

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

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**CRM-M-17423-2021 (O&M)
Decided on : 20.08.2021**

Kallu @ Anil

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Hitesh Ghai, Advocate,
for the petitioner(s).

Mr. Anmol Malik, DAG, Haryana.

MANJARI NEHRU KAUL, J. (Oral)

CRM-25035-2021

Pursuant to order dated 28th June, 2021, statements of the prosecutrix recorded under Section 164 Cr.P.C., as Annexures P-3 & P-4 filed along with the application are taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

CRM stands disposed of.

CRM-M-17423-2021

This is the second petition filed under Section 439 Cr.P.C. for grant of bail to the petitioner in case FIR No. 0543, dated 15.09.2018, under Sections 363, 506, 376(2)(n), 376(3) of IPC and Section 6 of the POCSO Act, 2012, registered at Police Station Yamuna Nagar City, Distt. Yamuna Nagar.

Learned counsel for the petitioner has invited the attention of this Court to the first statement of the prosecutrix recorded under Section 164 Cr.P.C. on 26th September, 2018 (Annexure P-3), subsequent to her

return to her home. He further submits that in her first statement recorded under Section 164 Cr.P.C., the prosecutrix categorically stated that she had left her home of her own accord as she was unhappy with her father, who wanted that she should discontinue her studies. Further submits that after two years of having made her first statement, a second statement under Section 164 Cr.P.C. was again recorded by the prosecutrix on 13th February, 2020 (Annexure P-4), wherein, she came up with a hugely improved version and levelled allegations against the petitioner for the first time, that on 14.09.2018, he had lured her away from her house and after coming to know about the registration of the FIR in question, she had subsequently been dropped by him at the Railway Station, Yamuna Nagar. Learned counsel, therefore, submits that it is thus very evident that the victim, who was aged 16 years of age had come up with a totally improved and contrary version to the one given in 2018 under the influence and at the behest of her family.

Learned counsel further submits that the prosecutrix was not subjected to any medical examination in 2018 and it was only as recently as in February, 2020, the medical examination of the prosecutrix was carried out. He submits that when these circumstances are seen in totality, they indeed cast a serious shadow of doubt on the authenticity of the allegations levelled against the petitioner by the victim in her second statement recorded under Section 164 Cr.P.C.

Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions, has not been able to controvert the fact that the second statement of the prosecutrix recorded under Section 164 Cr.P.C. after two years of the first statement under Section 164 Cr.P.C., is at complete variance, as she had not

blamed anyone in her first statement under Section 164 Cr.P.C., much less, the petitioner. Learned State counsel has also very fairly admitted that there was no MLR on record of the prosecutrix, after she returned home in September, 2018 and it was only recently that her medical examination was carried out. He has further submitted that the prosecutrix already stands examined before the trial Court, wherein, she has reiterated the allegations levelled against the petitioner in her second statement recorded under Section 164 Cr.P.C.

I have heard learned counsel for the parties and perused the material on record including the two statements of the prosecutrix recorded under Section 164 Cr.P.C..

As already apprised by the learned State counsel that 07 out of the 19 prosecution witnesses cited, stand examined, which include the material witnesses including the prosecutrix. Keeping in view the fact that petitioner has been in custody since 01st September, 2020, I deem it a fit case for grant of the concession of regular bail to the petitioner, as the trial is unlikely to conclude in the near future. The petition as such is allowed and the petitioner is admitted to bail to the satisfaction of 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.

(MANJARI NEHRU KAUL)
JUDGE

August 20, 2021

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No