

CRM-M-52388-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52388-2024
Reserved on: 11.11.2024
Pronounced on: 25.11.2024

Naresh Kumar alias Secretary ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.K. Bishnoi, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
222	22.09.2019	Sirsa Sadar, District Sirsa, Haryana	25 of Arms Act, 323, 342, 394, 406, 506 IPC (Challan filed u/s 342, 395, 397, 406 IPC and 25 of Arms Act)

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. As per reply dated 09.11.2024 and custody certificate 10.11.2024, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	43	2013	395 IPC	NS Chopta, Distt. Sirsa
2	239	2013	174A IPC	Bhattu Kalan
3	135	2024	174A IPC	City Sirsa
4	266	2020	3 of PDPP Act and Sections 332, 353 IPC	Churu, District Churu
5	202	03.09.2019	323, 341, 506, 34 IPC	Sadar Sirsa, Distt. Sirsa
6	447	04.08.2019	174-A	City Jind
7	29	08.02.2023	21-B of NDPS Act	NS Chopta
8	58	16.03.2024	25/54/59 of Arms Act	NS Chopta
9	297	29.10.2023	302 IPC	NS Chopta
10	62	19.03.2024	25/54/59 of Arms Act	NS Chopta
11	140	07.06.2022	394 & 171 IPC and	Sadar Sirsa, Sirsa

			25/54/59 of Arms Act	
12	38	18.03.2010	148, 149, 323, 324, 325, 326 IPC	Nathusarai Chopta, Sirsa
13	5	2010	394 IPC	Dudhawa Khara, Churu
14	4	2010	Arms Act	Dudhawa Khara, Churu
15	488	19.08.2012	379 IPC	City Jind, Jind
16	Court Complaint No.31/2012 u/s 138 NI Act at Police Station Karnal			
17	Court Complaint No.--- Shri Ram vs. Co./2014 u/s 138 of NI Act at Police Station Sirsa			
18	Court complaint No.Avinash Balkishan /2014 u/s 138 of NI Act at Police Station Sirsa			

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

“2. That as per the contents of FIR No.222 dated 22.09.2019 registered under Sections 342, 395, 406, 397 IPC and 25, 54, 59 of Arms Act registered at Police Station Sadar Sirsa, on 20.09.2019 one call was received by MHC, Control Room Sirsa that one Madan Lal son of Prem Chand and Surender son of Rajender were got seriously hurted in some fight and they both were admitted to Civil Hospital Sirsa for treatment. On receipt of information/ruqqa police rushed to the hospital and recorded the statement of injured victim Madan Lal son of Prem chand which is as follows- "I am resident of the above mentioned address. I do work as accountant at Liquor contractor namely Vinod Banawali Bakriyanwali Musihbwali Circle and our office of this circle is at Burj-Karamgarh (Sangar). On dated 20.09.2019 at about 2:00 at night myself and Surender son of Rajender caste Jaat resident of Muklan i.e. cashier of our office, were present in the office. Then our vehicle driver Jai Singh son of Dharampal resident of Darbi and our Cook Lal Bahadur were sleeping in adjoining room. During that our vehicle driver namely Raju @ Rajkumar resident of Risaliakhara who used to work of supplying liquor at Liquor vend, and now doing work with us since last six months came. He used to collect payment at night from all our vends and used to deposit at our office. He came to us and his friends Anil Jakhar resident of Kharia Dobhi District Hisar and Naresh @ Secretary and Dholu Thakar resident of village Shahpuria district Sirsa and two others were also alongwith him, I do not know their names and addresses. Surender Cashier asked the Rajkumar @ Raju to deposit the cash payment which he had brought from liquor vends, then he replied that 'I have no cash'. He said to cashier Surender that whatever cash is with you, give to us'. Then Surender cashier told him that whatever cash was with him, all cash Vinod Bana contractor had taken with him. Then Raju @ Raj Kumar and his friend Anil, Naresh Secretary and Dholu Thaker and two others started beating

