

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49254-2024
Reserved on: 10.01.2025
Pronounced on: 29.01.2025

Sawan ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Anmol Sharma, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
44	25.02.2024	Thanesar City, District Kurukshetra	307/323 read with 34 IPC and 25 of Arms Act

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. Per paragraph 17 of the bail application and para 8 of the reply, the accused has the following criminal antecedents:-

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	439/2021	-	323/325/308/506 IPC	Kurukshetra University, Kurukshetra
2.	322/2021	-	379-B/325 IPC	Butana, District Karnal
3.	122	25.02.2024	25-54-59 of Arms Act	Krishna Gate Thanesar, District Kurukshetra

3. The facts and allegations are being taken from the reply dated 07-11-2024, filed by the State, which reads as follows:

“2. That the complainant namely Umesh Kumar had given the statement that on 24.02.2024, he along with his friends namely, Nishu Garg, Prince son of Sohan Lal and Prince son of Neelam Kumar had gone to Divine Mall for watching movie in the car of Nishu Garg bearing registration No. HR41L-6125 Make Tata Punch and as soon as they parked the car in the parking of the said mall, one boy came there and gave 3/4 fist blow on the bonnet of the said car. On seeing this, complainant

alighted from the car and on being asked, the said boy hit on his head with a sharp object and also fired gun shot with a revolver towards the complainant with the intention to kill him. However, he sat down immediately. Thereafter, the said boy pointed his revolver towards Prince, son of Neelam who was sitting in the car but Prince moved the said revolver aside with his hand. Thereafter, the said boy hit the rear window of the said car with some object and subsequently, he snatched the keys of the car from Nishu Garg and took away the said car. But after 15 minutes, the said boy left the car at the gate of Divine Mall and also threw away the keys of the said car and fled away with his associate on Bullet motorcycle but they could not note down the registration number of the said Bullet motorcycle. However, he can identify the boy on being confronted. On the alarm raised by them, the passerby took him and Prince, son of Sohan Lal to B.S. Heart Care Hospital Kurukshetra, where they were being treated. Lastly, he prayed for taking strict legal action against the wrongdoers.”

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:

“6. The role of the petitioner: That the petitioner/ accused has been booked under Sections 307, 323, 34 IPC and Section 25 of Arms Act, with the allegations that he along with his accomplices, had caused injuries to the complainant and his friends by using deadly weapons and also fired gun shots. The shell of bullet was recovered by the police on the same day, and this fact prima facie proves the firing of gun shot. Moreover, the gun was recovered from the petitioner/ accused at the time of his arrest.”

7. Pursuant to the directions of this Court a TIP was conducted, and a status report was filed; the relevant portion of the status report dated 07-12-2024 reads as follows:

“3. That, in compliance of orders of this Hon'ble Court, before the Court of learned Chief Judicial Magistrate Kurukshetra the answering respondent moved an application with a prayer to conduct the test identification parade of petitioner/ accused. On the application of the answering respondent, the test identification parade was conducted in the presence of Dr. Mohini, Learned Chief Judicial Magistrate, Kurukshetra vide order dated 28.11.2024. During identification, Dr. Mohini Learned Chief Judicial Magistrate, Kurukshetra reached at District Jail and called for the I.O. who was already present there. Thereafter, the accused was brought from the District Jail to the veranda of Medical premises of District Jail, Kurukshetra in muffled face along with 8 other accused of

same height and built and accused was made to stand in a line with 8 other accused in following sequence (from left to right). Thereafter, complainant (Umesh Kumar) was called in the veranda of Medical Premises of District Jail Kurukshetra and was asked to identify the accused of the present case. But, despite making earnest efforts, he could not identify the accused/ petitioner standing at serial no.7. The copy of order dated 28.11.2024 passed by Dr. Mohini, Learned Chief Judicial Magistrate Kurukshetra is enclosed herewith Annexure R-1/A for kind perusal of this Hon'ble Court.

4. That as per the order dated 28.11.2024 passed by Learned Chief Judicial Magistrate Kurukshetra, the complainant Umesh Kumar has failed to identify the petitioner/ accused. However, the petitioner/ accused along with co-accused of the present case has committed crime of serious nature and his name came into present case, from the disclosure statement made by Astik alias Vasu. During investigation of the present case the following evidence came out against the petitioner/ accused:-

The evidence against the petitioner/ accused

- a). Demarcation of the place of incident by the petitioner.*
- b). Recovery of Bullet Motor Cycle used in the present crime from the petitioner.*
- c). Recovery of illegal pistol used by the petitioner in the present crime.”*

8. Although apart from test identification parade, there may be other evidence like recovery of weapon, but for the reasons best known to the police, the test identification parade was initially not conducted and now it has been conducted, the victim could not identify the petitioner as one of the assailants. The effect of other evidence collected is subject matter of trial and needless to say that the evidence prima facie may be sufficient to launch prosecution or frame charges but for the purpose of bail, a doubt is created firstly by not conducting test identification parade during investigation and secondly, the victim could not identify the petitioner in TIP. All this atleast would not justify pre-trial incarceration subject to the compliance of terms and conditions mentioned in this order. Although the petitioner has massive criminal history, but given the quality of evidence and victim's not identifying the petitioner in TIP, in the opinion of this Court, even the criminal antecedents would not be a ground to continue pre-trial incarceration.

9. The petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

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.

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 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 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. This order is subject to the petitioner's complying with the following terms.

14. 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 (Crl.) 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, 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 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

29.01.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.