

CRM-M-45161-2024

209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45161-2024

Date of Decision: 21.04.2025

Mutaj

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Lakshay Bector, Advocate
for the petitioner.

Mr. Adesh Pal Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
18	07.03.2024	Daresi, District Ludhiana	336, 427, 148, 149, 120-B IPC (Sections 307, 160 IPC and 25, 27 of Arms Act added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from translated version of FIR, which reads as follows:

“SHO, Police Station DAREST Ludhiana, "Jai Hind. Today I, myself ASI along with fellow officials, Constable Joban Singh 1335/LUDH, and Constable Hardeep Singh 1332/LUDH were present at the police station, then it was noted by the Head Clerk of Police Station that there is fight going at the shrine of Baba Ghor Shah near the area of Vijay Nagar, reach at the spot and take action. On which I, myself along with fellow officials reached the incident spot, where it was found that a car number PB-10-HR-9472 dark grey in colour having brand Baleno which has been vandalized by some unknown persons.



CRM-M-45161-2024

That after examining the place of incident and on checking the CCTV cameras installed nearby, it was found that on 06.03.2024 the time would be around 09.10 PM that 2 Acura and 2 motorcycles, two unknown person on one Acura and three unknown persons on the other Acura were on board and two unknown persons on each of the two motorcycles were on board, who were coming towards the Shrine of Baba Ghori Shah from the main road. In the meantime a car PB-03-AC-8295 of model Mercedes coming towards the shrine of Baba Ghori Shah from the side of Vijay Nagar and was being followed by car number PB-10-HR-9472. When both the vehicle moved towards the Ghori Shah Road from the link road, then the passengers after getting their car marked Mercedes 03-AC-8295 stop, have stopped the vehicle Baleno following their car. Then an unknown person came out from the Mercedes car and fired a single shot over the car numbered PB-10-HR-9472, due to which the unknown persons in the Baleno car fled from the spot, then in the meantime, the unknown persons on the Acura and motorcycle came who smashed the car number PB-10-HR-9472 with a stick and a brick and fired in the air. That the above said 10-11 unknown persons has carried out the activities under the premeditated plan and by doing so the unknown persons have committed an offence under section 336-427-148-149-120B of Indian Penal Code and under section of 25-27 Arms Act. Due to which he notification is being sent to the Police station by hand through Constable Hardeep Singh 1332/LUDH for registration of the case. The case number to be notified after registration of the case. Control room should be informed. I myself ASI alongwith the fellow officials is engaged in the investigation. In the area of Road of Shrine of Baba GHori Shah, Ludhiana at time 03:25 AM, verified by Sukhwinder Singh ASI at Police Station Daresi Ludhiana dated 07.03.2024. Today on receipt of the aforesaid notification, the aforesaid case has been registered against the 10-11 unknown persons under the aforesaid section accordingly. The original notification with the copy of the FIR is being sent by hand through the arrived Constable to the ASI at the spot for investigation. Control room is being informed through wireless. Closure of the Rapat Number 06 at 04:10 AM.”

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. He further seeks bail on the grounds of parity with co-accused who have already been granted bail.

5. The State's counsel opposes bail and refers to the status report.

REASONING:

6. Allegations against the petitioner are that he was member of unlawful assembly. The gunshots were fired by co-accused who have already been granted bail.

CRM-M-45161-2024

7. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible.
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, co-accused already granted bail 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. This order shall come into force from the time it is uploaded on this Court's official webpage.

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. 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



CRM-M-45161-2024

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.

14. 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.

15. 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 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.

16. 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."



CRM-M-45161-2024

17. 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.

18. 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.

19. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State shall 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 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

21.04.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.