

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49161-2023
Reserved on: 11.09.2024
Pronounced on: 27.09.2024

Gagan Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Nitin Verma, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab.

Mr. Ramnish Puri, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
114	15.07.2022	Division No. 2, Ludhiana, District Ludhiana	302/341/186/353/506/148/149 IPC, Section 3 of Prevention of Damage to Public Property Act, 1984 (Section 120-B IPC added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, seeking regular bail.
2. The petitioner has not disclosed criminal antecedents; however, the representing counsel states on instructions that the accused has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“3. In his statement the complainant has stated that on 14.07.2022 at about 09.30 PM, his brother-in-law Sumit Kumar was standing near the house of his neighbourhood, and one Sahil alias Sorpi S/o Mittar Pal, Ankur and 2/3 unknown persons came there and then the said Sahil hit a glass Bottle on the right side of the Head of Sumit Kumar on account of which his blood started oozing out and that then the complainant and Sawan Kumar took Sumit Kumar to Civil Hospital, Ludhiana.

The complainant further stated in his statement that after this he took Sumit Kumar to the Emergency Room of the Hospital and during this period the said Sawan Kumar was standing outside the Emergency Room and then at about 11.25 PM Sahil Birla,

Sahil alias Sorpi 8/0 Nittar Pal, Vishal, Abhishek, Ankur, Nannu, Vikas and 8/10 other unknown persons armed with Swords and Daats came there and waylaid the said Sawan Kumar and further that thereafter Sawan Kumar rushed inside the Emergency Room of the Hospital to save himself but the said Sahil Birla and the other persons followed him and entered the Emergency Room alongwith their weapons.

The complainant further stated in his statement that after this Sahil Birla, Sahil alias Sorpi S/o Mittar Pal, Vishal, Abhishek, Ankur, Mannu, Vikas and other unknown persons armed with Swords and Daats raised Lalkaras that today he should not be spared and thereupon the said Sawan Kumar on seeing them tried to close the glass Door of the Emergency Room but the said Vishal broke open the glass door of the Emergency Room with his Sword and thereafter they all attacked Sawan Kumar with sharp edged weapons and also obstructed the Doctors and Nurses in their official duties.

The complainant further stated in his statement that the said Vishal gave several blows of the Sword to Sawan Kumar which hit him on his Neck, Head and right Hand and further that then Sahil Birla, Sahil alias Sorpi, Abhishek, Ankur, Vikas and Mannu also gave several blows of Swords and Daats to him which hit Sawan Kumar on his Head and Neck.

The complainant further stated in his statement that after this they all ran away from there alongwith their respective weapons while giving threats and that then the complainant and Sumit Kumar took the said Sawan Kumar to CMC Hospital by Ambulance where the doctors declared him dead and placed his body in the Mortuary. The complainant then stated that the reason for rivalry is that earlier the said Sawan Kumar had a quarrel with these persons and on account of this they started keeping grudge with him. Accordingly, based upon the statement of complainant the above noted FIR was registered.”

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 submits that perusal of the zimni orders passed by this Hon'ble Court in the instant petition would reveal that it's a case where Investigating Officer was hand in gloves with the accused which goes a long way to show that the petitioner is influential person and his release on bail would be highly detrimental to the contours of fair trial for which the complainant is also entitled to. He submits that in case the petitioner is released on bail, it is highly likely that petitioner will destroy evidence. Furthermore, he is likely to put pressure upon the complainant and other witnesses so as to dissuade them from telling the real facts thereby hampering the trial in the present case. The complainant and other private witnesses will be harmed in case the petitioner is released on bail. He submits that eye witness Sumit Kumar and Dr. Gurmehar Dhillon have duly corroborated the entire incident. He further submits that petitioner is part of unlawful assembly and criminal conspiracy which has resulted into brutal murder of young boy and that too in a hospital, no less.

6. The State's counsel opposes bail and refers to the status report.
7. It would be appropriate to refer to the following portions of the status report, which read as follows:

"6. That during the course of further investigation on the same day i.e. 18.07.2022 the complainant got recorded his supplementary statement with the police that he has seen the CCTV Camera footage loaded in Pen Drive and then he identified Sanju wearing a black and white T-Shirt, black colour Pajama and slippers in feet as Sanju and the second man as Rishabh and a woman as Seema. The complainant also stated that the petitioner and Veeru also came alongwith them and that the murder of his brother- in-law Sawan Kumar has been got committed by Seema in connivance with these accused persons.

Thereupon based upon the supplementary statement of the complainant and evidences that has come on record the present petitioner, Rishabh, Seema, Veeru and Sanju were nominated in the above stated FIR vide Special Report dated 18.07.2022 and offence u/s 120-B IPC was also added.

12. That with respect to this Hon'ble Court order:-

*i) **To explain the role of the petitioner in the present FIR,** it submitted is that the petitioner was part of unlawful assembly and criminal conspiracy with other co-accused and even though he was not present inside the Emergency Ward but he was duly identified by the complainant as the accused person who stood outside the hospital as per the larger conspiracy of committing the murder and further his role becomes clear from the fact during his interrogation, the petitioner confessed that he alongwith accused Veeru were standing outside the hospital so that Sumit and his brother won't be able to run from the hospital and he further confessed that the other accused persons entered the hospital and committed the murder of the complainant's brother. It is pertinent to mention here that the co-accused of the petitioner namely Vishal, Sahil Siropi, Ankur, Mannu and Vikas, during their interrogation on 19.07.2022 has also disclosed that the petitioner was one of the person who has committed the crime alongwith them and was part of the conspiracy.*

*ii) **To explain the evidence against the petitioner,** it is submitted that he was duly identified by the complainant as the accused person who stood outside the hospital as per the larger conspiracy of committing the murder and further during his interrogation, the petitioner confessed that he alongwith accused Veeru were standing outside the hospital so that Sumit and his brother won't be able to run from the hospital and he further confessed that the other accused persons entered the hospital and committed the murder of the complainant's brother. It is further submitted that the co-accused of the petitioner namely Vishal, Sahil Siropi, Ankur, Mannu and Vikas, during their interrogation on 19.07.2022 has also disclosed that the petitioner was one of the person has who committed the crime alongwith them and was part of the conspiracy."*

8. The investigation revealed that neither the petitioner entered the hospital nor inflicted any injury.
9. 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 10 of the bail petition, the petitioner has been in custody since 14.07.2022. Per the custody certificate dated 23.07.2024, the petitioner's total custody in this FIR is 1 year, 11 months and 26 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.

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 be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

15. 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.

16. 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.

17. 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.

18. 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."

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

27.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.