

CRM-M-46337-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46337-2024
Reserved on: 06.11.2024
Pronounced on: 14.11.2024

Sagar alias Shiv ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Robin Lohan, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0206	25.05.2024	Narnaund, District Hansi	147, 149, 307, 323, 506, 452 IPC

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. In paragraph 13 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:

“That, the brief facts of the case that on 24.5.2024 a ruqa was received in Police Station Narnaund regarding admission of Sonu son of Sube Singh in General Hospital, Hisar after referring from CHC Narnaund in a fight case. Contact was made on the mobile number, who told that Sonu is admitted in Sarvodaya Hospital, Hisar. On 25.5.2024, after reaching Sarvodaya Hospital, Hisar and taking the opinion of doctor was obtained and statement of Sonu was recorded to the effect that he is resident of Ward No.3 Narnaund and have a shop by the name of Saini Juice Corner at Khanda Mod. Further he alleged that Sahil son of Ishwar Valmiki, resident of ward No.8, Narnaund had taken juice and pastries etc. worth about Rs.350/- on credit from his shop about 3-4 months ago. When he asked him for paying the said amount, he used to say that he will return it

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in 2-3 days. On 24.5.2024, at about 2:30 PM, he was present in his shop and at that time, Sahil was passing by his shop. When he asked him for paying the aforesaid amount, he abused him and went away saying that he will settle the amount after some time. Thereafter, after about 15-20 minutes, Sahil along-with 5-6 other persons came to his shop. Sahil was having an ice pick in his hand, Sagar (Present Petitioner) had a binda in his hand and the other were having sharp weapons and all of them entered in his shop illegally. Sahil raised alarm and said that he would teach lesson to him for asking for money and attacked on the neck of the complainant with sua (ice pick). When he tried to rescue himself, sua hit his waist on the right side below the neck. Hearing his scream, neighbouring shopkeepers came at the spot and on seeing them all the accused persons ran away from the spot with their weapons and threatened him not to ask about money, otherwise he would be killed. Thereafter, he was shifted to CHC Narnaund but due to the serious injuries, his family members admitted him in Sarvodaya Hospital, Hisar. A prayer was made for taking action against accused Sahil, Sagar and others. Copy of MLR is annexed herewith as Annexure R-1. On the basis of said statement and injuries mention in MLR, a case FIR No.206 dated 25.05.2024 under Sections 147, 149, 323, 506 IPC was registered at Police Station Narnaund.”

4. The petitioner's counsel prays refers to para 6 of the bail petition, which reads as follows:

5. 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.

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:

“That the injury received by the complainant attributed by co-accused Sahil which was dangerous to life. Not even a single blow or injury has been given by the petitioner.”

8. 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.

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9. As per paragraph 7 of the bail petition, the petitioner has been in custody since 05.06.2024. As per the custody certificate (Annexure R-5) the petitioner’s total custody in this FIR is 04 months & 23 days. 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. 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.

11. 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.

12. 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.

13. 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)	

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 (CrI.) 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

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

19. 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.

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

(ANOOP CHITKARA)
JUDGE

14.11.2024

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Whether speaking/reasoned: Yes

Whether reportable: No.