

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

CRM-M-57642-2024
Reserved on: 02.05.2025
Pronounced on: 16.05.2025

Kausar Parveen and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gulam Nabi Malik, Advocate and
Mr. Shahid Anwes Chaudhary, Advocate for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

Ms. Gagan Deep, Advocate for the complainant.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
140	28.09.2024	City-1, Malerkotla, District Malerkotla	318(4), 336(2), 336(3), 338, 339, 126(2), 115(2), 351(3), 127(7), 61(2) of BNS (Section 105 of BNS added vide order dated 02.05.2025)

1. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 22 of the bail petition, the accused declare that they have no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“3. That pursuant to the said order, it is respectfully submitted that brief facts of the present case are that on dated 15.07.2024, the complainant, Shukria widow of Mohd. Sajid, daughter of Sh. Abdul Sattar, Resident of Mohalla Hajan Wala, Tehsil and District Malerkotla presented an application before the SSP, Malerkotla for taking action against Mehmood Akhtar, Wasim Sheikh, Rahila, Mehmooda, Iqbal Alias Bali, Nazma, Amir, Aslam, Kausar, Yasin, Aasia, Idrish, Shabir Sheikh, Mumtaz, Sajia on the allegations that she is the wife of late Mohd. Sajid and she has one daughter namely Azha of the age 8 years. Her husband Mohd. Sajid has died on dated 09.07.2020 and after his death, there was no male member

in her family and only she, her mother-in-law and the aforesaid minor daughter have been residing in the house. It has been further alleged that after the death of her husband, the aforesaid persons have been making plans to arrogate their property by hook or crook. When the complainant went to her ailing mother-in-law Akhtari, she was not allowed to meet her and on dated 11.07.2024, the mother-in-law of the complainant had died but even then, the aforesaid persons did not allow the complainant and her daughter to see the face of the aforesaid Akhtari as per the last rites and even the complainant and her daughter were thrown out of the house. It has been further alleged that the aforesaid persons are their relatives and neighbourers, who wanted to arrogate and usurp their property, whereas the complainant and her daughter are the only successors as per law. It has been further alleged that now after the death of her mother-in-law Akhtari, the aforesaid persons have been trying to arrogate their property and the complainant has further apprehension that the aforesaid persons would misappropriate the valuable goods lying in the house of the complainant. Her istridhan and dowry articles are also laying in the house of her in-laws, therefore, the necessary action be taken against the aforesaid petitioners and their associates.”

4. The petitioners’ counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioners and their family.

5. The counsel for the complainant and the State’s counsel opposes bail and refers to the status report.

6. It would be appropriate to refer to the following portions of the status report, dated 03.12.2024 as well as status report dated 07.04.2025 filed in CRM-M-58304-2024, which read as follows:

“12. ROLE OF THE PETITIONERS

The present FIR No.140 dated 28.09.2024 under Sections 318(4)/336(2)/336(3)/ 338/ 339/126(2)/115(2)/351(3)/127(7)/61(2) of BNS, Police Station City-I Malerkotla was registered against the petitioners and their associates based on the complaint moved by complainant Sukriya. During inquiry proceedings conducted by the Senior Police Officers of District Malerkotla, it revealed that Mohd. Sajid, the husband of the complainant had died on dated 09.07.2020 and thereafter, the mother-in-law Akhtari of the complainant had also died on 11.07.2024 and after her death the complainant and her minor daughter were residing of in matrimonial home of the complainant. The petitioners and their other co-accused were not

allowing the complainant and her daughter to enter in the aforesaid house of her husband and her mother-in-law. The petitioners in connivance with their other co-accused are alleged to have forged and fabricated various documents to usurp/grab the property of the aforesaid Akhtari, the mother-in-law of the complainant, after the death of the aforesaid Akhtar. In this way, the accused persons in connivance with each other committed present offence. So, a specific role is attributed to the petitioners in the commission of present offence.”

