

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3628-2025
Reserved on: 14.02.2025
Pronounced on: 28.02.2025

Gopal Sharma and others ...Petitioners
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gurmej Singh Bhinder, Advocate for
Mr. S.K. Choudhary, Advocate for the petitioners.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
116	11.12.2024	Dhariwal, District Gurdaspur	115, 118(1), 303(2), 190, 191(3) of BNS, 2023 (Section 115 added and 315 deleted vide rapat No.13 dated 12.12.2024)

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 12 of the bail petition, the accused declare that they have no criminal antecedents.
3. The facts of the case are being taken from the translated copy of FIR annexed with the bail petition as Annexure P-1, which reads as follows:

“Statement of Pankaj Kumar son of Surinder Kumar resident of Krishna Bazaar, Dhariwal aged 36 years, stated that I am a resident of the above said address and work as a vegetable vendor, on 07.12.2024 time at about 3.15 PM, I was setting up my cart shop and was praying that Sanjeev Kumar has come to me to take money of finance. There Rajesh Kumar son of Vijay Kumar, resident of Gandhi ground, Rohit Kumar son of Mulkh Raj, resident of Angwali street had also come. Then smoke of the Dhoopwent to the shop of Gopal Sharma resident of opal Nagar, who is running shop of footwear, then turning aggressive Gopal Sharma son of Jagdish Raj Sharma armed with datar, and his father, Jagdish Raj, armed with iron rod, Mohan Lal, son Jagdish, armed with Datar, Gautam of son of Gopal Sharma, armed with Sword, all the residents of Gopal Nagar, Dhariwal, along with them, Bedi residents, Kot Satnakh Rai, armed with

rod came to my cart, and Gopal Sharma said as soon as he came, that you should be taught lesson for enlightening the Dhoop. As soon as I came, he attacked me with a hand-held Datar, I was put my left arm ahead for saving myself which landed on my left elbow and I fell down and as is fell down Mohan Lal son of Jagdish Raj, started hitting on my back. Then for releasing me Sanjeev son of Tarsem, Rajesh son of Vijay and Rohit Kumar son of Mulkraj also 3/4 unknown persons caused a lot of injuries. Then Mohan Lal took abovementioned Rs.6550 from Sanjeev abovementioned and also broke his phone and then we shouted Mar Ditta Mar Ditta, then abovementioned accused escaped from the spot with their respective weapons. Then due to our injuries, Dinesh Mahajan, son of Naresh Kumar, a resident of Dhariwal, made arrangement of vehicle and took us the civil hospital Dahriwal, where Doctor Sahib conducted our MLR and after giving first Aid and further referred to the Civil Hospital Gurdaspur, where we are under treatment, legal action be taken.”

4. The petitioners’ counsel prays for bail by imposing any stringent conditions and contends that further 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:

“10. Role of the Petitioners:-

That it is humbly submitted that the petitioners and others co-accused, caused injuries with sharp edge weapons upon complainant/Pankaj Kumar and his companions namely Sanjiv, Rohit & Rajesh Kumar who were standing with him. Hence the offence under section 118(2) BNS is made out against the petitioners.

11. Evidence against the petitioners:-

It is humbly submitted that sufficient evidence are there against the petitioners which include statement of the complainant and statements of injured persons as per record.”

REASONING:

7. 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.

8. 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. 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.

9. Given above, provided the petitioners are not required in any other case, the petitioners shall be released on anticipatory 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.

10. 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)	

11. This order is subject to the petitioners' complying with the following terms.

12. 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 petitioners shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

13. 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 petitioner 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 petitioner 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.

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. 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.

16. 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.

17. 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 be at liberty to cancel this bail.

18. 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.
19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.
20. 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.
21. **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.