

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45181-2024
Reserved on: 12.11.2024
Pronounced on: 26.11.2024

Akshay ...Petitioner
Versus
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S.Dhull, Advocate for the petitioner.
Mr. Ashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
503	25.07.2020	Sadar Karnal, District Karnal	307/34/379-B IPC and 25 of Arms Act

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail.
2. Per paragraph 9 of the bail application and para 8 of status report/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated/Year	Offenses	Police Station
1	207	20.07.2020	379 IPC	Civil Lines Kaithal
2	643	16.02.2020	457/380 IPC	Ambala City
3	374	24.07.2020	392/398/506 IPC and 25 of Arms Act	Sadar Thanesar, Kurukshetra
4	289	30.07.2020	457/380/411/427 IPC	Pundri, Kaithal
5	333	2018	379/411 IPC and 25 of Arms Act	City Kaithal
6	03	2020	379 IPC	City Pehowa, Kurukshetra
7	353	2020	379 IPC	Shahbad, Kurukshetra
8	89	2020	380 IPC	Jhansa, Kururkshetra
9	248	2020	379 IPC	Pehowa, Kurukshetra
10	254	2020	379/411 IPC	City Kaithal, Kaithal
11	42	2018	457/380/411/489 IPC	Sadar Samana, Patiala
12	410	2020	379-A/392 IPC	Pehowa, Kurukshetra

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

“The brief facts of the case are as under:-

"On 25.07.2020 SI Ajaib Singh along with HC were present in the area of Village Dabri for patrolling duty and crime checking in Government vehicle bearing registration No.HR-05-BC-7964. Then SI Ajaib Singh received a message from the Control Room to the effect that some unknown persons have fired on Salesman of Chauhan Petrol Pump near Mayur Dhaba GT Road Uchani. On receipt of this SI Ajaib Singh along with other police ofcials reached at Chauhan Petrol Pump, where Isham Singh son of Sh. Mann Singh resident of Village Sultanpur District Karnal, who was working as Manager at Chauhan Petrol Pump near Mayur Dhaba at G.T. Road Uchani Karnal, met police party and got recorded his statement to the effect that on 25.07.2020 after performing his duty that he had gone to his house. Thereafter, at about 1:30 AM he received a call from the Petrol Pump to the effect some unknown persons had come on the Petrol Pump on the motor cycle and they had got filled the petrol from the Petrol Pump in their motor cycle. But they did not pay the money for filling the petrol in their motor cycle. When Kuldeep son of Mam Chand, who has filled the petrol in the motor cycle of those persons asked to give money then one of them had fired upon Kuldeep with intention to kill him. On receipt of this information the complainant reached at the Petrol Pump and checked the CCTV footage of the camera, which are installed in the office of the Petrol Pump. On checking of the CCTV footage three persons were found on a motorcycle and out of them one person had fired upon Kuldeep son of Mam Chand. The remaining persons snatched the amount from the other employee of the Petrol Pump namely Narender with the help of the person who was having pistol in his hand." On these allegations the above noted FIR was registered against the unknown accused persons.”

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:

“9. That the specific role has been attributed to the petitioner/accused for committing the offence. He along with co-accused had gone to petrol pump, where he fired upon salesman Kuldeep, when he demanded money from them after filling the petrol in their motorcycle. The petitioner/accused Akshay had fired the gun shot upon salesman Kuldeep. The petitioner/accused along with other co-accused were also duly identified by the complainant Ishwar Singh during the course of investigation. Moreover, as per investigation the bullet injury to injured Kuldeep was caused by the present petitioner namely Akshay. Thus the present petition deserves to be dismissed.”

7. There is sufficient primafacie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing.

8. Per paragraph 3 of the bail petition, the petitioner has been in custody since 24.07.2020. Per the custody certificate dated 09.11.2024, the petitioner's total custody in this FIR is 04 years, 01 month and 14 days.

9. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie 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.

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21. **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.