

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MP(M) Nos. 1328, 1329 and 1330 of
2026****Reserved on: 21.07.2026****Date of Decision: 28.7.2026.****1. Cr.MP(M) No.1328 of 2026**

Gaurav Kumar Petitioner

Versus

State of HP Respondent

2. Cr.MP(M) No. 1329 of 2026

Deepak Kumar Petitioner

Versus

State of HP Respondent

3. Cr.MP(M) No. 1330 of 2026

Saurav Kumar Petitioner

Versus

State of HP Respondent

*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting?¹ No.*For the Petitioner(s) : Mr Ashwani Dhiman, Advocate in
all the petitions.¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

For the respondent/State : Mr Lokender Kutlehria, Additional Advocate General, in all the petitions.

Rakesh Kainthla, Judge

The petitioners have filed the present petitions seeking pre-arrest bail in FIR No. 64 of 2026, dated 11.04.2026, registered at Police Station Majra, District Sirmour, H.P., for the commission of offences punishable under Sections 191(2), 191(3), 190, 115(2), 351(2), 109(1) and 117(2) of Bharatiya Nyaya Sanhita (BNS), 2023.

2. Since all the petitions have arisen out of the common FIR, all of them are being taken up together.

3. Briefly stated, the facts giving rise to the present petitions are that Surender Singh was ploughing the fields of Om Prakash with his tractor on 10.04.2026 at about 09.10 a.m. Some portion of the land of Shajid Ali alias Bobby was damaged during the ploughing. Shajid Ali questioned Surender Singh as to why he had damaged the field. Surender Singh replied that he would set the land right with the help of a tractor. Shajid Ali started abusing Surender Singh and inflicted a blow by means of a stick on his forehead, resulting in an injury to the eye. The matter was

reported to the police, and the police registered the FIR. The petitioners are innocent, and they were falsely implicated. No corresponding injury to the body was found by the Medical Officer. The victim was suffering from pneumothorax, which can be caused by multiple diseases. The allegations in the FIR, even if accepted to be correct, only show the case of grievous hurt. The police added Section 109 of BNS without any basis. The investigation is complete. No fruitful purpose would be served by detaining the petitioners in custody. Hence, he prayed that the present petition be allowed and the petitioners be released on bail.

4. The State has filed a copy of the FIR in which it was asserted that Surender Singh was ploughing the field adjacent to the field of Shajid Ali. The tractor damaged Shajid Ali's land. Shajid Ali objected, and Surender Singh tried to crush Shajid Ali under the tyres of the tractor, which led to a quarrel. Surender Singh went to his home and brought Sourav Kumar, Gaurav Kumar, Deepak Kumar and some women with him. All of them were armed with sticks and iron rods. They gave beatings to Shajid Ali. They had also threatened to kill Shajid Ali before this incident. The mother of Shajid Ali pleaded with the accused to

leave him, but the accused retorted by saying that Shajid Ali had harassed them and they would kill him. Shajid Ali was taken to the hospital from where he was referred to Dr Y.S. Parmar Government Medical College, Nahan.

5. I have heard Mr Ashwani Dhiman, learned counsel for the petitioner(s) in all the petitions, and Mr Jitneder K. Sharma, learned Additional Advocate General, for the respondent/State in all the petitions.

6. Mr Ashwani Dhiman, learned counsel for the petitioners, submitted that the petitioners are innocent and they were falsely implicated. The allegations in the FIR, even if considered to be true, do not show any intention to commit murder. The Petitioners had given beatings by means of a stick and iron rods as per the FIR, but no corresponding injuries were found on the body of Shajid Ali. The Medical Officer found pneumothorax, which can be caused by multiple reasons. Therefore, he prayed that the present petitions be allowed and the petitioners be released on bail.

7. Mr Jitender K. Sharma, learned Additional Advocate General, for the respondent/State submitted that the injuries

were dangerous to life. The petitioners had used iron rods and sticks, which are deadly weapons. They had threatened to kill the victim, which showed their intention to kill. The offence is heinous. The investigation is continuing, and releasing the petitioners on bail will adversely affect the investigation. Hence, he prayed that the present petitions be dismissed.

8. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

9. It was laid down by the Hon'ble Supreme Court in *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24: (2019) 3 SCC (Cri) 509: 2019 SCC OnLine SC 1143 that the power of pre-arrest bail is extraordinary and should be exercised sparingly. It was observed:

“69. Ordinarily, an arrest is a part of the procedure of the investigation to secure not only the presence of the accused but also several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power, and the same has to be exercised sparingly. The privilege of pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; the possibility of the applicant fleeing justice and other factors are considered to decide whether it is a fit case for the grant of

anticipatory bail. Grant of anticipatory bail to some extent interferes with the sphere of investigation of an offence, and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule, and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

10. This position was reiterated in *Srikant Upadhyay v.*

State of Bihar, 2024 SCC OnLine SC 282, wherein it was held:

“25. We have already held that the power to grant anticipatory bail is extraordinary. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of the imagination, be said that anticipatory bail is the rule. It cannot be the rule, and the question of its grant should be left to the cautious and judicious discretion of the Court, depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious, as the grant of interim protection or protection to the accused in serious cases may lead to a miscarriage of justice and may hamper the investigation to a great extent, as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest, and we say that such orders shall be passed in eminently fit cases.”

