

CRM-M-48521-2025

2026:PHHC:011560

113 (1st case)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRM-M-48521-2025**

Mohammad Shoaib Rather

....Petitioner

versus

State of Punjab

....Respondent

Date of decision: January 28, 2026

Date of Uploading: January 29, 2026

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. R.S. Cheema, Senior Advocate with
Mr. A.S. Cheema, Advocate,
Mr. Aakash Vashisth, Advocate and
Mr. Satish Sharma, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG Punjab.

Mr. Sanjeev K. Virk, Advocate
(presence marked through video-conferencing) and
Ms. Deepika Verma, Advocate for the complainant.

SUMEET GOEL, J. (ORAL)

Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner, in case bearing FIR No.70 dated 15.05.2025, under Sections 109, 103(1), 190, 191(3), 118(1) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'), registered at Police Station Satnampura, Phagwara, District Kapurthala.

2. The gravamen of the FIR in question is that the injured, namely Ahmad Mohamed Nour Ahmed Hussien, stated that on 15.05.2025, he had

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gone to perform Namaz along with his friend Mohammad Wada Bala Yousif Ahmed (since deceased) and three girls, namely Ethar Youssry Salih Mohammed Ahmed, Narmeen Omer Abdalla Edris, and Fatimaelzahara Amir Tagelsir Mahgoub. When they reached just outside the said premises, they were accosted by six to seven unknown persons who were standing there. It is alleged that the assailants started inquiring about the phone numbers of the girls and, when the injured attempted to intervene and restrained them, the accused persons initiated a scuffle. All the accused, out of whom two were armed with knives, allegedly caught hold of the injured and his friend. The assailants thereafter stabbed both the injured and the deceased on the left side of their chests. Upon raising hue and cry, all the accused fled from the spot. Thereafter, Prabhat Dubey arrived at the scene and took both the injured persons to Johal Hospital, where Mohammad Wada Bala Yousif Ahmed was declared brought dead, while the injured was admitted to the hospital after having sustained serious and life-threatening injuries.

3. Learned Senior Counsel for the petitioner has argued that the petitioner has been in custody since 15.05.2025 and has already undergone substantial incarceration. Learned Senior Counsel has further contended that the petitioner has been falsely implicated in the FIR in question and his involvement is not borne out from the material on record. Learned Senior Counsel has iterated that the Investigating Officer, after critically evaluating the material on record including CCTV footage/recordings, found the petitioner along with four other co-accused to be not culpable, and

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accordingly, an application dated 10.07.2025 seeking discharge of the petitioner and four other co-accused was moved before the learned Judicial Magistrate Ist Class, Phagwara. Learned Senior Counsel has further submitted that despite the opinion of the Investigating Agency itself, the learned JMIC, vide order dated 16.07.2025, dismissed the said discharge application and, inadvertently, held that a prima facie case was made out against the petitioner and the other four co-accused. Learned Senior Counsel has further argued that thereafter, vide order dated 07.08.2025, the learned JMIC again inadvertently proceeded to take cognizance against the petitioner and others by invoking the principle of vicarious/joint liability, even though the Court itself recorded a categorical observation that no specific injury or overt act was attributed to the petitioner or the said co-accused. Learned Senior Counsel has submitted that assuming *arguendo*, the prosecution version is assumed to be correct; the role attributed to the petitioner is confined merely to his presence at the spot with a brick in his hand, without any allegation of use thereof or causing injury to any person. Learned Senior Counsel has emphasized that the entire incident stands captured in the CCTV footage, on the basis of which the police itself had found the petitioner and four other co-accused to be uninvolved and had sought their discharge. Learned Senior Counsel has thus contended that the petitioner was at best a passive onlooker/bystander at the alleged place of occurrence and has been unnecessarily roped into the case without any substantive or incriminating material.

3.1. Learned Senior counsel, raising doubt on the conduct of the complainant, has further argued that in order to save one of the co-accused, namely, Aditya Garg, the complainant filed an affidavit dated 01.09.2025 before the Court of learned Additional Sessions Judge, Kapurthala stating therein that the said co-accused has absolutely no role in the alleged preparation or commission of offence, however, the challan has been presented against said co-accused, namely, Aditya Garg.

3.2. Learned Senior counsel has further argued that statement(s) of three eye witnesses was recorded by the police, but none of them have named the petitioner in their statement(s). Learned Senior counsel has further argued that, it is the co-accused, namely, Abhay Raj who has been attributed the injury which caused death of the deceased.

