

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

(Through Video Conferencing)

CRM-M-34504-2021

Date of Decision: 27.08.2021

VINAY

.....*Petitioner*

V/s.

STATE OF HARYANA

.....*Respondent*

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

Present: Mr. S.K. Tripathi, Advocate, for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

MANJARI NEHRU KAUL, J. (Oral)

This is the first 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.415 dated 29.10.2020 (Annexure P-1) lodged under Section 376(2)(n) of the Indian Penal Code, 1860 registered at Police Station Badshahpur, District Gurugram, Haryana.

Learned counsel for the petitioner submits that admittedly, it was a case of a consensual relationship between two adults as is evident from the statement dated 30.10.2020 (Annexure P-2) of the prosecutrix recorded under Section 164 of the Cr.P.C. However, subsequently, relations between the prosecutrix and the petitioner again turned sour as a result of which she backtracked from her earlier statement given under Section 164 Cr.P.C. statement and came up with another statement wherein she has again levelled allegations of forcible rape against the petitioner and has stated that she would proceed against the petitioner and teach him a lesson as he had refused to marry her.

It has been further submitted that the prosecutrix is intentionally

not stepping into the witness box and unnecessarily trying to delay the trial.

He submits that 5 out of the 7 prosecution witnesses have been examined and prosecutrix has been summoned on as many as five dates, however, she has refused to put in appearance and give her deposition before the trial Court.

Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from ASI Sonika, has not been able to controvert factual aspect of the submissions made by learned counsel for the petitioner with respect to the contradictory stands taken by the prosecutrix first while getting the FIR in question registered and later in the her statement recorded under Section 164 of the Cr.P.C. He too has conceded that the prosecutrix has failed to put in an appearance before the trial Court to get her evidence recorded. He further submits that all efforts made by the investigating agency to trace out the prosecutrix have been in vain as the prosecutrix has changed her telephone number and even her address.

Heard.

In view of the submissions made by learned counsel for the petitioner and the fact that the petitioner has been in custody since 29.10.2020, 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 27, 2021

Ess Kay

**[MANJARI NEHRU KAUL]
JUDGE**

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No