

petitioner has been falsely implicated in the present case. The prosecutrix was produced before the learned JMIC and her statement under Section 164 Cr.PC was recorded and the extract true translated copy of statement is available on record as (Annexure P-2). A perusal of the same would clearly indicate that she has not levelled any allegation against the petitioner. Rather, she pleaded that the petitioner should be released and he should not be implicated. She has further deposed that she went with the petitioner with her own accord.

Learned counsel for the petitioner further submits that nothing suggestive of sexual assault was found during her medico-legal examination, which is available on record as (Annexure P-3). He further submits that the prosecutrix is more than 18 years of age and it would a moot point to be determined by the learned trial Court as to whether the petitioner can be held liable for any offence under Section 363 IPC and the POCSO Act. He further submits that the petitioner is not involved in any other case and he is in custody since 02.10.2022 and prosecution has failed to conclude the trial and petitioner cannot faulted for same and in view of the fundamental rights provided under Article 21 of the Constitution of India, petitioner is entitled for regular bail.

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 petitioner is the main accused and there are serious and specific allegations against him. However, he could not controvert the fact that the petitioner is not involved in any other case and petitioner is confined behind the bars for the last more than 2 years.

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 02.10.2022 and has undergone a period of more than 02

years as on 27.10.2024 and 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 19 witnesses cited by the prosecution on instructions from SI Suresh Kumar, 3 witnesses have 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-Ranjeet 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.

28.10.2024
Parveen kumar

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned :Yes/No
Whether reportable :Yes/No