

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-64029-2024 (O&M)

Date of Decision: 08.01.2025

Ajay @ Jhabbu

... Petitioner

VS.

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sunil Sheoran, Advocate for the petitioner

Mr. Chetan Sharma, DAG Haryana

Sandeep Moudgil, J.

Relief claimed

(1). This is the third petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for grant of regular bail to the petitioner in case FIR No.192 dated 12.10.2023 under Sections 148/149/323/341/506 IPC (Sections 307/325 IPC added later on) registered at Police Station Bond Kalan, District Charkhi Dadri.

Facts

(2). Facts as emerging in the FIR is reproduced as under:-

“To SHO Police Station Bond Kalan. I Vikas S/o Dharambir resident of village Ranila. I along with my brother Akash and Sumit had gone to village Bond Kala to get dental medicine but when we could not find a doctor, then we all three on my bike went towards our village Ranila. As soon as we left the village Sajarwas near the canal on Ranila road, then Akit, Gaurav, Sahil were standing who blocked our way, stopped our bike, took out the keys of the bike and caught hold of us. Then an auto came whose number is HR844595 and Ajay got down from the auto who had an axe in his hand and Jogendra also had an ax in his hand, Akush was holding a knife, Gaurav was holding a spear in his hand, Hannu, Gulshan, Sachin, Surendra were having wooden

sticks (binde) in their hands alighted from the auto and some other boys also got down from the auto whom I don't know. All of them attacked us (three brothers) with the intention of killing us. Ajay hit my brother Akash directly in the back of the head with Farsa and he stated that he will kill him today which I had heard and seen this with my eyes. Ajay had given the axe blow with the intention to kill my brother and at the same time I ran in that direction to save my brother. Then Ajay said that he had killed Akash, now it is your turn and Ajay attacked me and I caught hold the axe. Meanwhile, Hannu attacked me with a punch and Sahil and Ankit gave injury to me with their wooden sticks (Binda). I saw that my brother Akash had fallen on the road with blood and they kept hitting him. When brother Sumit ran to pick up Akash, then Joginder attacked Sumit on the head with Farsa and said he will kill him in the same way as he killed Akash. Thereafter both Gaurav, Gulshan gave a spear blow to Akash who was lying on the road with blood and stated that they will kill all three of us. Few months back, we had a quarrel with them and during that quarrel, they had threatened my brother Akash that if they ever get a chance in the future, they will kill him and we have been attacked due to that grudge. Both of my brothers were lying on the road with blood. When I raised alarm, then I saw that farmers coming from the nearby fields. On seeing them, they started running away and while leaving they said today they have killed my brothers and they will kill me. Strict legal action should be taken against them. This incident took place on 11/10/2023 around 2.30 PM Sd/- Vikas”

Submissions of the petitioner

(3). Learned counsel for the petitioner submits that as per the FIR, total 10 persons have been implicated by the complainant attributing injuries by each of them and all the injured so alleged have been stated to be simple injuries except injury No.1 as per the examination of PW1 doctor and the complainant as PW2. He further submits that the petitioner was arrested on 01.12.2023 and there is no other case against him and subsequently also, other

co-accused persons, namely, Sachin @ Chotu and Gourav have already been granted the concession of regular bail by this Court vide order dated 29.05.2024 passed in CRM-M-26663-2024 and order dated 13.06.2024 in CRM-M-28589-2024 (Annexures P10 & P11, respectively).

(4). It is then averred that as per medical evidence, Vikas received 5 injuries, Sumit received 2 injuries and Akash received 6 injuries which are simple in nature except injury No.1 to Akash, which as per the opinion dated 5.11.2023 stating to be fracture of left parietal bone for which the patient underwent surgical procedure. He exhorted that the police, in order to make out a case under Section 307 IPC, again obtained the opinion of the doctor on 06.11.2023 in which on the basis of same MLR and report, thereafter, the doctor stated that it is life threatening and comes under grievous hurt resulting into addition of section 307/325 IPC.

Stand of the State

(5). Learned State counsel submits that the petitioner has filed third bail application without any cogent ground for such relief. He has filed the custody certificate dated 07.01.2025 which is taken on record, according to which, the petitioner has undergone 1 year 1 month and 6 days of custody. He submits that pursuant to submission of challan on 21.02.2024, charges have been framed on 16.08.2024 and out of total 16 PWs, only 4 PWs have been examined till date.

(6). He argued that subsequent bail application can only be filed only after some substantive change in the circumstances, for, there is no new fact emerging. Further, it is averred that there is a video showing that the petitioner and other accused attacked the complainant party on the main road in broad

daylight leading the gang to cause injuries in a brutal manner and there are high chances that the petitioner being the main accused may influence or coerce the evidence if he is let off on bail.

Analysis

(7). Heard learned counsel for the parties.

(8). As per the contents of the FIR, when complainant Vikas along with his brother Akash and one Sumit was returning to the village, the petitioner (neighbour of the complainant) and other accused persons stopped him near the canal outside the village. The petitioner was allegedly carrying farsa accompanied with more than a dozen youth of the village with him and starting giving merciless beatings to the above-named three persons of complainant party. The petitioner has been attributed farsa blow on the head of the Akash.

(9). It is case of the petitioner that as per the opinion of the doctor on 05.11.2023, the injury No.1 was opined to be grievous in nature and when the clarification of the same doctor is sought on the next day by the police, then the previous opinion of “grievous hurt” is changed and is deliberately opined to be life threatening just to make out a case of Section 307 IPC against the petitioner.

(10). Be that as it may, it is not for this Court to examine the medical opinion of the treating doctor vis-à-vis the clarified opinion of another doctor, for, if there is any contradiction that can very well be examined by the trial court on the basis of material witnesses and evidence. It would not be in the fitness of things for this Court to express any opinion, at this stage, as commenting on the veracity of the medical opinions would directly affect or

influence the merits of the trial proceedings. Before this Court, *prima facie*, there are attributions against the petitioner in the FIR of having caused life threatening farsa blow on the head of the injured.

(11). Admittedly, pursuant to dismissal of the earlier bail petitions of the petitioner firstly on 11.07.2024 and thereafter on 27.09.2024, by this Court wherein the petitioner had withdrawn both the petition after arguing on merits, counsel for the petitioner has failed to show any change of circumstances in between the period of 2½ months since the dismissal of second petition with similar prayer, before this Court.

(12). Once that application/petition was rejected after considering the arguments raised on behalf of the petitioner, there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation much less a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence or mere iteration of the earlier petition. Between the two orders there was a gap of around 2½ months only and it is nobody's case that during this period, any drastic change had taken place necessitating the release of the petitioner on bail. This view of mine find force from the decision of the Apex Court in **State of Maharashtra v. Buddhikota Subha Rao, (1989) Supp (2) SCC 605.**

(13). Dismissed.

(14). However, nothing expressed herein shall, in any manner, influence the trial Court.

08.01.2025

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
Yes/No