



documents, the name of her maternal uncle is mentioned. There is no court document regarding adoption. The prosecutrix was residing with her maternal uncle. Co-accused Anil Kumar is her neighbour. When the prosecutrix goes to school, co-accused Anil Kumar follows her and asked for friendship. Prosecutrix developed friendship with co-accused Anil Kumar and they started talking and roaming in the park. In the month of October, 2022, on the asking of co-accused Anil, prosecutrix went along with him for roaming. Co-accused Anil took the prosecutrix in OYO hotel in Old Faridabad and committed penetrative sexual assault upon her forcibly and asked the prosecutrix not to disclose the incident at her home. Prosecutrix does not know the name of OYO hotel. As the prosecutrix talks with co-accused Anil and did not go to school once or twice, the family members of the prosecutrix got suspicion and her maternal uncle dropped the prosecutrix at Palwal in her house. Prosecutrix started talking with co-accused Anil from the mobile phone of her aunt. On 27.06.2024 prosecutrix asked the co-accused Anil for meeting and on the asking of prosecutrix, co-accused Anil came in the night at around 10.30 P.M. and took the prosecutrix on his motorcycle. At some distance, two friends of co-accused Anil were standing and they all came to Faridabad in the motorcycle. The motorcycle was being driven by friend of co-accused Anil. The prosecutrix and co-accused Anil stayed at Royal Hotel INN NIT Faridabad and friends of co-accused left after dropping them at the reception. Co-accused Anil gave his ID card and Adhaar card of one girl Sona and asked the prosecutrix to sign by the name of Sona: Co-accused Anil developed physical relations with the prosecutrix in the hotel. On 28.06.2024, friends of accused Anil took them and dropped the prosecutrix near the house of her maternal uncle. Prosecutrix went to the house of her maternal uncle. The family



members of prosecutrix took, the prosecutrix to the police Station. Co-Accused Anil committed penetrative sexual assault upon the prosecutrix and asked her not to disclose ATEST incident to anyone. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The petitioner is not named in the FIR (supra) and he has no concern with the alleged incident. The main accused, in the present case, is Anil and petitioner has been involved only on the basis of disclosure statement and he has been sent for trial by the investigating agency by filing final report qua his role only under Section 17 of the POCSO Act and he is not the accused of Section 6 of POCSO Act or Section 366 of Indian Penal Code. Further, the perusal of the case set up by the prosecution would indicate that there is no allegation against the petitioner with regard to any sexual assault and only it is alleged that the petitioner has accompanied the main accused and the prosecutrix and thereafter he returned back. Further, there is a delay of 03 days in registration of the FIR (supra). The investigating agency has already concluded the investigation and presented the final report under Section 173 Cr.P.C. before the learned trial Court.

4. *Per contra*, learned State counsel opposes the prayer of the petitioner on the ground that the petitioner has helped the main accused Anil in committing the crime and in the CCTV footage, the petitioner along with the co-accused were seen dropping the main accused Anil and the prosecutrix at the OYO hotel in Faridabad. As such, he is liable for abetment of the crime within the meaning of Section 17 of the POCSO Act.

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 24.07.2024. 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 31 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-Sourabh 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.

October 15, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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