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her house to give tuitions, he tried to touch the complainant on some pretext and gradually started blackmailing her and threatened her over the phone. The wife of the accused/petitioner used to take the complainant to her home in Hisar, who in connivance with her husband/petitioner, had given some intoxicating substance to the complainant and the accused/petitioner took some objectionable photos and videos. Thereafter, both of them started blackmailing the complainant and extended threats to her. Thereafter, on 02.04.2023, the complainant got married to Anil and started her new life but the accused/petitioner along with his wife were not happy with this and when the complainant used to visit her parental home, the accused/petitioner called her at his house in Sector 14, Hisar on 06.12.2023 on the pretext that he would delete all her photos and videos and when the complainant went to his house, the accused/petitioner and his wife snatched her phone and earrings and on the asking of his wife, the accused/petitioner raped the complainant and extended threats to kill her and her entire family. Thereafter, by creating fake IDs and email I.D. in the name of the complainant, he uploaded objectionable photos and videos of her on social media platforms like Instagram and Facebook. On 31.05.2024, the wife of the accused/petitioner called the husband of the complainant on his mobile and said that her husband and the complainant had a relationship before marriage and they are still continuing the same. Further, the accused/petitioner has transferred the SIM card of the complainant to his name and keep changing his phone number and threatening the complainant and her in-laws including husband and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the

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petitioner is aged about 34 years and a married man and the prosecutrix is also a married lady of 23 years of age and both were in a consensual relationship. Now, during the pendency of the trial, the petitioner as well as the complainant/respondent No.2 have effected a compromise and the incriminating material along with the phones have been recovered from the petitioner. He further submits that respondent No.2 has already furnished her affidavit dated 07.07.2024 in which she has stated that the FIR (*supra*) has been registered due to mistaken beliefs and all her doubts and apprehensions have now been removed between them. He further submits that the petitioner has been falsely implicated in the present case and he is behind the bars since 24.07.2024 and the Investigating Agency has already concluded the investigation and filed the final report before the jurisdictional Court and the petitioner is not involved in any other case.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that the petitioner even after the marriage of the prosecutrix continued to harass and blackmail her as he was having the obscene material of the prosecutrix and as such, he has destroyed the marital life of the prosecutrix.

Learned counsel for the complainant/respondent No.2 submits that he has no objection if the petitioner is granted regular bail and the petitioner and respondent No.2 have already effected the compromise and her affidavit dated 07.07.2024 is available on record as Annexure P-2.

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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 26.07.2024. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 16 prosecution witnesses, none has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. 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.

In view 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, the petitioner-Gobinda 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.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)

JUDGE

04.11.2024

Neha

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No