



(appellant herein), who used to come to their house, was studying with prosecutrix 'A' in 10th class, after which, they became friends. Said Vinay (appellant herein) on 25.01.2023 took her to a hotel near bus stand for a surprise party on her birth, where he got a cake cut and served her. Prosecutrix started feeling dizziness. After sometime, she saw that appellant-Vinay was sitting in front of her. After that she was feeling dizzy and heavy in her body. Then, prosecutrix went to the bathroom and noticed bleeding and pain in her lower portion. Prosecutrix further disclosed that in the month of March, when she was alone in her house, appellant-Vinay, having cold drink, came in her house and he administered that cold drink to her, due to which she fell asleep. After that when she woke up around 6.00 PM in the evening, she felt that her lower was wet and she was having pain below. One day, prosecutrix 'A' asked the appellant whether he had committed something wrong with her, then appellant-Vinay threatened her not to disclose such act to anyone, otherwise she would be killed. Due to this fear, prosecutrix did not disclose this act to anyone. Complainant prayed to take legal action against the appellant-accused Vinay. Hence the FIR (supra) was registered.

3. Learned counsel for the appellant *inter alia* contends that at the time of alleged incident, the appellant was 18 years of age, whereas, the prosecutrix was 17 years and 06 months old and both of them were in a consensual relationship. There is a delay of more than 04 months in the registration of the FIR (supra) and inordinate and unexplained delay in informing jurisdictional police authorities creates a serious doubt on the case set up by the prosecution. Further, learned counsel submits that the victim-prosecutrix has already been examined as PW-1 and she has clearly stated in her deposition that in the last week of March, 2023, the appellant had proposed



her for marriage and she discussed the proposal with her sister. Further, there is contradiction in her deposition with regard to the incident as she has given a totally different version in her statement recorded under Section 164 Cr.P.C. Learned counsel further submits that the proximity in the age between the appellant and the prosecutrix requires a lenient view and the appellant has been in custody for the last 01 year and 03 months and he is not involved in any other case and the material witnesses have already been examined.

4. *Per contra*, learned State counsel produces the custody certificate of the appellant, which is taken on record and opposes the prayer made by the appellant on the ground that the allegation against the appellant is very serious in nature. The prosecution witnesses have supported the case of the prosecution and DNA report also indicates the complicity of the appellant.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that appellant is behind the bars since 14.07.2023 and has undergone a period of 01 year, 03 months and 22 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 21 prosecution witnesses, only 05 have been examined so far. So further incarceration of the appellant 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.

7. 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.”

9. Accordingly, the present appeal is allowed. The appellant-Vinay is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.
10. 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 |