

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(Through Video Conferencing)

CRM-M-14284-2021

Date of Decision: 04.08.2021

YOGENDER

.....Petitioner

V/s.

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

Present: Mr. Suvir Sidhu, Advocate, for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

MANJARI NEHRU KAUL, J. (Oral)

This is the third petition filed under Section 439 of the Code of Criminal Procedure for grant of concession of regular bail to the petitioner in case FIR No.307 dated 25.07.2019 lodged under Section 376 of the Indian Penal Code, 1860 registered at Police Station Rai, District Sonapat, Haryana.

A pointed query was put to the learned counsel for the petitioner as to what were the changed circumstances pursuant to the dismissal of the second petition filed under Section 439 of the Cr.P.C, 1973 by this Court which would warrant entertaining the instant petition, he has apprised this Court that subsequent to the withdrawal of the previous petition on 18.08.2021, two material witnesses including the prosecutrix have been examined. He further submits that a perusal of the FIR in question makes it abundantly clear that the prosecutrix, who is a major, was in a consensual relationship with the petitioner. In support of his submissions, he has drawn the attention of the Court to the Whatsapp messages exchanged between the prosecutrix and the petitioner which are part of the challan and in turn lend support to the factum of the prosecutrix being a consenting party throughout.

It has also been submitted that there was a delay of almost four months in lodging of the FIR in question from the date of alleged occurrence which further lent credence to his false implication.

Learned counsel for the petitioner also submits that since the material witnesses have been examined there could be no apprehension of the petitioner tampering with evidence or trying to influence any of the witnesses in his favour, hence, he be extended the concession of regular bail.

Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from ASI Samay, has apprised the Court that indeed the prosecutrix has since been examined but has supported the case of the prosecution in its entirety. She has further submitted that 9 out of the 23 cited witnesses have been examined and the delay in conclusion of the trial has been on account of the outbreak of the pandemic COVID-19.

Heard.

In view of the submissions made by learned counsel for the petitioner and the fact that the petitioner has been in custody since 25.07.2019 and material witness i.e. prosecutrix already stands examined, present petition is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

August 4, 2021

Ess Kay

[MANJARI NEHRU KAUL]
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No