

CRM-M-58311-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58311-2023
Reserved on: 09.08.2024
Pronounced on: 30.08.2024

Gulshan Kumar @ Sheru ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Dinesh Trehan, Advocate (Through VC)
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
27	13.02.2022	Division No.3 District Police Commissionerate, Ludhiana	307/323/341/148/14 9/120-B/506 IPC

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. As per custody certificate dated 08.08.2024, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	91	17.09.2017	399/402/473 IPC	Badhni Kalan
2	58	02.06.2018	61/1/14 of Excise Act	Ajitwal
3	128	07.06.2023	25(6)(7)(8), 54, 59 of Arms Act	City Moga
4	19	30.01.2023	379-B IPC	Sadar Jagraon
5	24	15.02.2023	379-B/323/34/201 IPC	Sadar Jagraon
6	55	17.03.2023	307/323/324/473/120-B IPC	Salem Tibri
7	56	01.06.2022	61/78/1/14 of Excise Act	Chhajali
8	59	16.04.2023	379-B/201 IPC	Sadar Jagraon
9	193	03.10.2022	307/160/506/148 IPC and 25/27 of Arms Act	City Jagraon
10	194	21.09.2021	61/78(2)/1/14 of Excise Act	City Jagraon
11	195	21.09.2021	61/1/14 of Excise Act	City Jagraon
12	223	25.10.2021	307/294/506/148/149 IPC and 25/54/59 of Arms Act	City Jagraon

3. The facts and allegations are being taken from the reply dated 05.02-2024, filed by the State, which reads as follows:

“That the brief factual matrix pertaining to the present case are as follows:

i. That on the statement provided by Rajesh Kumar, (hereinafter referred to as "the complainant") the present case i.e. FIR No. 27 dated 13/02/2022, was registered under Sections 307, 323, 341, 148, 149, 120-B, and 506 of the IPC at PS Division No.3, Ludhiana wherein 5-6 unidentified individuals were implicated as accused.

ii. That in the detailed statement provided by the complainant, Rajesh Kumar, pertaining to the incident dated 11/02/2022, it was alleged that while he was returning from the Municipal Corporation, Ludhiana, Zone - A Office at approximately 01:00 PM, a group of 6- 7 unidentified individuals on two Activas intercepted him near Rupa Mistry Gali. The assailants (on one of the aforesaid Activa) encircled the complainant, and one of them struck him on the back with a wooden stick (danda), causing him to fall. Subsequently, another attacker assaulted the complainant with Kirpan/Datar. The complainant raised an alarm, attracting the attention of onlookers, prompting the assailants to flee the scene while issuing threats to the complainant. Following the incident, the complainant was taken to CMC Hospital for medical treatment. The motive behind this alleged attack, as per the complainant's statement, is rooted in a prior case (bearing no. 1/2005) related to illegal constructions and possessions carried out by the complainant's neighbor, Rajesh Mehta, in collusion with Municipal Corporation officials. The complainant, being a witness in the said case, highlighted that some individuals were convicted, while others were acquitted by the Learned Trial Court. The prosecution, dissatisfied with the acquittals, filed an appeal before the Hon'ble Punjab and Haryana High Court, designating the complainant as a whistleblower in the matter. Additionally, the complainant stated that he had sought various other Right to Information (RTI) disclosures, which aimed to expose financial irregularities and losses to the Government exchequer. The complainant asserts that corrupt individuals, with the assistance of others, orchestrated the attack with the explicit intent to eliminate him due to his role in unveiling malpractices and corruption.

iii. That upon the registration of the FIR, the investigating agency diligently pursued efforts to trace the assailants who had attacked the complainant. Despite scrutinizing various CCTV cameras installed in the vicinity of the incident, none of the assailants could be identified or

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located. Subsequently, information was received by the investigating officer that two individuals, namely Brijpal and Nisha Sabharwal, had been apprehended in Case FIR No. 55/2023 registered at PS Salem Tabri, Ludhiana. During questioning in the aforementioned FIR, Brijpal and Nisha Sabharwal disclosed their involvement in the assault on the complainant. Consequently, on 29/03/2023, these individuals were nominated as accused in the present case, and on 30/03/2023, they were apprehended in connection with the present case. Based on the disclosures made by the aforesaid accused individuals, the present petitioner and Ashok Kumar @ Shoki were subsequently nominated as accused in the present case.”

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. There is sufficient primafacie evidence connecting the petitioner with the alleged crime. However, per the custody certificate dated 08.08.2024, the petitioner’s total custody in this FIR is 01 year, 01 month & 08 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie 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, subject to the compliance of terms and conditions mentioned in this order.
7. 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.
8. 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.
9. 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)	

10. 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.

11. 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.

12. 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.

13. 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

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necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”

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

15. 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.

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

(ANOOP CHITKARA)
JUDGE

30.08.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.