



searched his daughter/victim in the nearby area as well as in the houses of his relatives but she could not be found. He fully believed that some unknown person had enticed away his minor daughter/victim by alluring her on the pretext of marriage and prayed that legal action be taken against unknown person. With these allegations, the present FIR has been registered against the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is a household lady and she is not named in the FIR (supra). As per the case set up by the prosecution, at the most the petitioner can be held liable for abetment, even if the prosecution story is treated as a gospel truth. In fact, the brother of the petitioner and the prosecutrix were in a consensual relationship and both of them eloped together and after a period of 10 days, they both were apprehended. Thereafter, the statement of the prosecutrix was recorded, in which, she has levelled allegations that the petitioner had taken the prosecutrix and handed her over to her brother. It is further contended that no details with regard to the date and time as to when the prosecutrix was taken by the petitioner. Further, the jurisdictional police authorities have not taken any step to procure the CCTV footage in the Railway Station, in order to verify the allegations against the petitioner. Further, there is no direct allegation against her and she is not involved in any other criminal activity.

4. *Per contra*, learned State counsel produces the custody certificate, which is taken on record and opposes the prayer of the petitioner on the ground that the petitioner facilitated the commission of the crime and the main accused Jagannath, who is the brother of the petitioner, committed aggravated penetrative sexual assault upon the victim-prosecutrix, however, he could not controvert the fact that the petitioner is not involved in any other case.



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 since 24.05.2024 and has undergone a period of 04 months and 21 days as on 15.10.2024. The investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. The petitioner is not involved in any other case. Further incarceration of the petitioner, without there being the prospect of the conclusion of the trial, in the near future, would be violative of her 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-Kalavati is ordered to be released on regular bail during trial on her



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.

October 16, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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