

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29791-2024
Reserved on: 07.08.2024
Pronounced on: 30.08.2024

Rohit ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Divya Gulati, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0009	04.03.2024	Verka, District Amritsar	323, 324, 326, 506, 148, 149 IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 15 of the bail petition, the accused declares that he has no criminal antecedents.
3. Facts of the case are being taken from short reply dated 06.08.2024 filed by Assistant Commissioner of Police which reads as follows:-

“3. It is submitted that as per the report furnished by SHO, P.S. Verka, Amritsar, on 04.03.2024, the statement of the complainant Kashmir Singh was recorded by Gopal Singh ASI, Police Station Verka, Amritsar wherein it was alleged that on 08.02.2024 at about 6 PM, his (the complainant) son Rohit Singh went to the market for buying prashad but did not come back. Thereby, the complainant went to the market in search of his son Rohit Singh, and when he (the complainant) reached Chowk Ajit Nagar found that Rohan S/o Mangal Dass and Sahil S/o Nathu Ram both were beating his son Rohit Singh near Hundal Dairy. The above-said Sahil was holding his son Rohit Singh in his arms and above said Rohan was beating Rohit Singh. The complainant tried to rescue his son Rohit Singh then the above said Rohan gave a blow of his 'Karah' (iron bangle) on Rohit which hit his

(Rohit) left eyebrow and blood started oozing out. The complainant raised an alarm then Rohan and Sahil went away from the spot while extending threats. The complainant had taken his son Rohit Singh to Rana Medical store for treatment of his injuries. There the complainant's son Hira Singh, brother Wazira Singh, and nephew Mohit Singh also came to the medical store for treatment of Rohit. Meanwhile, Mangal Dass (father of the present petitioner Rohit) S/o Iqbal Das armed with 'datar', Pardeep S/o Iqbal Das armed 'Khanda', Rohit (present petitioner) S/o Mangal Das armed with 'datar', Rohan S/o Mangal Dass armed with sword, Thomas S/o Mangal Das armed with punch Sahil S/o Nathu Ram armed with datar along with 2/3 unknown persons came. Pardeep gave a blow of his khanda on the complainant which hit his forehead, Sahil also blew his 'datar' on the complainant, which hit on right side of his forehead, Rohit (present petitioner) gave a reverse blow of his datar on the head of the complainant and he raised his left arm and the blow landed on his arm. The complainant was drenched in blood then his elder brother Hira Singh came forward to his rescue, Thomas punched on nose of Hira Singh and Mangal Das gave blow of his datar on Hira Singh which hit on left side of his head and he was drenched in the blood. Mangal Das gave reverse blows of his datar on Hira Singh which hit in the middle of his head and back side of his head. In the meanwhile one of the accused persons a blow of some sharp object on his face which hit on left eyebrow near the nose of the complainant. Pardeep gave a blow of his khanda on the head of Wazira Singh who raised his hand for his safety and the blow landed on the little finger of his right hand. Rohit (present petitioner) gave reverse blows of his datar on Wazira Singh which hit in the middle of his head and on his right cheek. Rohan gave blow of his sword on Mohit who raised his left hand in his safety and blow hit on the thumb of his left hand. Sahil gave reverse blow of his sickle on Mohit, which hit on right side of his head. Rohan gave blow of his sword on the head of Mohit but the complainant's son Rohit came in his rescue then the blow of datar hit on index finger of his right hand. Sahil gave blow of his datar on Rohit, which hit on backside of his head. They all got drenched in blood then the crowd gathered and all the above said assailants ran away from the spot with their respective weapons. The reason for the grudge is that Rohan (incorrect name of the present petitioner Rohit) and Thomas studied with Rohit son of the complainant and Rohit had a minor altercation with them in the school. Therefore, Rohan (incorrect name of the present petitioner Rohit) along with his friend Sahil beat the son of the complainant. All the injured persons of the complainant party got a docket from PS Verka and had treatment from CHC Verka. The complainant Kashmira Singh and his brother Hira Singh were referred to Guru Nanak Dev Hospital. The MLRs of the injured were issued by the doctor.

