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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-44186-2024
Reserved on:02.12.2024
Pronounced on: 19.12. 2024

Pankaj @ Sethi ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Pardeep Singh Mirpur, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. A.G.Haryana.

Mr. Bhanu Pratap, Adocate and
Mr. Kamal Nagpal, Advocate, for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
406	22.12.2023	Nisshing, District Karnal	148,149,308,323,324,379-B, 427, 452, 506 IPC

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 17 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:

“1. That it is submitted that a complaint was submitted in the Police Station Nissing, Karnal by Rampal S/o Datu Ram resident of Nissing along with MLR No.GK/NSG/2023/62 dated 21.12.2023 of Sonu S/o Bira Ram resident of Nissing and MLR No. GK/NNS/2023/63 dated 21.12.2023 of Rahul S/o Surinder resident of Gonder mentioning therein that he was present at Gallarpur Road Power Zone Gym with his nephew. At that time Deepak Lot S/o Suresh, Sethi, Ajay son of Sham Lal, Aryan S/o Mahinder, Rocky, Ravi who were all armed with gandasi, swords, pharsas and followed by 26/27 boys armed with weapons came inside the gym and

Rohit @ Rohta, Pankaj @ Sethi, Deepak, Kalu, Chanderkant attacked Sonu with sharp-edged weapons with the intention to kill him while Ravi, Ajay, Rocky, Aryan attacked Rahul with sharp-edged weapons. Deepak Lot was carrying a pistol on his waist. Thereafter, on raising of lalkara by Rohit @ Rohtas and Deepak Lot the other boys, some of whom had covered their faces, destroyed the Gym and snatched cash amount Rs.50,800/-, CCTV and DVR. Sethi, Aryan, Sahil Singha, Sethi's brother-in-law from Gharaunda and others are participants in the incident of destruction of property, dacoity and criminal intimidation. Certain other persons who were using the Gym, their mobile phones were also snatched by Rocky and other boys. Deepak Lot and others raised lalkara and threatened that in case any person dares to be a witness or tries to help the complainant party, then they will not spare him. While going away, the accused stated that they had merely made the complainant party understand and if they still continue to run the Gym without accompanying the accused, then they would lost their lives. Aryan and others damaged all the bikes standing outside the Gym with their weapons and by displaying weapons in open went away. Out of them most of accused are of Balmiki Basti Nissing. The complainant knows them personally and they all have past criminal record and also enjoy political patronage. Previously also, they had threatened them to close the Gym regarding which he had also moved an application. On the basis of the statement of the complainant FIR no.406 dated 22.12.2023 U/s 148,149,308,323,324,379-B,427,452,506 IPC was registered in Police Station Nissing Karnal (Annexure P-1).”

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.

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

“That the petitioner accused Pankaj @ Sethi, co-accused Deepak @ Challu, Vikash @ Bashi, Sahil @ Singha, Ajay S/o Rameshwar and Pardeep @ Kalu were also arrested on 05.01.2024. During the course of investigation, all the above mentioned accused suffered their disclosure statement vide which they admitted the commission of crime of the present case and in pursuance of the same, they got recovered money and weapon used in the offence from the disclosed places. The disclosure statement of

petitioner accused is (Annexure R-4) vide which he admitted the commission of crime of the present case and stated that "I and Vikash @ Bashi, Sahil @ Singha S/o Pappu and Deepak @ Chalu son of Naresh @ Billu and Ajay S/o Rameshwar, Pardeep @ Kalu son of Subash, Deepak Kumar @ Deep Lot and Rohit @ Rohta S/o Ishma Ram, Rohit resident of Sarafa Bajar Nissing, Ajay and Rockey sons of Shyam Lal, Pritak @ Chupa S/o Gyasu Ram resindent of Sarafa Bazar Nissing, Ashwani @ Gola son of Kali, Rahul @ Nonu s/o Pawan Kumar, Aryan son of Mahender @ Baba Khati, Goldy son of Om Prakash are relatives and friends. Several days ago, Deepak Lot and our friend Ajay R/o Nissing had an altercation with the boys of Harijan Chamar community of Tehsil Nissing and to take revenge of the same incident, we all, on 19-12-2023 around evening at around 5 O'clock gathered in Nissing and we all in furtherance of our common intention in order to take revenge from the boys of Harijan Chamar community and to spread our terror and dominance in Nissing, today we after calling more of our fellow boys and got armed with weapons and will go to Gularpur Road and will enter Power Zone Gym in order to vandalize the gym and they will break the gym equipment and they will murder the gym operators Sonu S/o Bira Ram resident of Nissing and Rahul son of Surinder R/o Gondar and they will break the gym equipment or make loot and they will abscond. After that I and my other companion and along with our other friends out of which I do not know names and addresses of many of them, and after gathering about 26/27 boys and according to the plan made by us, armed with weapons like sticks or swords or sharp knives, on the same day i.e. 19-12-2023, at night at 8:30 PM, when many boys were doing gym, we forcefully entered the gym and attacked the gym operators Sonu S/o Bira Ram R/o Nissing and Rahul S/o Surinder, resident of Gondar, and inflicted fatal injuries on them, I was having a sword in my hand and inflicted blows on the back of Sonu and we all inflicted injuries to Rahul and We broke all the articles of the Gym and also damaged the motor cycles parked outside the Gym. We looted 50,800/- from the Gym kept in the gym counter and looted valuables like supplement boxes were looted. When we came to know that CCTV cameras installed inside and outside the gym recorded the incident then our companions looted the DVR of the CCTV camera kept in the cabin of the gym and ran away. After the occurrence, we all gathered near my house and divided the cash of Rs 50,800/- which was looted from the gym among ourselves. Out of those looted rupees, I had got two thousand as my share, out of that two thousand rupees, now only Rs. 600/- are left and I have spent the remaining Rs. 1400/- on food

and drinks. I have kept the Gandasi used in the crime along with Rs.600/- which I kept concealed in the bed of the room of my house which no one has any knowledge except me, which I can get recovered from my house in village Gondar by getting it demarcated. And also I can demarcate the place of occurrence". The petitioner accused in pursuance of his disclosure statement got recovered Rs.600/- and Gandasi from the bed of the room of his house (Annexure R-5)."

7. There is sufficient *prima-facie* evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing.
8. Per paragraph 16 of the bail petition, the petitioner has been in custody since 05.01.2024. Per the custody certificate dated 28.11.2024, the petitioner’s total custody in this FIR is 10 months and 23 days.
9. 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.
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 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, 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.

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

19.12. 2024
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Whether speaking/reasoned: Yes
Whether reportable: No.