

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14193-2025
Reserved on: 07.04.2025
Pronounced on: 22.04.2025

Mohd. Rashid @ Mohd. Rasid ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Madhu Dayal, Advocate and
Mr. Arjun Dhingra, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
219	07.10.2021	Nagina, Distt. Mewat (Haryana)	307, 341, 34 IPC and Sections 25/54/59 of Arms Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 14 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“2. That brief facts of the present case and investigation conducted by the local police are mentioned below:-

i. That on 07.10.2021, SI Yaad Ram was present at PS Nagina and MHC PS Nagina has informed to him that fire gun shots had taken place at Sikrawa turn, in village Bhadas, upon which SI Yaad Ram alongwith staff in Govt. vehicle reached at the spot and where complainant Nisar met to him and presented a written complaint to the Investigating Officer. The relevant portion of the complaint is reproduced below

"To the SHO. P.S. Nagina Nuh, Subject: for committing fire shot with intention to kill him after parking the motorcycle. Sir, I am Nisar son of Roshan Meo r/o Rewasan PS Rozka Meo. Today, I was coming from my in laws Jhamrawat. On 07.10.2021, at about 9:00 PM reached at Sikrawa

turn village Bhadas, then one motorcycle from behind, on which three young boys riding, who parked the motor cycle in front of my car baring registration No. HR 72F 1149. On boy, fired upon up me with intention to kill, but bullet hit the vehicle/car bearing registration no. HR-72-F-1149. Motorcycle pulsur on which No. HR-27K was written on its number plate and half of the plate was broken. They ran away after leaving the Pulsher motorcycle on the spot. Legal action may kindly be taken against the unknown persons." Upon the above mentioned compliant present case FIR No. 219 dated 07.10.2021 under Sections 307, 341 and 34 of IPC and 25-54-59 of Arms Act was registered at Police Station Nagina, District Nuh."

4. The petitioner's counsel submits that the allegations against the petitioner are that he had fired upon the complainant with a country made pistol. He further submits that the name of the petitioner is not mentioned in the FIR, the petitioner has been falsely implicated in the present case; his name has been surfaced on the basis of disclosure statement of co-accused Rashid and no specific role was attributed to the petitioner. He further submits that in case the petitioner is granted bail, he has no objection to imposing of any stringent conditions, including surrender of fire arms and the petitioner further undertakes that during the period of bail, he shall not commit any offence and in case the petitioner commits any offence in which the sentence is prescribed more than three years, the State shall be at liberty to file an application for cancellation of bail, to which they will not raise any objection. He further contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

5. Counsel for the petitioner has drawn attention of this Court to the affidavit dated 10.03.2025 (Annexure P-2) filed by complainant-Nisar in which he had mentioned that he had registered the FIR against unknown persons and he does not know the petitioner Rashid. It has further been mentioned in the said affidavit that he was unaware about the fact that whether the petitioner was present on the date of incident or not. In para 5 of the said affidavit, he stated that he has no objection if bail is granted to the petitioner.

6. In reply to the said affidavit, counsel for the State submits that the affidavit was not handed over to the investigator and its authenticity is doubtful. However, he opposes bail and refers to the status report.

7. It would be appropriate to refer to the following portions of the status report, which read as follows:

"7. That it is also submitted that the petitioner/accused Rashid S/o Harun is the main accused who fired shot upon the complainant, which is yet to be recovered, hence custodial interrogation of the accused / petition is very much required to dug out the truth of the present crime. If at this stage,

concession of anticipatory bail is granted to the petitioner, he may abscond and may influence the witnesses and may not appear before the Ld. Trial Court.

8. That it is humbly submitted that the petitioner was arraigned as an accused on basis of disclosure of accused Lukman as well as other accused, by which it was found that the petitioner is the main accused who called the other accused to kidnap & beat complainant and the petitioner fired gut shot upon the complainant with the country made pistol, which is yet to be recovered from the present petitioner Rashid S/o Harun, which is very necessary for the investigation, hence his custodial interrogation is very much required. If this petition is dismissed, then the petitioner may be taken into the police custody fair investigation.”

REASONING:

8. Since, this petition was filed on 11.03.2025 and around 26 days have passed and in case the State wanted to dispute the contents of the affidavit of the complainant, they could have verified the same from the complainant but it was not done.

9. The name of the petitioner has been surfaced on the basis of disclosure statement. No doubt, the petitioner fired upon the complainant with country made pistol but the bullet hit the car and no injury has been attributed. Given the undertaking given by the counsel for the petitioner that in case the petitioner is granted bail, he has no objection to imposing of any stringent conditions, including surrender of fire arms and the petitioner further undertakes that during the period of bail, he shall not commit any offence and in case the petitioner commits any offence in which the sentence is prescribed more than three years, the State shall be at liberty to file an application for cancellation of bail, to which they will not raise any objection, as such, the petitioner is entitled to bail.

10. 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.

11. Given above, this Court does not deem it appropriate that the petitioner should be subjected to custodial interrogation, and he is entitled to bail subject to the condition that in case it is found that the affidavit (Annexure P-2) was fabricated and false, then the State shall file an application for cancellation of bail before the trial Court/Sessions Court which shall be authorized and competent to cancel the present bail. This bail is also subject to the following further conditions:

12. 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. 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.
13. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on anticipatory 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 Ilaka Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.
14. 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) | |
15. This order is subject to the petitioner's complying with the following terms.
16. The petitioner is directed to join 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 petitioner 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 petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.
17. In case the petitioner repeats the offence, where the sentence prescribed is more than 7 years, then this bail shall be cancelled. In para 14 of the bail petition, the petitioner claims to be first offender, as such, this Court wants to afford him one opportunity to course correct.
18. 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.

19. Given the background of allegations against the petitioner, 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 petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days 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.

20. 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."

21. 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.

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

23. 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.

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

(ANOOP CHITKARA)
JUDGE

22.04.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.