



and then came to know that Monu s/o Kantu their neighbourer (petitioner herein), who used to visit in their house, is also missing from his house since today morning and his mobile is also switch off. On this basis she has full doubt and confidence that he has kept her sister secretly. So she wants to get registered a report of missing of her sister that she is missing from today i.e. on 28.9.2023 without disclosing anything. 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. Learned counsel submits that the petitioner is real brother-in-law of elder sister of the victim/prosecutrix and due to the ongoing matrimonial dispute between the brother of the petitioner and his wife, FIR (supra) has been registered. Learned counsel further submits that the investigation has already been concluded and the petitioner is behind the bars since 15.11.2023. Furthermore, the complainant and victim/prosecutrix have already been examined as PW-4 and PW-5 and they have not supported the case of the prosecution and their deposition is available on record as Annexures P-2 and P-3 respectively. The petitioner 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 victim/prosecutrix has supported the prosecution during her examination-in-chief on 16.02.2024, however, when her cross-examination was conducted on 21.05.2024, she turned hostile as she has been won-over by the petitioner. 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



15.11.2023 and has undergone a period of 01 year and 12 days as on 26.11.2024 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 26 prosecution witnesses, only 08 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-Monu 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 27, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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