

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

229

**CRM-M-37713-2021
Decided on : 15.12.2021**

Insurum

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Karan Pathak, Advocate
for the petitioner(s).

Ms. Gaganpreet Kaur, AAG, Haryana
assisted by L/ASI Monika.

None for the complainant(s).

MANJARI NEHRU KAUL, J. (Oral)

This is the second petition filed under Section 439 Cr.P.C. for grant of bail to the petitioner in case FIR No. 70, dated 06.08.2020, under Sections 376, 376D, 452 of IPC, registered at Women Police Station, District Gurugram (Haryana).

Learned counsel for the petitioner *inter alia* contends that it was on account of a previous animosity between the parties, the FIR in question came to be registered against the petitioner, wherein, false allegations were levelled against him of having raped the prosecutrix, aged 35 years. While inviting the attention of this Court to the deposition of the prosecutrix (annexed as Annexure P-10), learned counsel submits that she did not support the case of prosecution, when she stepped into the witness-box as PW-2 during trial, as a result of which, she was declared hostile.

Learned counsel further submits that rather the prosecutrix during her aforementioned deposition had stated that she had developed physical relationship with the petitioner of her own accord. Still further, it has been submitted that since the sole material witness i.e. the prosecutrix, already stands examined, his further incarceration would not serve any useful purpose, as 15 prosecution witnesses remain to be examined.

Per contra, learned State counsel while opposing the prayer

made by learned counsel for the petitioner, on instructions from L/ASI Monika, has not been able to controvert the submissions made by the counsel opposite *qua* the prosecutrix having turned hostile during trial. She, on instructions, has submitted that some of the prosecution witnesses are likely to be examined on the next date of hearing i.e. 07.01.2022 by the trial Court.

I have heard learned counsel for the parties and perused the material on record.

The petitioner has been in custody since 16th August, 2020, and the sole material witness i.e. the prosecutrix, during her deposition before the learned trial Court was declared hostile. The trial is unlikely to conclude anytime in the near future, as 15 prosecution witnesses remain to be examined. Therefore, his further incarceration would not serve any useful purpose.

In the facts and circumstances of the case as enumerated hereinabove, the petition is allowed. The petitioner be 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

December 15, 2021

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*