

CRM-M-34597-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34597-2024
Reserved on: 10.09.2024
Pronounced on: 27.09.2024

Anmol Kumar alias Mola ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gursimran S. Bawa, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
71	20.04.2023	Chheharta, District Amritsar	307, 148, 149 IPC and subsequently added Sections 323, 324, 379-B (2) IPC

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. As per paragraph 13 of the reply, the accused has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“That the brief and relevant facts of the case are that aforesaid FIR No. 71 dated 20.04.2023 was registered on the basis of the statement of Rajiv Sharma, who had alleged therein that he has been working at VJ Filling Station from the last six years and on 19.04.2023, at about 10 PM, he was doing his duty on the petrol pump, where 7/8 youngsters came on motorcycles and started abusing each other at the time of getting the petrol filled and one lady also reached at the petrol pump to get petrol filled, on which he (Rajiv Sharma) asked the motorcycle riders to speak decently but the aforesaid youngsters became angry and started abusing him. He further alleged that the aforesaid youngsters attacked him with datars and Varun Sharma, who also works at the petrol pump came to rescue him but the aforesaid youngsters also attacked upon him with datars and when he raised hue and cry, the accused fled from the spot.”

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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 the petitioner

8. That the petitioner was arrested on 21.06.2023 during the course of the investigation. During his custodial interrogation, the petitioner reiterated the similar facts as disclosed by the co-accused Raunakdeep Singh in his disclosure statement.

9. That as per the prosecution version, the petitioner being a member of an unlawful assembly in furtherance of their common object had attacked upon the workers of VJ Filling Station and caused various injuries on the person of the complainant Rajiv Sharma and Varun Kumar and as per medical record, the said injuries are inflicted with sharp edged weapon on the vital parts of the body and committed a snatching of Rs. 28,000 from the complainant. A total of Rs. 300/- was recovered at the instance of the petitioner from the backside of the photograph at his house pursuant to his disclosure statement dated 23.06.2024.

Evidence against the petitioner

10. That the petitioner is clearly visible in the CCTV footage installed at VJ filling Station, who along with the other co-accused had attacked upon the workers of the filling station. Moreover the complainant Rajiv Kumar has also identified the petitioner vide identification memo dated 23.06.2023.”

7. Pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, as per paragraph 6 of the bail petition, the petitioner has been in custody since 21.06.2023 and accordingly his custody in this FIR is more than 01 year & 03 months. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

8. 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.

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9. 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 concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

10. 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)	

11. 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.

12. 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.

13. 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

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instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

14. 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."

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

16. 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.

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

(ANOOP CHITKARA)
JUDGE

27.09.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.