

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41857-2024
Reserved on: 14.11.2024
Pronounced on: 26.11.2024

Rakesh Mahajan @ Rishu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Munish Puri, Advocate
for the petitioner.

Mr. Akshay Kumar, A.A.G., Punjab.

Mr. Ketan Chopra, Advocate for
Mr. Vishal Munjal, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0070	31.07.2024	Taragarh, District Pathankot	3(5), 115(2), 118(1), 118(2) of BNS Act, 2023

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. Per paragraph 9 of the bail application and per paragraph 6(ii) of the status report filed by the State, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	121	17.10.2020	341/323/506/427/34 IPC	Taragrah (Pathankot)
2	29	14.06.2018	61/1/14 of Excise Act	Taragrah (Pathankot)

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

“3. That the brief facts of the case are that FIR No. 0070 dated 31.07.2024 U/s 3(5), 115(2), 118(1), 118(2) of BNS 2023 was registered at Police Station Taragarh, District Pathankot against Rakesh Mahajan @ Rishu (petitioner), Krishan Kant @Kai and Anmol Gupta @ Bawa of the statement of complaint Rahul Chouhan S/o Om Parkash. That on 11.07.2024 at about 04:30 pm when the complainant was about to go to market for

his personal work then he seen that the accused Krishan Kant @Kai along with his son Anmol Gupta Bawa and his nephew Rakesh Mahajan @ Rishu (petitioner) was got modifying the shutter of one of the shop from Mistri, then the complainant asked the accused that they cannot get modified the shutter of shop without his consent as the complainant is the actual owner of the said shops. On this, the petitioner Rakesh Mahajan @ Rishu raised Lalkara and said to other co-accused to catch/hold Rahul Chouhan (complainant) and teach him a lesson for got vacating the shops and he will manage everything. On this Krishan Kant @ Kai got aggravated and he attacked on Rahul Chouhan (complainant) with Kahi Kassi which was already placed in the shop, and when the complainant (Rahul Chouhan) tried to save himself, then the petitioner Rakesh Mahajan@ Rishu caught hold Rahul Chouhan (complainant) tightly from his left arm and give punch on the nose of Rahul Chouhan. Thereafter the accused Anmol Gupta Bawa also hit the complainant with a sharp iron weapon and the complainant raised hue and cry due injuries and pain. On listening the cries of complainant, Nirmala Devi (mother of complainant) and father of complainant comes out of the house and on seeing them all the above named accused persons ran away from the spot along with their weapons. Thereafter Rahul Chouhan @ Chanu was taken to the Civil Hospital Pathankot for the treatment of his injuries and the Medico Legal Examination of the Rahul Chouhan @ Chanu (complainant) was conducted vide MLR No. 1/PG/11/07/24/CH/PTK, dated 12.07.2024 wherein the medical officer concluded that there were total 4 injuries. Injury no. 1 was caused due to Light shrap resembling weapon/Blade, and the injuries no. 2,3 & 4 are blunt. Injury No. 1 & 2 kept under observation and injury no. 3 & 4 were simple in nature. Rahul Chouhan @ Chanu remained admitted in the hospital from 11.07.2024 to 17.07.2024.”

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 status report.

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

“A. The Role of the Petitioner.

i. As per the statement of Rahul Chouhan Chanu (complainant), the main reason of quarrel between the parties was that he had rent out his two shops (constructed beneath his house) to accused Krishan Kant @ Kai, wherein the accused Krishan Kant @ Kai was doing the work of Bakery along with his son Anmol Gupta Bawa and his nephew Rakesh Mahajan Rishu (petitioner). As per the statement of complainant, the rent agreement of said shops was terminated in the year 2022 and thereafter the complainant told the accused Krishan Kant @Kai several times to vacate the said shops as the complainant want to run his own business therein, but the accused was not vacating the said shops intentionally.

B. The evidence against the petitioner:-

i. *The statement of Sh. Rahul Chouhan (complainant) S/o Om Parkash is recorded against the petitioner. The statement of Om Parkash S/o Basant Singh, Nirmala Devi W/o Om Parkash and Rohini Chouhan D/o Om Parkash, all residents of village Begowal, Taragarh (Pathankot) were recorded against the petitioner. All the witnesses recorded similar statements on the same lines of Rahul Chouhan (complainant)."*

7. It shall also be appropriate to refer to paras 3 to 5 of the bail petition, which read as follows:

"3. That infact from the bare perusal of the FIR. The instant FIR Is counter blast to the civil litigation initiated by Krishan Kant uncle of the present petitioner (Chacha as well as Masad) and every endeavor is made to involve family members and relatives of Krishan Kant so that they could pressurize and get vacated the shops illegally. A copy of the order in this regard is appended as Annexure P-2.

4. That infact petitioner is not having interest in the disputed shops and is having a separate business of meat shop at main road Begowal, Taragarh, there were two shops in which one shop was having Theka and other shop was Ahata now he has converted his business into General Store due to continuous political disturbance in his business Photograph of shop of petitioner at present is appended as Annexure P-3 and visiting card of previous business of petitioner is appended herewith as Annexure P-4. Thus assertion of complainant that petitioner is working with Krishan Kant and having bakery shop is factual incorrect and which could be further verified that petitioner is having separate business as mentioned above.

5. That it is further submitted that petitioner was not even present at the spot. However even if version of the complainant believed as a gospel truth it could be easily appreciated that present petitioner was not having any intention to indulge into any fight as he was empty handed. Thus it is a matter of trial whether complainant party or accused party is aggressor."

8. An analysis of the petitioner's stand does make out a case for the preponderance of probability, and the status report does not refute it convincingly.

9. Pre-trial incarceration should not be a replica of post-conviction sentencing. 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 it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

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. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. 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.

16. 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.

17. 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.

18. 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."

19. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

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

26.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.