

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.47937 of 2022
Date of decision: 5th May, 2023

Aman Dcruz

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.
Mr. Rahul Mohan, Sr. Dy. Advocate General, Haryana
for the respondents/State.
Mr. Baljeet Beniwal, Advocate for the complainant.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case Zero FIR No.0001 dated 21.11.2020 under Sections 376D, 342 IPC registered at Police Station Maidan Garni, District South Delhi (on transfer to Police Station Women NIT Faridabad, was registered as FIR No.218 dated 22.11.2020).

Learned counsel for the petitioner inter alia contends that in fact it was a case of consent and the prosecutrix, who was a 31 year old lady, had accompanied the co-accused of her own volition. He submits that the allegations levelled in the FIR, which has been annexed as Annexure P-1, also hints towards the prosecutrix being a consenting party. Learned counsel has drawn the attention of this Court to Annexure P-6, which is a supplementary statement given by the

prosecutrix wherein she stated that when the accused tried to sexually assault her, she raised a hue and cry, as a result of which the neighbours informed the police. However, when the police came there, she was pushed inside a room by the accused party.

Learned counsel submits that had there been any grain of truth in the allegations levelled and had she been raped, as alleged, she would not have kept quiet in the presence of the police as it was not even her case that her mouth had been gagged by the accused. Learned counsel further submits that no doubt, in her statement under Section 164 Cr.P.C. she had levelled specific allegations against the petitioner, which she reiterated while stepping into the witness box, however it was also a matter of record that subsequently she had resiled and given an affidavit that the FIR in question came to be registered on account of some pressure exerted on her. Learned counsel still further submits that since all the material witnesses including the prosecutrix, stand examined and the petitioner has now been in custody since 22.11.2020, the trial shall take considerable time to conclude, in the circumstances, further incarceration of the petitioner would serve no useful purpose.

Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Muneesh, has submitted that the petitioner along with co-accused had raped the prosecutrix and while stepping into the witness box, she had reiterated the allegations levelled against them in the FIR as well as in her statement recorded under Section 164 Cr.P.C.

Learned counsel for the complainant has not disputed that the complainant, who is the sole material witness, stands examined in the case in hand. He has also not disputed that the prosecutrix has given an affidavit exonerating the petitioner.

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

The petitioner has now been in custody since 22.11.2020 and there is no likelihood of the trial concluding in the near future. All the material witnesses including the victim already stand examined. In the facts and circumstances, as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner. The petition as such is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. However, it is made clear that anything contained hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

May 5, 2023
rps

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