





(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that there is a delay of 04 days in the registration of the FIR (supra), which creates doubt on the case set up by the prosecutrix and it is duly proved on record on the basis of call details that the prosecutrix, even after the alleged date of incident, had been talking to the petitioner. Moreover, the prosecutrix has made contradictory statements during investigation and in the FIR (supra). The alleged incident has taken place in a thickly populated area and the prosecutrix has raised no alarm or made any resistance, which proves that the relationship between the petitioner and prosecutrix is consensual. Prosecutrix is married lady, having children and the investigating agency has exonerated the other co-accused, which render the prosecution case unbelievable. Petitioner is behind the bars since 15.12.2023.

4. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that there is sufficient evidence to indicate the complicity of the petitioner in the present case.

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 15.12.2023. 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 14 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-Rahul alias Nafees 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 23, 2024  
manisha

(HARPREET SINGH BRAR)  
JUDGE

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