

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51152-2024
Reserved on: 15.01.2025
Pronounced on: 24.01.2025

Gurwinder Singh @ Gurvinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.K.S. Phoolka, Advocate,
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
133	01.08.2024	Canal Colony, Distt. Bathinda	118(1), 115(2), 351(2), 351(3), 191(3), 190 of BNS and Sections 117(2) & 118(2) of 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 7 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts of the case are being taken from the translated copy of the FIR filed by the petitioner, which reads as follows:

“Copy of Statement, Statement of Dilpreet Singh son of Sh. Tarsem Singh, resident of near Gali No.23 main road Shaheed Udham Singh Nagar, Bathinda aged about 24 years, Mobile No. 78375-xxxxx, states that I am resident of above said address and doing the work of welding. On dated 29.07.2024 at about 10:30 PM after taking the meal I went to walk from our house, I was talking with my friend on phone then I reached nearby the house of the Gurwinder Singh @ Hitler then at that time mother of Gurwinder Singh Tara Rani came out of the house and she started giving abuses me and the dispute has been arisen along with her. I crossed their

house continuing talking on phone, than I came back to my house that the light was glowing in the street, then son of Tara Rani namely Gurwinder Singh came in front along with Kapa, and his friend Chandu having Kirpan, Chhota Daddu having Khanda, Chandi having iron Grari and 03 unknown boys along with deadly weapons, then Gurwinder Singh gave Lalkara and said that teach him a lesson for arguing with my mother in the meantime Gurwinder Singh gave kappa blow on my right arm whom hold his hand which hit on my shoulder then Chandu gave kirpan blow on my left arm's shoulder then I fell down, while lying down Chhota Daddu gave injury to me with Khanda, which hit on my left arm's wrist and then Chandi gave injury to me with Iron Grari upon me which hit on my left side on my waist then unknown three young persons gave injury to me with hand held deadly weapons which hit on my left side of the back then I protect myself. I raised raula of marta marta then seeing the neighbours gathered Gurwinder Singh, Chandu, Chhota Daddu, Chandi and three unknown young persons giving life threats and ran away from the spot along with their deadly weapons then in the meantime my mother Mandeep Kaur came on the spot and arranging the vehicle and admitted in the civil hospital Bathinda for treatment. Where I am going under treatment. Motive is that mother of Gurwinder Singh Tara Rani a quarrel between us for using phone. Strict legal action may kindly be taken against Gurwinder Singh, Chandu, Chhota Daddu, Chandi and three unknown persons. Statement given heard correct."

4. The petitioner's counsel submits that it was the complainant, who had molested and abused the mother of the petitioner, regarding which the petitioner and his family members, approached the local respectables and further to initiate appropriate legal action against the complainant but in order to save his own skin, a false story is being made to implicate maximum number of persons on the basis of self- suffered injuries which are on all non-vital parts and there is a delay of 03 days in lodging of the FIR, which indicates a concocted story is being prepared. Whereas the petitioner has no concern whatsoever with the alleged occurrence.

5. 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 his family.

6. The State's counsel opposes bail and refers to the status report.

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

"4. The Role of the petitioner - The petitioner and co-accused caused as many as nine injuries (including three grievous injuries) to the complainant with their respective weapons. The injury No.1 caused with kappa, which is grievous, is attributed to the petitioner. The petitioner actively participated in the commission of crime.

The Evidence against the petitioner - During the investigation, the incriminating evidence came on file against the petitioner as the complainant also named the petitioner as one of the accused in the commission of crime.

The custodial interrogation of the petitioner is required to investigate the case effectively and to recover the kappa used by him in the commission of crime."

8. Without observing or being influenced by the grounds taken by the petitioner regarding false implications, the nature of allegations and the injuries inflicted, coupled with the fact that the petitioner is a first offender would, neither call for custodial interrogation nor pre-trial incarceration. It is subject to the condition that in case, petitioner violates any conditions, it shall be permissible for the complainant to file an application for cancellation of bail.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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)	

14. 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.

15. 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.

16. 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 (Crl.) 458); and Aparna Bhatt v. The State of Madhya Pradesh, 2021:INSC:192, 2021 SCC Online SC 230.

17. 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.

18. 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."

19. 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.

20. **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.**

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

24.01.2025

Jyoti-II

Whether speaking/reasoned: Yes

Whether reportable: No.