

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56686-2024
Reserved on: 15.01.2025
Pronounced on: 30.01.2025

Gurpreet Singh @ Vicky ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
186	14.09.2024	Lopoke, District Amritsar Rural	109, 115(2), 118(1), 126(2), 191(3), 190 of BNS and 25/27 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 9 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the short reply filed by the State, which reads as follows:

“2. That the brief and relevant facts of the case are that aforesaid FIR No. 186 dated 14.09.2024 was registered on the basis of the statement of Babbu Singh son of Gurbachan Singh, who had alleged therein that his cousins Peter Bhatti and Sukhdev Singh resides in his neighbourhood and Subash son of Peter works in a private lab at his village and on 13.09.2024, at about 11:50 PM, he heard noises from the Chowk of his village and he saw that his cousins Peter and Sukhdev Singh were encircled by Joban Singh armed with a pistol, Subeg armed with a pistol, Ajay armed with a datar, Mandeep Singh armed with a datar, Lucky, Jaspal Singh, Suba Singh all empty handed, Rahul armed with a datar, Rakesh armed with brickbat and Gurjit Singh armed with brickbat. He further alleged Suba Singh aised a lalkara and Rahul caused injury on the right leg of Peter with a blow of a datar and Jaspal Masih

caused injury on the head of Peter with a blow of brickbat and Peter fell down on the ground. He further alleged that in the meantime the co-accused Ajaypal caused injury on the right arm of Sukhdev Singh with a blow of a datar and when he tried to rescue his cousins, Joban fired a shot from his pistol and the bullet hit him on his right thigh and he fell down on the ground and at the same time Subeg Singh fired upon him, which hit on the right calf. The detailed facts mentioned by the complainant in his aforesaid statement has been reproduced in the true translation of the FIR No. 186 dated 14.09.2024 attached with the petition as Annexure P-1, which may kindly be read as a part of this paragraph as same are not repeated for the sake of brevity.

4. That during the investigation, the statement of Sukhdev Masih was recorded by the investigating officer reiterating the similar facts as disclosed by the complainant Babbu. Furthermore, he stated that co-accused Vishal, Dilbagh alias Happy, Sarabjit Kaur and Gurpreet Singh alias Vicky (petitioner) were also accompanying them and the aforesaid accused had caused injuries upon them. On the basis of the aforesaid disclosure statement, the petitioner and aforesaid accused were nominated in the present case vide G.D. No.25 dated 30.09.2024.”

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 short reply.

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

“Role of the petitioner

6. That as per the version of the injured Sukhdev, the petitioner along with the other co-accused after forming an unlawful assembly in furtherance of their common object attacked upon the him and caused injuries upon him.

Evidence against the petitioner

7. That the evidence against the petitioner is in the form of oral statement of the complainant Sukhdev Masih recorded under section 161 Cr.P.C. by the investigating officer, which is corroborated with the Medico-Legal Report of the complainant Babbu, Sukhdev and Peter.”

7. Counsel for the petitioner submits that the petitioner was not initially named and was named later on. As per para no.4 of the reply filed by DySP, petitioner was arraigned only on the basis of disclosure statement of co-accused and he had no role. No injury has been attributed to him and has no criminal antecedents. Further, the prosecution intentionally improved their case and attributed sticks after deliberations and concoctions.

8. State counsel opposed the bail on the ground that the petitioner was not arraigned only on the basis of disclosure statement but for the satisfaction of investigation, the legal evidence against the petitioner is statement of complainant recorded under Section 180 BNSS in which the petitioner was named and the statement is corroborated by medico legal report of complainant victims namely Babu, Sukhdev Masih and Peter, as such petitioner is not entitled to bail.
9. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible. A perusal of the reply does not point out the steps taken to arrest the accused.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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)	

16. 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.

17. 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.

18. 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.

19. 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.”

20. 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.

21. 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.

22. **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.**

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

24. 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.

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

(ANOOP CHITKARA)
JUDGE

30.01.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.