



zip of his pants. In the meantime, the prosecutrix took out the cloth from her mouth and she raised noise whereupon her son reached at the spot. Two persons raised alarm and petitioner-accused fled away from the spot, after leaving her in naked position. The petitioner-accused also threatened her of dire consequences. She narrated her ordeal to her son who took her in the house and telephonically informed her husband who was present in the village. Thereafter, she narrated the entire incident to her husband and informed. Police reached at the spot. A prayer was made for taking appropriate action against the accused persons. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that prosecutrix, in the present case, is a mature and married lady of 35 years of age, having 03 children. Further, the initial version of the prosecution does not contain any allegation with regard to the rape. Learned counsel relies upon the statement of the prosecutrix recorded by the jurisdictional Magistrate under Section 164 Cr.P.C. and submits the perusal of the same would indicate that prosecutrix has specifically stated that she was not subjected to forcible intercourse and petitioner has molested and outraged the modesty of the prosecutrix. Thereafter, she makes a complete U-turn in her statement recorded by the jurisdictional police under Section 161 Cr.P.C. Learned counsel further submits that the petitioner has been falsely implicated as there was a dispute between the petitioner and the husband of the prosecutrix. The investigation of the case is complete and petitioner is behind the bars since 21.02.2024 and he is not involved in any other case.

4. *Per contra*, learned State counsel produces custody certificate, which is taken on record and opposes the prayer made by the petitioner on the ground that there are serious allegations against the petitioner and sufficient

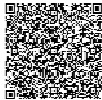


evidence is available on record to indicate his complicity. However, he could not controvert the fact that the petitioner is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 21.02.2024 and has undergone a period of 08 months and 15 days as on 05.11.2024. The Investigating Agency has concluded the investigation and filed the final report under Section 173 Cr.P.C. before the concerned Court. Trial of the case has not made much progress and out of total 11 prosecution witnesses, none has been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of 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. Accordingly, the present petition is allowed. The petitioner-Lallu *alias* Mustaq is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate 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.

November 06, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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