11. It was held in *Pratibha Manchanda v. State of Haryana*,

(2023) 8 SCC 181: 2023 SCC OnLine SC 785 that the Courts should

balance individual rights, public interest and fair investigation

while considering an application for pre-arrest bail. It was observed:

“21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tightrope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each case becomes crucial to ensure a just outcome.”

12. The present petitions have to be decided as per the parameters laid down by the Hon'ble Supreme Court.

13. The FIR mentions that the petitioners were armed with sticks and iron rods and they gave beatings to the victim, who became unconscious on the spot and was taken to the hospital. The Medical Officer issued an MLC, in which multiple fractures were detected. Pneumothorax was also detected on the chest, which was dangerous to life. The FIR also mentions that when the victim's mother pleaded with the petitioners to leave him, the petitioners said that the victim had harassed them and they would finish him. These utterances and the injuries caused

to Shajid Ali, *prima facie*, depict an intention to kill him. Hence, a *prima facie* case is made out against the petitioners for the commission of an offence punishable under Section 109(2) of the BNS.

14. It was submitted that no corresponding injury or fracture of ribs was found and pneumothorax can be caused due to various reasons. This submission will not help the petitioners. *Prima facie*, the report of the Medical Officer shows that the injuries were caused by the petitioners to the victim, which were found to be dangerous to life. Whether pneumothorax could be caused by other diseases is a matter of trial and cannot be appreciated at this stage.

15. It was submitted that the F.I.R was lodged on 10.04.2026. The police have completed the investigation, and custodial interrogation of the petitioners is not required, and the petitioners are entitled to bail. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in *State of A.P. v. N. Sanjay*, 2025 SCC OnLine SC 1747, that pre-arrest bail cannot be granted because the charge sheet has been filed or the

custodial interrogation is not required. It was observed at page 397:

“26. In a litany of pronouncements, from *Niranjan Singh v. Prabhakar Rajaram Kharote*, (1980) 2 SCC 559 and *Vilas Pandurang Pawar v. State of Maharashtra*, (2012) 8 SCC 795 to *Atulbhai Vithalbhai Bhanderi v. State of Gujarat*, (2023) 17 SCC 521, the Court cautioned against elaborately discussing/detailing the evidence or rendering findings basis the same when seized with the question of considering whether or not to grant bail. Indeed, as held by us in *State of Haryana v. Dharamraj*, (2023) 17 SCC 510:

‘11. Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits....’ (emphasis supplied)

27. In *Sumitha Pradeep v. Arun Kumar C K*, (2022) 17 SCC 391, it was held:

‘12. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO, and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding

an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked, and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, it by itself cannot be a ground to grant anticipatory bail.' (emphasis supplied)

28. In *P Krishna Mohan Reddy v. State of Andhra Pradesh*, 2025 SCC OnLine SC 1157, it was stated:

'23. As held by this Court in Sumitha Pradeep v. Arun Kumar C.K., (2022) 17 SCC 391, that it would be preposterous as a proposition of law to say that if custodial interrogation is not required, that by itself is sufficient to grant anticipatory bail. Even in cases where custodial interrogation may not be required, the court is obliged to consider the entire case put up by the State, more particularly, the nature of the offence, the punishment provided in law for such offence, etc.

24. It is needless to say that for the purpose of custodial interrogation, the investigating agency has to make out a prima facie case at the time when remand is prayed for. Whether any case for police remand is made out or not, it is for the Court concerned to look into it.

25. In such circumstances, referred to above, we are of the view that we should not come in the way of the investigating agency at this point and the investigation should be permitted to proceed further.' (emphasis supplied)

16. This position was reiterated in *Ashok Kumar vs Union Territory of Chandigarh Special Leave Petition (Crl.) No.9949/2023* decided on 01.03.2024 wherein it was observed:

“12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating the alleged crime. It is equally true that just because custodial interrogation is not required, that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature.”

17. Therefore, the petitioners cannot be released on bail because the FIR was registered in the month of April and the custodial interrogation of the petitioners may not be required.

18. The offence punishable under Section 109 of the BNS is punishable with imprisonment for life. It was laid down by the Hon'ble Supreme Court in *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240: 1978 SCC (Cri) 115: 1977 SCC OnLine SC 327* that when the punishment is severe, the person is not entitled to bail. It was observed at page 244:

“6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of, and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage, and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve a sentence in the event of the Court punishing him with imprisonment. In

this perspective, the relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle. J. indicated that when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment for it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. [*Mod. Law Rev. p. 50* *ibid.*, 1852 I E & B 1] Lord Campbell, C.J., concurred in this approach in that case, and Coleridge J. set down the order of priorities as follows: [*Mod. Law Rev. ibid.*, pp. 50–51]

“I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial It is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point, three elements will generally be found the most important: the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted. In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death.”

7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

19. Therefore, the petitioners cannot be held entitled to pre-arrest bail considering the gravity of the offence and the severity of the punishment.

20. No other point was urged.

21. In view of the above, the present petitions fail, and these are dismissed.

21. The observation made hereinbefore shall remain confined to the disposal of the instant petitions and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

28th July 2026
(Ravinder)