

CRM-M-25341-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25341-2024
Reserved on: 06.09.2024
Pronounced on: 20.09.2024

Jatin Sethi ...Petitioner

Versus

State of Punjab ...Respondent
CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.K. Virk, Advocate (Through VC) for the petitioner.

Ms. Swati Batra, DAG, Punjab (Through VC)

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
32	17.02.2024	City Phagwara, District Kapurthala	323, 341, 506, 148, 149, 379-B, 325 IPC

1. A boy aged 19, having clean antecedents, apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, 1973 seeking anticipatory bail.
2. In paragraph 10 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the translated copy of FIR, annexed with the bail petition as Annexure P-1, which reads as follows:

“I am resident of above mentioned address and am doing private business, I am Vice President of Shiv Sena, on 06th of March 2024 there is Shobha Yatra of Lord Shri Bhole Nath in Phagwara, in this connection me and Jimmi Karwal son of Inderjit Karwal, Vipin Sharma son of Husan Lal, Vinay Kaushal son of Ashok residents of Phagwara were collecting donation amount, time at around 4:30 PM 5:00 PM when we were standing outside Subhash Nagar Street Number 01 then Tanish son of Laddi armed with Hockey, Vikram armed with Baseball, Abhi Malhotra armed with Hockey, Nau (Bhaa), Ammol Gagan Mattu residents of Phagwara who came along with weapons and Tanish alias Bhinda raised challenge and while hurling abuses said that the dispute which was pending since around 3/4 years. Teach lesson for the same today, no one should go scot free, then Tanish alias Bhinda gave Hockey blow upon my head, I raised my right arm up for my survival, the blow hit just above my right arm wrist. In the meantime Vikram gave me blow of baseball upon my head, I raised my left arm up for my survival, blow hit me upon my left elbow. Then Abhi Malhotra gave Hockey blow to me, blow hit me below my left arm elbow. I fell down on the ground and while I was lying down

CRM-M-25341-2024

all of them gave blows to me with their respective weapons. I sustained injuries upon my wrist, my both the legs, right finger. All these persons marched ahead to assault my fellows who come along with me then all of them fled from the spot. Cash bag of donation which was with me they also snatched it from me. I raised clamour of save-2 then all of them fled from the spot along with their respective weapons. In the meanwhile my nephew Yogesh son of Harish Kumar came. Who made arrangement of vehicle and brought me to Civil Phagwara. Hospital Where I am undergoing treatment, in the year 2018 also they had launched an attack upon me and had inflicted injuries to me and while leaving they had said that you have to be killed for sure, me and my family are having danger from them.”

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 reply.

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

*“Role of Petitioner and Incriminating evidence against petitioner:-
10) That there are specific allegations against the petitioner as petitioner in connivance with other co-accused have inflicted injuries on the person of complainant, moreover accused Tanish was arrested in present case and he suffered disclosure statement on 18.02.2024 in which he has stated that he alongwith Jatin Sethi had given beatings to complainant Rajesh Palta and they had snatched the bag containing money and that bag is with Jatin Sethi. He has also stated that he was armed with hockey at that time and he had given the hockey to the police. Initially the name of petitioner has not been mentioned in the FIR but later on the name of the petitioner has been surfaced in the present case on the basis of the supplementary statement of complainant got recorded before the police on 17.03.2024. So from the confessional statement of Tanish which is on the police file, it is clear that bag containing donation money which was snatched from complainant Rajesh Palta is also to be recovered from the petitioner for which the custodial interrogation of the applicant is required for proper investigation of the case.”*

7. 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 the same for the bail stage.

8. The petitioner is a young boy aged 19, in the formative years of his life, and this coupled with nature of allegations, injuries attributed, 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.

CRM-M-25341-2024

9. 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.

10. 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.

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. The petitioner is directed to join the investigation within seven days and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act/ Proviso to Section 23 of BSA. 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.

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

CRM-M-25341-2024

15. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, and their family members, as well as 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 firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond 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 from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in 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.

16. 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."

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

20.09.2024

anju rani

Whether speaking/reasoned: Yes

Whether reportable: No.