

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52318-2024
Reserved on: 11.11.2024
Pronounced on: 26.11.2024

Gurmail Singh @ Raja Saipuria @ Raj Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Rishma Verma, Advocate
for the petitioner (through V.C.).

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
168	07.08.2023	Division No.8, Jalandhar	307, 323, 506, 148, 149, 201 IPC and 25, 27 of Arms Act

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 439 CrPC seeking regular bail.
2. Per paragraph 12 of the bail application and custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Sta- tion
1	210	01.12.2012	323/325 IPC	Division No.1, Jalanhdar
2	189	30.11.2007	392/397/452/323/148/149 IPC	Division No.1, Jalanhdar
3	169	19.10.2007	448/511/427/379/506 IPC	Division No.1, Jalanhdar
4	5	15.01.2008	307/325/324/323/148/149 IPC	Division No.2, Jalanhdar
5	46	30.03.2008	307/325/324/323/506 IPC	Division No.1, Jalanhdar
6	161	09.10.2007	307/324/323/506 IPC	Division No.1, Jalanhdar
7	148	24.08.2015	353/324/186/511/332 IPC	Division No.1, Jalanhdar
8	173	24.08.2015	365/506 IPC	Division No.8, Jalanhdar
9	85	06.07.2021	325/323/341/506/148/149 IPC	Division No.1, Jalanhdar
10	69	22.04.2017	452/323/506/34	Division No.3, Jalanhdar

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

“5. That the brief facts pertaining to the present FIR are that the complainant namely Satish Kumar son of Ramesh Kumar got registered the FIR stating that on dated 06.08.2024 at about 09:40 P.M. he was sitting inside his house then he heard hue and cry outside. When he came outside, then he saw that Raja Saipurian was throwing bricks on the gate of their house and also threatened to fire upon them. He has further threatened that his son Sunny was also coming and they would fire upon the complainant party. In the meanwhile, complainant's uncle's son Gora came with his dog, but this person started abusing him. Complainant asked Gora not to cause any fight with him, but in the meanwhile, Pub wife of Raja Sapurian also came outside and they started giving threats and abuses to complainant party. In the meanwhile one Brezza Car came there and 5-6 persons armed with weapons came outside, who were Sunil Kumar armed with pistol Sunil Saini Sheela armed with pistol Pawan Pamma armed with datar. Sunny armed with pistol and datar came there All these persons started firing towards the gate of the house of the complainant whereas complainant party went inside the house. For their self-defence, they also started brickbats outside of their house. One Jatinder Kumar son of Ramesh Lal was passing from that side, who had suffered pellets injury.”

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 short reply.

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

6. **ROLE OF THE PRESENT PETITIONER:**

That the present petitioner namely Gurmail @ Raj Kumar is the main person who came alongwith 5-6 persons armed with weapons in Brezza car on the spot and also started firing towards the gate of the complainant He was armed with fire arms and have fired on the-spot.

7. **EVIDENCE:**

That the fired shells/cartridges have been recovered from the spot and the weapon used in the crime le country made pistol alongwith 2 cartridges stands recovered from the present petitioner. The statement of the injured was recorded and the same supports the prosecution version. During investigation, one country made Pistol along-with 02 alive rounds were recovered to the Police and the same was sent for examination; however, ballistic report from the concerned quarter are received on 28.09.2024.”

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 4 of the bail petition, the petitioner has been in custody since 12.08.2023. Per the custody certificate dated 07.11.2024, the petitioner's total custody in this FIR is 01 year, 02 months and 26 days.
9. 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 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.
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 (CrL.) 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. 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.

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.

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

(ANOOP CHITKARA)
JUDGE

26.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.