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Mohalla, Pathankot together operate. Yesterday on dated 07.02.2025 at about 04:00 PM my cousin brother (Chacha's son) Nakul @ Shivam was present at his palace White Pearl Palace and I was also standing near the palace that a boy and a girl forcibly entered our palace. While I was watching, they had been stopped by our watchman Vinay, then that boy and girl started forcing our watchman, then my cousin brother (Chacha's son) stopped them from fighting, then that boy started abusing my cousin brother and watchman and I also came and tried to understand them. The boy who was fighting made a phone call to unknown persons and called them in palace, who were having datar and baseballs in their hands, upon coming they beat and injured my cousin brother (Chacha's son) Nakul @ Shivam and watchman Vinay and they raised alarm "Maar Ditta Maar Ditta" and then my cousin brother (Chacha's son) Nakul alias Shivam fainted and I called my (Chacha's son) Vidush son of Ashwani Kumar resident of Anandpur and Anurag son of Sham Lal resident of Anandpur at the spot, and aforementioned assailants ran away from the spot along with their weapons while threatening. When we checked CCTV Footage of our palace then we came to know that Kewal Singh and Lucky sons of Darshan Singh residents of Mohalla Rampur gave consecutive blows of datar on the face, stomach and chest of my cousin brother (Chacha's son) Nakul alias Shivam and after that both of them attacked our watchmen Vinay with datar on his right hand fingers and left wrist and gave stick blows on left knee and Monica wife of Paramjit Singh resident of Kotarpur District Pathankot came with them, was inciting them to fight and 4-5 unknown persons beat also beat by kicks. We can recognize those unknown persons when they came before us. My brother Nakul alias Shivam and Watchman Vinay were admitted to the civil hospital by arranging vehicle and doctor issued MLR of Nakul alias Shivam and Vinay. Legal action be taken against them. Correct Sd/- aforementioned Ashish Sharma."

4. The petitioner's 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 based on instructions.

REASONING:

6. Counsel for the petitioner submits that when his first bail petition was dismissed vide order dated 20.03.2025 passed in CRM-M No.9407 of 2025, at that time, offence arraigned against him was under Section 109 BNS which corresponds to Section 307 IPC whereas on 27.02.2025, medical report had clearly pointed out the injuries to be simple.

7. State counsel submits that Section 109 BNS is not added merely based on injuries but when it is a case of failed attempt of murder.



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8. Facts of the case are being taken from CRM-M No.9407 of 2025 and paras no.3 and 6 of the said order reads as follows:

“That FIR No. 15 dated 08.02.2025 U/s 115(2), 191(3), 190, 333, 351(3) of BNS, 2023 (offence punishable U/s 109 of BNS, 2023 added later on vide DDR No. 38 dated 11.02.2025) was registered at Police Station: Division No.1 District Pathankot on the basis of a statement given by the complainant namely Ashish Sharma where he stated he has a palace namely "White Peral Palace" which is being run by the complainant and his cousin Nakul @ Shivam. On 07.02.2025 at about 04:00 PM, when Nakul @ Shivam was present at the said palace and complainant was also standing near the palace, one boy and girl forcibly entered in the palace and started manhandling Vinay, the watchman. When Nakul @ Shivam restrained the said persons, then they started abusing Nakul @ Shivam and Vinay. The complainant also intervened and in the meantime, the boy made a telephonic call pursuant to which unknown persons armed with datar and baseball bats came to the palace and started giving beatings to Nakul @ Shivam and Vinay. When the victims (Nakul @ Shivam and Vinay) raised noise, the assailants fled from the spot. On checking the CCTV footage, the complainant came to know that Kewal Singh and Lucky (petitioner) gave datar blows upon the face, stomach and chest of Nakul @ Shivam and after that, Kewal Singh and Lucky (petitioner) gave datar blows upon Vinay's right-hand fingers and left wrist and stick blows upon Vinay's left knee. Furthermore, Monika had instigated the accused persons who had given beatings to Nakul @ Shivam and Vinay. Hence, instant case FIR was registered against the accused Kewal Singh, Lucky, Monika and unknown persons initially U/s 115(2), 191(3), 190, 333, 351(3) of BNS, 2023.”

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

“That the petitioner has been specifically named by the complainant Ashish Sharma as well as the victims Nakul @Shivam and Vinay. The petitioner has inflicted 3 sword blows upon Nakul @ Shivam's right arm, left side of chest and right cheek and 3 sword blows upon Vinay's right-hand fingers.”

9. State counsel submits that another similarly placed co-accused has been granted regular bail on the ground of custody and nature of allegations, as such petitioner cannot claim parity with co-accused. At the time when petitioner's first anticipatory bail was dismissed, medical evidence dated 27.02.2025 was already with the Investigator. The reason for dismissal was that the petitioner had inflicted three sword blows which hit on the right side of chest and cheeks. When such a dangerous weapon is used on vital parts of body, it was a sheer luck that the victim survived. Thus, the attempt on the face of it prima facie was to commit murder and not cause hurt. Use of sword on the vital part indicates such intention.

10. Unlike successive bail applications under section 439 CrPC in changed circumstances, the filing of successive applications before the same court, under section 438 CrPC, which had been decided earlier by a speaking order, amounts to recalling of the order, which is barred under section 403 BNSS and is legally impermissible.



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11. In *State of Bihar and Ors. v. J.A.C. Saldanha and Ors.*, 1979-INSC-235, a three-member bench of Supreme Court holds,

[25]. There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendent over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in *King Emperor v. Khwaja Nazir Ahmad* [1944] L.R. 71 IndAp 203, where the Privy Council observed as under:

In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then.

[26]. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.

12. In *M.C. Abraham and ors. v. State of Maharashtra and ors.*, 2002-INSC-575, Supreme Court holds,

[13]. This Court held in the case of *J.A.C. Saldanha* (supra) that there is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment.



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Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the code of Criminal Procedure, its duty comes to an end. On a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.

13. In G.R. Ananda Babu v. State of Tamil Nadu, [Law Finder Doc Id # 1800715], decided on 28.1.2021, a three-judge bench of Hon'ble Supreme Court holds,

[7]. As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.

[8]. To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

14. In Ramadhar Sahu v. The State of Madhya Pradesh, SLP (Crl) no. 11130-2023, decided on 16-10-2023, while dealing with a bail of an accused who was in custody, held as follows:

[5]. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant's application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order.

15. In the light of the judicial precedents mentioned above and in the given facts and circumstances peculiar to this case, the petitioner fails to justify filing of the second



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application for anticipatory bail under section 482 BNSS in the same court.

16. Even otherwise, when this court re-assessed the petitioner's case on merits, the nature of the allegations and the malicious intent make the allegations grave and do not make out a case for anticipatory bail. The impact of crime would also not justify bail.

17. Any observation made hereinabove is neither an expression of opinion on the case's merits nor the court taking up regular bail nor the trial Court shall advert to these comments.

18. **Petition dismissed.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

26.05.2025
Jyoti Sharma

Whether speaking/reasoned : Yes
Whether reportable : No.