



house of her sister Veena in Village Banawali Sotra. On 11.03.2019, the complainant went to her sister's house to meet her. In the night at about 9:30, her sister went to meet her mother who was ill and she passed away. Petitioner-Bittu who was of their village stayed with the complainant, till late night for some work. He saw her alone and raped her forcibly. He threatened her that if she would tell anyone then he will kill her. Even after this, when the complainant used to come to her sister to meet her at Village Banawali Sotra, then petitioner-Bittu would come there taking advantage of being known because he also used to visit the house of her sister and when her sister used to go out, then he would take advantage of the situation and do force on the complainant. Petitioner threatened her by saying that he has her obscene photos. If she tell anyone then he will viral her photo. On 08.11.2023 and 18.12.2023 also, petitioner-Bittu forced himself on the complainant at her sister's house in Banawali. In this way, petitioner-Bittu repeatedly done wrong act with her by threatening her to make her photo viral and kill her. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the prosecutrix is a major and mature lady, having two grown up children and the petitioner and the prosecutrix were in a consensual relationship. The first alleged incident is 05 year old and further, there is a delay of almost 04 months in lodging the FIR (supra) as the last date of alleged rape is 18.12.2023 and the FIR (supra) was registered on 04.04.2024. Further, there is no corroboration of the case set up by the prosecution. The prosecutrix has refused to get herself medically examined and it would be a moot point to be determined by learned trial Court as to whether the consent of the prosecutrix was under the misconception of fact provided under Section 90 of IPC.



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 there are serious and specific allegations against the petitioner. He has exploited the prosecutrix by taking advantage of her innocence, however, she could not controvert the fact that he 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 bars since 04.06.2024 and has undergone a period of 04 months and 11 days as on 14.10.2024 and he is not involved in any other criminal activity. The trial of the case is likely to take long time as out of 16 witnesses cited by the prosecution, none has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his 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 the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Parveen *alias* Bittu is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court 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.

October 16, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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