

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.48776 of 2024
Reserved on: 14.11.2024
Pronounced on: 29.11.2024

Varinder Singh @ Mani ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ketan Chopra, Advocate for
Mr. Vishan Munjal, Advocate
for the petitioner(s).

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
70	19.06.2024	Sarabha Nagar, District Ludhiana	458, 323, 324, 148, 149 and 506 IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 14 of the bail petition, the accused declares that he is involved in some other cases, however, the details of which have not been mentioned.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“ That in compliance to the above noted order of this Hon'ble Court, it is respectfully submitted that complainant-Murli Jaiswal made a statement with the police in which he stated that he works as Manager in Skyhigh Hotel since last 4 years and the owner of this hotel is Amit Kakkar who has another hotel namely Koji Inn and its working are also looked after by the complainant.

It was further alleged that on 11.06.2024 the said Amit Kakkar and Harish Kakkar were taking Dinner in Room No.101 of their Hotel Koji Inn, then at about 11.15 p.m Gaurav Tiwari alongwith the present petitioner, Navjot Singh, Jagjeet Singh, Romi, Prince and two unknown persons, armed with sharp edged weapons, came in the said room no.101 of the hotel and started arguments with owner Amit Kakkar. It was alleged that Gaurav Tiwari took out iron Daat from his Fold and hit its blows at the left arm of Amit Kakkar, Romi

removed his thick/big iron Kara from his hand and hit its blows at the legs and arms of Amit Kakkar. The other persons including the petitioner picked up glass bottles and tables/chairs from the room and hit the same and caused beatings to Amit Kakkar. The complainant and Harsh Kakkar tried to stop them on which the said persons attacked the complainant and caused beatings to him and while beating, brought out the complainant from the room to the lobby of the hotel. When the complainant and others raised alarm, then the said persons ran away from the hotel with their weapons. Thereafter the complainant and Amit Kakkar got conducted their medical examination from Civil Hospital, Ludhiana. It was that further alleged even thereafter the said persons were threatening the complainant and others to kill them and their family members and due to their fear, the complainant could not earlier come to report the matter to the police. It was further alleged that with the said beatings, Amit Kakkar has been mentally distorted.

In the MLR of Amit Kakkar, the doctor has documented total five injuries i.e. (i) Incised wound on left arm (caused by Gaurav Tiwari); (ii) Swelling on left forearm (caused by Gaurav Tiwari); (iii) Lacerated on right leg anteriorly; (iv) Contusion on mid back region crossing midline; and (v) Swelling on right side parietal aspect of skull. Injury on left arm has been caused with sharp edged weapon and the remaining injuries are with blunt weapons. Thereafter opinion regarding the head injury of Amit Kakkar was obtained from the doctor who opined that the same is not dangerous to life and the same is simple in nature. Similarly in the MLR of the complainant, the doctor has documented total four injuries i.e. (i) Lacerated wound on left parietal aspect of skull; (ii) Abrasion on left shoulder posteriorly; (iii) Contusion on right flank; and (iv) Abrasion on lower lip along with left side. All the Injuries have been caused with blunt weapons. Accordingly FIR No.70 dated 19.09.2024, u/s 458, 323, 324, 148, 149, 506 IPC, P.S. Sarabha Nagar, Ludhiana (Annexure P-2) has been registered against the petitioner and his co-accused Gaurav Tiwari, Navjot Singh, Jagjit Singh, Romi, Prince and two unknown persons.”

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:

“ROLE OF THE PETITIONER:-

After forming unlawful assembly with his accused and after lurking house trespass by night, the present petitioner picked-up Glass Bottles and tables/chairs from the room and hit the same at Amit Kakkar. When the complainant and Harsh Kakkar tried to stop the petitioner and others, they attacked the complainant also and caused beatings to him and while beating, brought out the complainant from the Room to the Lobby of the Hotel.

EVIDENCE AGAINST THE PETITIONER:-

In the FIR, there are direct and specific allegations against the petitioner as well. Apart from it, there is Statement u/s 161 Cr.P.C. of injured Amit Kakkar in which allegations have been levelled against the petitioner also."

7. It shall be relevant to refer to paras 5 & 6 of the bail petition, which read as follows:

"5. That it is pertinent to mention here that Amit Kakkar and Co-accused Gaurav Tiwari are the partners in two different hotels and the above mentioned FIR has been got registered by manager of Amit Kakkar only due to business dispute between co-accused Gaurav Tiwari and Amit Kakkar.

6. That it will not be out of place to mention here that it is abundantly evident from the perusal of present FIR that the same is cleverly thought story and has been concocted after proper legal advice. Further it will not be out of place to mention here that the present FIR has been got lodged after great delay of 08 days as the alleged occurrence took place on 11.06.2024, whereas the present case has been registered on 19.06.2024 and no explanation is forthcoming qua the delay part."

8. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

9. Given the above, the penal provisions invoked 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 custodial interrogation or the pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

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 Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/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. 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. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. 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. 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 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. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

19. 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.

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

21. 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.

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

(ANOOP CHITKARA)
JUDGE

29.11.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.