

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52978-2024
Reserved on: 14.02.2025
Pronounced on: 19.02.2025

Santosh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Bishnoi, Advocate and
Mr. Sanjeev Kumar Arya, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
341	08.09.2024	Tosham, Distt. Bhiwani	25(1) (a) of Arms Act

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

“To, The Station House Officer, Police Station Tosham. Jai Hind. Today I, ASI along with head constable Vinod Kumar no. 786, along with constable Mani Ram no. 305 were in Government Vehicle bearing registration number HR-16GV-3122, which was being driven by EHC Vinod no. 862 and were present at Isharwal turn in connection with crime investigation. That one person was seen standing there. On seeing the police party, he started walking with fast steps, then I, ASI, with the help of fellow colleagues caught him and gave full introduction of my team. His whereabouts were enquired, and then he disclose his name as Karan Singh, son of Inderraj, resident of Isharwal. On carrying out search of the

pant worn by him, then from the right pocket one country made pistol 12 bore and from the left pocket three live cartridges were found. They were checked after opening then the chamber of the pistol was found empty. On asking of the license of the above said country made pistol from above said Karan Singh, then he was not able to present any license. Separate memo was prepared on the paper of country made pistol and it was measured, then the length of the barrel comes out as 17.5 CM, length of body comes out as 16.3 CM and length of butt comes out as 10 CM. Separate memo of three cartridges was also prepared. Panda of country made pistol along with three live cartridges of 12 bore was prepared and Panda was stamped with stamp SS. Stamp after use was handed over to head Constable Vinod Kumar number 786. Recovered country made pistol along with Panda of cartridges were taken into police custody as evidence through separate memo. I, ASI got conducted the videography of the incident through EHC Vinod no. 862 and the memo was signed by accused and witnesses respectively. That above said accused Karan Singh has committed an offence under section 25(1)a-54-59 Arms Act by keeping in possession illegal country made pistol along with cartridges without license. Information is written and is being sent through Constable Mani Ram no. 305 to Police Station Tosham. Second investigation officer be sent on spot and I, ASI along with fellow colleagues and accused and case property is present on the spot.”

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 his 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:

“6. That the role of the present petitioner is that the present petitioner had supplied country made pistol and four alive cartridges to the co-accused namely Karan Singh and co-accused Karan Singh disclose the name of present petitioner in his disclosure statement and stated that he had started a Dhaba in the name of Karna in Katwar Road, Isharwal and Surender son of Dharampal of my village used to come to me on the Dhaba. In the year 2016 Surender son of Dharampal, resident of Isharwal

came to his Dhaba and quarreled with him and beat him up and threatened to kill him. Since then, holding a grudge, Surrender had tried to fight with him several times. He became friends with Santosh Jagra resident of Gangwa in the year 2013. He and his friend Santosh Jagra used to have our own tempo in Hisar which we used to run on rent. Then in the year 2016, he sold his tempo and opened a hotel by the name of Karna. Then he told his friend Santosh Jagra resident of Gangwa about his reputation that he had enemies in his village and he need a pistol on that Santosh told him that he will get him pistol but it will cost Rs.10,000. He agreed and 7/8 months ago his friend Santosh called him to Hisar and brought him a pistol and 4 live cartridges. In exchange for which he gave Rs. 10,000 to his friend Santosh. He tested the pistol by firing one cartridge to check it. The remaining 3 cartridges and a pistol were recovered by the police. That the interrogation of the present petitioner may be required to arrive at the root of the matter in order to ascertain the source from which the arms and ammunition were procured."

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, weapon already recovered 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 petitioner makes a case for bail.
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. Given above, provided the petitioner is not required in any other case, the petitioner 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.

11. 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)	

12. This order is subject to the petitioner’s complying with the following terms.

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. 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. 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. 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.

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

19. 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.

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

(ANOOP CHITKARA)
JUDGE

19.02.2025
Jyoti-II

Whether speaking/reasoned:
Whether reportable:

Yes
No.