

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

CRM-M-52159-2022

Date of Decision: 23.11.2022

Tarif Petitioner

Versus

State of Haryana Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Rohit Arya, DAG, Haryana.

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MANJARI NEHRU KAUL, J.

The petitioner by way of third petition is seeking the concession of regular bail under Section 439 Cr.P.C. in FIR No. 19 dated 17.02.2021 under Section 346 IPC (later on Sections 363, 366, 376-D, 34 IPC added and subsequently Section 346 IPC deleted).

Learned counsel submits that the previous petition was, no doubt, dismissed on 17.02.2022, however, it was on account of wrong instructions received by the learned State counsel to the effect that all the material witnesses including the prosecutrix had supported the case of the prosecution in its entirety. Learned counsel has submitted that in fact while stepping into the witness box the prosecutrix had failed to support the case of the prosecution and had made material improvements and contradictions as a result of which she was declared hostile by the learned Public Prosecutor for the State. In support of his submissions, learned counsel has invited the attention of this Court to the testimony of the prosecutrix

(Annexure P5) wherein the factum of the prosecutrix having been declared

hostile stands reflected. On merits, learned counsel has *inter alia* submitted that the prosecutrix was admittedly a 22 year old married girl who went missing from her parental home on 08.02.2021. Thereafter, on 17.02.2021 a missing report was filed by her father. Learned counsel submits that in her statement recorded under Section 164 Cr.P.C. ,which has been annexed as Annexure P3, the prosecutrix alleged that she had been abducted by three boys and a relative from her village on 08.02.2021 at 09:00 PM and thereafter driven to Agra where she was subjected to rape, and after which she was left at village Singhal. Learned counsel submits that while stepping into the witness box, on a court question put to her under Section 165 of the Evidence Act, the prosecutrix stated that when she was abducted on the fateful day she was present inside her room with her sisters-in-law (Bhabis). Learned counsel submits that had it been a case of abduction as alleged, the factum of she having been abducted and that too in the presence of her sisters-in-law would have surely been stated by the complainant-father at the time of lodging of the FIR in question. However, in the FIR, the complainant-father had merely stated that his married daughter i.e. the prosecutrix had gone away somewhere on 08.02.2021. It was thus urged by the learned counsel that since the prosecutrix had admittedly been declared hostile during trial and as many as 11 prosecution witnesses remained to be examined, further incarceration of the petitioner, who has been in custody for almost 01 year and 09 months having been arrested on 21.02.2021, would serve no useful purpose.

Per contra learned State counsel on instructions has conceded that at the time of hearing of the second petition for regular bail filed under Section 439 Cr.P.C. by the petitioner wrong instructions had been received

with respect to the deposition of the prosecutrix. Learned State counsel apologizes for the same and submits that it was on account of some miscommunication as during that time the court proceedings were being held through virtual mode. Learned State counsel has further not been able to dispute the submissions made by the counsel opposite with respect to the prosecutrix having not supported the case of the prosecution, particularly, qua the role attributed to the petitioner in the crime in question. Learned State counsel submits that only 03 prosecution witnesses out of the 14 stand examined till date.

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

The prosecutrix, who is the sole material witness in the case in hand, stands examined and it is a matter of record that while stepping into the witness box she has failed to support the case of the prosecution as a result of which she was declared hostile. The trial is unlikely to conclude in the near future. This court, in the facts and circumstances as enumerated herein above, deems it fit to extend the concession of bail to the petitioner, who has now been in custody since 21.02.2021.

Accordingly, the petition is allowed and the petitioner is admitted to bail to the satisfaction of trial Court/Duty Magistrate. However, it is made clear that any observation made herein above shall not be construed as an expression of opinion on the merits of the case.

23.11.2022

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Note: Whether speaking/reasoned
Whether Reportable:

(MANJARI NEHRU KAUL)
JUDGE

Yes / No

Yes / No