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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO.1254 OF 2019

Sandesh Ganpat Padave

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.O.R.Tiwari, for the Applicant.

Ms. Veera Shinde, A.P.P for the Respondent - State.

PI – Ravindra Ranshevare, Samta Nagar Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 11th OCTOBER, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.818 of 2018 registered with the Samta Nagar Police Station, Mumbai, for the alleged offences punishable under Sections 376(2)(n), 354-A, 354-D, 506 of the Indian Penal Code and under Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act.
3. Learned Counsel for the applicant submits that the applicant

has been falsely implicated in the aforesaid case and that the documents on record do not support the case of the prosecutrix. He submits that if the panchanama of the terrace is seen, it had mud and other articles on the terrace and that it was not opened. He submits that clothes of the prosecutrix, which were seized under the panchanama are different from the clothes seen in the CCTV footage. He submits that the statements of the watchman, prosecutrix's close friend as well as the aunt have not been recorded. He submits that the CCTV footage will also prove that the applicant had not gone to the terrace along with the prosecutrix.

4. Learned APP opposed the application. She submits that the CCTV footage was seen and it was found that the formatting time in the said CCTV footage is inconsistent. She submits that the statement of the prosecutrix recorded under Section 161 and 164 of the Code of Criminal Procedure and the history given to the doctor are consistent.

5. Perused the papers in particular the statement of the prosecutrix. According to the prosecutrix, the applicant was staying in the adjacent building and that the applicant would take her to the terrace and attempt sexual relations with her on the terrace. She has stated that the said act was committed by the applicant repeatedly on her. She has stated that

the applicant threatened her not to disclose the same to any person. She has further stated that the applicant would follow her to school and would regularly stalk her, pursuant to which, she stopped attending the school. The statement of the prosecutrix recorded under Section 161 and 164 of the Code of Criminal Procedure and the history given to the doctor are consistent. As stated by the prosecutrix, the applicant had dragged her to the terrace, undressed her and thereafter attempted sexual intercourse with her. She has also alleged that the applicant would ask her to perform oral sex but she refused. The medical case papers are consistent with the case of the prosecutrix of attempt and therefore the question of hymen being torn does not arise. The prosecutrix was 12 years at the relevant time. The CCTV footage is not the part of the charge-sheet and has been produced by the learned counsel for the applicant.

6. The applicant aged 30 years had exploited the prosecutrix, aged 12 years and had taken advantage of her vulnerable age. Considering the aforesaid, this is not a fit case to enlarge the applicant on bail. Hence, the application for bail is rejected and disposed of as such. However, having regard to the age of the prosecutrix, i.e. 12 years, the trial of the applicant is expedited, lest she forgets the incident, due to passage of time. The learned Judge to conclude the trial as expeditiously as possible and

preferably within 12 months from the date of receipt of this order.

7. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.