



CRM-M-7022-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7022-2025
Date of Decision: 10.03.2025

Gulam Nabi and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amandeep Saini, Advocate
for the petitioners.

Mr. Sukhdev Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
105	28.10.2024	Sadar Gurdaspur, District Gurdaspur	137(2), 140(3), 331(4), 190, 191(3), 61(2) of BNS

1. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 9 of the bail petition, the accused declares that they have no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“That it is humbly submitted that brief facts of the case that the present FIR was registered on the statement of Bashir Mohammad, who stated that he is doing the work of dairy and he has five children, three sons and two daughters. The complainant further stated that his nephew Sher Ali got married with Sanah about eight months ago and they both started living with him in his house at village Gidarpindi. After the marriage, the maternal uncle family of Sanah proposed for marriage of their son Saif Ali with his daughter/prosecutrix, but they refused, as his daughter was 14 years of age. It was further stated by the complainant that on the intervening night of 21/22.10.2024 at about 12:30 AM, he along-with his family was sleeping in his house, while his nephew Sher Ali along-with his wife Sanah was sleeping in adjacent room and one



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side, his daughter/victim was sleeping. On hearing noise of vehicle, foot and seeing lights, the complainant woke up and saw that his daughter along with wife of his nephew were forcibly kidnapped by Saif Ali, Safi, Gulam Nabi, Laldeen and Mareed Ali and Billu, who were also armed with weapons. The complainant further stated that he came forward to rescue his family, but the accused started giving brickbats blow upon them and due to fear, the complainant along-with his nephew entered the room by raising the alarm. Hence, a case FIR No. 105 dated 28.10.2024 under section 137(2), 140(3), 331(4), 190,191(3) and 61(2) of Bharatiya Nayaya Sanhita 2023 (BNS) at Police Station Sadar, Gurdaspur was registered against 1) Saif Ali, 2) Safi (Petitioner No. 2), 3) Gulam Nabi (Petitioner No1), 4) Laldeen, 5) Mareed Ali and 6) Billu on the statement of Bashir Ahmad s/o Mossa r/o Giddar Pindi, District Gurdaspur.”

4. The petitioners’ counsel prays for bail by imposing any stringent conditions and contends that 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 status report.

6. Petitioners claim to be co-cousin of the minor girl who was allegedly kidnapped. It remain undisputed by State counsel that the girl was recovered and no harm was caused to her. Counsel for the petitioners refers to Annexure P-3 and para no.3 reads as follows:-

“3. In pursuance to the issuance of the notice, detenue, namely Sanha is present in person in the Court with her Maternal Aunt (Mammi), and has been identified by her counsel. The Court has interacted with the detenue who apprised the Court that she is living with her parents with her own free will. She submits that she does not want to reside with petitioner, namely, Sher Ali.”

7. The Police did not arrest the petitioners; if they intended to arrest the petitioners, it was not impossible.

8. Perusal of the pleading reflects that the petitioners are in close relation with Sher Ali with whom the girl was eloped and when she was recovered, she was on family way. Perusal of order dated 20.11.2024 passed by this Court reflect that the girl for whom abduction FIR was registered also performed Nikah with the said Sher Ali.

9. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.



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10. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage.

11. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

CONDITIONS:

12. Given above, provided the petitioners are not required in any other case, the petitioners shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fail to appear, such surety can produce the accused.

13. While furnishing a personal bond, the petitioners 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)	

14. The petitioners are directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioners shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

15. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners 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



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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 petitioners, it becomes paramount to protect 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 firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a 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 petitioners shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days of release from prison and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under 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. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.



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19. It is clarified that if the petitioners 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 petitioner moves for deletion or dilution of any bail conditions, the trial court is empowered to do so.

20. **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 have the liberty to cancel this bail.**

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

22. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioners 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.

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

(ANOOP CHITKARA)
JUDGE

10.03.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.