

218 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-52026-2024
Reserved on: 15.01.2025
Pronounced on: 30.01.2025

Akash Sharma @ Golu Pandit ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rhythem Bajaj, Advocate for the petitioner.

Mr.Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
169	15.08.2024	City-I Abohar, District Fazilka	118(1), 309 AND 3(5) BNS, 2023

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. Per paragraph 15 of the bail application and the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	47	2023	21 NDPS Act and Section 25 of Arms Act	City-II Abohar

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

“That, at the outset, FIR in question was registered against the present petitioner along with other co-accused, on the statement of Gagandeep Singh son of Jaspal Singh resident of Street No.I, Thakar Abadi Abohar, who stated that I am resident of above said address and engaged in agricultural work and also doing the business of trucks. Mandeep Singh son of Unknown, Resident of Guru Kripa Colony Abohar is employed as driver on one truck. My driver stops the vehicle at Dana Mandi, Abohar due to vacant place. On 11.08.2024 my driver stopped the vehicle at Dana Mandi as he had to go further for loading. My driver told my brother Sahib Singh on phone to send the advance money. My brother informed me on phone to send the advance money to driver. At about 9.30 PM, I and my friend Vishal Kumar son of Surinder Kumar resident of South Avenue Street No.11 , • 0

Abohar, left house for Dana Mandi on my motorcycle for giving advance money of Rs.50000/- and meal to driver, when I and my friend Vishal reached near Shed No.1 at Dana Mandi Abohar, where my truck was standing. My driver Mandeep Singh was not present near my truck. I and Vishal waited for driver for some time, but driver did not come back on truck. When, I and vishal were talking, then in the meantime one Car Audi CH number white colour came from the side of Nanaksar Gurudwara gate and stopped near us, out of which Jeeta Singh Dhillon son of Ram Singh resident of Waryam Nagar near Gurudwara Baba Deep Singh Hanumangarh Road Abohar armed with Kaapa and his accomplice Golu Pandit son of Avinash Kumar Pandit resident of Johri Mandir Abohar armed with kirpan and Vinay @ Ghoda son of Bobby Dheh resident of Prem Nagar near Johri Mandir Abohar armed with Kaapa and Sagar Nepali son of not known, resident of Gali No.6 Patel Park, Abohar armed with Kaapa raising noise come out from the car by hurling abuses and while coming Jeeta Singh raised lalkara and said that today do not leave Gagandeep Singh scot free and in the meanwhile Jeeta Singh Dhillon gave Kaapa blow and I raised my left hand for saving myself which hit on left side of wrist and above said Golu Pandit gave kirpan blow upon me, which hit on my left leg. Then Vinay @ Ghoda gave Kaapa blow on me, I raised my left hand for saving myself, which hit on the finger of left hand from reverse side. I fell down, while I was down Sagar Nepali gave kirpan blow, I raised my right hand for saving myself, then the blow hit on two fingers of hand. When I raised alarm, then my friend above said Vishal move forward to save me then kirpan and Kaapa blows were hit from reverse side over his right ear on finger of right hand. On hearing alarm of both of us peoples started gathering and while Jeeta Singh Dhillon gave Kaapa blow on my right arm from reverse side and snatched Rs.50000/- and necessary documents from front pocket of my shirt. Then all of them fled away in car along with their respective weapons. In the meantime on hearing our alarm Gurleen Singh son of Surinder Singh resident of Abohar and Moksh Pandit son of Vidya Sagar Pandit resident of Street No. 15 came on the spot who take care of both of us and above said Moksh arranged vehicle and got us admitted in Civil Hospital Abohar. Due to serious injuries, the doctor referred me to GGS Medical College Hospital Faridkot. Today, I have been discharged from the hospital. I along my brother Sahib Singh came present at police station and got recorded my statement, heard, which is correct. The bone of contention is that all the above said persons are habitual of quarreling. Action be taken. I am aggrieved. MLR. No. 19DY 2024, ABH of Gagandeep Singh son of Jaspal Singh, resident of Street No.1, Thakar Abadi, Abohar and MLR No.20/DY/2024/ABH of Vishal Son of Surinder Kumar, Resident of Street No.11, South Avenue Abohar was received at Police Station Cityl, Abohar through ward servant Civil Hospital Abohar for investigation which was handed over to S.I by MHC of Police Station for investigation in MLR No. 19/DY/2024 the doctor has mentioned total five injuries. All the injuries are from sharp edged weapon

