



206-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50083-2024
Date of Decision: 07.01.2025

Ashu Sabharwal @ Ashu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Raghav Soni, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G, Punjab
assisted by ASI Parvinder Singh.

Mr. Rajat Dogra, Advocate
for the complainant.

ANOOP CHITKARA, J.

DDR No.	Dated	Police Station	Sections
34	24.06.2024	'A' Division, Amritsar	452, 427, 148, 149 IPC

in

FIR No.	Dated	Police Station	Sections
98	24.06.2024	'A' Division, Amritsar	323, 341, 506, 148, 149, 325 IPC (added later on)

1. The petitioner apprehending arrest in the DDR captioned above has 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 declares that he has clean antecedents and is not involved in any other case except cross case. However, as per paragraph 10 of the status report dated 11.11.2024 the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	84	13.05.2024	447, 448, 427, 148, 149 IPC	A Division, Amritsar

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:



“3. That the brief and relevant facts of the case are that aforesaid FIR No. 98 dated 24.06.2024 was registered on the basis of the statement of Sunny alias Kadar, who had alleged therein that on 23.06.2024 at about 03:30/04:00 PM, he, his brother Sonu Sabharwal and Ravi Kumar and Rajiv Khokhar and his brother Aniket Khokhar of their opposite side had gone at the shop of Arora Bus Travels for the settlement of their old dispute but the compromise could not be effected and he and his brother Sonu Sabharwal went to their house and when they were about to leave for their shop, he saw Rajiv Khokhar, Aniket Khokhar, Parveen Khokhar and Joban Gill armed with a kahi dasta along with 6/7 unidentified persons attacked his brother Sonu and when he came to forward to rescue his brother, all the aforesaid accused also gave him beating. He further alleged that Parveen Khokhar raised a lalkara to teach them a lesson and on listening the noises, his wife Vandhna and nephew Sameer also came at the spot and Sameer was armed with a kahi for his self defence but the co-accused Rajiv Khokhar snatched kahi from Sameer and caused injury on the head of his wife Vandhna with a blow of a kahi and injury on the head of his brother Sonu and when he raised hue and cry, all the aforesaid accused fled away from the spot. The detailed facts mentioned by Sunny alias Kadar in his aforesaid statement has been reproduced in the true translation of the aforesaid FIR No. 98 dated 24.06.2024 attached with the petition as Annexure P-2, which may kindly be read as a part of present paragraph as same are not repeated here for the sake of brevity.”

4. Counsel for the petitioner submits that it is a cross-case and petitioner was not aggressor. He 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 reply, which read as follows:

“6. That a cross case vide G.D No. 34 dated 24.06.2024 under section 452, 427, 148 and 149 Indian Penal Code was registered on the basis of the complaint filed by Parveen Kaur, who had alleged therein that on 23.06.2024, there was dispute between her family and Sonu Sabharwal during the daytime and at about 10:15 PM, Sameer, Ashu(petitioner), Kadar, brother in law of Sameer, Hula along with 35 unidentified persons forcibly trespassed into her house and damaged their window panes, fridge, LED TV, Laptop and other household items and at the time



of the alleged occurrence, her daughter Seema was alone at her house and all the aforesaid accused had taken a gold of about Rs. 10 Lakh and cash of Rs. 6 Lakh from the almirah of Rajiv Khokhar. The detailed facts mentioned by Parveen Kaur in her aforesaid complaint has been reproduced in the true translation of the G.D No. 34 dated 24.06.2024 attached with the petition as Annexure P-1, which may kindly be read as a part of present paragraph as same are not repeated here for the sake of brevity.

7. That beside the petitioner, the names of the co-accused nominated as accused in the present cross case are as under:-

- i. Sameer son of Sonu;*
- ii. Sunny alias Kadar son of Sham Lal;*
- iii. Brother in law of Sameer;*
- iv. Vishal alias Hulla son of Rinku.*

Role of the petitioner

8. That as per the version of the complainant Parveen Kaur, the petitioner as an active member of an unlawful assembly consisting of him and the other co-accused had forcibly trespassed into her house and damaged their window panes, fridge, LED TV, Laptop and other household items and at the time of the alleged occurrence, her daughter Seema was alone at her house."

7. A perusal of para 6 of the reply clearly points out of the cross-case. At this stage, it is very difficult to determine who was the aggressor? Even the complainant is stated to have handed over a video clipping to the investigator as mentioned in the order dated 03.12.2024. Thus, it is not a case for custodial interrogation or pre-trial incarceration.

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 petitioner makes a case for bail.

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 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.

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. This order is subject to the petitioner’s complying with the following terms. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner 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.

14. 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.

15. 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.

16. This bail is conditional, and the foundational condition is that if the petitioner indulges 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.

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

18. 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.

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

(ANOOP CHITKARA)
JUDGE

07.01.2025
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.