



came to her room and raped her while extending threat to not to tell anyone about the incident else she and her husband shall be done to death. That on 22.08.2023, Petitioner-Dharambir took her to the District Courts, at Faridabad, on the pretext, to get her husband also, released on bail, where he made her meet an Advocate and also to obtain her signature on some documents and took her back to the same Village but on his way back, she was taken to an OYO room and raped her. That the Petitioner-Dharambir alias Kalti had been committing the offence against her since then. That on 14.10.2023 also, he had given beatings to her, to commit rape against her, after forcing her husband, to run away from the house. However, her husband collected the courage to report the matter, to police and that was how the present case came to be registered against the Petitioner-Dharambir *alias* Kalti.

3. Learned counsel for the petitioner *inter alia* contends that the prosecutrix is mature lady of 26 years of age and she is mother of two children. In fact, the petitioner has been falsely implicated in the present case, as he has got registered one FIR No.175 of 2021 against the prosecutrix and her husband. As such, as a counter blast to the same, the petitioner has been falsely implicated. It is further contended that during the medical examination of the prosecutrix, no injury was found, which is suggestive of any kind of resistance of forcible intercourse. The petitioner is behind the bars since 21.10.2023 and he is having clean antecedents.

4. Per contra, learned State counsel assisted by learned counsel for respondent No.2 opposes the grant of regular bail to the petitioner on the ground that FSL report is positive with regard to the presence of spermatozoa on the samples. As such, there is sufficient evidence to indicate the complicity



of the petitioner in the present case. Custody certificate filed by the respondent-State is taken on record.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind the bars since 21.10.2023 and he is not involved in any other case. The investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. The trial of the case is likely to take long time to conclude as out of 16 witnesses cited by the prosecution, none has been examined so far. Further incarceration of the petitioner, without there being the prospect of the conclusion of the trial, in the near future, would be violative of his rights under Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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."



7. In view of the above, the present petition is allowed and the petitioner- Dharambir @ Kalti 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.

8. 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.

July 22, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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