

CRM-M-40092-2024
Date of decision: 23.08.2024

...PETITIONER

...RESPONDENT

Accused/petitioner was arrested on 18.11.2020. Auto bearing registration



No.HR-38X3329 which was used in the commission of offence was taken into possession. Co-accused Prince was arrested on 14.12.2020. After completion of necessary investigation, challan against petitioner was presented in the court. Charge under Sections 120B, 363/120B, 366/120B, 506 IPC and Sections 6, 10, 17 of POCSO Act, and in the alternative Section 376 IPC was framed against accused/petitioner vide order dated 25.8.2021. Father/complainant as well as prosecutrix have already been examined and mother of the prosecutrix has been given up by learned PP being unnecessary.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is behind the bars since 18.11.2020 and more than 03 years and 09 months have passed, the learned trial Court has not concluded the trial and delay in conclusion of the trial violates the rights of the petitioner enshrined under Article 21 of Constitution of India, which ensures speedy trial. Learned counsel submits that there is no material available on record to prove the actual age of the prosecutrix. As per the ossification test, her age was found to be 14-16 years and if we add the variation of two years, she could be major also and this would be a moot point to be determined by learned trial Court, whether the petitioner can be held liable for the offences under POCSO Act or not. Furthermore, material witnesses, in the present case, have already been examined.

4. *Per contra*, learned State counsel produces custody certificate, which is taken on record and opposes the grant of regular bail to the petitioner on the ground that the petitioner is the main accused and there are specific allegations against him and he is a habitual offender as he has been acquitted in one case and has undergone sentence in 05 other cases.



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 18.11.2020. 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 not even reached halfway mark as only 03 out of 23 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. Hon'ble the Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

8. In this regard, reference is being made to the law laid down by Hon'ble Supreme Court of India in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi***



Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka, (2202) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.

9. 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."

10. In view of the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner-Aman Khan 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.

11. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and



without commenting on the merits of the case lest it may prejudice the outcome of the case pending before learned trial Court.

12. 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 23, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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