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victim/prosecutrix is a married lady of 23 years of age and there is a delay of 04 days in the registration of the FIR (*supra*) which creates serious doubt on the integrity of the case set up by the prosecution and it is duly established on record that there is mandatory dispute between the petitioner and the prosecutrix and the case set up by the prosecution is highly improbable. The prosecutrix herself has stated that she went with the petitioner on his motorcycle on her own, as such, in the absence of any hue and cry, there is nothing available on record to remotely suggest that the prosecutrix was forcible exploited. The petitioner is behind the bars since 27.04.2024 and he is not involved in any other case. Investigation is complete.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that there are specific and serious allegations against the petitioner and the prosecutrix has reiterated the allegations in her statement made before the jurisdictional Magistrate recorded under Section 164 Cr.P.C.

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."

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Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 29.04.2024. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 03 out of 15 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Suraj Kumar Gupta 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.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

16.12.2024*Neha*

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No