3.3. Learned Senior counsel goes on to state that no recovery is alleged to have been made from the petitioner and the petitioner has been wrongly implicated, in this case. Learned Senior counsel has urged that the petitioner is 22 years old young student with clean antecedents. Learned counsel has further urged that the petitioner has suffered incarceration for more than 05 months and no useful purpose would be served by keeping him behind bars further. Thus, regular bail is prayed for.

4. *Per contra*, learned State counsel has referred to the status report by way of an affidavit dated 11.11.2025, already on record. Raising submissions in tandem with the said reply, learned State counsel has submitted that during investigation, the petitioner along with 04 other persons were found to be not involved in the offence. Accordingly, an

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application seeking their discharge was filed before the learned JMIC. However, the same was dismissed, vide order dated 16.07.2025 and learned JMIC had taken cognizance against the petitioner and other 04 co-accused as well. Learned State counsel further submits that thereafter, the State challenged the said order before the learned Additional Sessions Judge, Kapurthala. The said application was also dismissed, vide order dated 30.08.2025. Pursuance to the observations made by this Court, vide order dated 30.10.2025, the State counsel, while referring to para-10 of the aforesaid reply, has stated that the Department has decided not to file any revision *qua* the aforesaid orders, i.e. 16.07.2025 and 30.08.2025, and both the orders have attained finality. It has further been contended that once two Courts have concurrently held that sufficient material exists to proceed against the petitioner (*herein*), he cannot claim the concession of regular bail in view of the gravity of allegation as also the active involvement in the commission of the offence. Learned State counsel seeks to place on record custody certificate dated 27.01.2026, in the Court today, which is taken on record. Accordingly, the dismissal of the present petition is prayed for.

4.1. Learned counsel for the complainant has vehemently opposed the grant of regular bail to the petitioner by arguing that there are direct/serious allegations against the petitioner. The petitioner along with his co-accused had committed the murder of the deceased and had also inflicted injuries dangerous to life on the chest of the complainant. Learned counsel has further argued that, in case, the petitioner is accorded the concession of regular bail, there is all likelihood of him tampering the prosecution

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evidence and also intimidate the prosecution witnesses. On the strength of these submissions, the dismissal of the petition in hand is prayed for.

5. I have heard learned counsel for the rival parties and have perused the paper-book.

6. A perusal of the case record indicates that, though, the police had moved an application seeking discharge of the petitioner along with 04 other co-accused persons before the learned JMIC, but the said application was dismissed, vide order dated 16.07.2025 finding *prima facie* case against the petitioner while holding them vicariously/ jointly liable for the commission of crime in question. Aggrieved, the State had filed revision petition before the learned Additional Sessions Judge, Kapurthala against the aforesaid order, but the same was also dismissed vide order dated 30.08.2025. On perusal of the record as also upon a query put forth to learned Senior counsel for the petitioner as also learned State counsel, it has been brought to the notice of the Court that there is no further challenge to both the aforesaid orders, i.e., dated 16.07.2025 (cognizance taken by learned JMIC while rejecting application of the State seeking discharge of the petitioner and other 04 co-accused persons) and dated 30.08.2025 (dismissal of revision petition against the order dated 16.07.2025) and, thus, both the orders have attained finality. Perusal of the record further reveals that the offence in question committed by the petitioner and his co-accused is serious in nature. Further, learned Additional Sessions Judge, Kapurthala, while declining the bail application of the petitioner, vide impugned order dated 11.08.2025, has specifically observed that grave and serious offence

has been committed by the petitioner and co-accused. The Court below further observed that co-accused, namely, Abhay Raj had not only committed the murder of Mohammad Wada Bala Yousif Ahmad, but also inflicted injuries on the chest of the complainant, which were declared dangerous to life. The petitioner and his co-accused were very much present at the time of the alleged occurrence and the said fact is further substantiated/ corroborated from the CCTV footage also.

