

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-1663-2025  
Reserved on: 17.02.2025  
Pronounced on: 28.02.2025

Vicky and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Piyush Setia, Advocate,  
for the petitioners.  
  
Mr. Sukhdev Singh, AAG, Punjab.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                    | Sections                                                                                                       |
|---------|------------|-----------------------------------|----------------------------------------------------------------------------------------------------------------|
| 234     | 07.11.2024 | City-1, Abohar,<br>Distt. Fazilka | 311, 140(1), 115(2), 190, 191(3) of BNS,<br>2023 (Section 117 (2) of BNS added vide<br>order dated 15.01.2025) |

1. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 16 of the bail petition, the accused declare that petitioner No.1 has the following antecedents and petitioner No.2 is not involved in any other case.

| Sr. No. | FIR No. | Dated      | Offenses                                                                                        | Police Station |
|---------|---------|------------|-------------------------------------------------------------------------------------------------|----------------|
| 1.      | 244     | 21.11.2024 | 311 (6), 324(4), 351(2), 191(3) of<br>BNS (in which matter stands<br>compromised on 17.12.2024) | --             |

3. The facts of the case are being taken from the translated copy of FIR annexed with bail petition as Annexure P-1, which reads as follows:

*“Statement of Gurwinder Singh son of Jagsir Singh son of Billu Singh Resident of Street No. 02 Jammu Basti Abohar Age about 23 years Mobile No.92562-xxxxx stated that I am a resident of the said address and working as a palledari and also doing studies. On 04/11/2021 at around 1:00/1:30 PM I was at Anaj Mandi Abohar, shied No. 02 and was loading paddy in the truck of Shanti alongwith me Nambardar Manga Singh and*

*some other daily wagers were also loading paddy then four motorcycles came upon which happy son of Rinku, Vicky son Kaka Dove armed with Kapa, Vicky son of Roma armed with Rod, Heera Son of Kaka Taylor armed with Kapa, Ghugi Son of Shera armed with Wooden Stick Resident of Jammu Basti Abohar along with Jhoti alias Moti son of unknown armed with Kirpan resident of Seed Farm Pakka and 4/5 other unknown persons came there. I was standing on top of the truck then Vicky son Kaka got on top of the truck, who as soon as he came hit my left leg many times with Datar which was hit at little lower to the knee. Seeing our fight, the labour attached to me ran away from the spot. Then Vicky forced me down to the truck and then all of them started hitting me with their weapons. Happy gave Kape blow on left knee, Jhoti hit Kirpan on the back side of left knee, Vicky son Roma hit me on right shoulder with iron rod, Hira hit me with his Kapa but I put my left hand forward to save which hit on my fingers. When I started to get up, then Ghugi hit me on the back with the stick, then the unknown youth also hit my legs, Happy hit me with kapa on my left thigh, Vicky son of Kaka again hit me with Dattar on my right leg. Jonty gave kirpan blow on my left hand which got hit on my elbow, then all these men picked me up and took me to Dharamshala Kikra near Jammu Basti on motorcycle and tied my leg. Children and ladies who were roaming nearby saw all this and started making noise, all these people upon seeing the gathering of people, ran away from the spot alongwith their weapons and motorcycles and while going, Vicky son of Kaka took out my mobile brand OPPO Silver with sim number 87270-xxxxx and Rs. 2700/- from my lower pocket and also pulled the silver chain around my neck and said that today you escaped. If again you were caught then you will be killed. Then my brother Vinod Singh picked me up and arranged a ride and admitted me to Civil Hospital Abohar. The reason of fight is that some time ago, I and Vicky son of Kaka had Tu-Tu, Me-Me, which was made compromised by respectable persons. But Vicky had a grudge and beat me up. Legal action should be taken against them.”*

4. The petitioners’ counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioners and their family.
5. The State’s counsel opposes bail and refers to the status report.
6. It would be appropriate to refer to the following portions of the status report,

which read as follows:

*"4. **Role of the petitioner** – That there are specific allegations against the petitioner/accused. The petitioner/accused was armed with wooden sota. The petitioner/accused gave sota blow on the back of the complainant. The injury No.9 caused with sota is attributed to the petitioner No.1. The petitioner actively participated in the commission of crime.*

*The petitioner and co-accused caused injuries as many as ten injuries to the complainant with intention to kill him (including three grievous injuries). **Evidence against the petitioner** -There is sufficient evidence against the petitioner. The petitioner no. 2 is armed with kappa. The injury No.4 caused with kappa, which is grievous in nature and is attributed to the petitioner No.2.*

***Evidence against the petitioners:** The petitioner actively participated in the commission of crime. There is sufficient evidence against the petitioners."*

**REASONING:**

7. Perusal of the FIR prima facie does not indicate that the assault was made to rob or snatch phone but it was to cause beating. Given above, motive assume importance which is missing for dacoity as parties knew each other. It creates a doubt, coupled with the nature of injuries despite offence being under Section 311 BNS i.e. robbery or dacoity with attempt to cause death or grievous hurt, but injuries did not point towards such attempt.

8. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

9. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make a case for bail.

**CONDITIONS:**

Given above, provided the petitioners are not required in any other case, the petitioners shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

11. While furnishing a personal bond, the petitioners shall mention the following personal identification details:

|    |                                                                                                                                      |  |
|----|--------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. | AADHAR number                                                                                                                        |  |
| 2. | Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk. |  |
| 3. | Mobile number (If available)                                                                                                         |  |
| 4. | E-Mail id (If available)                                                                                                             |  |

12. This order is subject to the petitioners' complying with the following terms. The petitioners shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioners shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

13. The petitioners are directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioners shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

14. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall not enter the property, workplace, and residence of the victim until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (Crl.) 458); and Aparna Bhatt v. The State of Madhya Pradesh, 2021:INSC:192, 2021 SCC Online SC 230.

15. Given the background of allegations against the petitioners, it becomes paramount to protect the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioners shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

16. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

17. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioners notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

18. It is clarified that if the petitioners violate any bail condition, the State and/or the victim may file an application for bail cancellation before the trial court, which shall be competent to cancel the bail or add more conditions. Furthermore, if the petitioners move for deletion or dilution of any bail conditions, the trial court is empowered to do

SO.

19. ***This bail is conditional, and the foundational condition is that if the petitioners indulge in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.***

20. The concerned trial court is authorized to delete, modify, or relax any of the above conditions and shall be competent to do so in accordance with the law.

21. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

22. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

23. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)  
JUDGE

28.02.2025

Jyoti-II

Whether speaking/reasoned: Yes

Whether reportable: No.