

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40509-2024
Reserved on: 06.09.2024
Pronounced on: 18.09.2024

Deepak ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Vikrant Pamboo, Sr. D.A.G., Haryana.

Mr. Gautam Bhardwaj, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
68	26.01.2024	Camp, Palwal, District Palwal	458/506/34, IPC (Section 307, IPC and Section 25 of the Arms Act, 1959 were added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. In paragraph 19 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts and allegations are being taken from the translated copy of the complaint, referred to in the status report filed by the State, which reads as follows:

“2. That brief facts of the case are that FIR no. 68 dated 26.1.2024, P.S Camp, Palwal was initially registered under sections 458, 506, 34 of IPC against Deepak (present petitioner) son of Rewati, resident of village Chirwari, Palwal and his two more unknown companions, upon complaint of Amilal son of Ramchand with regard to the incident which took place on the intervening night of 24.1.2024/25.1.2024/A true translated English version of his complaint is appended below for kind perusal of the Hon'ble Court:-

"I, 'Amilal son of Ramchand, am a resident of Street no. 11, Ward

no. 15, Adarsh Colony, Palwal, Tehsil and District Palwal. I have a double storied house, in which I live with my family. My elder son Gianchand lives at 2nd floor. On the intervening night of 24/25.1.2024 at about 2:30/3:00, two boys had barged into our house and they had broken locks of two rooms on 1 floor. On hearing the noise, my elder son Gianchand had woken up and noticed that one boy was trying to get into the rooms constructed on the roof and other boy was standing on the stairs. As soon as Gianchand came out of the room, the boy standing on the stairs straight fired at Gianchand with an intention to kill him which passed by his ear. The other boy fisted with a PUNCH on his head, which had ruptured his head and Gianchand started bleeding. He also caused injury on the nose. One injury was caused on left cheek and other on right hip, it was caused by his companion. On hearing the noise caused by Gianchand, we all had also woken up. We tried to nab both of the boys, in the melee, the punch of one boy had fallen down. One boy namely Deepak, resident of Chirwari was identified by Gianchand and his one shoe had also left in our house. Empty cartridge, punch and one shoe are lying inside our house and blood oozed out from my son is also lying there. Those two boys were extending threats to kill us and saying that some day they would loot all of our articles from our house. Both of boys had fled off after jumping on a roof on south of our house. We also noticed that their one more companion was also standing outhouse the house. Then all of three had fled off. We followed them, however, they had fled in a car standing towards railway line. Our family is afraid of them. Then a request to take action against the accused persons was made.”

4. The petitioner's counsel refers to Para 4 to 7 of the bail petition, which read as follows

“4. That the petitioner has been falsely implicated in the above mentioned case as ‘P’, aged 21 years, daughter of Gian Chand and niece of complainant Amilal was having friendly relations with the petitioner since long and they wanted to marry but the family of ‘P’ was opposed to it.

5. That ‘P’ was forcibly married by her parents to Nikhil on 19.2.2024 against her wishes.

6. That ‘P’ was beaten and tortured by her husband and turned out of the matrimonial home on 19.4.2024. She thereafter started living with the petitioner of her own free will and they decided to have live in relationship. ‘P’ has sworn an affidavit dated 19.4.2024 to this effect and has also executed an agreement with the petitioner admitting the live in relations. Copy of affidavit and agreement are annexed herewith as Annexures P-2 and P-3.

7. That to cover up his misdeeds, Nikhil got registered FIR No.112 dated 19.4.2024, under Section 346 IPC at Police Station Mundkati wherein he stated that his wife ‘P’ who was doing B. Pharma course has gone to the college on 18.4.2024 but did not return. True translated copy of FIR No.112 dated 19.4.24 is annexed herewith as Annexure P-4.”

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 status report.

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

"6. That it is submitted that the present petitioner is the only named accused and the names of his two more accomplices of crime could be unearthed by him only. A bullet has been recovered from the spot. Apart from this the weapon of offence i.e a country made pistol (KATTA) is also required to be recovered from him. Therefore, his custodial interrogation is required. Thus, the present petitioner may not be granted concession of anticipatory bail at this stage."

8. As per the affidavit filed by "P" she has been living with the petitioner since 19-02-2024.

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. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing the same for the bail stage.

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 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.

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. 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.

16. The petitioner is directed to join the investigation within seven days and 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.q

17. 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.

18. 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.

19. 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."

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

21. 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.

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

(ANOOP CHITKARA)
JUDGE

18.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.