

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.39867 of 2024
Reserved on: 18.10.2024
Pronounced on: 29.10.2024

Deepak Singh @ Deepak ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kulbir Singh Saini, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

Mr. Rajesh Kumar Kashyap, Advocate and
Mr. Sandeep, Gehlawat, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
17	13.01.2024	Derabassi, District Mohali	323, 325, 341, 365, 34 IPC (364 IPC added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. Per paragraph 12 of the bail application and the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	100	21.11.2020	Under section 379-B, IPC City Kurali	City Kurali
2.	04	19.01.2021	Under section 399, 402 IPC and 25/ 54/ 59 of Arms Act	City Kurali, District SAS Nagar

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

“7. That on merits it is submitted that the present FIR No.17, dated 13.01.2024, has been registered on the statement of the complainant namely Ajay, in which he broadly stated that he was a driver. He was going to Dera Bassi in search of a job of driver. On 06.01.2024, when he reached Ambala, it was around 9.30 A.M. four young boys were hu standing there on their motorcycles, who had an iron rod and sticks in their hands. The complainant further stated that out of aforesaid boys, one boy was Deepak (the petitioner) s/o Tarsem Fauji, resident of village Kahlo Majra, P.S. Banur and his other unknown accomplices, he could recognize if they would come in front of him. As soon as, the complainant crossed Ghaggar, they surrounded the complainant before the village Amlala, caught the complainant and started beating him with rods. They tied the mouth of the complainant with cloth and took him to a room constructed on a farm house in fields. In the aforesaid room, they tied the complainant and gave rod blows and Kirch blows on his legs and broke his both the legs. The complainant got unconscious and when he woke up, he found himself lying in Ghaggar. The complainant further stated that he called his uncle Sher Singh from his mobile phone, on which his uncle came there and got him admitted in Civil Hospital Rajpura. The doctor discharged the complainant on 10.01.2024.”

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 EVIDENCE AGAINST HIM

12. That the role of the petitioner is that he called his friend Salim Khan at Ghaggar bridge at village Amlala where Salim Khan and two of his other friends on motor cycles. Deepak and Salim Khan were carrying Baseball bats in their hands and one of their friends namely Gurpreet OF IND Singh INDIP was also carrying baseball bat in his hand whereas, another friend namely Bittu was empty handed and his one arm is already amputated. They all surrounded the complainant and gave him beatings. They further tied his mouth with cloth and Deepak threw the complainant in his car and took him to Gaggar Birr in a motor room of land of some farmer. Outside the said room, the person namely Bittu whose arm is already amputated was standing and Salim Khan, Deepak and their another friend namely Gurpreet took the complainant inside the said room and all of them broke the legs of the complainant and while thinking that the complainant has died, they threw him near the Gaggar Bridge. Deepak petitioner was arrested on 15.01.2024 and offence under Section 364 IPC was also added.

Evidence against the petitioner

There is a statement of complainant himself against the petitioner. Further petitioner had made a disclosure statement wherein, he confessed his guilt. Further there is a recovery of baseball bat as well as car from the petitioner. Further there is MLR of the complainant clearly showing 5 injuries on his person out of which injuries Nos.2, 3 and 4 are grievous and injury No.1 & 5 are simple in nature.”

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, per paragraph 11 of the bail petition, the petitioner has been in custody since 14.01.2024. Per the custody certificate dated 17.10.2024, the petitioner’s total custody in this FIR is 08 months and 29 days. 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, subject to the compliance of terms and conditions mentioned in this order.

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.

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

12. 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.

13. 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.

14. 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.

15. 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.”

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

17. 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.

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

(ANOOP CHITKARA)
JUDGE

29.10.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.