



the petitioner since no aggravated sexual assault has ever taken place and so added offence under Section 9 of the POCSO Act. Learned counsel further submits that even the statement of the prosecutrix recorded under Section 164 Cr.P.C. reveals that the factual ingredients of the offences are not made out. Furthermore, the medical examination of the victim/prosecutrix is also not suggestive of any sexual assault. Learned counsel further submits that the prosecutrix and the complainant both have already been examined as PW-1 and PW-2. The petitioner is behind the bars since 27.05.2023 and the prosecution has not been able to conclude its trial, in spite of passing of more than 18 months.

4. *Per contra*, learned State counsel produces custody certificate, which is taken on record and opposes the prayer made by the petitioner on the ground that there are serious and specific allegations against the petitioner. Learned State counsel submits that the petitioner has removed the victim/prosecutrix from the guardianship of her mother and committed sexual assault. However, he could not controvert the fact that the petitioner is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 27.05.2023 and has undergone a period of 01 year, 05 months and 23 days as on 19.11.2024 and he is not involved in any other case. The Investigating Agency has concluded the investigation and filed the final report under Section 173 Cr.P.C. before the concerned Court. Trial of the case has not even reached half way mark as out of total 14 prosecution witnesses, only 03 have been examined so far. So 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. Accordingly, the present petition is allowed. The petitioner-Suraj is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

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.

November 20, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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