

CRM-M-42577-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42577-2024
Reserved on: 13.09.2024
Pronounced on: 25.09.2024

Suraj Singh @ Noni ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. B.S. Jaswal, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
139	11.07.2024	Islamabad, Distt. Amritsar	111, 310(4), 310(5) of BNS and Sections 25, 27 Arms Act, 1959 (Act No. 54 of 59)

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 12 of the bail petition, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	45	15.05.2016	394, 379-B(2)/411 IPC	Islamabad, Amritsar
2	102	26.04.2024	323, 324, 326, 427, 148, 149 IPC	Gate Hakima, Amritsar

3. 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.

4. The State’s counsel opposes bail and refers to the reply.

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

“4. That it is submitted that according to the report submitted by SHO PS Islamabad, Amritsar the present FIR No. 139 dt. 11.07.2024(supra) was

registered on the basis of secret information against six accused persons namely (i) Rahul xxx, (ii) Karan Singh @ Tidda xxx, (iii) Sukhdeep Singh @ Gori xxx, (iv) Abhay Sharma @ Arav xxx, Kishankot, xxx, (v) Raghav Kumar xxx, Kishankot, Amritsar, (vi) Ramesh Kumar xxx that the above said persons have formed a gang, who are habitual of vehicle theft, committing extortion, dacoities, drug peddling and having in their possession of illegal weapons. They were staying on that day i.e. on 11.07.2024 in rented room in Hotel Roopa opposite Subash Juice Bar, Sikandari Gate, Amritsar and have gathered there for planning to commit some big crime of dacoity and they have illegal weapons. If raid is conducted with police party then they can be apprehended with illegal weapons.

5. That it is submitted that in pursuance to the aforementioned information, Sub Inspector Jasbir Singh along with other police officials conducted raid at room No. 208 of Hotel Roopa International. The following accused persons were apprehended from that place and following recoveries were made from their conscious possessions and videography at the place of occurrence was made as per provisions of Section 176 BNSS:

Sr. No.	Name of accused	Recovery effected
1	Sukhdeep Singh xxx	One country made pistol .32 and 05 live cartridges of .32 bore
2	Karan Singh @ Tinda xxx	One country made pistol .12 bore and 2 live cartridges of .12 bore
3	Abhay Sharma @ Aarav xxx	Mobile Phone
4	Raghav S/o Ramesh Kumar xxx	Mobile Phone
5	Ramesh @ Arun xxx	Mobile Phone

6. That it is submitted that all the aforementioned accused persons were produced before the Court of LD Illaqa Magistrate, Amritsar and their police remand for 4 days was granted by the learned Magistrate. That during remand, the co-accused Karan Singh @ Tinda made disclosure statement dated 15.7.2024 before the Investigating Officer that the country made pistol.12 bore with 02 cartridges recovered from him, were purchased by him from his school friend Pardeep Singh @ xxx. He contacted him on his Instagram ID gill_p307(Karan Gill) about one year ago and asked him regarding purchase of illegal weapon then the above said Pardeep Singh @ Kaka had called him and his friend Suraj Singh @ Noni (present petitioner) to Mahal Bye pass one year ago and had sold him one country made pistol .12 bore with cartridges in Rs. 45,000/-.

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Thereafter he along Suraj Singh @ Noni present petitioner had committed many snatchings-robberies at different places. The present petitioner Suraj Singh @ Noni had borrowed the above said country made pistol.12bore and cartridges from him many a times. However, it is only the Suraj Singh @ Noni present petitioner, who can disclose that where he had used the country made pistol. 12 bore. Therefore, based on the above said disclosure statement, the present petitioner Suraj Singh @ Noni and Pardeep Singh @ Kaka were also nominated as co-accused vide GD No. 20 dated 15.07.2024 in the present case FIR No. 139 dated 11.07.2024 (supra) on 15.07.2024. The disclosure statement of the co-accused Karan Singh @ Tinda is annexed herewith as Annexure R-1/T for the kind perusal of this Hon'ble Court."

6. During his custodial investigation, the investigation reveals that accused Karan Singh disclosed to the Police officer that he had purchased the pistol and cartridges from his school-time friend Pardeep Singh alias Kaka, who had further purchased these from the petitioner. After that, on numerous occasions, petitioner Suraj borrowed the said pistol. Based on this disclosure statement, the Investigator had arraigned the petitioner, Suraj, as an accused.

7. The admissibility of evidence when it is extracted through a disclosure statement of an accused in police custody is mentioned in S. 23 of The Bharatiya Sakshya Adhiniyam, 2023, [BSA], which reads as follows:

23. (1) No confession made to a police officer shall be proved as against a person accused of any offence.

(2) No confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him:

Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.

8. Fact is defined in S.2(f) of BSA, which reads as follows:

S.2 (f) "fact" means and includes—

(i) any thing, state of things, or relation of things, capable of being perceived by the senses;

(ii) any mental condition of which any person is conscious.

Illustrations.

(i) That there are certain objects arranged in a certain order in a certain place, is a fact.

