

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.38424 of 2024
Reserved on: 16.10.2024
Pronounced on: 22.10.2024

Momin ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abdul Sattar, Advocate
for the petitioner.

Mr. Ashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
515	28.12.2023	Kunjpura, Karnal, Haryana	307, 323, 379, 506, 34 IPC and 54, 25 of Arms Act, 136 of Electricity Act, 2003

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 6 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	482/2023	--	Under sections 379 IPC and 136 of Electricity Act	Kunjpura, Karnal
2.	199	31.05.2023	Under section 136 of Electricity Act and 379 IPC	Kunjpura

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“2. That the brief facts of the case of the prosecution are that the present FIR has been registered on the application of Rajpal complainant presented at the police station on 28.12.2023 alleging that in the intervening night of 27/28.12.2023 at about 02:00 am, he had gone to his field to ward off any stray cattle and when he reached near tubewell, he heard some noise and got suspicious that there were several persons on the tubewell. At once, he came

to the village and returned to the tubewell alongwith his family members Deshraj, Sanjay, Vinod and Tejbhan. At the tubewell, they found that one person had climbed on the transformer and three persons were standing on the ground. When they reached near them, the said persons attacked them with dandas and the person who had climbed on the transformer, he jumped onto the ground and then fired a gun shot on the shoulder of Deshraj. They raised noise upon which several persons from the village came on the spot. The boy who had fired the gun shot was apprehended on the spot alongwith country made pistol and upon asking, he disclosed his name as Aabid while rest of the persons succeeded in running away from the spot alongwith their weapons. They also left behind the cables/ wires of the transformers on the spot. All the said persons had come to commit theft of transformers while Aabid had fired on his nephew Deshraj with the intention to kill him. A prayer was made to take necessary action against the culprits. On that basis, present FIR was registered under Section 323, 506, 379, 307, 34 IPC, Section 25-54-59 Arms Act and Section 136 of the Electricity Act.”

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:

“3. That co-accused namely Aabid was apprehended on the spot of occurrence alongwith countrymade pistol used by him and during investigation he suffered a disclosure statement in which he implicated the petitioner Momin and Rehtu @ Kala as his accomplice in the commission of the crime. The disclosure statement of Aabid is enclosed as Annexure R-1 wherein he has named petitioner alongwith him in the commission of the crime for kind perusal of this Hon'ble Court.

5. That the accused-petitioner was arrested on 04/01/2024 and he also made his separate and distinct disclosure statement vide Annexure P-5 about his involvement in the commission of this offence, besides 39 other cases, wherein, his custodial interrogation is required, to establish his involvement in the disclosed cases and further legal action will be taken accordingly as per law and that the accused-petitioner has also demarcated the place of occurrence on the basis of disclosure statement.”

7. The evidence collected against the petitioner during the investigation is not of sterling quality.

8. 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, per paragraph 5 of the reply filed to the bail petition, the petitioner was arrested on 04-01-2024. 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.

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 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.

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

13. 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 (Crl.) 458; and *Aparna*

Bhatt v. The State of Madhya Pradesh, 2021:INSC:192, 2021 SCC Online SC 230.

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

22.10.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.