



along with his son Rohit Kalyan reached at the house of her daughter and saw that the door was bolted from inside. Then the complainant with the help of his son broke open the grill and entered into the house and saw that the body of his daughter Preeti was hanging with ceiling fan. The complainant further alleged that her daughter committed suicide on the instigation and beating caused by her husband Rohit Kumar (petitioner). On the basis of the statement of the complainant, present FIR was registered against the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that the perusal of the case set up by the prosecution clearly indicates that although, the generic allegations are there, however, there is no allegation against the petitioner to make him liable for the abetment as provided under Section 107 of IPC. The factual ingredients constituting the offence breaching the threshold of Section 306 IPC are not available on record. There is no allegation that the petitioner played any active role, which has any proximity with the death of the daughter of the complainant. Learned counsel further submits that the petitioner is behind the bars since 14.11.2023 and is not involved in any other case.

4. *Per contra*, learned State counsel produces custody certificate, which is taken on record and opposes the prayer of the petitioner on the ground that he is the main accused in the present case and on the fateful day, the deceased had telephonically informed her father about the beatings given to her by the petitioner.

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 for last 10 months and 08 days as on 23.09.2024 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 has not even reached half way mark, as out of 10 witnesses cited by the prosecution, only 02 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-Rohit Kumar 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.

September 24, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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