



and Roopdeep Kaur be sent to them. On 07.04.2024, Gurmeet Kaur mother of Roopdeep Kaur took her to village Gaggo Mahal, on 19/20-5-2024 in the midnight, neighborer Khuspreet Singh @ Kalu of the complainant came to their house and sent that their daughter Sharanjeet Kaur @ Simmy has called them from mobile No.70877-32014 that her son happy has taken away Roopdeep Kaur from Gaggomahal. Her Bua Baljeet Kaur be informed that their son happy has committed mistake, you take back your daughter Roopdeep Kaur from them. Immediately, The complainant alongwith Khushpreet Singh, Sukhdev Singh in her car came to the house of her *Bhabhi* at village Goggo Mahal and her sister-in-law Gurmeet Kaur and her father Mohinder Singh were sleeping in an unconscious condition, they woke them up and on asking about Roopdeep Kaur they showed their ignorance then the complainant alongwith her brother-in-law Lakhwinder Singh went to the house of Rippan son of Lakhwinder Singh @ Kaka but nobody was present in the Home. Then they received a telephone call from mobile No. 99883-65564 of Rimpdy daughter of Lakhbir Singh and Lakhbir Singh on mobile No.97807-45751 of Jeeta Singh that their daughter Roopdeep Kaur is with them. They can take back their daughter. Thereafter, they went to the house of Lakhbir Singh above but they did not produce Roopdeep Kaur. Apart from this then a telephone call was received by Sukhdev Singh @ Sabhu from mobile No.88726-49492 of Moda @ Taran that they can return daughter of complainant Roopdeep Kaur. We went to them then they switched their mobile phone and later on, they came to know that Buggi alongwith Happy has enticed away their daughter Roopdeep Kaur on the pretext of performing the marriage forcibly kidnapped her on his motorcycle. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the perusal of the case set up by the prosecution indicates that there is no allegation against the petitioner with regard to any sexual assault. In the initial version,



the petitioner was not even named and the main accused in the present case is Harpreet Singh *alias* Happy, who is alleged to have enticed away the prosecutrix on the pretext of marriage. Thereafter, subsequent statement of the prosecutrix was recorded before the jurisdictional Magistrate on 10.07.2024. Even in the subsequent statement, the prosecutrix has not made any allegation with regard to any sexual assault. The only allegation against the petitioner is that the main accused Harpreet Singh *alias* Happy confined the prosecutrix in the house of his sister and the petitioner is suffering the incarceration without any substantial evidence qua his complicity. The investigation of the case is complete and the petitioner is behind the bars since 05.06.2024 and is not involved in any other case.

4. *Per contra*, learned State counsel has produced custody certificate, which is taken on record. He opposes the prayer of the petitioner on the ground that the petitioner has facilitated the crime and helped the main accused Harpreet Singh *alias* Happy, who enticed away the prosecutrix.

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 more than 03 months and 27 days 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 22 witnesses cited by the prosecution, none has been examined so far. 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-Mota *alias* Taran *alias* Avtar Singh 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.

(HARPREET SINGH BRAR)
JUDGE

October 04, 2024
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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |