

CRM-M-39832-2024
Reserved on: 15.01.2025
Pronounced on: 30.01.2025

...Petitioner

State of Punjab

...Respondent

Present: Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

FIR No.	Dated	Police Station	Sections
77	24.04.2024	Sadar Jalandhar, District Jalandhar	323, 324, 326, 341, 148 and 149 IPC (326 IPC added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 of Criminal Procedure Code, seeking anticipatory bail.
2. In paragraph 15 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the translated copy of FIR annexed with the petition, which reads as follows:

“Statement of Rahul son of Sukhinder Kumar resident of village Bambianwal P.S. Sadar, Jalandhar aged about 30 years. Stated that I am resident of above address and do work of plumber. On 16.04.2024 I alongwith my friend Sunil son of Sarwan resident of village Bambianwal, Jalandhar and Raja son of Sarwan resident of village Bambianwal, Jalandhar were going to village Khusropur P.S. Sadar, Jalandhar for work at about 12 PM when we reached near the shop of a Barber village Khusropur, Jalandhar then there Rajat son of Sunil and his friend Vikas @ Mitha both residents of village Babianwal, Jalandhar were consuming some intoxicant. Vikas @ Mitha started abusing me and said why are you looking at us. In the meantime Vikas @ Mitha caught hold of my arms and Rajat picked up a scissor from the Barbar Shop and hit me with the same on the back of my left ear. I saved myself by moving my head. After saving myself from them I reached my village Bambianwal. There Rajat and Vikas @ Mitha alongwith their other associates namely Harry R/o Mohalla No. 30 Cantt Jalandhar, Pardeep R/o Sofi Pind, Jalandhar, Visu R/o Cantt. Jalandhar, Varun @ Kaka

R/o Sofipur Pind, Jalandhar and in vehicle No. PB08-2722 driven by Prince R/o Mohalla No. 31, Cantt. Jalandhar. They encircled me and started beating me and Rajat attacked me with his khanda on the back of my head towards the left side and I fell on the ground. While I was on the ground then Prince son of Mangi resident of Mohalla No. 31, Cantt. Jalandhar attacked me with base bat on the elbow of my left arm. Pardeep, Ish and Varun @ Kaka gave me kick and fist blows while I was on the ground. I raised alarm Mar Ditta Mar Ditta upon which all the above said person fled away from the spot alongwith their weapons in their vehicle. Cause of dispute is that Rajat suspected that I was working with his father Sunil and I tell his father about his habit of consuming intoxicants. On 16.04.2024 Sunil arranged for a vehicle and got me admitted to Civil Hospital, Jamsheer, Jalandhar where doctor issued my MLR No. JSS/155/24/JMK dated 16.04.2024 and referred to me Civil Hospital, Jalandhar. On 17.04.2024 since my condition was not improving my parents got me admitted to Johal Hospital, Rama Mandi, Jalandhar where I am under treatment. Till now talks for compromise were going on with the other party but same could not materialize. Today I have given my statement and MLR to you. Legal action be taken. I have heard my statement and the same is correct. Sd/- Rahul 62848. Attested Balwinder Kumar ASI, P.S. Sadar, Jalandhar dated 24.04.2024.”

4. 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.

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:

“15. **Role of Petitioner**

That there are specific allegations against the petitioner as petitioner in connivance with co-accused have inflicted injuries on the person of complainant hence present FIR was rightly registered against them. It is pertinent to mention here that petitioner has abused the complainant and he shares common intention with other co-accused of inflicting injuries on complainant thus petitioner is not entitled for concession of anticipatory bail thus present petition is liable to be dismissed.”

7. The injuries attributed to the petitioner are that he had caught hold of the complainant from his arms whereas Rajat had given a blow of scissor on his ear. Since the incidence was spontaneous it cannot be presumed that Rajat had inflicted scissors blow after deliberations or pre-mediation with the petitioner.

8. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible. A perusal of the reply does not point out the steps taken to arrest the

accused.

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.

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, subject to the compliance of terms and conditions mentioned in this order.

11. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

12. 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. This order shall come into force from the time it is uploaded on this Court's official webpage.

13. 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.

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. 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.

16. The petitioner is 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 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. 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 (CrL.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

18. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, 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 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.

19. 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.”

20. 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.

21. 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.

22. **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.**

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

24. 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.

25. **Petition allowed** in terms mentioned above. Interim order is made absolute. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.01.2025
M.Sikka

Whether speaking/reasoned: Yes
Whether reportable: No.