



marriage with her. He had enticed away the daughter of the complainant on 19-02-2024. Dr. Ajay Pal Janjua, Sukhwinder Kaur and Balbir Kaur were also included with him. According to his information, petitioner-Gurpreet Singh has solemnized marriage with his daughter, whereas when his daughter left the house, at that time she was minor and her age was about 16 years and one month. The above-said Gurpreet Singh (petitioner) by solemnizing marriage with his daughter is assaulting her sexually forcibly. The complainant had also come to know that the petitioner-Gurpreet Singh alongwith his companions namely Dr. Ajay Janjua; Surinder Kaur and Balbir Kaur have applied for marriage protection in High Court. All the documents which have been placed with application are wrong. His daughter is minor. In the documents of his daughter wrong age has been shown. In the document of his daughter, her date of birth has been changed from 25-12-2007 to 25-12-2003, whereas his marriage was solemnized on 09-04-2005. Petitioner-Gurpreet Singh and his companions are doing injustice with them and also misleading the High Court. The daughter of the complainant daughter is minor and she will become major on 25-12-2025. They also came to know that the above-said persons-accused are harassing to his daughter and the petitioner is making forcible sexual relations with his daughter, whereas his daughter is not ready for this. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner and the prosecutrix were in a consensual relationship and their relationship was opposed to the complainant as they both belong to different religions and both of them eloped. Thereafter, they both approached this Court by filing a joint petition seeking protection from the hands of the complainant and other family members. Both of them performed marriage on 20.02.2024



against the wishes of the complainant. The marriage certificate was annexed with the petition seeking protection as Annexure P-3. Copy of the protection petition bearing CRWP No.1700 of 2024 is annexed herewith as Annexure P-2. Learned counsel further submits that the age of the prosecutrix is also disputed and the investigating agency has not taken the primary entry with regard to date of birth of the prosecutrix during the investigation and only School Leaving Certificate has been obtained, whereas, the date of birth in the Aadhar Card of the prosecutrix indicates that she is major and it would be a moot point to be determined by the learned trial Court as to whether the petitioner can be held liable for any offence under the POCSO Act. Further, the material witnesses are not appearing before the learned trial Court and their bailable warrants have now been issued.

4. *Per contra*, learned State counsel produces the custody certificate, which is taken on record and opposes the prayer of the petitioner on the ground that the prosecutrix has recorded her statement under Section 164 Cr.P.C. and she has levelled specific allegations against the petitioner.

5. Learned counsel for the complainant vehemently opposes the prayer made by the petitioner and places reliance upon the judgment passed by Hon'ble Supreme Court in case of ***XYZ vs. Abhisheik and another, 2022(4) RCR (Criminal) 711*** to contend that for determining the claim of juvenility, the School Leaving Certificate is the relevant document as provided in Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007. Learned counsel submits that School Leaving Certificate of the prosecutrix clearly indicates that the prosecutrix is minor.

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 18.04.2024 and has undergone a period of 05 months and 22 days as on 14.10.2024 and 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 as out of 22 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.

7. 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."

8. In view of the above, the present petition is allowed and the petitioner-Gurpreet 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.

9. 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.

October 16, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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