

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49069-2024
Reserved on: 16.10.2024
Pronounced on: 28.10.2024

Sunny @ Kala Sunny ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Imaan Singh Khara, Advocate
for the petitioner.

Mr. Akshay Kumar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
96	12.04.2023	Civil Lines, District Bathinda	458, 324, 323, 148, 149 IPC (Section 459, 326, 201 IPC added later on)

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. Per paragraph 13 of the bail application, the accused has the following criminal antecedent:-

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	147	02.06.2023	307, 323, 341, 324/34 IPC	Civil Lines, Bathinda

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

“4. That the complainant was doing private job at Jalalabad and he used to come Bathinda to visit his mother. On 05.04.2023, the complainant visited his mother namely Seema. On 10.04.2023, the complainant and one Ajay were in home, and after having meal, they were sleeping. At that time the complainant's mother Seema and sister Sulaina were not at home, as they were present at Harpreet Singh's house, situated at Power House Road, Bathinda. At about 3:30 AM, the complainant heard noises of entering of some persons, jumping inside the house, crossing over

the wall of the complainant's house. The complainant immediately woke up and from the switched on light of the courtyard, the complainant saw the accused-petitioner armed with Gandassa, the accused Kaku armed with sword and the accused Swarn armed with Kappa, were standing in the courtyard. The complainant woke Ajay up immediately. Then the complainant asked the reason to the accused, for entering in his house. On which the accused Swaran said "We have come for you" and he (the accused Sawan) started giving repeated blows of his Kappa on the complainant. Then all the accused gave multiple blows of their respective weapons on the complainant's right arm. The accused- petitioner gave a blow towards the complainant which hit on the back of the complainant's head and the accused Kaku gave blows of his sword towards the complainant, which hit four times on complainant's left arm. Thereafter, the accused-petitioner gave blow of his Gandassa on the ankle of complainant's left leg. The complainant shouted "Marta-Marta" and Ajay also shouted "Na Maro Na Maro". Thereafter the accused Kaku gave a blow of handle of his sword on the back of the complainant's neck. Meanwhile, two unknown persons, standing in the street, called the accused and said to stop, upon which the accused-petitioner and the co-accused fled away from the spot."

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 meanwhile, on 11.09.2023, the Investigating Officer obtained the doctor's opinion regarding nature of injuries suffered by the complainant, which is as follow:

"As per the relevant record, MLR No.GA/CHBTI/103/2023, relevant record, MLR Bed head ticket, Adm. No.4891 dt. 11/04/2023 from Civil Hospital, Bathinda and record from AIIMS Bathinda, CR No. 23/441766 dt. 11/04/23, I am of the opinion that injury No.4 is Grievous in nature. No Medico legal X-Rays reporting has been produced before me for injury No.1,2,3,5,6,7,8,9&10. So no opinion can be given regarding the nature of injury for injury No.1,2,3,5,6,7,8,9&10."

On the basis of the aforesaid Doctor's opinion, Section 326 IPC was added, vide DDR No.31 dated 11.09.2023 and due to the aforesaid grievous injury being inflicted by the accused during night, Section 459 IPC was also added in the case FIR and the DDR No.32 dated 11.09.2023 was entered in this regard."

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 7 of the bail petition, the petitioner has been in custody since 12.03.2024. 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 for 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 (CrI.) 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

28.10.2024

Jyoti Sharma

Whether speaking/reasoned: Yes

Whether reportable: No.