

CRM-M-47485-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47485-2024
Reserved on: 08.11.2024
Pronounced on: 29.11.2024

Pargat Singh Sandhu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ajaypal Singh Sandhu, Advocate
for the petitioner.

Ms. Swati Batra, DAG, Punjab.

Mr. Arshdeep Singh Brar, Advocate
for the complainant.

ANOOP CHITKARA, J.

GD No.	Dated	Police Station	Sections
3	24.06.2024	Baghapurana, District Moga	307, 148, 149, 120B IPC and Sections 25/27 of Arms Act
In FIR No.87	22.06.2024	Baghapurana, District Moga	307, 323, 148, 149 IPC and 25/27 of Arms Act

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 11 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:

“3. That initially the FIR No. 87/2024 was registered on the basis 3 of statement of Mewa Singh recorded on 22-06-2024, who had stated that he is an agriculturist. His brother Sadhu Singh had took 15 acres of land on lease 2 months before, out of which 13 acres was situated at Gholia Kalan and 2 acres at Phulewala. On that very day at 01-00 PM, he along with his driver Harbans Singh were present the above said land of Village Gholia Kalan and were sitting under a tree and eating their lunch, in the meantime i)

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Amar Singh armed with pistol, ii) Sukhdev Singh armed with baseball and iii) Sonpreet Singh armed with kappa accompanied with 7/8 unknown persons who were also armed with sticks and kirpans came to them and Amar Singh raised lalkara to teach them a lesson of taking land on lease. Amar Singh fired two shots of his pistol toward him with intent to kill him but he had narrowly escaped. Complainant tried to fled away but being nervous, he fell down on the earth. Sukhdev Singh and Sonpreet Singh caused injuries to him with their respective baseball and reverse side of kappa. The unknown persons also gave fist and kick blows to him. When Harbans Singh tried to rescue him, the accused had caught hold his arms and beaten him with their sticks. On raising alarm, the accused fled away from the spot. His brother Sadhu Singh arranged vehicle and brought them to Hospital.

x x x x x

5. Cross Version:

That the present petitioner is an accused of cross case, which was registered at the instance of aforesaid accused-Amar Singh. The brief facts of cross version are given as under:

A) That in furtherance with the medical ruqa no.2156 dated 22- 6- 2024 pertaining to injured victim Amar Singh s/o Bachittar Singh (accused) who was under treatment at Harbans Nursing Home, Kot Ise khan. Investigation officer, visited the Hospital and collected the MLR No. 2156/HNH/KIK/2024 dated 22-06-2024 reflecting two injuries on the person of Amar Singh. The concerned doctor opined about the weapon for injury no. 1 was sharp and for injury no. 2 firm arm.

B) Statement of injured-victim Amar Singh (accused) was reduced into writing on 24-06-2024, which is reproduced as under:

"I am an agriculturist. Yesterday on 22-6-2024, at around 02-00 PM, I went on my motor cycle to take a round of my land at Village Gholia Kalan II, under my possession since 2009. I saw i) Gurpreet Singh alias Titu son of Harbans Singh r/o Phulewala, ii) Nirmal Singh son of Mukhtiar Singh President Kisan Union, Moga, iii) Dhana Singh s/o Nirmal Singh r/o Manuke and iv) Harbans Singh alias Kuka son of Jora Singh r/o Phulewala, v) Mewa Singh & vi) Sadhu Singh sons of Sarban Singh r/o Manuke, vii) Pargat Singh r/o Simlapuri Ludhiana (Petitioner), viii) Manpreet Singh s/o Mehnga Singh r/o Bir Rauke and 2/3 unknown persons were already present in the chubara and other vacant area

of water motor. When I came down from my motor cycle, catching my sight, Gurpreet Singh s/o Harbans Singh r/o Phulewala raised lalkara caught hold Amar singh, don't spare him and he fired a shot of his 12 bore gun toward me to kill me which hit at my left thigh, then Dhanna Singh r/o Manuke fired a shot of his 12 bore gun toward me which crossed near to me. I fell down on the ground and in the mean time Nirmal Singh r/o Manuke armed with kasauli came forward and raised his kasauli, I raised my left arm to ward off the attack and blow landed at left wrist. Harbans Singh alias Kuka r/o Phulewala assaulted with his kirpan which also hit at my left wrist. Mewa Singh assaulted me with his stick at my right hand then Sadhu Singh rushed toward me and gave fist and kick blows.

Petitioner- Pargat Singh gave blow of his baseball which hit on my back. Manpreet Singh gave a blow of his stick which hit at my waist. On raising alarm, accused fled away from spot with their respective weapons. The planning of entire incident was made by Nirmal Singh and Jaspreet Singh now r/o Canada who were making claim over the land situated at Gholia Kalan. "

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. Counsel for the complainant also oppose the petition and prayed for dismissal of the same.

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

"Evidence against present Petitioner:

That the victim had got recorded the name of present Petitioner Sadhu Singh in his initial statement and attributed specific role of beating him with his baseball bat. The occurrence was witnessed by Jashandeep Singh s/o Manga Singh who confirmed the complicity of Petitioner in crime. The Petitioner was apprehended when he was accompanied with prime accused Sadhu Singh. They were concealing themselves to evade their arrest. The petitioner had joined the unlawful assembly knowing the purpose of its design to attack upon the victim at disputed land. Thus Petitioner is equally liable for the injuries dangerous to life under the rule of vicarious liability."

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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 8 of the bail petition, the petitioner has been in custody since 22.06.2024. Per the custody certificate dated 07.11.2024, the petitioner’s total custody in this FIR is 04 months & 11 days.

9. Given the cross-cases, it would be uncertain to fix who was the aggressor, 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.

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. 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.

14. 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.

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15. 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.

16. 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."

17. 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.

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.

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(ANOOP CHITKARA)
JUDGE

29.11.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.