



house and other persons also gathered and seeing them, the accused persons fled away from the spot. It is further alleged that the unknown persons accompanying the accused persons captured the incident by preparing a video of the complainant and made it viral which has defamed her and thus, the instant FIR got registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is alleged to have raised only *lalkara* and she is at a better footing with co-accused, namely, Gurcharan Singh, who has been granted the concession of regular bail by this Court vide order dated 24.09.2024 in case bearing CRM-M No.46671 of 2024 (Annexure P-3) and the FIR (supra) was registered after a delay of 03 days, which creates serious doubt on the case set up by the prosecution and the maximum sentence under which, the FIR (supra) has been registered, is punishable up to 05 years. The petitioner is not involved in any other criminal activity.

4. *Per contra*, learned State counsel opposes the prayer of the petitioner on the ground that the petitioner has actively participated in the alleged incident, as such, she is not entitled to any relief. 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, it transpires that the petitioner is behind the bars since 06.04.2024. 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 21 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 her rights under Article 21 of the Constitution of India.

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-Kulwinder Kaur *alias* Mahni 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

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