The respectable persons made efforts to make a compromise between both parties, which could not be arrived at. Therefore, as per the above statement and MLRs of the above-mentioned injured persons, the aforesaid FIR No. 09 dated 04.03.2024, under Section 323/324/326/506/148/149 was registered by ASI Gopal Singh at, Police Station Verka, Amritsar.”

4. Counsel for the petitioner submits that petitioner is the accused in the FIR and a cross version was registered by the father of the petitioner vide DDR No.31. The injured were medico legally examined and the injury No.1 in the person of Kashmira Singh was sharp and attracts the offence under Section 326 IPC. However, no injury of 326 IPC is attributed to the petitioner. Counsel further submits that father of the petitioner namely Mangal Dass is also injured and has received three sharp injuries and one blunt injury and the co-accused Thomas has also received simple injuries. The cousin of the petitioner namely Rohan has also suffered injuries which is a lacerated wound on the head.

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 opposes bail and has referred to the reply.

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

“6. That it is submitted that during investigation, the accused Mangal Das S/o Iqbal Das was arrested on 08.03.2024 and his statement was recorded by the Investigating Officer wherein he alleged that on 08.02.2024 at about 6PM, firstly Rohit and Mohit armed with sickle S/o Hira Singh had beaten his son Rohin. Mohit gave reverse blow of his sickle on head of Rohin, due to which he got injured. Rohin's friend Sahil was passing through the market, who saved Rohin then Rohit and Mohit ran away from the spot. After sometime his son Rohit was coming home from market then Kashmira Singh armed with khanda, Hira Singh armed with sickle, Vazira Singh empty handed, Mohit S/o Hira Singh armed with sickle, Rohit S/o Kashmira Singh armed with iron stick, Rahul armed with sickle, Kuldeep Singh armed with sickle and Rajan empty handed stopped Rohit near Rana Medical Store and started beating Rohit. Upon hearing shouting, he (Mangal Das) along with Rohin, Sahil, Pardeep and Thomas reached the spot. There the above said persons caused injuries to him (Mangal Das), Thomas, Pardeep, Rohan and Rohit with their respective weapons and thereafter all the above said persons ran away from the spot with their respective weapons. All the injured got treatment from CHC Verka, Amritsar. The respectable persons made efforts to effect compromise between them, but it could

not be made. Therefore, based upon the above statement and as per MLRs of Rohan, Rohit, Mangal Das, Pardeep and Thomas, the cross version GD No. 31 dated 08.03.2024, under Sections 323/324/325/341/148/149 IPC, PS Verka, Amritsar was registered by the Investigating Officer. The accused Mangal Das was produced before the learned Court of competent jurisdiction and his police remand was granted by the learned Court. During the remand, one sickle used in the commission of the crime which was recovered on 10.03.2024 from his residential house. The accused Mangal Das was again produced before the learned Court and was sent to judicial custody.

12. ROLE OF PETITIONER

12. That it is submitted that based upon the investigation being carried out in the present case FIR No. 09/2024 (supra), as per statements of the injured persons coupled with their MLRs, it has come forth that at the time of commission of crime the present petitioner Rohit was armed with 'sickle' and he had caused injuries to the injured persons as under:

I. Injury No. 3 of Kashmira Singh on posterior lateral aspect of the left forearm with reverse sickle-simple-blunt.

II. Injury No. 1 and 2 of Vajira Singh on the middle of the head and right cheek with reverse sickle-simple-blunt.

EVIDENCE AGAINST THE PETITIONER

13. That it is respectfully submitted that during the course of investigation of the statements of the complainant and all the aforesaid injured persons namely Kashmira Singh, Rohit Singh, Hira Singh, Vajira Singh and Mohit Singh were recorded under Section 161 Cr.P.C. wherein they have leveled specific allegations against the present petitioner Rohit and the petitioner has been attributed specific role in commission of crime.”

8. There were cross-cases and at this stage it would be difficult to conclude that which party was the aggressor and which party exceeded the defence.

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. 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.

11. 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.

12. 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.

13. 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)	

14. 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.

15. 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.

16. 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.

17. 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."

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

30.08.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.