





residing, came to their room in March 2023 on finding her daughter/victim alone and committed rape with her forcefully. Her daughter told her that petitioner threatened her that if she disclose this to her mother or anyone else, he would kill her and her family. Thereafter, whenever petitioner used to find opportunity, he used to commit rape with her forcefully. Her daughter/victim told her all this and she is very scared. She requested to take legal action against him. Hence, FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. In fact, the prosecutrix has now married with co-accused Sachin and staying with him in her matrimonial home. Learned counsel submits that the victim as well as her mother, who is the complainant in the present case, have been examined by the prosecution as PW-2 and PW-3 respectively, have not supported its case and were declared hostile by the learned Public Prosecutor. Learned counsel further submits that the complainant clearly stated that at the time of alleged incident, the age of the prosecutrix was 19 years. As such, no offence under the provisions of POCSO Act is made out. Further, the petitioner is behind the bars since 13.01.2024 and there is nothing on record to indicate the complicity of the petitioner.

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 and specific allegations against the petitioner. As such, he is not entitled to any relief. However, she 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



14.01.2024 and has undergone a period of 10 months and 07 days as on 20.11.2024 and he is not involved in any other case. 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 even reached half way mark as out of total 24 prosecution witnesses, only 04 have 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 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. Accordingly, the present petition is allowed. The petitioner-Gaurav 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.

9. Pending miscellaneous application(s), if any, also stand(s) disposed of.

November 21, 2024  
manisha

(HARPREET SINGH BRAR)  
JUDGE

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