

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63686-2024
Reserved on: 15.01.2025
Pronounced on: 23.01.2025

Jashandeep Singh alias Billa ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sukhbir Maandi, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
97	17.11.2024	Chohla Sahib, District Tarn Taran	109, 3(5) of BNS 2023 and 25 of Arms Act

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 15 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the translated copy of the FIR, which reads as follows:

“MHC, Police Station Chohla Sahib, Today, I, SI along with ASI Balwinder Singh 428/TT, ASI Hardeep Singh 1765/TT, CT Malkit Singh 299/TT, PHG Harpreet Singh 4141 on a Govt. Vehicle No. PB-46W-0531 which was driven by ASI/LR Prabhdev Singh 73/TT regarding patrolling were going from Police Station Chohla Sahib to Village Pakhopur, Gharka etc. when the police party was about to take turn from Village Pakhopur to Village Rani Wallah then saw that the people apprehended two young men along with their Motorcycles. They disclosed that these young men had fired gunshot upon Sukhjinder Singh alias Kala son of Baldev Singh resident of Pakhopur which hit on his right thigh and he was

taken to Hospital. Upon which, I SI enquired about the name and address from the apprehended persons, then first young man disclosed his name as Gurjinder Singh alias Billa son of Kulwant Singh resident of Khara and second young man disclosed his name Immandeep Singh alias Maan son of Nishan Singh resident of Khara and these young men disclosed their third companion name as Jashandeep Singh alias Billa son of Harpal Singh resident of Gharka who fled away. I, SI, on the search of apprehended young men Immandeep Singh alias Maan recovered a country made 32 bore pistol along with magazine from the Dab of his worn pant. Upon which, a separate memo was prepared and recovered Country made 32 bore pistol along with magazine was taken into police custody. The above accused persons caused gunshot injury to Sukhjinder Singh alias Kala. Upon which, a ruqa u/s 109, 3 (5) BNS, 25, 54, 59 of Arms Act has been written and sent through PHG Harpreet Singh 4141 to Police Station for registration of FIR. After registration of FIR, the case number be intimated. Control Room be informed through email. Special Reports be sent in the services of Illaqa Magistrate and Police officials, I, SI along with fellow companions is busy on spot in investigation and Officer- Incharge be informed to come present on the spot. Today, within jurisdiction Village Pakhopur, time 6:40 PM, Sd/- Vipin Kumar, SI, Police Station Chohla Sahib, Dated 17.11.2024."

4. Petitioner's counsel argued that even if everything is accepted, still the only allegation against the petitioner was that he was present at the spot and there is no other allegation that he fired upon. 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:

"ROLE OF THE PEITIONER:

7. That as far as role of the petitioner is concerned, it is submitted that the petitioner along with co-accused had gone together and one the accused had fired gunshot and injured Sukhjinder Singh and the co-accused of the petitioner has been nabbed at the spot by the villagers and one empty cartridge of 32 bore was recovered from the place of occurrence and even, a 32 bore pistol has been recovered from the possession of co-accusea Immandeep Singh. Moreover, there are specific allegations against the

petitioner as the petitioner has specifically been named in the present case and the offence ascribed to the petitioner is grave in nature and the petitioner has committed the heinous offence and he is not entitled for the concession of anticipatory bail.

EVIDENCE AGAINST THE PETITIONER:

That it is submitted that as far as evidence against the petitioner is concerned, it is submitted that the name of the petitioner has been surfaced by the villagers as well as by the injured Sukhjinder Singh and empty cartridge of 32 bore pistol has also been recovered from the spot and there is sufficient evidence against the petitioner and he is certainly and he will be convicted in the present case.”

7. Although two of the accused Gurjinder Singh and Immandeep Singh were arrested from the spot but petitioner allegedly fled away but it was the co-accused who had named him as third accused. The police had recovered an country made pistol from Immandeep Singh. An analysis of the FIR reveals that the complainant was not the one who named the petitioner as an accused but it was the co-accused who had disclosed his name. Thus, there is no evidence except disclosure statement against petitioner, furthermore petitioner has clean antecedents.

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, subject to the compliance of terms and conditions mentioned in this order.

10. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

11. 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.

12. 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.

13. 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)	

14. 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.

15. 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.

16. 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.

17. 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.

18. 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."

19. 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.

20. 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 be at liberty to cancel this bail.

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

22. 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.

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

(ANOOP CHITKARA)
JUDGE

23.01.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.