



disclosed anything about it, then he would commit murder of her children. It is further alleged that appellant also abused prosecutrix by the name of her caste and repeatedly made physical relations with her. It is further alleged on 10.11.2023, the appellant called the prosecutrix on the pretext of her giving her ATM card and made her sit in his vehicle and then he took away the complainant on KMP Highway and then he made physical relations with her in the car by parking it on the *kacha* portion of the road. It is further alleged that on 15.11.2023, the prosecutrix again went to the house of the appellant for taking her ATM card and then he dragged her inside his house by holding her hand and assaulted her with leg and fist blows. In the meanwhile, *Sarpanch* of the village came there, who rescued her and thus application was filed by the prosecutrix for taking action against the appellant

3. Learned counsel for the appellant *inter alia* contends that the appellant has been falsely implicated due to monetary dispute, the prosecutrix is more than 36 years of age, whereas the appellant is 27 years of age and the alleged incident has taken place firstly in the year 2022, thereafter on 10.11.2023 and 15.11.2023 and the FIR (supra) was registered after an inordinate delay, which has not been explained by the prosecutrix. Even medical evidence does not corroborate the case set up by the prosecution. The investigating agency has already completed the investigation and presented the final report under Section 173 Cr.P.C. before the concerned jurisdictional Court on 28.03.2024.

4. Per contra, learned State counsel opposes the grant of regular bail to the appellant on the ground that the prosecutrix has reiterated her allegation against the appellant, when her statement was recorded by the jurisdictional Magistrate under Section 164 Cr.P.C. As such, the appellant is not entitled to



regular bail and he produces the custody certificate, which is taken on record. However, learned State counsel could not controvert the fact that the appellant is not involved in any other 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 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 appellant, 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 appeal is allowed and the appellant-Shyam Singh 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 12, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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