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us. Raju @ Rajkumar hit blow on left hand of Surrender, fist and stick blow on left eye. Rajkumar @ Raju and his friends Anil, Naresh Secretary@ Dholu Thakar hit me on right leg, right arm on both hips and left side of head from back side. The two other boys were having pistols, he had pointed pistols and two other unknown boys were standing outside pointing pistols on us. Rajkumar alias Raju opened the cupboard in our office and checked it and thereafter he also took away 4 mobile phones kept in our cupboard. I had MI (5) SIM Number, I don't remember and Surrender had a small Jio phone, Its SIM number was 98120-69999. Our car driver had a Samsung mobile with SIM number 94671-84347 and our cook Roshanlal's mobile had SIM number 98179-25013. They then threatened us 'if we disclose this to anyone, they will kill us. Then they locked me in the office room and while leaving they took away my contract's vehicle Bolero Camper HR02Y-4023 and my vehicle Eon vehicle number HR24Y-8658 SIRS which was parked outside and Raju alias Rajkumar had contract's night sale cash of about two and half lakh rupees which he also took away with him. Then our driver Jai Singh climbed over the table and chair from inside and opened the latch from the skylight hole and then we came out and after arranging for a vehicle we came to the government hospital Sirsa. The doctor admitted me, I am undergoing treatment in the government hospital Sirsa. Strictest legal action should be taken against the above mentioned culprits. I have now got written my statement in front of Surrender son of Rajender resident Muklan district Hisar". At the behest of this statement the case was registered and investigated. Raids were initiated to arrest the culprits. On 31.10.2019 present petitioner alongwith co-accused Raju @ Rajkumar, Anil Jakhar and Jaivir @ Gholu were arrested on passing relevant facts and evidences against them. Accused Hemant @ Chintu was arrested on 30.08.2020. Their disclosure statements were recorded and produced in the court of learned Area Magistrate where they were sent to judicial custody. During investigation sixth accused namely Shopi @ Sheo Parkash was found innocent so he was not charge-sheeted in the present case. Final investigation report against the apprehended five accused has been submitted in learned Trial court where they are facing in the court of learned Addl. Sessions Judge, Sirsa. The charges were framed vide orders dated 18.02.2022 (in main challan) and on 06.07.2022 (in supplementary challan against child-in-conflict-with-law Hemant @ Chintu). The trial is now pending at the stage of Prosecution evidence. Total 16 prosecution witnesses have been cited in the challan out of which 05 PWs have been recorded and 11 PWs are yet to examined."

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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:

"3. That as far as the Role of the present petitioner/accused is concerned he was the mastermind and dreaded criminal of the attack and dacoity in the present case. He was the core and central criminal at the spot of robbery. He was the black minded person who made the terrible plan to attack the wine vend staff and carried out the robbery alongwith his co-accused Anil, Raj kumar @ Raju, Hemant @ Chintu, Shopi @ Sheo Parkash and Jaibir @ Gholu. Other accused persons strictly acted upon his directions and all together carried out the dacoity. The present petitioner/accused was arrested on 31.10.2019 in this case where his disclosure statement was recorded on the same day. He admitted his active and blasting involvement in the present crime of robbery and attack made with the complainant and other staff of wine vend. He disclosed that he made the plan to loot the cash counter of wine shop alongwith his co-accused named above. They assailed upon the accountant/Munim Surender and Madan Lal present in the wine shop and got them locked in the room and carried out the robbery. They looted 4 mobile phones, Rs.70000/- in cash, one Bolero camper van and another Eon car. (True Translated copy of disclosure statement of accused Naresh Kumar @ Secretary is annexed as Annexure R-1)."

x x x x x

8. That the present accused did not come present in the learned Trial court on 02.11.2023 where two prosecution witnesses were present in the learned court for deposition of evidence. But both the witnesses were discharged as the present petitioner and co-accused Raj Kumar @ Raju both remained absent. Therefore, their bail bonds were cancelled and non-bailable warrants were issued against both these accused including the present petitioner. If all the accused persons had come present, then present prosecution witnesses would have been recorded without any adjournment. The present petitioner/accused has rightly been sent to judicial custody vide order dated 04.07.2024, as he may abscond or hamper/temper the witnesses. The prosecution strongly opposes the concession of bail to the present petitioner as his presence in custody would find way to proceed with prosecution evidence in the learned trial

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Court.”

7. The petitioner was earlier granted bail, but without any reasonable explanation, he failed to attend the trial. Thus, his conduct is clear. Further, the petitioner is a habitual offender, and even earlier, when he was granted bail, he indulged in crime, and there is likelihood that if the petitioner is again granted bail, he is most likely to repeat the crimes. Considering the bail petition of an accused with a criminal history throws an onerous responsibility upon the courts to act judiciously and reasonably because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecution resulting in acquittal or discharge, or when Courts quashed the FIR, the prosecution stands withdrawn, or the prosecution filed a closure report, cannot be included. Although crime is to be despised and not criminal, for a recidivist, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles.

8. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

9. The petitioner's custody of around 03 years & 03 months cannot be termed prolonged, given the sentence prescribed for the offense, which is imprisonment for life or ten years.

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

11. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

25.11.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.