



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CRM-M-35022-2025
Decided on : 15.01.2026

SUNIL KUMAR
.....Petitioner
Versus
STATE OF PUNJAB
.....Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Narender Pal Bhardwaj, Advocate,
for the petitioner.
Mr. Neeraj Madaan, Sr. DAG, Punjab.

SANJAY VASHISTH, J.

1. The instant petition has been filed under Section 483 of BNSS, 2023 (earlier Section 439 Cr.P.C.), for grant of regular bail to the petitioner, during the pendency of trial, who has been booked in a criminal case arising out of First Information Report, as detailed hereunder:-

Name of Petitioner(s)	FIR No.	Date	Section(s)	Police Station	District
Sunil Kumar, aged about 35 years	222	10.05.2025	115(2), 126(2), 351(2), 117(2) of BNS (Sections 109 of BNS and Sections 25, 54 and 59 of Arms Act added later on)	Zirakpur	SAS Nagar (Mohali)



2. Learned counsel for the petitioner contends that, at the first instance, incident occurred on 07.05.2025 at about 8:30 p.m., when daughter of co-accused Urmila and daughter of the complainant Sonu, were playing together. It is submitted that both the accused and the injured were residents of the same neighbourhood.

3. As per the allegations in the FIR, petitioner is stated to have inflicted a brick blow on the head of the complainant Sonu and blow was not repeated by the petitioner.

4. Learned counsel further submits that, after completion of the investigation, *challan* has already been presented and, at present, the case is fixed for recording of evidence before the Court of learned Chief Judicial Magistrate, Mohali.

It is further submitted that the challaned accused are Sunil Kumar (petitioner herein), Urmila, Ankit and Sampat. Except of the petitioner, all other co-accused have already been granted the concession of anticipatory bail.

5. Petitioner is in judicial custody since 02.06.2025, i.e. for a period of more than seven months.

6. At this stage, learned State counsel has filed a status report dated 07.01.2026, which is taken on record.

7. Perusal of paragraph No.5 of the status report reveals that although, surgery was performed for the injury allegedly caused by the petitioner to the injured-Sonu at PGIMER, Chandigarh, yet, the offence under Section 109 of the Bharatiya Nyaya Sanhita was added, without obtaining any opinion from the concerned doctor(s).



For reference, paragraph No.5 of the status report is reproduced here under:-

“5. That thereafter, during the course of investigation, on 15.05.2025, the wife of the complainant namely Sweety appeared before the Investigating Officer and produced the discharge summary of the complainant issued by PGIMER, Chandigarh, wherein the treating doctors recorded the following in the discharge notes under the heading "Hospital Course": -

HOSPITAL COURSE

"...SURGERY WOUND DEBRIDEMENT + ELEVATION OF DEPRESSED FRACTURE FRAGMENT DONE BY DR MKS, DR. VGO ON 8/05/25

PATIENT SUPINE UNDER GA, HEAD ON RING. TURNED TO LEFT. PPD. RIGHT FTP SKIN INCISION GIVEN. MUSCLE HEMATOMA +. RIGHT FTP CRANIOTOMY DONE AROUND THE DEPRESSED FRACTURE. PERICRANIAL PATCH HARVESTED. DEPRESSED BONE FRAGMENTS ELEVATED. NO OBVIOUS DURAL TEAR FOUND SMALL, UNHEALTHY BONE FRAGMENTS DISCARDED. ADEQUATE WASH GIVEN AND HEALTHY BONE PIECES REPLACED BACK HEMOSTASIS ACHIEVED AND WOUND CLOSED IN LAYERS OVER DRAIN. LACERATED WOUND DEBRIDED, WASHED AND CLOSED IN LAYERS, ASD DONE..."

It is pertinent to mention here that the complainant had to undergo surgery due to a depressed fracture in the temporal region, having suffered a grievous and life-threatening head injury, which could have proved fatal. Accordingly, based on the medical findings recorded by the doctors in the discharge summary, the offence under Section 109



*BNS was also found to be made out during the course of investigation. Consequently, the same was added to the array of offences in the present case/FIR No. 222 (supra) vide Daily Diary Report No. 56 dated 15.05.2025. It is further submitted that photographs of the complainant showing the grievous head injury including images depicting profuse bleeding from his head, as well as post-surgery photographs showing the stitched wound are attached herewith as **Annexure R-1** for the kind consideration of this Hon'ble Court."*

8. Learned counsel for the petitioner has also produced a copy of the order dated 05.01.2026 passed by learned Additional Sessions Judge, SAS Nagar (Mohali), at the stage of framing of charges, which is ordered to be taken on record.

9. By referring to the said order, learned counsel for the petitioner submits that, at the time of framing of charges, Court of Sessions observed that the offence under Section 109 of the Bharatiya Nyaya Sanhita had been added by the Investigating Officer, without there being any supporting medical opinion. It is further recorded therein that the said offence was added merely on the basis of the discharge summary of the complainant, Sonu, issued by PGIMER, Chandigarh, for the period from 08.05.2025 to 12.05.2025.

