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to aggravate the offences. In fact, the victim has made her statement before the Counsellor (Annexure P-3) and she has clearly stated that the petitioner has not committed any wrong act with her. Further, her statement recorded under Section 164 Cr.P.C. (Annexure P-4) by the jurisdictional Magistrate, clearly indicates that she has levelled no allegation with regard to sexual exploitation. The victim/prosecutrix had refused to undergo medical examination and, thereafter, on the next date, her medical examination was conducted in which also, there is nothing to indicate the complicity of the petitioner. He further submits that the petitioner is behind the bars since 27.08.2023 and is not involved in any other case.

The learned State counsel has filed the reply by way of affidavit along with custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that there are specific allegations against the petitioner and he is the main accused who enticed away the minor daughter of the complainant.

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



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

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 27.08.2023. 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 none out of 23 prosecution witnesses has 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 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.

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-Ankush @ Shanky 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.

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

15.07.2024

Neha

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