

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

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**CRM-M-50230-2021
Decided on : 06.12.2021**

Prakash Kumar

. . . Petitioner(s)

Versus

State of Kumar

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Varun Singh Dhanda, Advocate
for the petitioner(s).

Ms. Gagandeep Kaur, AAG, Haryana
assisted by ASI Rajo.

MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been filed under Section 439 Cr.P.C. for grant of bail to the petitioner in case FIR No. 09, dated 08.01.2021, under Section 346 of IPC (later on added, Section 363 of IPC and Section 4 of the POCSO Act, 2012), registered at Police Station Sector 50, Gurugram, District Gurugram.

While inviting the attention of this Court to the statement recorded under Section 164 Cr.P.C. (annexed as Annexure P-2), it has been submitted that the victim, who was more than 17 years of age on the date of alleged occurrence, did not level any allegation of wrong doing, much less, of any sexual assault, against the petitioner and which she also reiterated while stepping into the witness-box as PW-3 during trial. Learned counsel submits since the victim did not support the case of the prosecution during trial, she was declared hostile. Learned counsel has thus prayed for grant of concession of bail to the petitioner, as his further incarceration would not serve any useful purpose, more so, since the sole material witness i.e. the victim, already stands examined and he has been in custody since 09th

January, 2021.

On the other hand, learned State counsel while opposing the prayer made by the counsel opposite, has not been able to controvert his submissions *qua* the victim having declared hostile during trial. Learned State counsel has conceded that the victim is the sole material witness in the case in hand.

I have heard learned counsel for the parties and perused the material on record including the statement of the victim recorded under Section 164 Cr.P.C. and her deposition, which has been annexed as Annexure P-4, wherein, the submissions made by the learned counsel for the petitioner *qua* the victim not having supported the case of the prosecution, stands duly reflected.

In the facts and circumstances as enumerated hereinabove, further incarceration of the petitioner would serve no useful purpose, more so, since the sole material witness i.e. victim stands examined. 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 06, 2021

J.Ram

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