

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4682-2025
Reserved on: 13.02.2025
Pronounced on: 17.02.2025

Gurwinder Singh @ Ginder ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jagjit Singh, Advocate
for the petitioner.

Mr. Jasjit Singh, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
46	16.10.2024	Kabirpur (Ahalikalan), District Kapurthala	115(2), 118(1), 191(3), 190 BNS (Sections 118(2), 127(2), 333, 238, 109 BNS added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“2. That as per the record, it is found that the present FIR No.0046 dated 16.10.2024 U/s 115(2)/118(1)/191(3)/190 BNS of 2023 Lateron added S. 118(2)/ 127(2)/333/238/109 of BNS Police Station Kabirpur, Kapurthala has been registered the present case has been registered on the basis of the statement of complainant Ramanpreet Kaur wife of Sunny/Injured, who had stated before the police authorities that on 14.11.2023 at about 6.00 PM in the evening, she along with her husband were standing in the street. In the meantime, her neighbourers namely, Jinder and Ginder/Petitioner along with 10/12 unknown persons, who were holding datars in their hands came there. Out of them, one unknown person tried to give datar

blow on her husband. But she pulled her husband back. On raising alarm by them, one Sandeep Kaur also reached in the street. in the meanwhile, the aforesaid assailants took her husband into the house of said Sandeep Kaur and bolted the door from inside and gave datar blows on front side of the head, back side of left thigh, right thigh and left eye of husband of complainant. She and her 'Jethani' do not know who has given datar blows on Sunny. Thereafter they raised alarm upon which all the accused persons fled away from the spot along with their respective weapons. Then she along with her father-in-law arranged the vehicle and got admitted her husband at Civil Hospital, Sultanpur Lodhi, from where her husband was referred to some other hospital. The motive behind the occurrence was that earlier also, a fight took place between them and no compromise was effected in that case. Thus, it was submitted that necessary action be taken.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the following portions of the status report, which read as follows:

“4. That as per record, on 14.10.2024, the petitioner in joint conspiracy with his accomplice in common intention, being member of unlawful assembly, attacked on the injured i.e. husband of complainant and had caused injuries on his person. The injury no.1 caused on the head of injured namely, Sunny has been declared as dangerous to life, whereas the remaining injuries caused on the person of Sunny have been declared as simple in nature. Thus the petitioner in connivance with his accomplices had caused injuries on the person of Sunny with datars with intention to kill him. The allegations against the petitioner are serious in nature. The recovery of weapon i.e. datar used by the petitioner /accused Gurwinder Singh in the commission of offence is yet to be effected for which custodial interrogation of the accused/applicant is required for proper investigation of the suit.”

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.

9. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

11. Given above, provided the petitioner is not required in any other case, the petitioner 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 Ilaqa 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.

12. While furnishing a personal bond, the petitioner 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)	

13. The petitioner is 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 petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner 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 petitioner 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 (CrI.) 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 petitioner, 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 of release from prison 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.

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 petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

18. It is clarified that if the petitioner violates 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 petitioner moves 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 petitioner indulges in any non-bailable offense, the State shall 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

17.02.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.