



submits that the main accused, as per the case set up by the prosecution is co-accused Anil *alias* Jinu, who is alleged to have enticed away the daughter of the complainant and on 20.06.2024, the prosecutrix was traced in Poshan. Further, the only allegation against the petitioner is that he along with co-accused Anil and Sandeep has mis-behaved with the prosecutrix. Furthermore, no sign of any external or internal injury, swelling or tenderness, bleeding was detected during the physical examination and even during her medical examination, no allegation has been levelled against the petitioner when she reported the history of the case. Even the opinion with regard to sexual assault has been withheld, awaiting the report of forensic examination. The investigation of the case is complete and the petitioner is behind the bars since 19.07.2024.

4. *Per contra*, learned State counsel opposes the prayer of the petitioner on the ground that the petitioner along with co-accused Sandeep mis-behaved with the prosecutrix and they were present along with the main accused Anil. Custody certificate filed by the respondent-State is taken on record.

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 19.07.2024 and has undergone a period of 03 months and 25 days as on 13.11.2024 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 20 witnesses cited by the prosecution, none has 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.

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.”

8. In view of the above, the present petition is allowed and the petitioner-Parduman 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.

9. 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.

(HARPREET SINGH BRAR)
JUDGE

November 14, 2024
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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |