

CRM-M No.44020 of 2024
Reserved on: 16.10.2024
Pronounced on: 29.10.2024

...Petitioner

Versus

...Respondent

Present: Mr. Harjot S. Bedi, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
97	18.04.2024	Sadar Kharar, District SAS Nagar, Mohali	379-B, 473, 411, 34 IPC and 25 of Arms Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. Per paragraph 11 of the bail application, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	143	25.10.2021	Under section 22 C of NDPS Act	Bassi Pathana, District Fatehgarh Sahib
2.	21	16.03.2024	Under sections 457, 380, 511, 427 IPC	Bassi Pathana, District Fatehgarh Sahib
3.	109	03.04.2024	Under sections 379-B, 411, 34 IPC	Sohana, District SAS Nagar
4.	31	13.04.2024	Under sections 379-B, 427, 34 IPC	Bassi Pathana, District Fatehgarh Sahib

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



- "3. That with regard to the subject matter of the present petition, it is submitted that case /FIR No. 97 dated 18.04.2004 us, 379-8, 473, 411, 34 IPC and Section 25 of Arms Acts was registered at PS Kharar, District SAS Nagar against Harwinder Singh Raja, Manwinder Singh @ Mintu and Kamalpreet Singh (petitioner) on the ruqa of SI Gurpartap Singh that on 18.04.2024, SI Gurpartap Singh accompanied with police party was present near Police Post Majat in connection with patrolling and checking of bad elements when time at around 06:30 PM, he received a secret information from a secret informer informing that Harwinder Singh @ Raja Manwinder Singh @ Mintu and Kamalpreet Singh (petitioner) are indulged in committing robberies and snatching with the help of illegal weapons. They have also snatched the vehicles on gunpoint in the area of District Mohali. They have affixed fake number plates in the said vehicles and committed the incidents of snatching in the area of District Mohali as well as other districts and other cases of snatching and robberies have already been registered against them. They have taken a room on rent somewhere in Mohali and they usually travel to District Fatehgarh Sahib, passing through Landran Majat and today also they are roaming in car bearing registration No. PB-65-N-5465 make Swift Dzire colour white in the area of Landran in order to commit some incident and they are also armed with illegal weapons and in case, nakabandi is laid down, they could be apprehended with illegal weapons. Finding the information to be trustworthy and reliable and the prima facie offences under Sections 379-B, 473, 411, 34 IPC and 25/54/59 Arms Act to be made out against Harwinder Singh @ Raja, Manwinder Singh @ Mintu and Kamalpreet Singh (petitioner), the ruqa was sent and consequently, case/FIR No. 97 (supra) was registered and the investigation commenced.*
- 4. That thereafter, a checkpoint (nakabandi) was established and a search operation commenced with the checking of suspicious vehicles coming from the Landran Side and then at about 07:30 PM, one car bearing registration No. PB-65-N-5465 make Swift Dzire colour white was seen coming. In the car were two young men covering their faces with white cloth. Upon noticing the nakabandi, they attempted to reverse the car but were unable to do so due to traffic and were subsequently apprehended with the help of the police party. Upon inquiry, the driver of the aforementioned car disclosed his name as Harwinder Singh @ Raja and the individual in the passenger seat identified himself as Manwinder Singh @ Mintu.*
- 5 That thereafter, during the search of the accused Harwinder Singh @Raja, one .32 bore pistol loaded with three live cartridges was recovered from the right pocket of his pants. Furthermore, during the search of the accused Manwinder Singh @ Mintu, a dummy revolver loaded with six dummy cartridges was recovered from the right pocket of his pants."*

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 and explicitly to Para 8, 9, which read as follows:

8. *That thereafter, on 20.04.2024, the accused Manwinder Singh @ Mintu also made his disclosure statement under Section 27 of the Indian Evidence Act, wherein he stated that he along with the accused Harwinder Singh @ Raja had booked the Swift Dzire car No. HR55-AE-9622, color white, for travel from Sohana Sahib to Saneta. They snatched the car at the point of weapons. Subsequently, Manwinder Singh @ Mintu, Harwinder Singh @ Raja and Kamalpreet Singh (the petitioner) used the said car to go to Bassi Pathana, where at the SBI Mini Branch shop, Manwinder Singh @ Mintu and Harwinder Singh @ Raja attempted to rob cash while Kamalpreet Singh (the petitioner) remained in the car conducting reconnaissance. Then, Manwinder Singh @ Mintu and Harwinder Singh @ Raja tried to snatch cash from the women inside the shop while brandishing a knife and pistol, however, since the keys to the safe were not available, they were unable to obtain the cash. In anger, they broke the shop's LCD and fled after snatching three mobile phones. Manwinder Singh @ Mintu discarded two phones along the way and kept one Oppo phone for himself. Manwinder Singh @ Mintu further stated that he could facilitate the recovery of the said phone at his direction.*
9. *That thereafter, on 20.04.2024, the accused Kamalpreet Singh (petitioner) and Harwinder Singh @ Raja in pursuance of the disclosure statements made by them under Section 27 of the Indian Evidence Act got recovered one car without a number plate make Indica, the said car was checked and inside it, there was an ATM of HDFC Bank. The car was taken into police possession, in accordance with law."*

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

"Role of the petitioner

15. That the role attributed by the petitioner in the present case/FIR No. 97 (supra) is that he along with his co-accused formed a gang and was involved in snatching vehicles at gunpoint. Furthermore, the accused Harwinder Singh @ Raj and Manwinder Singh @ Mintu, confessed during their respective disclosure statements that they resided with the petitioner and after snatching a car, they - accompanied the petitioner and attempted to commit dacoity at the SBI Mini Branch in Bassi Pathana. Furthermore, four more FIRS have been registered against him indicating that the petitioner is a habitual offender.

Evidence against the petitioner



16. That the petitioner, in pursuance of his disclosure statement under Section 27 of the Indian Evidence Act facilitated the recovery of one car bearing registration number PB01-B-3721, a white Indica, which they had snatched at gunpoint. Furthermore, both accused Harwinder Singh @ Raj and Manwinder Singh @ Mintu have confessed in their respective disclosure statements that the petitioner was with them when they attempted to commit dacoity at the SBI Mini Branch in Bassi Pathana.”

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 6 of the bail petition, the petitioner has been in custody since 18.04.2024. 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.

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 Ilaka 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.



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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.