

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52834-2024
Reserved on: 11.11.2024
Pronounced on: 29.11.2024

Shamsher alias Samsher Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amit Siwach, Advocate
for the petitioner.

Mr. Aashish Bishnoi, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
186	20.06.2020	Civil Lines, District Bhiwani	120-B, 201, 302 r/w 34 IPC and 25-54-59 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. Per paragraph 16 of the bail application and the custody certificate filed by the State, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	820	14.08.2015	148/149/302/341/120-B IPC	Sadar Jhajjar
2	178	2021	457/380 IPC	Sadar Rohtak
3	172	20.05.2021	379-B/458/188/369/270 IPC and 51-B of Disaster Managment Act	Sadar Asaudha, District Jhajjar
4	167	07.05.2021	379-B/392/412/458 IPC and 25/54/59 of Arms Act	Sadar Jhajjar
5	132	20.06.2020	307/120-B/34 IPC	Sadar Jhajjar
6	376	08.05.2021	395/397 IPC	Kharkhoda, District Sonepat
7	225	17.06.2021	25/54/59-A of Arms Act	PS City Jhajjar
8	93	2021	380/457 IPC	IMT Rohtak
9	32	31.01.2021	380/457/201 IPC	IMT Rohtak
10	53	06.03.2021	395/397/458/379-B/201 IPC	Dujana, District Jhajjar
11	51	04.03.2021	392/458/379-A IPC	Dujana, District Jhajjar
12	177	07.05.2021	457/380 IPC	Sadar Rohtak, Rohtak
13	252	05.05.2021	148/149/186/332/353/307 IPC	Sampla, District Rohtak

14	271	15.05.2021	457/380 IPC	Sampla, Rohtak
15	280	21.05.2021	379-B/395/397/120-B IPC	Sampla, District Rohtak
16	281	21.05.2021	148/149/186/332/353/307 IPC	Sampla, Rohtak
17	98	27.03.2021	379-B/458/120-B/201 IPC and Sections 25/27/54/59 of Arms Act	Asauda, Jhajjar

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

“2. That the present case was registered on application of Karan Singh son Lok Ram resident of Jagrambaas that he is an agriculturist. He is having two sons and two daughters, all are married. Name of eldest daughter is Sarita, his son namely Manoj Kumar is younger to Sarita, his daughter namely Anju is younger to Sarita and Manoj, his son Anuj Kumar was youngest of them. His elder son Manoj is employed with RPSF and his younger son namely Anuj was running a shop of spare parts of bullet motor c, cle from last three and half months in partnership with his friend namely Amit resident of Bhangarh. His son Anuj was residing with his friend Amit on rent in front of Bal Bhawan Vatika, prior to this work his son Anuj opened a library in Bhiwani. His son namely Anuj stayed for ¼ days at their home and came to Bhiwani at about 10:30 AM on 19.06.2020. On 20.06.2020, he came to Bhiwani for purchasing items for bhaat ceremony. When he reached near shop of his son Anuj at about 5:30 PM then he listened noise of gun shots in the shop of his son. He came in front shop of his son by running then he saw four young boys with muifled faces having weapons in their hands and ran towards streets of Vidya Nagar after killing his son. He found his son seating on seat having gun shot injuries on his face, left arm, left shoulder, bottom of left ear, bottom of right ear, on cheek, on cheek and stomach. His son namely Anuj succumbed to gunshot injuries in front of his eyes. He can identify these four young boys.”

4. The petitioner's counsel made the following submissions:

“The main co-accused who had shot the deceased Anuj are all (7) acquitted by the Court of Ms. Rajni Yadav, the Ld. Additional Sessions Judge, Bhiwani vide order dated 22.08.2023(Annexure P-2). The challan qua the acquitted (Total 7) were presented on 05.11.2020. The petitioner was arrested on 10.01.2022 and challan against him were presented on 08.04.2022. The petitioner has never been declared proclaimed offender. The petitioner provided two motorcycles to the main accused and helped them in ingress and egress. The petitioner is not named in the FIR and nominated only based on disclosure statement. There is no presence of the petitioner at the alleged place of occurrence. There is no proper Test Identification Parade (TIP) was conducted by the prosecution despite the complainant, Karan Singh being the sole eye witness. The presence of the complainant, Karan Singh at the scene of crime is also highly doubtful as he had improved his version on various occasions starting from the contents of the FIR to the supplementary statement dated 02.08.2020. Therefore in all probability he was a planted witness. The weapons that were recovered during the course of investigation and the pellets recovered from the body of the deceased were never matched. The CCTV Footage Ex. P8 showed occurrence of no such alleged murder of deceased Anuj. Weapons recovered but no sanction order applied to prove

charges, which is otherwise a must. Not ballistic report to ascertain the working capacity of recovered pistols or the matching of bullets recovered from the body of the deceased or the empty cartridges collected from the spot to connect them.”

5. 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.

6. The State’s counsel opposes bail and refers to the reply.

7. It would be appropriate to refer to Annexure P-2, the judgment dated 22-08-2023, in which all the tried accused were acquitted. However, sufficient prima facie evidence connects the petitioner with the alleged crime, but the trial Court did not find the evidence convincing and acquitted the seven accused by extending them the benefit of the doubt. 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 10.01.2022. Per the custody certificate dated 03.11.2024, the petitioner’s total custody in this FIR is 02 years, 08 months and 03 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.

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

(ANOOP CHITKARA)
JUDGE

29.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.