





village, where also she was raped. Then the petitioner along with co-accused took the prosecutrix to Bhiwadi. She was kept there for one night and she was raped there also. Father of the prosecutrix and fellow villagers reached Bhiwadi in search of her and on seeing them, petitioner and co-accused fled away. The prosecutrix disclosed all the facts to her father. Thereafter, a *panchayat* was convened and there were chances of compromise. On 09.02.2021, while she was going to house of her uncle Sabir from her house, three persons namely Aakib (petitioner), Mursalin and Arbaj kidnapped her and took her to village Dhulena. The petitioner and co-accused again raped the prosecutrix and criminally intimidated her with dire consequences. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner and prosecutrix were in consensual relationship and both were major and their relationship was opposed to their family members. Because of their opposition, the petitioner and prosecutrix eloped on 20.01.2021. Thereafter, both of them were apprehended and a *Panchayat* was convened. After the *Panchayat* was convened, the petitioner and prosecutrix once again eloped on 09.02.2021 and they were apprehended on 15.02.2021 and the FIR (supra) was registered. It is further contended that it is clearly established that petitioner and prosecutrix were known to each other. In spite of the efforts made by the *Panchayat*, the matter could not be settled and the father of the prosecutrix lodged the FIR (supra). The petitioner is behind the bars since 12.05.2023 and is having clean antecedents. It is further submitted that the petitioner was 21 years of age and the prosecutrix was 20 years of age and proximity in their age requires lenient view.



4. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that the complicity of the petitioner is duly proved on record. The DNA report qua the allegations against the petitioner is positive. However, learned State counsel could not controvert the fact that the petitioner is not involved in any other 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 12.05.2023 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 27 witnesses cited by the prosecution, only one witness 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-Aakib 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 |