

CRM-M-36320-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36320-2024
Reserved on: 10.01.2025
Pronounced on: 27.01.2025

Yogesh Nain ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Pradeep Duhan, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
648	01.11.2022	Hisar Civil Lines, District Hisar	342, 365, 506, 34 IPC (Sections 120-B, 201 IPC added later on) and Section 67-E of IT Act and Section 12 of POCSO Act

1. The petitioner incarcerated in the FIR captioned above has come up before this Court under Section 439 CrPC, seeking regular bail.

2. As per paragraph 11 of the bail petition as well as custody certificate dated 09.01.2025, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	366	2019	25/54/59 of Arms Act	Barwala, Hisar
2	677	2020	379-A IPC	Sadar Hisar, Hisar
3	232	2022	147/148/149, 323, 324, 452, 506 IPC and 25A/54/59 of Arms Act	Urban Estate, Hisar
4	390	30.10.2019	379 IPC	Civil Lines Hisar, Hisar
5	107	20.03.2019	380 IPC	Azad Nagar, Hisar
6	570	09.10.2020	392, 34 IPC	Azad Nagar, Hisar
7	377	14.09.2019	379 IPC	City Hisar, Hisar
8	74	27.02.2023	147/149, 323, 506 IPC	Civil Lines Hisar, Hisar

3. The facts and allegations are being taken from the reply filed by the State as well as the translated copy of the FIR (Annexure P-1).

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4. The victim informed that he is a boy aged 17 years. On 27.10.2022, he had received a phone call from Mohit @ Sukha and he asked him to meet him regarding a case lodged by R against Yogesh Nain (present petitioner) and Yogesh Sheoran. When he reached at the gate of Haryana Agriculture University, then 10-15 boys were already drinking and having eight gandasa with them. They took him towards Jawahar Nagar, Hisar and made him sit on a bullet motorcycle and took him near Satrod canal. They took all his clothes and made him nude. Subsequently all of them made a video of the victim when he was nude and made it viral. Subsequently they threatened him on dire consequences in case he complains to anyone.

5. Based on such information, the FIR was registered. The petitioner-Yogesh Nain was arrested on 20.05.2023.

6. The petitioner's counsel 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.

7. The State's counsel opposes bail and refers to the reply.

8. Although the petitioner has massive criminal history but in the present case, there is no allegation of any assault, physical or sexual and it shows that the petitioner and his accomplices were not intending to outrage the modesty of the victim or to commit any sexual assault with him. But had confined their action by making him nude and then taking his video and circulating on social media. Although there is prima facie evidence regarding aforesaid acts but the petitioner is already in custody and further custody would not be justified.

9. It is appropriate to reproduce statement of Victim 'A', which reads as under:-

"Stated that I have two sisters. My father does labour work. My mother is housewife. My date of birth is 23.6.2005. Vikas Malik is my friend. On 24.10.2022, I was standing in front of SBI Bank, Azad Nagar, Hisar. Accused Yogesh Nain and Yogesh Sheoran, present in the court caused injuries to me. They gave brick blows and Danda blows on my head.

On 27.10.2022, I had received telephonic call from Mohit @ Sukka and he asked me that he would patch up the matter about the incident of dated 24.10.2022 with accused Yogesh Nain and Yogesh Sheoran and he called me near Gate No.4, HAU, Hisar. I went there in the room of accused persons, where accused Yogesh Nain, Muhit @ Sukka and 15/20 more boys were consuming liquor and they were having deadly weapons such as Gandasi etc. Accused Mai Baksh and Yogesh Nain took me on their bullet motor-cycle near Satrod Canal. Yogesh Nain, accused called accused

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Mukesh Balmiki and Dinesh at water Canal. All the accused persons gave me beatings and removed my clothes and they made my obscene/nude video. They forced me for apology. All the accused extended threat to kill me, if I will make any complaint against them. They also extended threat that they would viral my obscene/nude video in society. Accused Yogesh Nain had viralled my nude/obscene video to other accused. Accused left me at Canal of Azad Nagar, Hisar. I handed over one pendrive to the police and it was taken in police possession vide recovery memo Ex.P1. I also handed over to police certificate u/s 65B of Evidence Act Ex.P12 regarding pendrive.

(At this stage, one pendrive is played on the computer system of the court and video clips contained therein have been shown to the witness. After seeing the same, witness stated that it is the same pendrive Ex.P13(MO) (objected to on mode of proof), which I handed over to the police.)

I handed over to police one screenshot Ex.P14 (objected to) and it was taken into police possession vide recovery memo Ex.P1, which bears my signature at point A. I also handed over to police photocopy of Aadhar card and copy of affidavit regarding date of birth, which were taken in possession by the police vide memo Ex.P2.

On 1.11.2022, I moved application Ex.P15 to Incharge, Police Post Court Complex, Hisar, which bears my signature.”

10. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing. As per the custody certificate dated 09.01.2025, the petitioner's total custody in this FIR is 01 year. 07 months & 17 days. 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.

11. 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.

12. 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 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.

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13. 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)	

14. 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.

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 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 petitioner 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 petitioner 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.

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. 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. 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 be at 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 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.

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

(ANOOP CHITKARA)
JUDGE

27.01.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.