



pretext of marrying her. Ramu Amdayawala (co-accused) had also connived with petitioner in enticing away his daughter. Since thereafter, they had been tracing for their daughter but she could not be traced. Therefore, necessary action be taken against the accused/petitioner.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner and prosecutrix/victim/respondent No.2 fell in love with each other and their relationship was opposed to the family of respondent No.2 and both of them eloped and solemnized marriage on 23.05.2022 at Vaishno Devi Temple, Katra, Jammu. Out of the said wedlock, the couple has been blessed with a child on 09.03.2023 and since their marriage, the petitioner and respondent No.2 (daughter of complainant) are residing happily and cohabiting as husband and wife. The statement of prosecutrix/respondent No.2 was recorded under Section 164 Cr.P.C., in which, she has categorically stated that she has left with the petitioner with her own sweet will. It is further submitted that prosecutrix/respondent No.2 is major now and as such, she can take care of her welfare.

4. Ms. Aarushi Garg, Advocate for Mr. M.S. Chauhan, Advocate has put in appearance on behalf of respondent No.2 and filed his *vakalatnama* which is taken on record. Registry is directed to tag the same at the appropriate place. Learned counsel for respondent No.2 submits that the prosecutrix is major now and she has no objection in case the petitioner is allowed regular bail as his incarceration in custody would affect her matrimonial life and the upbringing of her son.

5. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that it is a matter of trial whether the petitioner had enticed away the daughter of the complainant and sexually exploited her



However, learned State counsel could not controvert the fact that the petitioner is not involved in any other case. Custody certificate filed by the respondent-State is taken on record.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that petitioner and prosecutrix/respondent No.2 have performed their marriage and they are blessed with a son and they are co-habiting together as husband and wife and reliance in this regard can be placed on the judgment passed by Hon'ble Supreme Court in ***K. Dhandapani v. The State 2022(2) R.C.R.(Criminal) 987*** and a Full Bench of Delhi High Court in **'Court on its Own Motion (Lajja Devi) Vs. State' 2012 (4) CCR 72**. Moreover, the petitioner is behind the bars since 05.07.2024 and he is not involved in any other case. Further incarceration of the petitioner, will affect the matrimonial life of respondent No.2.

7. A two Judge Bench of Hon'ble Supreme Court in ***'Satender Kumar Antil v. CBI' (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a



democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

8. In view of the above, the present petition is allowed and the petitioner-Rohit is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

9. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

August 14, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No