

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

212

**CRM-M-15974-2022  
Decided on : 25.04.2022**

Kundan

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

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

PRESENT: Mr. Kunal Dawar, Advocate  
for the petitioner(s).

Mr. Rohit Arya, DAG, Haryana.

Mr. Shiv Kumar, Advocate  
for the complainant.

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**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. 201, dated 23.10.2020, under Sections 376(2)(N), 506, 328, 34 of IPC (Sections 313, 406, 366 of IPC were added later on and Section 34 IPC was deleted), registered at Police Station Women NIT, Faridabad, District Faridabad, Haryana (annexed as Annexure P-1).

Learned counsel for the petitioner submits that subsequent to the withdrawal of the previous petition on 07<sup>th</sup> December, 2021, the Investigating Officer of the case in question stands examined. Learned counsel submits that during his deposition, the Investigating Officer had categorically deposed that no incriminating material, much less, in the shape of obscene pictures of the prosecutrix and the petitioner had come to the fore or produced by the prosecutrix during investigation. In addition to this, learned counsel submits that the Investigating Officer had also deposed that

the prosecutrix was holding two Aadhar Cards in two different names. He submits that in fact the prosecutrix was a woman of dubious antecedents and still further a perusal of the allegations levelled in the FIR leaves no manner of doubt that the prosecutrix had been a consenting party throughout. Learned counsel submits that since the relations between the parties turned sour, the prosecutrix for reasons but obvious planted a totally concocted case upon the petitioner.

Learned counsel while drawing the attention of this Court to the FIR in question, submits that it cannot be digested and believed that the prosecutrix, who was a 30 years old woman, after being intoxicated and raped, would have still agreed to travel to Calcutta on a promise given by the petitioner of getting her a job. Learned counsel submits that yet again it cannot be digested that once in Calcutta, the prosecutrix would have given her ATM card to the petitioner for withdrawing her “hard earned” money on various occasions. Learned counsel while drawing the attention of this Court to Annexure P-2, which is the Medico Legal Report (in short 'MLR') of the prosecutrix, submits that the factum of the prosecutrix being in a relationship with the petitioner, stands fortified from the following observations made by the Doctor at the time of her medical examination, which is as under:-

*“ALLEGED H/O SEXUAL ASSAULT BY A PERSON NAMED KUNDAN IN 2ND JUNE 2018, H/O LIVING IN WITH THE SAME PERSON FROM SEPT 2018 TO JUNE 2020 ON THE PRETEXT OF MARRIAGE AFTER THAT HE STARTED IGNORING HER AND PT BROUGHT BY POLICE FOR MEDICO LEGAL EXAMINATION.”*

Learned counsel further submits that while in the FIR, it had been alleged that on the pretext of getting the prosecutrix a job, the petitioner had taken her to Calcutta, whereas, while getting her statement

recorded at the time of her medico legal examination, she had come with an altogether different version that she had been lured into a relationship on the pretext of marriage.

A prayer has, therefore, been made that sine the prosecutrix, who is the sole material witness, stands examined and 09 prosecution witnesses remained to be examined out of the 16 cited, the petitioner be extended the concession of bail, as there is no likelihood of the trial concluding in the near future.

*Per contra* learned State counsel assisted by learned counsel for the complainant, while opposing the prayer and submissions made by the counsel opposite, submits that the prosecutrix was lured into a relationship by the petitioner on the pretext of her getting a job and thereafter, he continuously violated her person against her wishes. The petitioner then took her to Calcutta, where she was confined in a flat and continuously raped. It has, therefore, been submitted that subsequent to the withdrawal of the previous petition on 07<sup>th</sup> December, 2021, there had not been any material change in circumstances, which would warrant acceptance of the instant petition filed under Section 439 Cr.P.C. for grant of concession bail to the petitioner.

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

*Prima facie*, it does appear to be a consensual relationship between the petitioner and the prosecutrix, who admittedly was a 30 years old woman. The contention of the learned counsel that there has been no material change in circumstances, after the withdrawal of the previous petition was withdrawn on 17<sup>th</sup> December, 2021, is bereft of any merit, as

admittedly, the Investigating Officer has since been examined. The material witness in this case i.e. the prosecutrix also stands examined.

In the facts and circumstances, as enumerated hereinabove, coupled with the fact that only 09 prosecution witnesses stand examined out of the 16 prosecution witnesses cited, there is no likelihood of the trial concluding in the near future. This Court, therefore, deems it fit to extend the concession of bail to the petitioner during the trial, as he has been in custody since 14<sup>th</sup> January, 2021. The petition is allowed and the petitioner is admitted to bail to the satisfaction of the concerned Trial Court/Duty Magistrate. However, it is made clear that any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)  
JUDGE

**April 25, 2022**

*J.Ram*

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