

CRA-S-414-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-414-2025
Reserved on: 06.03.2025
Pronounced on: 25.03.2025

Bashau ...Appellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S. K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate and
Mr. Neeraj Sachdeva, Advocate
for the appellant(s).

Mr. Aashish Bishnoi, DAG, Haryana.

Mr. Bajrang Indal, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
723	10.10.2024	Barwala	115(2), 127(2), 190, 191(2), 308(4)(5), 351(3) & 54 of BNS and 3(1)(r), 3(1)(s), 3(2)(Va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act)

1. Aggrieved by the dismissal of his bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], for the offenses including under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, [SCSTPOA], the accused has come up before this court by filing an appeal under section 14-A of SCSTPOA, seeking bail.
2. In paragraph 20 of the appeal, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“That brief facts of the case are that one Ompal son of Kali Ram gave a statement to the police that he along with Jalinder, Harbir, Babu Ram,

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Sarvesh, Dalip, Guddu, Vishal, Pappu, Bhura and Suraj had come to Banbhora fair on dated 02.10.2024 to work as labourer. They were engaged by Contractor (Thekedar) Satish Jangra, Aman, Sewa Ram, Rajbir, Rajender and 8 to 10 other persons. After the fair conclusion, when they asked for their wages, Satish Jangra and his accomplices assaulted the complainant and his other labourer friends and also locked them in a nearby and kept them there for the whole night. Then these persons started calling family members of the complainant and his friends asking them for extortion money of Rs 5 lakhs and threatened to kill the complainant and his friends. The information was given in P.S. Titavi (U.P.) by the family members of the complainant and his friends. Some unknown persons also reported about the assault and kidnapping of the complainant and his friends at PS Barwala. The police reached at the spot and rescued all of them from that room. They were taken to hospital for their medico legal examination. Upon this case FIR No. 723 Dated 10.10.2024 under Section 115(2), 127(2), 190, 191(2), 308(4), 351(3) of Bhartiya Nyaya Sanhita was registered at Police Station Barwala, District Hisar.”

4. The Appellant's counsel submits that appellant has not been named in the FIR. He further prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the Appellant and their family.

5. The State counsel as well as counsel for the complainant oppose the bail and refers to the reply.

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

“That as far as the role of the petitioner/accused, it is submitted that complainants are residents of other States and they were humiliated and assaulted by the petitioner/accused and co-accused. That petitioner/accused and co-accused were forcibly detained and then bludgeoned the victims. One of the complainants called up some police officials of UP and the team of UP Police in collaboration with Haryana Police, got them released. Six injured namely Om Pal, Harbir, Suraj, Babu Ram, Pappu and Sarvesh have sustained multiple injuries. Merely because the name of the petitioner/accused is not mentioned does not mean that he was not involved in the incident as the complainant did not know the names of all the assailant persons as they were from the other State and had no previous acquaintance with the petitioner/accused and co-accused.

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That arrest of the remaining co-accused is pending and if the petitioner/accused are granted the concession of bail, he may interfere in the arrest of remaining accused.”

REASONING:

7. In Prathvi Raj v. Union of India, 2020:INSC:157 [Para 10], AIR 2020 SC 1036, a three-judge bench of the Hon’ble Supreme Court read down S. 18 by declaring as follows,

[10]. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply.

8. The allegations are of injuring, detention and abusing the people belonging to the scheduled castes by using derogatory words prohibited under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCSTPOA).

9. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the appellant with the alleged crime. However, per paragraph 18 of the appeal, the appellant has been in custody since 11.10.2024 and accordingly his custody in this FIR is more than 05 months. 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 appellant makes a case for bail.

11. Given above, provided the appellant is not required in any other case, the appellant 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 Appellant 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. The Appellant shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The Appellant shall not tamper with the evidence,

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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. Given the background of allegations against the appellant, 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 appellant 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 appellant 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.

15. In *Siva v. State*, Crl.A. No.46 of 2024, decided on 01 Feb 2024, Justice M. Nirmal Kumar of Madras High Court, while granting bail, imposed the following condition,

[6] ...After executing all the sureties within 15 days from coming out of prison, the appellants shall file affidavit before the concerned Court which reads as follows:

“I, as a Citizen of India, having utmost faith in the Constitution of India, am quite aware that 'Untouchability' has been abolished under our Constitution. I, hereby, take pledge that knowingly or unknowingly, I will not practice social discrimination based on untouchability either by words or deeds or in any other manner. I am aware that it is my duty to serve in a true, honest and faithful manner, as per the basic principles laid down under the Constitution, to create an independent Society, without any discrimination. I solemnly affirm that this would stand to speak forever the faith I have in the Indian Constitution.”

16. The appellant is also directed to hand over two affidavits, in the same terms, attested by any Executive Magistrate or Notarized, to the concerned SHO within two weeks, one copy for the case file and one for the victim.

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,

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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. It is clarified that if the appellant violates any bail condition, the State and/or the victim may file an application for bail cancellation before the trial court, which shall be competent to cancel the bail or add more conditions. Furthermore, if the appellant moves for deletion or dilution of any bail conditions, the trial court is empowered to do so.

19. **This bail is conditional, and the foundational condition is that if the appellant indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall have the 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 Appellant 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. Appeal allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

25.03.2025

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Whether speaking/reasoned: Yes
Whether reportable: NO.