



to as the 'petitioner'). He alleged that he tried to contact on the mobile number but petitioner did not pick up his phone call. He raised suspicion that victim might have been allured and enticed away by the petitioner on the pretext of marriage. He stated that he did not want to issue public notices etc against the victim. He prayed that victim be got searched and legal action be taken against the culprit. On this complaint, the case was registered under Sections 363, 366A IPC.

3. Learned counsel for the petitioner *inter alia* contends that prosecutrix was produced before the jurisdictional Magistrate and her statement under Section 164 Cr.P.C. was recorded, in which, she has categorically stated that she has left the house with her own will, after being beaten up by her parents. Further, the age of the prosecutrix has not been proved strictly in accordance with law by producing primary entry and it would be a moot point to be decided by learned trial Court as to whether the prosecutrix is minor at the time when incident took place. Moreover, the incriminating material was recovered from the clothes in the FSL that does not indicate the complicity of the petitioner. The material witnesses have already been examined. The prosecutrix/victim as well as her father have been examined as PW-3 and PW-4 respectively. Petitioner is behind the bars since 23.02.2022 and he is not involved in any other criminal activity.

4. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground of gravity of the offence and the fact that the petitioner is the main accused and he has sexually exploited the minor daughter of the complainant. Learned State counsel produces custody certificate, which is taken on record. However, he could not controvert the fact that the petitioner 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 petitioner is behind the bars since 23.02.2022 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 has only reached half way mark, as out of 22 witnesses cited by the prosecution, 11 have been examined. 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-Vinod Kumar Verma @ Himanshu 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.

August 14, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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