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

**CRM-M-1561-2022 (O&M)
Date of Decision: 18.08.2022**

Sunita

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Parminder Singh Kanwar, Advocate, for
Mr. Sanjeev K. Virk, Advocate,
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

SUVIR SEHGAL J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking grant of post-arrest bail in case FIR No.111 dated 01.05.2012, registered for offences under Section 376 of the Indian Penal Code, 1860 (for short “IPC”) and Section 10 of the Prohibition of Child Marriage Act, 2006, at Police Station City Kapurthala, District Kapurthala, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been registered on the statement of father of a 13 year old girl (for short “the prosecutrix”) that he was married to Sunita Kumari, the present petitioner, who along with her family members wanted to sell the prosecutrix and earn money. His wife, i.e. the present petitioner, developed relations with one Gurbax Singh and eloped with him along with all the three children. The complainant later on came to know that the prosecutrix has been married to

one Charanjit Singh @ Mani. He managed to recover the prosecutrix and filed the present complaint.

Learned counsel for the petitioner submits that petitioner is the natural mother of the prosecutrix. He contends that petitioner has been embroiled in a false case by her husband due to estrangement. He submits that out of the total ten accused named in the FIR, Annexure P-1, trial against the five accused has been concluded and they have been acquitted by the learned Additional Sessions Judge, Kapurthala, vide judgment dated 05.01.2018. By referring to paragraphs No.28 to 30 of the judgment, he urges that prosecution has failed to establish that the prosecutrix was a minor at the time of her marriage with Charanjit Singh @ Mani. He submits that the charges have been framed against the petitioner under Section 10 of the Prohibition of Child Marriage Act and Section 120-B of the IPC, which entail a maximum punishment of two years, in case the petitioner is found guilty of the offences. He asserts that the petitioner, who is in custody since 20.07.2021, is no longer required for custodial interrogation and deserves to be released on bail.

Per contra, learned State counsel, upon instructions from ASI, Jasbir Singh, has opposed the petition and has filed Custody Certificate dated 17.08.2022, which is taken on record. He submits that the petitioner was declared a proclaimed offender and she was arrested after nine years of registration of the FIR. He submits that whereabouts of accused-Charanjit Singh are also not known. As per his instructions, out of the total 22 prosecution witnesses, no witness has been examined so far.

Having considered the submissions made by learned counsel for the parties, this Court *prima facie* is of the view that the complicity of

the petitioner, who is a middle-aged lady and mother of the prosecutrix, would remain controvertible before the Trial Court. Petitioner, who is in custody for the last more than one year, would be entitled to be released on bail as the trial is likely to take time to conclude.

Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail during the pendency of trial, on furnishing adequate bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. It will be open to the Trial Court/Duty Magistrate concerned to impose any condition it deems appropriate to obviate the possibility of any future default by petitioner.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

18.08.2022*Apurva***(SUVIR SEHGAL)
JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No