

214 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
(through video conferencing)**

CRM-M-40951-2021
Date of decision:10.02.2022

Dharambir

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Savita Rana, Advocate
 for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking grant of regular bail under Section 439 Cr.PC in case FIR No.681 dated 07.11.2020 under Sections 341, 342, 376(2)(n), 376(2)(f), 376-D IPC registered at Police Station City Karnal, District Karnal.

Learned counsel for the petitioner inter alia contends that on 03.10.2020, the prosecutrix went missing from her house, as a result of which, FIR No.281 dated 04.10.2020 under Section 346 IPC at Police Station Sadar Safidon was lodged by her mother. At the time of registration of aforementioned FIR, the mother of the prosecutrix did not raise any suspicion qua the involvement of any person much less the petitioner. She further submits that after her recovery on 04.11.2020, prosecutrix got her statement recorded under Section 164 Cr.PC wherein she stated that she had gone to Shimla of her own accord and stayed there for 15 days in the house of a friend. Thereafter, she had gone and stayed in the house of one Akriti

at Karnal for one week and thereafter, she met the police in Karnal and expressed her desire to return home. Learned counsel contends that in her first statement recorded under Section 164 Cr.PC, the prosecutrix did not name anyone much less the petitioner nor levelled any allegation of wrong doing against any person. She further submits that it was after three days i.e. on 07.11.2020, the prosecutrix got her second statement recorded under Section 164 Cr.PC wherein she came up with an altogether different version by stating that she had got her first statement under Section 164 Cr.PC recorded under the pressure of not only her mother but co-accused Aman and the petitioner. While inviting the attention of this Court to her second statement recorded under Section 164 Cr.PC, which stands reproduced in the petition, learned counsel submits that she had come up with a totally unbelievable version to the effect that while travelling in a bus from Rohru to Karnal alongwith two other boys Anees and Ashok, she met the petitioner and co-accused Aman with whom she started talking. Thereafter, both of them including the petitioner took her to the fields in Karnal where they raped her. Learned counsel still further submits that in the said statement, she also alleged that co-accused Aman forcibly solemnized marriage with her on 29.10.2020 and kept her confined in his home. She, thus, submits that the story, which has been brought forth, on the face of it, is nothing but a bundle of lies. It has also been submitted that the two statements made under Section 164 Cr.PC, which are at complete variance with each other, create a big question mark about their authenticity, more so, since there was no medical evidence also on record to corroborate the allegations levelled with respect to the petitioner having forcibly raped her. It has been

submitted that as the petitioner has been in custody since 08.11.2020 and the sole material witness i.e. prosecutrix has been examined during trial, his further incarceration would not serve any useful purpose. Learned counsel submits that the petitioner is a man of clean antecedents and is not involved in any other criminal case much less of similar nature.

Per contra, learned State counsel on instructions from L/SI Babita Rani has not been able to controvert that the prosecutrix, who admittedly is an adult, had come up with different versions while getting her statements recorded under Section 164 Cr.PC on 04.11.2020 and 07.11.2020. He has further conceded that the MLR of the prosecutrix did not reveal any external or internal injury on her person even though she had alleged that she had been physically assaulted by the accused while she was in their custody. He, however, on instructions submits that the prosecutrix while stepping into the witness box had reiterated her allegations against the petitioner which she had levelled in her second statement recorded under Section 164 Cr.PC on 07.11.2020.

Heard learned counsel and perused the paper book.

From the sequence of events as detailed above, it is clear that the prosecutrix had come up with totally contrary versions in the two statements recorded under Section 164 Cr.PC. The authenticity or otherwise as to which version made by the prosecutrix under Section 164 Cr.PC is credible would be a matter to be appreciated during trial.

In the facts and circumstances, more so, since the sole material witness i.e. prosecutrix stands examined and 12 prosecution witnesses remain to be examined, this Court deems it a fit case to extend the

concession of bail to the petitioner. Accordingly, the present petition is allowed. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. 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.

10.02.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No