

CRA-S-2962-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2962-2024
Reserved on: 09.01.2025
Pronounced on: 30.01.2025

Deepender alias Duli ...Appellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sumit Sangwan, Advocate
for the Appellant.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0324	11.10.2023	Dadri City, District Charkhi Dadri	120-B, 323, 324, 34, 506 IPC and Section 3(2)(v) of SCSTPOA Act (Section 307 IPC added during investigation)

1. Aggrieved by the dismissal of his bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], for the offenses including under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, [SCSTPOA], the accused has come up before this court by filing an appeal under section 14-A of SCSTPOA, seeking bail.

2. On 06.09.2024, while issuing notice, Coordinate Bench of this Court had directed to serve respondent No.2 through counsel representing him before the courts below. As per the report of the Registry, respondent was served through his counsel, however none put in appearance.

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“2. That brief facts in the present case are that the instant case was registered on the complaint submitted by complainant submitted by respondent No. 2 that he was indulge in a quarrel with Ankit @ Baniya and his friends some time ago and a case FIR was registered against him in this regard in which he is on bail. On 10.10.2023, while he had gone to

CRA-S-2962-2024

old Sabji Mandi, Charkhi-Dadri on motor-cycle along with his friend Sahil to purchase some household article. While they were present in a shop there, two boys, one of whom was petitioner/accused Dipender @ Duli, arrived on a scooty and called complainant to come outside the shop. While complainant was interacting with applicant Dipender outside said shop, suddenly applicant picked out a sharp-edged weapon and given repeated blows over the chest with intent to kill him in order to take revenge for beating Ravinder Baniya in the past and also commented caste-based remarks on him. Complainant fell on the ground. Both the assailants then left the spot after giving kick blows to complainant and presuming that complainant has died. This attack has been committed on him after hatching a criminal conspiracy with Ravinder @ Baniya. Complainant was shifted to a private hospital (GK hospital). Upon this instant case was registered under sections 323/324/506/34/120-B IPC and section 3(2) (v) of SC/ST Act and investigation commenced.”

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:

“4. That during investigation, accused/petitioner Dipender @ Duli was arrested in the case on 18.12.2023. The petitioner confessed his crime and based upon the disclosure statement of the accused/petitioner; knife and scooty used in crime was recovered from his house. True translated copy of disclosure statement of the petitioner is annexed herewith as Annexure R-3. During investigation, involvement of accused Yashwi @ Yashu and Ravinder @ Baniya was not established in the crime and name of both these accused was kept in column No.12 and Section 120-B/34 IPC was deleted in the case.”

7. Although the appellant had stated to have addressed the complainant with cast words but this Court is not dealing with criminal trial. Coupled with this, the complainant has massive criminal history. The appellant's stand in the criminal appeal is specific that he is preparing for the competitive examination and has no concern at all with the complainant. In fact a video had gone viral, in which complainant had seen giving injuries by taking help of a young child and he had grudge against the appellant thinking that appellant had made the video viral and for this reason he had made false allegations.

Appellant further argued that complainant does not want the appellant to get government

CRA-S-2962-2024

job and for this reason he made allegations.

8. The allegations are abusing the people belonging to the scheduled castes by using derogatory words prohibited under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCSTPOA).
9. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient primafacie evidence connecting the appellant with the alleged crime. However, per paragraph 3(i) of the appeal, the appellant has been in custody since 18.12.2023 and accordingly, the appellant’s total custody in this FIR is more than one year. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie 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.
10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the appellant makes a case for bail.
11. Given above, provided the appellant is not required in any other case, the appellant 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.
12. While furnishing a personal bond, the Appellant 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. The Appellant shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The Appellant 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. Given the background of allegations against the appellant, 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

CRA-S-2962-2024

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 appellant 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 appellant 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.

15. In *Siva v. State*, CrI.A. No.46 of 2024, decided on 01 Feb 2024, Justice M. Nirmal Kumar of Madras High Court, while granting bail, imposed the following condition,

[6] ...After executing all the sureties within 15 days from coming out of prison, the appellants shall file affidavit before the concerned Court which reads as follows:

“I, as a Citizen of India, having utmost faith in the Constitution of India, am quite aware that 'Untouchability' has been abolished under our Constitution. I, hereby, take pledge that knowingly or unknowingly, I will not practice social discrimination based on untouchability either by words or deeds or in any other manner. I am aware that it is my duty to serve in a true, honest and faithful manner, as per the basic principles laid down under the Constitution, to create an independent Society, without any discrimination. I solemnly affirm that this would stand to speak forever the faith I have in the Indian Constitution.”

16. The appellant is also directed to hand over two affidavits, in the same terms, attested by any Executive Magistrate or Notarized, to the concerned SHO within two weeks, one copy for the case file and one for the victim.

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. It is clarified that if the appellant 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 appellant moves for deletion or dilution of any bail conditions, the trial court is empowered to do so.

CRA-S-2962-2024

19. **This bail is conditional, and the foundational condition is that if the appellant 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.**

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 Appellant 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. Appeal allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.01.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.