



had installed a camera in her room. He asked her to take her videos & photos from him and assured that he would remove the camera. Due to fear, she opened the door, however, he forcibly touched her private parts and attempted to outrage her modesty. When the complainant resisted, the petitioner threatened to kill her. He immediately took out the pistol from left pocket of his jacket and aimed at her. She when tried to rescue herself, he fired a shot which hit backside of her head. She fell down and cried. The petitioner also fell down. She immediately rushed outside and called her neighbours Deepak & Ravinder Yadav for help. She told them everything and that she had confined the petitioner in her house. They took her to PGI, Chandigarh for treatment. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that during investigation, the offending video and photographs of the prosecutrix were never recovered, as such, the entire case of the prosecution falls flat. Further, 04 different disclosure statements were recorded and as per the case set up by the prosecution that the petitioner has fired two gun-shots and the investigating agency has recovered two different weapons, however, till date, there is no ballistic report available on record to indicate that the weapons recovered pursuant to the disclosure of the petitioner, were used in the alleged incident. Learned counsel further relies upon the medico-legal report and submits that nature and extent of injuries with regard to the gun-shot injury is not mentioned in the MLR. Further, the complainant was in full senses and conscious and her blood pressure was stable and the MLR was recorded by Dr. Durairaj, however, the medico-legal case summary, in which, the dimension of the injuries given as 2X2 cms, has been recorded by Dr. Mrinal Goyal. Further, there is no blackening or tattooing mentioned in the medico-legal report to indicate that in



fact, the injury suffered by the complainant was result of gun-shot injury from a close range and the petitioner is behind the bars for last 09 months and 27 days and he is not involved in any other case. The petitioner is a government official, as such, he is not his flight risk.

4. *Per contra*, learned Public Prosecutor for UT Chandigarh produces custody certificate, which is taken on record and opposes the prayer of the petitioner on the ground that there are serious and specific allegations against the petitioner and the weapon offence has been recovered from the petitioner, however, he could not controvert the fact that the petitioner is not involved in any other case and he is behind the bars for last 09 months and 27 days as on 14.10.2024.

5. Mr. Sushil Sheoran, Advocate puts in appearance on behalf of the complainant and files his memo of appearance and opposes the prayer of the petitioner on the ground that the complainant is being approached by the other co-accused for not deposing against the petitioner.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that on the last date of hearing i.e. on 28.08.2024, the case was adjourned for the examination of the material witnesses, however, on 01.10.2024, no prosecution witness was examined. As per custody certificate, the petitioner is behind the bars since 18.12.2023 and has undergone a period of 09 months and 27 days as on 14.10.2024 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 as out of 28 witnesses cited by the prosecution, only 05 have been examined till date.

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-Dinesh 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.

10. It is made clear that in case, the petitioner tries to influence the



witnesses, either directly or indirectly, the State of UT Chandigarh would be at liberty to seek cancellation of bail granted to the petitioner.

October 14, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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