and have been mentioned as sharp and injury No.1 is kept under x-ray and injury No.4 has been kept under x-ray. In MR No.20 the doctor has mentioned total 3 injuries and are simple in nature. Upon which, S.I along with fellow officials reached at Civil Hospital, Abohar from where inquiry has been mentioned about injured of Vishal and Ward Servant told that above said injured went away by leaving the bed without intimating and told about above said injured Gagandeep Singh that he has been referred to GGS Medical College Fardikot for treatment. Then, S.I talked with injured Gagandeep Singh on mobile Phone No.73072 93000, who replied that I am not well at present and I cannot get the statement recorded. On return to the police station rapat has been entered. On 13.08.2024 S.I along with SC Malkeet Singh No.854/FZK and PHG Shiv Singh No.7427 in the private vehicle reached at GGS Medical College Faridkot for recording the statement of injured Gagandeep Singh, where a written request was presented to the doctor and doctor declared the injured fit to make the statement. On reaching to the bed of injured, I asked the injured to record his statement, who replied that I will get my statement recorded after consulting with relatives. On return to the police station rapat has been entered in the roznamcha. Today, SI was present at police station then injured Gagandeep Singh son of Jaspal Singh resident of Thakar Abadi Gali No.1 Abohar after taking discharge from GGS Medical College, Faridkot came present at police station along with his brother Sahib Singh son of Jaspal Singh. Injured Gagandeep Singh got his statement recorded before me, word by word which has been read over and understood who after hearing and admitting the same as correct appended his signatures in English and his brother Sahib Singh appended his signatures in English and SI attested the same. From the statement and MLR offence Under Section 118(1), 3(5), 309 of BNS-2023 are found to be committed. Statement is being handed over to CCTNS operator for registration of case against Jeeta Singh Dhillon son of Ram Singh Dhillon resident of Waryam Nagar near Gurudawara Baba Deep Singh Road Abohar, Vinay @ Ghoda son of Bobby resident of Prem Nagar Johri Mandir, Abohar, Golu Pandit son of Avinash Kumar Pandit, resident of Johri Mandir Abohar and Sagar Nepali son of not known resident of Street No.6 near Patel Park Abohar. After registration of case FIR number be intimated. Accordingly, FIR in question was registered.”

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:

“8. That in compliance to the order dated 18.10.2024 passed by this Hon'ble Court, it is submitted as under:-

THE ROLE OF THE PETITIONER: -

It is submitted that specific role has been attributed to the present petitioner by the complainant in his statement " he stated that Golu Pandit/petitioner along with other co-accused came in one Car Audi CH number white colour came from Nanaksar Gurudwara gate side and stopped near them out of which Jeeta Singh Dhillon son of Ram Singh resident of Waryam Nagar near Gurudwara Baba Deep Singh Hanumangarh Road Abohar armed with Kaapa and his accomplice Akash Sharma @ Golu Pandit son of Avinash Kumar Pandit resident of Johri Mandir Abohar armed with kirpan and Vinay @ Ghoda son of Bobby Dheh resident of Prem Nagar near Johri Mandir Abohar armed with Kaapa and Sagar Nepali son of not known, resident of Gali No.6 Patel Park, Abohar armed with Kaapa raising noise come out from the car by hurling abuses and while coming, Jeeta Singh raised lalkara and said that today do not left Gagandeep Singh scot free. In the meanwhile Jeeta Singh Dhillon gave Kaapa blow, he raised his left hand for saving myself which hit on left side of wrist and above said Golu Pandit gave kirpan blow upon him, which hit on him left leg. Further it is stated that on hearing alarm, people started gathering and while Jeeta Singh Dhillon gave Kaapa blow on his right arm from reverse side and they Snatched Rs.50,000/- and necessary documents from front pocket of his shirt. Meaning thereby, at the time of occurrence, the present petitioner Golu Pandit was very much present. Further, the present petitioner caused injuries to the complainant on his left leg with sword/kirpan and in connivance with his other co-accused, they snatched Rs.50,000/- from the complainant. Hence, the present petitioner-Golu Pandit has played active role at the time of occurrence.

B-THE EVIDENCE AGAINST THE PETITIONER:-

It is submitted that " there is sufficient evidence against the present petitioner i.e. Statement of Complainant-Gangadeep Singh, MLR No.19/DY/2024/ABH dated 11.08.2024. Further, there is sufficient evidence that at the time of occurrence, the present petitioner Golu Pandit was very much present and he caused injuries to the complainant on his left leg with sword/kirpan and in connivance with his other co-accused, they snatched Rs.50,000/- from the complainant."

7. A perusal of the allegations leveled in the FIR do not point towards any motive the complainant is silent that why did the accused assault him. There is no evidence that they were aware of Rs.50,000/- in possession of the injured. There is no allegations that the prima facie the motive was to snatch and it appears that the complainant has not come

with clean hands and has concealed the material facts. Thus, it gives a dent in the credibility of the complainant version and on this ground alone petitioner cannot be sent to custodial interrogation and for pre-trial incarceration.

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 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.

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 Ilaka 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. 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.

14. 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.

15. 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.

16. 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.

17. **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.**

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

19. 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.

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

(ANOOP CHITKARA)
JUDGE

30.01.2025
M.Sikka

Whether speaking/reasoned: Yes
Whether reportable: No.