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

CRIMINAL BAIL APPLICATION NO.52 OF 2020

Saddam Laltu Shaikh

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Viral Rathod i/b Ms. S. A. Sothe, for the Applicant.

Mr. P. H. Gaikwad – Patil, A.P.P. for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th JANUARY, 2020

P.C. :

1. This is the second bail application preferred by the applicant. The first bail application of the applicant was rejected on merits by this Court, vide order dated 28th August, 2019 passed in Bail Application No.2139 of 2019.

2. By this second bail application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-37 of 2019 registered with the MIDC Police Station, Mumbai, for the alleged offences punishable under Sections 363, 376(2)(i)(j), 506 r/w 34 of the Indian Penal Code and

under Sections 4 and 8 of the Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submits that the change of circumstance warranting filing of the second bail application is the C.A. Report received by the applicant. He submits that the C.A. reports are negative. He relied on the result of analysis of the examination of the C.A. reports which shows that neither blood nor any tissue matter is detected on Exhibits (2) and (3) i.e. nail clipping of right and left hand of the applicant and neither semen nor vaginal fluid is detected on Exhibits (1), (4) and (5) i.e. Pubic hair, penile shaft swab and coronal sulcus swab.

4. The earlier bail application preferred by the applicant was rejected on merits by a detailed order. The statement of the prosecutrix aged 15 years (inadvertently recorded in the earlier order as 17 years) clearly shows the complicity of the applicant. The history given by the prosecutrix to the doctor is also consistent with her statement of forcible sexual intercourse by the applicant. The statement of the prosecutrix recorded under Section 161 of Code of Criminal Procedure is also consistent with the statement of the prosecutrix recorded under Section 164 Cr.PC. The statement of the lady to whom the prosecutrix made a disclosure is also

consistent with the prosecutrix's statement. The incident is alleged to have taken place on 25th January, 2019. Admittedly, the prosecutrix was sent for medical examination on 27th January, 2019 i.e. after 2 day's of the sexual assault.

5. Considering the gap of 2 days, the result of the analysis appears to be negative. *Prima facie*, the statement of the prosecutrix cannot be discarded at this stage or rendered suspicious. The material on record clearly reveals that the applicant had taken advantage of the prosecutrix who was looking for a job by taking her to a isolated spot and sexually assaulting her. The possibility of the applicant tampering with the witnesses as well as the prosecutrix also cannot be ruled out.

6. Accordingly, no ground is made out for grant of bail. Hence, the application for bail is rejected and disposed of as such. The applicant is at liberty to file a fresh application in the event the trial does not commence within 9 months from today.

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.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.