

In virtual Court

CRM-M-3764-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3764-2021 (O&M)
Date of decision: 09.02.2021

Avtar Singh @ Tari

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

CRM-2934-2021

For the reasons stated in the application, same is allowed and date
of hearing is preponed from 26.04.2021 to today.

CRM stands disposed of.

CRM-2936-2021

For the reasons stated in the application, same is allowed.
Annexure P-7 is taken on record and exemption sought is granted.

CRM stands disposed of.

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Prayer in this petition is for grant of regular bail in FIR No.210
dated 05.11.2016 under Section 376 IPC and Sections 4 & 8 of POCSO Act,

registered at Police Station Kotwali, District Kapurthala.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of victim 'J' (name not disclosed), on 04.11.2016 at about 11.45 pm, when she came out of her house for easing herself, two young persons were sitting, out of which one person caught hold of her. One of them was petitioner Avtar Singh @ Tari and she could not identify another person. It is further stated that the petitioner committed rape on her and when she raised voice, both the boys ran away from the spot. In the meantime, her maternal uncle and grandfather came at the spot. She was taken to the hospital and the case was registered. It is further submitted that after registration of the case, statement of the victim was recorded under Section 164 Cr.P.C., in which she has stated that *"on that day I was rape but to darkness I could not identify him. There is no pressure on me. If I get a chance then I can identify the accused persons. I do not want to say anything else."*

Learned counsel for the petitioner further submits that the police, after conducting the investigation, submitted the untraced report on 16.03.2020, after got verified from DSP, Sub Division Kapurthala.

A perusal of the untraced report shows that the police has relied upon the statement of victim recorded under Section 164 Cr.P.C. as well as statement of her father Gurnam Singh, who is stated that her daughter has wrongly recorded the name of petitioner Avtar Singh @ Tari and misunderstanding has been cleared and the untraced report was submitted.

Learned counsel for the petitioner also submits that the Illaqa Magistrate did not accept the untraced report, therefore, the petitioner was

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arrested in the case on 12.12.2020 i.e. after about four years, as the FIR was registered on 05.11.2016.

Learned State counsel has filed the custody certificate in the Court today and could not dispute the factual position that at one point of time, the police has submitted the untraced report, on the basis of statement of the victim recorded under Section 164 Cr.P.C. as well as statement of her father, exonerating the petitioner, however, it is submitted that the victim was aged about 15 years.

Without commenting anything on merits of the case, considering the aforesaid submissions made by learned counsel for the parties, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

**[ARVIND SINGH SANGWAN]
JUDGE**

09.02.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No