(ii) That a person heard or saw something, is a fact.

(iii) That a person said certain words, is a fact.

(iv) That a person holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a

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particular sense, or is or was at a specified time conscious of a particular sensation, is a fact; of knowing its nature;

9. A perusal of the reply does not point towards the discovery of any fact, as defined in S. 2(f) BSA, to bring the above-referred confessions within the purview of the Proviso to S. 23 BSA. Thus, the disclosure statement made by the accused, Karan Singh, cannot be proved in evidence and thus has no evidentiary value.

10. The other evidence is the confidential information received by the police from its sources who had informed about the accused, initially named in FIR, who formed a gang and had already indulged in criminal activities, were hatching a conspiracy to commit offenses. The evidentiary value of this evidence is subject to the privileged communication, protected under S. 131 of BSA, which reads as follows:

S. 131. No Magistrate or police officer shall be compelled to say when he got any information as to the commission of any offence, and no revenue officer shall be compelled to say when he got any information as to the commission of any offence against the public revenue.

Explanation.—"revenue officer" means any officer employed in or about the business of any branch of the public revenue.

11. S. 131 is a privilege granted to the officers mentioned in S. 131 BSA, and thus, they cannot be compelled to name their source. Thus, this evidence can also not be proved.

12. It would be appropriate to refer to the following portions of the reply, which read as follows:

“THE ROLE OF PETITIONER

10. That it is submitted that during the course of investigation of the present case FIR No. 139 dated 11.07.2024 (supra), the co-accused Karan @ Tinda suffered disclosure statement before the Investigating Officer that the present petitioner Suraj Singh @ Noni had taken the recovered country made pistol.12 bore and cartridges from him many a times and had committed crimes with it.

THE EVIDENCE AGAINST THE PETITIONER

11. That it is submitted that the disclosure statement of the co-accused Karan Singh @ Tinda, wherein he had disclosed that present petitioner Suraj Singh @ Noni had taken the above recovered country made pistol.12 bore and cartridges from him many a times and had committed crimes with it, is an evidence against the petitioner, which is further corroborated with the fact that the present petitioner Suraj Singh @ Noni is already involved in the aforementioned two FIRs.

NEED FOR POLICE CUSTODY

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12. That it is humbly submitted that the custodial interrogation of the petitioner Suraj Singh @ Noni is required in order to know about the crimes committed by him while using the country made pistol. 12 bore after taking the same from the co-accused Karan Singh @ Tinda as well as to take the investigation of the present case to its logical conclusion. Hence, the present petitioner Suraj Singh @ Noni is not entitled to the discretionary relief of anticipatory bail. Therefore, the present petition is liable to be dismissed.”

13. A perusal of the reply reveals that the initial evidence is based on prior information of an informer, which is a privileged communication under S. 131 BSA and, thus, cannot be proved. The other evidence is a confession of the co-accused in custody before the Investigators, which is hit by S. 23(1) and 23 (2) of BSA, 2023. Under S. 23 of BSA, 2023, neither a confession made to a police officer can be proved against any person accused of any offense, nor a confession by an accused to a police officer can be proved except when made before a Magistrate, and if done, it would imply that such confession shall be inadmissible in evidence.

14. The main penal provisions invoked against the petitioner and the co-accused is Section 111 of BNS, 2023, which reads as follows:

[111]. Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organised crime.

Explanation.—For the purposes of this sub-section,—

(i) “organised crime syndicate” means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;

(ii) “continuing unlawful activity” means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence;

(iii) “economic offence” includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any

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other institution or organisation for obtaining monetary benefits in any form.

(2) Whoever commits organised crime shall,—

(a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees;

(b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(3) Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(4) Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(5) Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(6) Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.

(7) If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees.

15. To bring an offense into the four corners of an organized crime, the offense must fall under a category described in S. 111 of BNS, 2023. The prima facie evidence must be legally admissible to constitute any continuing unlawful activity to constitute an organized crime as defined in S. 111 BNS. Without legally admissible prima facie evidence, the State cannot make any suspect undergo custodial interrogation to hunt for such evidence against the suspect or others. The evidence must be gathered first to make

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out a prima facie case within the scope of S. 111 of BNS, and such evidence alone would justify custodial interrogation to carry out further investigation. Without legally admissible accusations, allegations, or evidence, the State cannot arrest a suspect to fish evidence against them or use such a suspect as custodial bait by any hook, line, and sinker to bring the case into the fold of S. 111 of BNS. Prima facie evidence must be admissible, and if such evidence is deemed inadmissible, the entire foundation will collapse.

16. There is no prima facie legally admissible evidence collected so far to make out an offence against the petitioner punishable under S. 111 of BSA.

17. 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.

18. 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.

19. 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.

20. 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)	

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

22. 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/ Proviso to Section 23 of BSA. 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

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the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

23. 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.

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

25. 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.

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

(ANOOP CHITKARA)
JUDGE

25.09.2024
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Whether speaking/reasoned: Yes
Whether reportable: **YES.**