



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.28079 of 2024
Reserved on: 02.08.2024
Pronounced on: 30.08.2024

Abdul Rajak ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. A.P.S. Mann, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. A.G., Haryana.

Mr. Intizar-ul-Hasan, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
457	07.11.2023	Sadar Tauru, District Nuh, Haryana	148, 149, 341, 323, 324, 427, 506 IPC 1860 (Sections 325 and 326 IPC added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, 1973, seeking anticipatory bail.
2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“1. That the brief facts of the case are that on 05.11.2023 the information was received in Police Post-Mohammadpur Ahir to the effect that Zuber son of Sarif Resident of Sabras admitted in CHC Tauru with a history of assault upon which the police reached at CHC and obtained the MLR No. the MLR, the Hwawwhich DS/Tauru/483/2023 dated 05.11.2023 of injured Zuber and in the MLR, the doctor recorded nine injuries. Injuries No. 1 ADV-NCCT Head Surgeon opinion and injury No. 2,3, and 9 ADV-X RAY Ortho Opinion and Injury No. 3,7,8 suturing i.e. stitching have been mentioned. Injury No. 3 is recorded to be sharp and the doctor has referred the injured to the Higher Centre in the MLR, a separate opinion has been obtained from the doctor, That SHKM Nalhad has been approached regarding the injured and the injured is not admitted. Thereafter on



07.11.2023 ASI Raj Kapoor was present in the Police Post by that time Sabir son of Sarif i.e. the brother of the injured Zuber moved the complaint which is as under :- To The Incharge, Police Post Moammadpur Ahir, Subject: Complaint for taking legal action against Razak (Petitioner), Hajar Khan, Mubin, Harun sons of Jumme Khan, Aarif, Dilsad, Mustafa sons of Razak, Mustakeem, Nadeem, Jeedu alias Shahid son of Hajar Khan, Junaid, Sohail sons of Mubin; Sajakat son of Harun'Shehzad, Altaf sons of Farukh, Saleem son of Chajju, Shahid son of Aasu, Aasu son of Chan singh, Tahir son of Asu son of Bulla, Sher Mohammad alias Bona son of Ruddar, Farukh son of Kalu, all residents of village Sabras for calling Zuber from home after conspiring with each other based on a preplanned conspiracy and for deadly assault by Lathi, Danda, Axe, Farsa and Iron Rods and looting, damaging the vehicle and giving threats to kill. Respected sir, it is submitted that i, Sabir son of Sharif am a permanent resident of village Sabras, Tehsil Tauru, District Nuh. Sir that on 05.11.2023 Saukat son of Khurshid came to our house at 2 AM in the night and called my brother Zuber. That wife of Zuber got up and came outside, then Saukat started saying that we have to go in car to Faridabad due to an emergency. Zuber's wife said that he is sleeping now, he will not go anywhere in night. Then Saukat again came after half an hour and started saying that let me talk to Zuber. That after hearing the voice, Zuber came outside, upon which Saukat said his nephew Naseer has to be taken to Faridabad. That Zuber agreed and took his Scorpio car (HR 26DJ 0647). When they reached near Sohna then Naseer received a phone call from Saukat-to return back home. When they started coming back Naseer got off outside of village Sabras and told Zuber to go home. At about 4:20 AM, when Zuber reached the village bus stand, then a TATA 407 the number of which was HR 55T 3571 parked in front of him and a tractor parked behind the scorpio. All the above mentioned accused were sitting hidden, armed with Lathis, Dandas iron rods, Farasas and Axes. They suddenly attacked on the scorpio car of Zuber from all the four sides and took out Zuber from the car by breaking the glasses. They attacked with Axes, Farsas, Lathis, Dandas etc. and robbed both the mobile phones of Zuber, cut the Scorpio car with Axes and continued to beat Zuber until he got unconscious. They cut both legs of Zuber with Axes and cracked his head and they fled away from there, thinking he is dead. Thereafter, Rashid, who is the son of my uncle (Tau), who had come from Delhi, saw these persons beating Zuber, and upon seeing Rashid's car, these persons fled away. That when Rashid reached the spot, he saw Zuber lying unconscious in a bloody condition. Rashid immediately telephonically called me that Sabir come immediately at the village bus stand by bringing the car, your brother has been killed. That I reached there by taking my swift car with Rashid we took Zuber to Tauru Government Hospital, where the doctors after preliminary inspection, referred him to PGI Rohtak to see the condition of Zuber. Zuber is still admitted in PGI Rohtak and we all remained with him getting his treatment done. His condition remains very critical. After regaining consciousness, Zuber told the whole story. Therefore, it is requested to your good self that legal action be taken against all the above-mentioned accused for conspiring and attacking with weapons, looting, damaging the car, and making threats to kill. The statement of Zuber be recorded." from the contents of the complaints & MLRs offenses punishable



under section 148, 149, 323, 341, 323, 324, 427, 506 IPC made out and accordingly the case the First Information Report 457 Dated 07.11.2023 registered in Police Station Sadar Tauru, District Nuh (Haryana). It is also most respectfully submitted that though in the complaint, the complainant mentioned about the robbing of two mobile phones but no bill or the IMEI Number had been provided."

