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recording the statement of the witnesses, Sections 376/34 of IPC and Section 4 of POCSO were added. The statement of victim was recorded under Section 164 of Cr.P.C. and her medico-legal examination was got conducted at General Hospital, Bhiwani. During the investigation, both the accused-Amit Kumar and Sahil were arrested.

3. Learned counsel for the petitioner *inter alia* contends that it is the admitted case of the prosecution that daughter of the complainant was having a consensual relationship with co-accused-Amit Kumar and due to some misunderstanding, the victim has involved co-accused-Sahil. He further submits that when the family members of the victim wanted to marry her at other place, she gave threat to commit suicide and when this fact was disclosed by co-accused-Amit Kumar to petitioner-Sahil, he intervened to save life of victim. It is further contended that the statement of victim has been recorded under Section 161 of Cr.P.C. as well as Section 164 of Cr.P.C. and she has also been examined by the learned trial Court as PW-15 and she is consistent with regard to the role of the petitioner. She has only implicated co-accused-Amit Kumar with regard to violating her physically and no allegations have been levelled against the petitioner. It is further submitted that the petitioner is behind the bars since 24.09.2023 and material witnesses have been examined i.e. the complainant and the victim/prosecutrix.

4. Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that there are specific allegations against the petitioner as he has facilitated the offence and he has helped the co-accused in taking away the victim/prosecutrix, however, she could not controvert the fact

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that the material witnesses have been examined and the petitioner is not involved in any other case.

5. 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."

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 24.09.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 19 out of 30 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the

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accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

7. In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Sahil 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 as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

23.04.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No