Consequently, Section 109 of the Bharatiya Nyaya Sanhita was deleted and the proceedings were remitted/transferred to the Court of learned Chief Judicial Magistrate, SAS Nagar (Mohali), as the remaining offences are triable by the Court of learned Magistrate.



10. For the sake of reference, findings recorded by learned Additional Sessions Judge, SAS Nagar (Mohali), in the order dated 05.01.2026, are reproduced hereunder:—

“Ex facie, perusal of the challan presented by the local police reveals that Section 109 of BNS is not attracted. Discernibly, there is only one injury of the head of complainant-Sonu which has been shown to be inflicted with blunt weapon (brickbat). It deserves to be noted that although aforesaid injury has been declared to be grievous but same has been levelled to be caused with blunt weapon. So palpably, the aforesaid injury caused with brickbat falls within sweep Section 117(2) of BNS. It is disquieting to note that IO has invoked Section 109 BNS on his own without any medical opinion. Nor the complainant has ever alleged that accused caused said injury with the intention to cause death of complainant. No doubt, intention of accused has to be gathered from the entirety of circumstances, including nature of weapon used, the manner in which it was used, severity of the injuries, the body part where injury was inflicted.

After compounding the entire gamut of deliberations, the Court concludes that solitary injury that too inflicted by blunt weapon on the person of complainant would not attract the provision of Section 109 of BNS. Likewise, since complainant has not named any specific weapon nor same was recovered from the possession of any accused, offence under Section 25 of Arms Act, 1959 is also not made out.

Out of the entire array of offences, so mentioned in the commitment order dated 20.10.2025, only Section 109 of BNS is exclusively triable by the Court of Sessions. Since no prima facie case has been



made out under Section 109 of BNS and as the Sections under which prima facie case is made out, 115(2), 126(2), 351(2), 117(2), 238, 3(5) of BNS are not exclusively triable by the Court of Session, by invoking Section 228 (1)(a) of CrPC, the case is ordered to be transferred/sent for trial to the Court of learned Chief Judicial Magistrate, SAS Nagar, Mohali for 16.01.2026 and the accused on bail are directed to appear before the Court of learned Chief Judicial Magistrate, SAS Nagar, Mohali on the date fixed. Jail Authorities are also directed to produce the accused Sunil Kumar before the Court of learned Chief Judicial Magistrate, SAS Nagar, Mohali on the date fixed. The trial be carried out in accordance with the procedure for the trial of warrant cases instituted on a police report. Ahlmad is directed to send this file to the Court well before date fixed, complete in all respects.”

Thus, counsel prays for grant of regular bail to the petitioner in the present case.

11. On the other hand, learned State counsel, produces the custody certificate dated 14.01.2026 in Court today, which is taken on record. Office to tag the same at appropriate place. A copy thereof has been handed over to the counsel for the petitioner.

As per the custody certificate, in the present case, petitioner has already undergone 07 months and 10 days period inside jail.

12. Learned State counsel, while opposing the prayer and submissions advanced by learned counsel for the petitioner, submits that the manner in which the offence was committed is serious and brutal in



nature, as petitioner allegedly inflicted a brick blow on the head of the injured.

Learned State counsel places reliance upon the photographs appended with the status report filed today. On these grounds, it is contended that petitioner does not deserve the concession of bail and present petition is liable to be dismissed.

13. This Court has heard the submissions addressed by learned counsel for the parties and has also perused the record available before it.

14. Undoubtedly, injured/complainant, namely Sonu, has suffered an injury on the head. The next question that arises for consideration is whether the offence under Section 109 of the Bharatiya Nyaya Sanhita presently subsists, or not, as it is evident from the order dated 05.01.2026 passed by learned Additional Sessions Judge, SAS Nagar (Mohali), that offence under Section 109 of the Bharatiya Nyaya Sanhita has already been deleted and trial is presently pending before the Court of learned Chief Judicial Magistrate, SAS Nagar (Mohali).

Petitioner has remained in custody for a period of more than seven months and ten days. All the other accused have already been granted the concession of anticipatory bail.

15. It is also relevant to note that, from the inception of occurrence, petitioner was empty-handed and dispute appears to have arisen out of a quarrel between the two children belonging to the respective parties. Therefore, it would be upon trial Court to examine whether there existed any intention to commit any crime from the very beginning or whether the incident occurred on the spur of the moment.



It is further noticed that petitioner is not alleged to have been armed with any weapon either before or at the time of the incident, except of a brick, which, in all likelihood, may have been picked up from the spot.

16. Therefore, in view of the totality of circumstances, nature of allegations levelled against the petitioner, and the factors noticed here above, this Court deems it appropriate to grant the concession of bail to the petitioner.

17. Consequently, prayer made in the present petition is **allowed**. Petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

18. Needless to observe that the petitioner shall not extend any threat and shall not influence any prosecution witness in any manner directly or indirectly.

19. Any of the discussion done and recorded here above, shall not be construed as an expression of opinion on the facts of the case. Therefore, trial Court is expected to decide the case by taking an independent view, on the basis of evidence available on record, as expeditiously as possible, in accordance with law.

20. Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

15.01.2026
Lavisha

Whether Speaking/Reasoned: **YES/NO**
Whether Reportable: **YES/NO**