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

CRM-M-44767-2022

Date of Decision: December 15, 2022

Sunil Kumar @ Sunil
Versus

.....Petitioner

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Narinder S.Lucky, Advocate
for the petitioner.

Mr.Karunesh Kaushal, AAG, Punjab.

Mr.Navdeep Singh, Advocate
for the complainant.

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RAJESH BHARDWAJ, J.(ORAL)

Instant petition has been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.121, dated 24.09.2021, under Section 376 IPC and Section 4 of POCSO Act (Section 6 of POCSO Act added later on), registered at Police Station Maqsudan, District Jalandhar.

Adumbrated facts of the case are that complaint was lodged by Radha wife of late Jagan Nath. It was alleged that she is a labourer and has three children. Her daughter, i.e., the victim (name concealed) is 16 years of age. A boy, namely, Sunil, who was living on rent for the last 2-3 years, established relationship with her daughter. She got suspicious about his relationship with her daughter and asked about the same to her daughter. On asking of the same, she disclosed that Sunil had established sexual relationship with her on the promise of marriage and due to the same, she

got pregnant. It was alleged that life of her daughter has been ruined and legal action be taken against the culprit. On the basis of complaint, formal FIR was lodged and investigation was commenced. Prosecutrix was medico legally examined. Her statement was recorded under Section 164 Cr.P.C. The Investigating Agency recorded the statements of relevant witnesses and the petitioner was arrested on 03.12.2021. He approached the Court of learned Additional Sessions Judge, Jalandhar, praying for grant of bail, however, after hearing both the sides, the same was declined vide order dated 31.08.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in this case. He has submitted that relationship between the petitioner and the prosecutrix was consensual and as the same was not acceptable to the family of the prosecutrix, the petitioner was implicated in this case. He has submitted that as on date, the prosecutrix has delivered a child also and the petitioner duly accepted himself to be the biological father of her child. He submits that the trial Court has examined complainant/mother and the victim as PW1 and PW2 respectively. He has drawn attention of this Court to their depositions showing that both of them have not supported the case of the prosecution and are declared hostile. He submits that now both the family members have decided to marry the petitioner with the prosecutrix. It is further submitted that the petitioner has no criminal antecedents and in the facts and circumstances, his further incarceration is totally unwarranted.

Counsel for the complainant has affirmed the submissions made

by counsel for the petitioner. He has submitted that both the parties have

decided to marry the petitioner with the prosecutrix after her attaining the age of majority.

Learned State counsel has submitted that prosecutrix is minor and in her statement recorded under Section 164 Cr.P.C., she had duly supported the case of the prosecution which clearly shows complicity of the petitioner regarding the offence committed against a minor. He has candidly acknowledged that the prosecutrix and her mother have been examined by the trial Court but they have not supported the case of the prosecution. He further submits that out of 19 prosecution witnesses, five already stands examined.

Heard.

Admittedly, the prosecutrix in this case is a minor. She has delivered a child which is born out of her relationship with the petitioner. As submitted before this Court, the petitioner admits himself to be the biological father of the child of the prosecutrix. Both the counsels, i.e. counsel for the petitioner as well as counsel for the complainant, have submitted before this Court that both the families have now decided to marry the petitioner with the prosecutrix. Evidently, the prosecutrix and her mother have not supported the case of the prosecution. There is nothing on record to show that the petitioner has any criminal antecedents. Though this Court would not comment upon the contentions raised regarding the compromise arrived at between the parties, however, the Court cannot even ignore the fact that prosecutrix in the case is not only a minor but, as on date, she is a mother of a child also. The petitioner has admitted himself to be the biological father of the child and he is ready to marry the prosecutrix on her attaining the age of majority. It has been submitted before this Court that

engagement could not be done as petitioner is behind bars. This Court would refrain itself from commenting anything on merits of the case, at this stage. In the overall facts and circumstances of the case, this Court finds that counsel for the petitioner succeeds in making out a case for grant of bail to the petitioner.

In the totality of facts and circumstances of the case and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to the satisfaction of trial Court/Duty Magistrate concerned. Nothing stated herein shall be treated as an expression of opinion on the merits of the case.

December 15, 2022
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |