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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

...Petitioner

Versus

...Respondent

Mr. Akshay Kumar, AAG, Punjab.

* * * *

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
427	04.09.2023	City Barnala, District Barnala	195-A, 506 IPC

2. Per paragraph 11 of the bail petition as well as para 6E of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	30	30.04.2021	307, 393, 511, 34 IPC	Kheri Gandian, District Patiala
2	50	05.05.2021	379 IPC	Banur
3	265	02.11.2021	392, 201 IPC and 25, 54, 59 of Arms Act	City Patiala
4	37	26.06.2024	341, 323, 506, 427 IPC	Kheri Gandiyan

“That pursuant to the said order, it is submitted that the present case/FIR No. 427 dated 04.09.2023 under section 195-A, 506 IPC, P.S. City Barnala was registered against un-known person on the basis of



application No. 3972/VP dated 14.11.2022 submitted by Sunny Kumar son of Jagdish Kumar, resident of House No.242, 22 Acre Colony, Barnala (Mobile phone No. 94176-xxxxx) against un-known person regarding Giving death threats over phone (Mobile phone No. 94745-xxxxx) stating therein that, "I am a businessman, that on 01.11.2021 my car bearing No. PB No. 265 dated 02.11.2022 under section 392,201 IPC 25/54/59 A Act was registered at Police Station City Patiala, which is going on in the Court at Patiala, but now on 12.11.2022 at around 8:33 pm I received a call from the said mobile No. 94745-xxxxx, an unknown person threatened me to not to give any testimony and if you give any testimony in this case then we will kill you and your family. We know all the details of your family, I have that recording. That I have danger of life and property from the above said persons. If there is any physical and financial loss to me or my family, then the said person will be responsible. So, I request you to investigate and find out the said unknown person and take appropriate legal action and provide justice and protect my life and property." Inquiry into the said application was conducted by the answering deponent and after conducting a thorough inquiry, the deponent submitted detailed inquiry report vide No. 475/VP/DSB dated 17.07.2023 that a status report of investigation of FIR No. 265 dated 02.11.2021 has been obtained from SHO, P.S., Sadar, Patiala. The perusal of report of SHO, P.S. Sadar, Patiala, it revealed that on 01.11.2021, the applicant Sunny Kumar along with his son was travelling from Barnala to Yamuna Nagar in his car No. PB-19N-8821 for his work and while returning, near the gate of Commando Training Center, Bahadurgarh, three youths came on a motorcycle, surrounded the applicant, showed pistol and took away his car. It was containing one lacs rupees in cash and purse containing 7-8 thousand rupees and ATM of different banks, mobile phone in which SIM No. 94176-xxxxx and SIM No. 76962xxxxx were running. On the statement of Sunny Kumar (applicant) said FIR was registered against un-known persons. During investigation Khuspreet Singh son of Jasbir Singh, resident of Sambhu Khurd was arrested on 17.03.2022 and based on his disclosure statement, Gurwinder Singh @ Goni son of Balkar Singh r/o Bhat Majra and Abhishek @ Billa son of Bahadur Singh r/o Kohie Majra were nominated as accused on 18.03.2022. Accused Abhishek @ Billa was arrested on 24.05.2022. Challan of the case was presented and the case is under trial in the Court at Patiala. Due to the testimony of the applicant



Sunnu Kumar in the trial, he got a call from the above said three accused or from any of their associate from mobile No. 94745-xxxxx on the mobile number 94176-xxxxx and threats of death were given to the applicant to not testify in the said trial. Because of which it has been found that by doing so offence u/s 195A,506 IPC is found to be made out against Khushpreet Singh son of Jasbir Singh resident of Sambhu Khurd, District Patiala, Gurwinder Singh @Goni son of Balkar Singh resident of Bhatt Majra and Abhishek @ Billa son of Bahadur Singh resident of Kohle Majra. The Inquiry officer recommended that FIR should be registered against above said persons. The SSP, Barnala sought legal opinion from Deputy District Attorney (Legal) Barnala and the Deputy District Attorney (Legal) Barnala opined that offence u/s 195-A, 506 IPC are found to be made out against Khushpreet Singh, Gurwinder Singh @ Goni and Abhishek @ Billa and the said opinion was approved by the SSP, Barnala and accordingly the present FIR No.427 dated 04.09.2023 was registered against Khushpreet Singh, Gurwinder Singh @ Goni and Abhishek @ Billa.”

4. The petitioner's counsel submits that petitioner shall not repeat the offence and 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. It would be appropriate to refer to the following portions of the reply, which read as follows:

“THE ROLE OF THE PETITIONER.

The role of the petitioner Abhishek is that FIR No. 265 dated 02.11.2021 u/s 392 IPC and section 25 Arms Act P.S. Sadar Patiala was registered on the basis of statement of Sunny Kumar (complainant of the case) against un-known persons. During investigation Khuspreet Singh (co-accused of the petitioner) was arrested on 17.03.2022 and based on his disclosure statement, Gurwinder Singh @ Goni and Abhishek @Billa (present petitioner) were nominated as accused on 18.03.2022. Accused Abhishek @ Billa was arrested on 24.05.2022, challan of the case was presented and the case is under trial in the Court at Patiala. Accused/petitioner Abhishek @Billa in connivance with his other co-accused gave threats to



the complainant by calling on his mobile No. 94176-xxxxx from mobile No. 94745-xxxxx, not to tender evidence against them in FIR No. 265 got registered by him against them. So, a specific role is attributed to the petitioner in the commission of present offence.”

REASONING:

7. Allegations against the petitioner are of threatening the complainant for not to identify them in the trial. Keeping in view the undertaking given by the petitioner, this Court is giving one opportunity to the petitioner to course correct.
8. 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.
9. 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.
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.

CONDITIONS:

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 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 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. 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.

14. The petitioner is directed to join the investigation 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.

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 (CrI.) 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 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.



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.

19. It is clarified that if the petitioner 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 repeats the offence or indulges in any non-bailable offence, 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 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.

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

(ANOOP CHITKARA)
JUDGE

12.05.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.