7. The grant of bail falls within the discretionary domain of the court; however, such discretion must be exercised in a judicious and principled manner, ensuring it aligns with established legal precedents and the interests of justice. While considering a bail application, the Court must evaluate factors such as the existence of *prima facie* evidence implicating the accused, the nature and gravity of the alleged offence, and the severity of the likely sentence upon conviction. The Court must also assess the likelihood of the accused absconding or evading the due process of law, the probability of the offence being repeated and any reasonable apprehension of the accused tampering with evidence or influencing witnesses. Additionally, the character, antecedents, financial means, societal standing and overall conduct of the accused play a crucial role. Furthermore, the Court must weigh the potential danger of bail undermining the administration of justice or thwarting its due course. A profitable reference in this regard is made to the judgment passed by the Hon'ble Supreme Court titled as ***State through C.B.I. vs. Amaramani Tripathi, 2005 AIR Supreme Court 3490***, relevant whereof reads as under:

“14. It is well settled that the matters to be considered in an application for bail are (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see **Prahlad Singh Bhati v. NCT, Delhi, 2001(2) RCR (Criminal) 377 (SC) :2001(4) SCC 280** and **Gurcharan Singh v. State (Delhi Administration), AIR 1978 Supreme Court 179**). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan, 2004(2) RCR (Criminal) 254 (SC) :2004(7) SCC 528** : "The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- c. *Prima facie* satisfaction of the court in support of the charge. (see **Ram Govind Upadhyay v. Sudarshan Singh, 2002(2) RCR (Criminal) 250 (SC) : 2002(3) SCC 598** and **Puran v. Ram Bilas, 2001(2) RCR (Criminal) 801 (SC) : 2001(6) SCC 338**.”

This Court also in specific terms held that :

“the condition laid down under section 437(1)(i) is *sine qua non* for granting bail even under section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations

of tampering with the witnesses by the accused during the period he was on bail.”

8. The petitioner is accused of committing a capital offence punishable with death or imprisonment for life and is facing trial therein. The instant case pertains to a heinous and brutal offence of murder, wherein the petitioner acting in concert with his co-accused is alleged to have attacked the complainant and the deceased, namely, Mohammad Wada Bala Yousif Ahmed. As per the prosecution version, the assault was not spontaneous but concerted and a violent act. Wherein, one of the co-accused, namely Abhay Raj committed the murder of the deceased and also inflicted injuries on the chest of the complainant which were subsequently declared dangerous to life thereby reflecting the ferocity and intent underlying the offence.

9. A perusal of the record further reveals that the offence allegedly committed by the petitioner and his co-accused is grave, serious and of an aggravated nature involving use of deadly force and resulting of loss of human life. Additionally, learned Additional Sessions Judge, Kapurthala, while declining the bail application of the petitioner, vide impugned order dated 11.08.2025, has specifically observed that grave and serious allegations supported by *prima facie* material have been attributed to the petitioner and his co-accused.

10. Concededly, there is no further challenge, either by the petitioner-side or State-side, to the aforesaid the orders, i.e., dated 16.07.2025 passed by the learned JMIC and dated 30.08.2025 passed by the learned Additional Sessions Judge, Kapurthala; consequently, both the

orders have attained finality and carry persuasive value at this stage. The arguments raised at bar give rise to debatable issues; including veracity to be attached to the CCTV footage and the conduct of the complainant in filing an affidavit allegedly conferring undue benefit upon another co-accused, namely, Aditya Garg; shall be ratiocinated upon during the course of trial and not at this stage. As per prosecution case, total 30 prosecution witnesses have been cited and out of which, none has been examined so far, thereby, unequivocally demonstrating that trial is at a nascent stage.

11. The allegations leveled against the petitioner are specific, grave and well defined, which *prima facie* indicate his active participation in the commission of the offence. In the considered opinion of this Court the very magnitude, brutality and seriousness of the crime clearly disentitle the petitioner to the discretionary relief of bail. In the considered opinion of this Court, at this stage, no accentuating circumstances have been made which may, *prima facie*, constitute a compelling ground for the grant of regular bail to the petitioner, especially in light of the gravity of the allegations and the evidence on record. It also deserves emphasis that offences of this nature strike at the very root of public order, rule of law and societal conscience. Grant of bail in such cases may send a wrong signal to society and undermine public confidence in the administration of criminal justice. Furthermore, there exists a real and tangible apprehension that if enlarged on bail, the petitioner may abscond to evade trial or attempt to influence, threaten, or intimidate prosecution witnesses especially when several

material witnesses are yet to be examined and the prosecution evidence is still to unfold.

12. Considering the overall facts and circumstances, as discussed hereinabove, this Court finds no merit in the present petition. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of regular bail. Accordingly, the petition is, thus, devoid of merits and is hereby dismissed.

13. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

14. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

15. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

January 28, 2026
mahavir

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