

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

210

(Through Video Conferencing)

CRM-M-42821-2021

Date of decision: 09.02.2022

Nahir Khan

.....Petitioner

Versus

State of U.T., Chandigarh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Surinder Kumar Daaria, Advocate
for the petitioner.

Mr. Kuldeep Tiwar, Addl. P.P., U.T., Chandigarh
for the respondent-U.T.

MANJARI NEHRU KAUL, J. (ORAL)

This is the first petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.332 dated 16.11.2018 lodged under Section 376(2) IPC registered at Police Station Industrial Area, Chandigarh.

Learned counsel for the petitioner submits that the allegations levelled in the FIR in question that the petitioner had established forcible physical relations and thereafter clicked obscene photographs of the prosecutrix were patently false and fabricated which found credence from the deposition of both the material witnesses including the prosecutrix, who while stepping into the witness box as PW-1 and PW-2, did not support the case of the prosecution as a result of which they both were declared hostile. Learned counsel submits that since both the material witnesses had been examined during trial and 8 prosecution witnesses remain to be examined, his further incarceration would serve no useful purpose as he has now been in custody for

almost 01 year and 06 months.

Per contra, learned State counsel while opposing the prayer made by counsel opposite has not been able to controvert the factum of both the material witnesses including the prosecutrix turning hostile during trial. Learned State counsel submits that the delay in conclusion of the trial was on account of the petitioner absconding subsequent to the registration of the FIR as a result of which he had previously been declared a proclaimed offender. Learned State counsel has also submitted that the petitioner was involved in another criminal case, however, he admittedly was acquitted in that case.

I have heard learned counsel for the parties and perused the material placed on record including the deposition of two material witnesses annexed as Annexures P-2 and P-3 with the petition.

In view of the facts and circumstances as enumerated hereinabove coupled with the fact that 8 prosecution witnesses remain to be examined and the trial is unlikely to conclude in the near future, the instant 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.

09.02.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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