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

CRM-M-22660-2022 (O&M)

Date of decision : 09.11.2022

Surmu @ Surmudeen

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Shubham Mehta, Advocate for
Mr. Vivek Salathia, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Bhavesh Aggarwal, Advocate
for respondents No.2 to 4.

RAJESH BHARDWAJ, J. (Oral)

CRM-41778-2022

Application is allowed as prayed for.

Annexures P-5 to P-7 are taken on record.

CRM-M-22660-2022

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.0116 dated 01.09.2021, under Sections 363, 366 of IPC (offence under Section 376-D of IPC and Section 6 of POCSO Act, 2012 added later on vide GD No.038 dated 08.02.2022), registered at Police Station Sadar Pathankot, District Pathankot on the basis of compromise deed (Annexure P-4).

As per the facts of the case, the FIR was lodged by father of the victim wherein it was alleged that his youngest daughter i.e. the victim is about 16 years of age. On 14.08.2021, he along with his wife,

son and youngest daughter i.e. the victim left on rehra along with their animals to reach at Hussain Baag. All three of them reached at about 05:00 PM at Kotli Canal and stayed there to spend night. At about 09:00-10:00 PM, one white coloured car came in which Rosi, Juman, Maskin sons of Basir and their brother-in-law Surmu son of Chhattu i.e. the petitioner came out and they forcibly kidnapped his youngest daughter i.e. the victim in their car and all of them were his relatives and hence, he knew them. They tried to trace his victim daughter but failed to trace her out. The request was made to take legal action against the culprits. In pursuance to the statement made by the complainant, the FIR was lodged for the offence under Sections 363 and 366 of IPC. On commencement of investigation, the victim was recovered on 03.02.2022. She was medically examined and produced before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C. The petitioner was arrested on 17.02.2022. He approached the Court of learned Additional Sessions Judge, Pathankot praying for grant of bail. However, after hearing counsel for the parties, learned Additional Sessions Judge declined the same vide his order dated 12.04.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner and the prosecutrix both belongs to the same community. He submits that both were in consensual relationship which was not acceptable to the family of the prosecutrix and hence, the petitioner has been falsely implicated in this case. He has submitted that the alleged occurrence has taken place on 22.08.2021 whereas, the present FIR has been lodged without any cogent reason in September,

2021. He submits that the prosecutrix was recovered on 03.02.2022 i.e. after about five months. He has submitted that during the period of about five months, both the petitioner and the prosecutrix remained together at public places and there was no incident ever reported regarding any coercion exercised by the petitioner on the prosecutrix. He submits that thereafter, both the families reconciled the issues and decided to marry both the petitioner and the prosecutrix. He also submits that the prosecutrix has attained the age of majority. As per the ossification test conducted, her age was found to be between 18 to 20 years. He has submitted that keeping in view the facts and circumstances of the case, this Court vide order dated 10.08.2022 granted interim bail to the petitioner. He has submitted that thereafter, both the petitioner and the prosecutrix got married on 30.08.2022 and as on date, both are of the age of majority and are husband and wife. He submits that the petitioner duly surrendered before the Jail Authorities on 16.09.2022. He has submitted that the petitioner has no criminal antecedents and the FIR had been lodged in a heat of passion and hence, the petitioner deserves to be granted regular bail.

Learned counsel for respondents No.2 to 4 has endorsed the submissions made by counsel for the petitioner. He has submitted that the prosecutrix has attained the age of majority as on date and she was married to the petitioner on 30.08.2022.

Learned State counsel on the other hand has submitted that initially the FIR was lodged for the offence under Sections 363 and 366 IPC, however, on the recovery of the prosecutrix, her statement was recorded under Section 164 Cr.P.C. and on the basis of the same, offence

under Section 376-D and Section 6 of POCSO Act were added. He has drawn the attention of this Court to the status report filed by the State and has submitted that the ossification test of the prosecutrix was conducted and she was opined to be of the age of 18 to 20 years. He has submitted that the investigation in the case is already complete and the case is fixed for framing of the charge on 25.11.2022. He has further submitted that as per the instructions provided, the petitioner has no criminal antecedents.

I have heard counsel for the parties and perused the record.

Evidently, the prosecutrix was allegedly kidnapped on 14.08.2021 and thereafter, she was recovered on 03.02.2022. She was produced before the Judicial Magistrate wherein her statement under Section 164 Cr.P.C. was recorded and she made the allegations against the petitioner for the offence under Section 376 IPC and Section 6 of POCSO Act which were incorporated in the FIR. However, later on, both the families reconciled the matter and the petitioner was granted interim bail and both of them got married. As submitted before this Court, the petitioner has no criminal antecedents. Learned counsel for the complainant has endorsed the factum regarding the marriage of the prosecutrix with the petitioner and her attaining the age of majority. He has admitted the relationship of the petitioner and the prosecutrix who are duly married after the interim bail was granted to the petitioner. Learned State counsel has submitted that petitioner has no criminal antecedents and the investigation already stands completed. This Court granted interim bail to the petitioner on 10.08.2022 and there is nothing on record that during this period, the petitioner misused the interim bail in any manner.

The trial of the case will take sufficient long time. The veracity of the allegations would be assessed by the trial Court only after appreciation of the evidence led by respective parties. However, confining itself to the prayer made for bail, this Court finds that counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

09.11.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No