

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.43792 of 2024
Reserved on: 11.11.2024
Pronounced on: 29.11.2024

Vikas ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amit Kumar, Advocate
for the petitioner(s).

Mr. Akshay Kumar, AAG, Punjab.

Mr. S.S. Rana, Advocate and
Mr. Arvind K. Sharma, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
114	15.07.2022	Division No.2, Ludhiana	302, 341, 186, 353, 506, 148, 149, IPC (section 120-B IPC added later on) and section 3 of Prevention of damage to Public Property Act, 1984.

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 439 Cr.P.C., 1973, seeking regular bail.
2. In paragraph 14 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“4. That it is respectfully submitted that Inspector Nardev Singh along with fellow officials reached CMC Hospital, Ludhiana, where Rajvir Singh came present, and got recorded his statement to the following effect:-

"...Stated that I am a resident of aforesaid address and is doing the job of a driver. On 14.7.22 at about 9.30 PM, my brother-in-law Sumit Kumar was standing near the house in his Mohalla. Then Sahil @ Sorpi son of

Mittarpal, Ankur and two-three unknown boys came. Out of them Sahil @ Sorpi inflicted a bottle blow on the right side of head of Sumit Kumar, due to which blood started oozing from Sumit Kumar. Then I and Sawn Kumar by seated Sumit Kumar on Motor-cycle took him to Civil Hospital, Ludhiana for treatment. I by taking Sumit Kumar came in the Emergency. Savan Kumar stood outside the Emergency. It was about 11:25 PM. Vishal son of Suresh Kumar, Sahil @ Sorpi son of Mittarpal, Abhishek @ Khaichu son of Pardeep Kumar, Mannu son of Mandir, Vikas son of Naitarpal, Sahil son of Vir Singh and 8-10 unknown boys, who all holding Kirpans and Datts in their hands, who on reaching surrounded Savan Kumar, and Savan Kumar in order to save himself by running entered in the Emergency of Civil Hospital. Then Vishal, Sahil @ Saropi, Abhishek, Ankur, Monu, Vikas, Sahil and some more unknown boys armed with Kirpans and Datts entered in the Emergency room by raising lalkaras "Sale Nu Aaj Jano He Mar Dena Hai" behind Savan Kumar. On seeing them Savan Kumar tried to close the glass door of Emergency Room, but Vishal broke the door glass by hitting Kirpan and as soon as he entered, attacked on Savan Kumar with sharp edged weapons. At that time obstructions were created in the working of the Doctors and Nurses. Vishal inflicted many kirpan blows on Savan Kumar, which hit on his neck, head and right hand. Then Sorpi, Abhishek, Ankur, Sahil, Monu inflicted many blows with Kirpans and Datts holding in their hands, which hit on his head, neck. Then they all ran away with their respective weapons by giving threats. Then I and Sumit Kumar by arranging Ambulance took Savan Kumar to CMC Hospital, Ludhiana, where in the Emergency, Doctor Sahib declared Savan Kumar dead and kept the dead body in the Mortuary. Motive for killing my brother-in-law Savan Kumar is that earlier there were some altercations once or twice between Savan Kumar and Sahil @ Sorpi, Ankur, Vishal etc and due to this, they used to hold a grudge with Savan Kumar. Due to this motive, they all with conspiracy killed Savan Kumar."

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 petitioner's counsel made the following submissions:

- That there is No Test Identification Parade was ever conducted by the Police Authorities.
- That the Petitioner was arrested only on the basis Identification made by the Complainant on dated 18-07-2022 from the CCTV Video Footage, as the complainant gained time to falsely implicate the person of his Choice.

- That the Petitioner was arrested before the lodging of FIR on 14-07-2022 and FIR lodged on 15-07-2022 and in Challan the arrest of the Petitioner is shown as 19-07-2022.
- That the Petitioner had no role in the murder of deceased Savan Kumar : That on the day of occurrence, the Petitioner went to Civil Hospital Ludhiana to conduct the Medical Examination of his friend who was earlier brutally beaten by the deceased. That the Petitioner was under the mistake that his friend Sahil@Shorpy is again being beaten up by the deceased and his Party in the Emergency Ward of the Hospital & when the Petitioner lastly entered in the Emergency Ward the scene was different and the Petitioner immediately ran out the Emergency Ward and the Petitioner caused no harm to the deceased Savan Kumar. But the Petitioner identified by the Complainant in CCTV Footage and falsely implicated.
- That there is no evidence or recovery of any alleged weapon against the Petitioner except he was identified by the Complainant in CCTV Footage and falsely implicated in the present Case.
- That the two Co-accused has been granted regular bail by this Hon'ble Court namely Gagan Kumar and Seema AND the regular Bail of the co- accused namely Sahil Birla has been declined.

6. The State's counsel opposes bail and refers to the reply.

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

"9. That it is respectfully submitted that during investigation, it has been found that the entire occurrence was recorded in the CCTV Cameras installed in the Emergency Room of the Hospital and the Investigating Officer Inspector Nardev Singh sought the CCTV footage vide letter No.274/5A Division No.2 dated 15.07.2022 from the Senior Medical Officer, Civil Hospital, Ludhiana pertaining to the date of incident happened on the intervening night of 14/15.07.2022.

10. That it is respectfully submitted that in response to the aforesaid letter, the Senior Medical Officer vide Letter No.2272 dated 18.07.2022 stated that the CCTV footage has been submitted in Pen Drive 64 GB to the Incharge, P.P. Division No.2, Ludhiana. Accordingly, the then Investigating Officer recorded the statement of Vijender Jain u/s 161 Cr.P.C. and obtained his Certificate u/s 65-B of Evidence Act vide separate Memo dated 18.07.2022 besides recording statement of other witnesses.

11. That it is respectfully submitted that during the course of further investigation on 18.07.2022 the complainant got recorded his supplementary statement with the police that he has seen the CCTV Camera footage loaded in Pen Drive and he identified Sanju wearing a

black and white T-Shirt, black colour Pajama and slippers in feet as Sanju and the second man as Rishabh and a woman as Seema. The complainant also stated that Gagan Kumar and Veeru also came alongwith them and that the murder of his brother-in-law Savan Kumar has been got committed by the said Seema in connivance with these accused persons:

12. That it is respectfully submitted that based upon the supplementary statement of the complainant and evidences that has come on record, Seema, Rishabh, Gagan Kumar, Veeru and Sanju were nominated in the above stated FIR vide special Report dated 18.07.2022 and offence u/s 120-B IPC was added.”

8. There is no prima facie evidence of the petitioner participating in the assault. But there is sufficient prima facie evidence of the petitioner’s presence at the crime scene. A prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability of further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

9. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

10. 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.

11. 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.

12. 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)	

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

14. 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. 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's family 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.

16. Given the background of allegations against the petitioner, it becomes paramount to protect the victim's 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.

17. 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.”

18. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

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

20. 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.

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

(ANOOP CHITKARA)
JUDGE

29.11.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.