4. The petitioner's counsel submits that during investigation after registration of FIR, on 24.12.2023 i.e. after one and half months of occurrence, injured Juber's statement under Section 161 was recorded in which injury on head was attributed to the petitioner with a Chatiya (axe). He further submits that injury no.1 was declared to be grievous and as such, Section 325 IPC was added and further injury no.3 on leg of the injured declared to be grievous and sharp, as such Section 326 IPC was added. He further submits that from CCTV footage of the place of occurrence, shows the petitioner walking around with an iron rod in his hand. Petitioner's counsel argued that in fact on 05.11.2023 at about 12 am, daughter of petitioner, namely Suhaliya was abducted by aforementioned Naseer and injured Juber by blackmailing her, and taken on Scorio vehicle. He further argued that Juber was driving vehicle while Naseer raped Suhaliya in the back seat. After some time, when the word of petitioner's daughter abduction spread in the village, Naseer was telephonically called which was recorded by petitioner's side, upon which the accused brought back the petitioner's daughter and left her near bridge of village Sabras at 4 am. Rape of petitioner's daughter was immediately reported by her and her family to Inspector Hukam Singh, SHO PS Tauru, in the morning. However, no action was taken as the said SHO was under heavy influence of aforementioned Naseer. He further submits that in order to pressurize the petitioner's side to not to pursue rape allegations against Naseer and Juber, FIR No. 457 after an unexplained delay of 2 days, i.e. on 07.11.2023 was registered, despite injured Juber being fit to make statement and conscious. All 13 male members of the petitioner's family, besides 8 others, were named in the FIR. He submits that finally, under pressure from several quarters, the police relented and registered FIR No. 460 against Naseer and Juber on 11.11.2023. He submits that the police is still pressurizing the petitioner to amicably settle the matter. Petitioner's counsel contends that genuineness of the petitioner's version is irrefutably proved by the fact that the subject FIR does not disclose any motive or any prior enmity with the Petitioner's side to launch an attack on Juber in the middle of a night in November which clearly shows that the daughter of the petitioner was indeed abducted by Naseer and Juber in the middle of the night on 5.11.2023. He further alleges that SHO PS Tauru, namely Inspector Hukam Singh has been acting under the direct influence of the complainant party, since Saukat s/o



Khurshid, who is admittedly the paternal uncle of Naseer as per subject FIR, is a Police Constable in the Haryana Police himself, and posted at Ballabgarh, in the adjoining district of Faridabad and Sub-Inspector Jameel, Haryana Police, is the great-grandfather of aforementioned Naseer (by relation) and posted at PS Kheri Pul, district Faridabad, where present SHO of PS Tauru, namely aforementioned Inspector Hukam Singh was last posted. Thus, the local police refused to take action against Naseer and Juber, when the incident of rape was reported by the petitioner's side on 05.11.2023. He further argued that the above captioned FIR was registered on a written complaint by the complainant-Sabir after 2 days of the occurrence i.e. on 7.11.2023 without any justification as, allegedly injured Juber was fit and conscious. He further argued that when the petitioner's side persisted with their complaint of rape against Naseer and Juber, present FIR was registered to pressurize them. He further contended that as per MLR recorded at CHC Nuh, Injury no. 1 on the head of injured Juber was already found sutured with stitches, despite the case in the FIR being that he was directly taken to GH Tauru/ CHC Nuh on the receipt of injuries which shows that the injuries on the person of Juber were manufactured. No record of any medical examination or treatment of Juber is forthcoming, even after detailed investigation, and presentation of challan against co-accused of the petitioner, apart from an admission by Juber himself in his S. 161 statement, that he was taken to one private Global Hospital. He further argued that no specific role was attributed to the petitioner in the FIR or for 1 ½ months thereafter, despite him being fit and conscious throughout. Petitioner attributed with specific attribution. It is thus evident that specific allegation against the petitioner of having given a blow on the head with an axe has been levelled in order to add gravity to the case against him, after an unexplained delay of 1½ months.

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 their family.

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

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

"3. That during the course of investigation that CCTV footage of the place of occurrence has been taken in possession, in which, the applicant is seen having an iron rod in his hand and it apparently shows that the applicant was among the assailants. It is most respectfully submitted that the custodial interrogation of the applicant is necessary for recovery of the case property as well investigation of the case and also to unearth the real facts as the of the case therefore benefit of



anticipatory bail should not be allowed to the applicant. It is also most respectfully submitted that the application for anticipatory bail of co-accused Hajar Khan has been dismissed, vide order dated 14.05.2024 by the court of Sh. Sushil Kumar Learned Sessions Judge Nuh."

8. The complainant also opposes the bail and refers to para 3 of his reply, which reads as follows:

"3. That it is respectfully submitted that the said occurrence was recorded in CCTV footage which is available in the pen drive before this Hon'ble Court. In pen drive Video on 02:24 (In CCTV on time 04:20 AM) the Petitioner is presented on the spot and clearly can be identified and standing with the iron rod and instructing other accused. The CCTV recording and the Screenshot images from the CCTV of the petitioner are annexed herewith as Annexure R-1"

9. The petitioner is allegedly carrying an iron rod. Even if it is accepted to be correct, still another view has emerged about the possibility of false implication because of the rape of the petitioner's daughter.

10. 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.

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. 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.

13. 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.

14. 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)	

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

16. The petitioner is directed to join the investigation as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. 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. 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.

18. 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.

19. 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,



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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 restrain the accused from influencing the witnesses and repeating the offense.

20. 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."

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

30.08.2024*Sonia Puri*

Whether speaking/reasoned:

Yes

Whether reportable:

No.