

220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.41335 of 2020
Date of Decision:24.03.2021

PAWAN

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Partap Singh, Advocate, for the petitioner.

Mr. Ashok Singh Chaudhary, Addl. AG, Harayana.

Mr. M.S. Kathuria, Advocate for
Mr. Shikhkar Kataria, Advocate, for the complainant.

HARNARESH SINGH GILL, J. (ORAL)

Petitioner has filed this petition under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.43 dated 30.07.2020 registered under Sections 328, 376-D, 452, 506, 509 IPC (later on Section 376-D IPC was deleted and Section 376 IPC was added), at Police Women Station Assandh, District Karnal.

Reply dated 22.03.2021 filed by way of affidavit of Deputy Superintendent of Police, Karnal on behalf of the State, is taken on record.

Learned counsel for the petitioner states that the present FIR was registered after a delay of 2 ½ months; that during investigation, out of total six accused, five were declared innocent and that in her statement under Section 164 Cr.P.C. recorded before the Divisional/Sub Divisional Judicial Magistrate, Assandh, the prosecutrix, had raised a finger upon her maternal aunt and not the petitioner. It is further submitted that the prosecutrix and her mother, appeared as prosecution witnessed as PW-1 and PW-2 on 18.03.2021

and both of them having not supported the prosecution witnesses, were declared hostile.

On the other hand, learned State counsel assisted by the counsel for the complainant, has vehemently opposed the prayer for grant of bail. They state that keeping in view the serious nature of the offence committed by the petitioner, he is not entitled to the concession of regular bail. While not disputing the factum of the prosecutrix and her mother having turned hostile before the trial Court, it is stated that the said fact cannot be a ground to enlarge the petitioner on bail.

I have heard the learned counsel for the parties.

The petitioner has been in custody since 14.08.2020. As noticed above, in her statement under Section 164 Cr.P.C. recorded before the learned Divisional/Sub Divisional Judicial Magistrate, Assandh, the prosecutrix did not name the petitioner. Still further, as pointed out by the counsel for the petitioner and not disputed by the counsel for the complainant, the prosecutrix and her mother, have not supported the prosecution version and been declared hostile.

In view of the above, without commenting anything on the merits, lest it should prejudice the case of either side, the petition is allowed and the petitioner is ordered to be released on regular bail to the satisfaction of the learned trial Court/Duty Magistrate.

However, the trial Court shall remain uninfluenced by the observations made above.

(HARNARESH SINGH GILL)
JUDGE

March 24, 2021

Jyoti Whether speaking/reasoned Yes/No Whether Reportable Yes/No