

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.45478 of 2024
Reserved on: 16.10.2024
Pronounced on: 25.10.2024

Mohit ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sanyam Khetarpal, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
390	21.05.2024	City Ballabgarh, District Faridabad	398, 401 IPC and section 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. As per paragraph 10 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	154	12.03.2024	Under sections 379, 34 IPC	City Ballabgarh, Faridabad
2.	210	02.05.2024	Under sections 379, 34 IPC	Dabua, Faridabad

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

“2. That the brief facts of the case are that ASI Ishwar alongwith Ct. Surrender, Ct. Shubham in Govt. vehicle bearing registration No. HR-51GV-6262 driven by Ct. Bhupender were present on crime patrolling duty at Sector-3, Ballabgarh. Secret information was received to the effect that two young persons namely, Mohit and Yogender alongwith deadly weapons are present near Sector-2, Green Belt, which is a secluded place and taking advantage of

trees by hiding themselves, they are seeking opportunity to loot passers-by. They can be arrested if immediate raid is conducted. On receiving such information, the beacon light of Govt. vehicle was removed and ASI Ishwar alongwith other police officials reached near Sector 2, Green Belt via Sector-3, Tigaon road. It was found that there were heavy stones placed on the road. Driver of the Govt. vehicle stopped the car near the stones on the road itself, suddenly, two persons came from behind the trees, laced with weapons and attacked the vehicle. Both the accused persons shouted, that whatever is in the car shall be handed over to them, else they will have to face deadly consequences. ASI Ishwar switched on the light inside the vehicle and on seeing the police dress, the accused persons started to run away from the place, but were apprehended. On inquiry, they disclosed their name as Mohit son of Luxman R/o Mukutia Mohalla, Village Tigaon, who was holding steel pipe measuring 53 cm in his right hand. The other accused namely Yogender son of Suresh R/o village Mandhawali, Tigaon, Faridabad was apprehended by Ct. Surender, who was having countrymade pistol having 12cm barrel and total length 23.4 cm and loaded with one 8mm live cartridge. When he was asked to show the licence and permit about the said countrymade pistol alongwith live cartridge, no licence could be produced. On the basis of Ruqa, present FIR No. 390 dated 21.05.2024, under Sections 398, 401 IPC, 1860 and Section 25 of Arms Act, was registered at Police Station Ballabgarh City, District Faridabad Haryana (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:

"8. That role of the petitioner/accused in the present case is that the petitioner/accused is addicted to drugs, for which he and his friend Yogender made a plan to rob goods and money by threatening the passersby at a deserted place on Sector 2 Green Belt Road Ballabgarh Faridabad. As per the plan, the petitioner and his friend Yogender reached the deserted place on Sector 2 Green Belt Road Ballabgarh Faridabad. The petitioner had a steel pipe and Yogender had a country-made pistol and a rod. They both were waiting to rob the passersby by putting stones on the road. They had pounced on the Bolero car of police to rob it, wherein policemen were in uniform sitting in the car. Seeing the police party, both of tried to flee with their weapons but they were apprehended by the police alongwith the steel pipe and countrymade pistol and live cartridge. About 2 months ago, the petitioner alongwith his friend/co-accused Yogender had stolen a motorcycle at night from an empty plot near Arya Nagar Milk Plant. About 20 days ago, the petitioner alongwith his friend Yogender had stolen a motorcycle Splendor in front of a house in Sainik Colony, Faridabad at night. In this manner, the petitioner is habitual of committing such type of offences.

Hence, he is not entitled for any relief as prayed for.”

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 8(ii) of the bail petition, the petitioner has been in custody since 21.05.2024. Per the custody certificate dated 04.10.2024, the petitioner’s total custody in this FIR is 04 months and 14 days. 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 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.
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.

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

25.10.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.