7. That during further investigation proceedings, the complainant Shukria had moved another application bearing No.66/P dated 21.01.2025 before the Senior Superintendent of Police, Malerkotla for conducting further investigation with regard to the medical care and treatment of her mother-in-law Akhtari, as her mother-in law was murdered by the accused persons under a criminal conspiracy. She stated in her complaint that as per the medical record, on 04.07.2024 at about 08.00 AM, her mother-in-law was in unconscious state. She was taken to Al-Dua Hospital, Malerkotla late afternoon, (i.e. at about 03 PM to 04 PM). The Doctor of Al-Dua Hospital, Malerkotla had advised the attendants i.e. accused Mehmood Akhtar and others, to take her to higher centre for further treatment. Whereas, the accused had purchased the Stamp papers at about 07.42 PM and taking advantage of the unconsciousness of her mother-in-law Akhtari, had taken her thumb impression on these papers and had prepared forged and fake documents to usurp the property of her mother-in-law. As per the CMC Hospital reports, she was taken there at about 09.45 PM and admitted there. However, despite being advised by the doctors of CMC, Hospital Ludhiana, the accused had taken her back against medical advice (LAMA) and got her admitted in Hazrat Haleema Hospital, Malerkotla on 05.07.2024. The doctors of Hazrat Haleema Hospital, Malerkotla were also advised the accused individuals to take her to higher centre for treatment, but the accused in connivance with each other, consented the doctors to admit her there, i.e. Hazrat Haleema Hospital, Malerkotla, as a result of which, she had died there on 11.07.2024 at about 08.45 PM. She further stated that after the death of her mother-in-law, the accused persons did not allow the complainant and her daughter to see the face of the aforesaid Akhtari as per the last rites and even the complainant and her daughter were thrown out of the house and even her mother-in law was buried within an hour after her death. The accused persons in connivance with each other, murdered her mother-in law Akhtari by not admitting her to a higher center for better treatment and despite being advised by the Doctors of CMC, Hospital, Ludhiana, they had taken her back against medical advice (LAMA) and got

her admitted in private Hospital, where she had died due to lack of treatment and care. She strongly suspects that the accused individuals in their criminal conspiracy had murdered her mother-in-law Akhtari and her post-mortem was not even conducted to carry out their well-thought conspiracy. This act and conduct of the accused demonstrates/fulfills the definition of offence U/s 103 of BNS. Therefore, it was requested to take necessary legal action against the accused persons.

9. That consequent upon which, the Medical Officer, Civil Hospital, Malerkotla constituted a Board of doctors to go through the record and to give opinion. The Board of Doctors of Civil Hospital, Malerkotla, after going through the relevant record opined that, "It is certified that patient named Akhtari, 62/F, after going through the Hospital record was a k/c/o DM, became unconscious on 04.07.2024 at 8 AM. Patient was taken to CMC Ludhiana. On arrival had a poor GCS-E2 V1 M4. NCCT Head and CT Angio was done s/o SAH with left MCA aneurysm with middle shift and parenchymal hematoma. The patient's attendant were advised surgery (left fronto temporo-parietal decompressive craniectomy & clipping of MCA Aneurysm) by Neuro Sugary Team of CMC, Ludhiana. But patient's attendant took (LAMA)-Leave against medical advice and brought the patient back to medical care in a private Hospital in Malerkotla. In this case, the possibility of life saving surgery cannot be ruled out. The patient was a surgical candidate and was kept under the care of conservative management against medical advice."

On the basis of aforesaid opinion given by the Board of Doctors of Civil Hospital, Malerkotla, offence under Section 105 of BNS was found to have been committed, thus, the offence under Section 105 of BNS has been enhanced in connection with the present case/FIR No.140 (supra) and special report was prepared and issued in this regard.

REASONING:

7. Petitioners and complainant are in relations with each other, dispute is qua the property of deceased. The allegations against the petitioners are that they are responsible for the death of Akhtari because they took leave against medical advice (LAMA) and instead of surgical treatment, they took her in private hospital where she was kept under the care of conservative management, due to which she expired. There is sufficient prima facie evidence connecting the petitioners with the alleged crime.

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. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make a case for bail.

10. Given above, provided the petitioners are not required in any other case, the petitioners shall be released on anticipatory 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.

11. While furnishing a personal bond, the petitioners 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)	

12. This order is subject to the petitioners' complying with the following terms.

13. The petitioners are 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 petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioners 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 petitioners shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

14. The petitioners shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioners 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. 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 petitioners notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

16. ***This bail is conditional, and the foundational condition is that if the petitioners indulge in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.***

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

18. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioners 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.

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

(ANOOP CHITKARA)
JUDGE

16.05.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.