



the maltreatment. On 21.01.2024, in the morning time, around 3.00 A.M., the uncle of the petitioner, namely, Rambir has telephonically informed that his sister has committed suicide. Thereafter, they immediately reached at her matrimonial home and found his sister lying in dead condition in the house. His sister has either been murdered or has committed suicide on account of dowry demand at the hands of the petitioner. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that in the present case, the ingredients of Section 304-B of Indian Penal Code are not attracted. The deceased had performed marriage with the petitioner without obtaining divorce from her husband. In fact, the deceased has taken a loan for running a boutique and petitioner was the guarantor in the said loan. When the bank officials pressurized her for recovery, she committed suicide. There is no specific date and time mentioned, in the case set up by the prosecution, with regard to the petitioner harassing the deceased on account of demand of dowry. Further, there is nothing available on record that deceased was subjected to harassment on account of demand of dowry immediately before her death. As such, the factual ingredients are also not available on record to breach the threshold of offence under Section 303 of Indian Penal Code.

4. *Per contra*, learned State counsel produces the reply by way of affidavit of Virender Singh, HPS Deputy Superintendent of Police, Rohtak on behalf of respondent-State as well as custody certificate, which are taken on record and opposes the prayer of the petitioner on the ground that it is a matter of trial, whether the marriage between the petitioner and deceased was valid marriage or not. Admittedly, the deceased was living with the petitioner, at the time of her death and death had taken place in the house of the petitioner. As such, it is incumbent upon him to explain the circumstances, under which, the



deceased had died of unnatural death.

6. 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 25.01.2024 and has undergone a period of 09 months as on 24.10.2024 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 18 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-Vivek *alias* Jonu 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 25, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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