

CRM-M-53094-2024

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

CRM-M-53094-2024
Reserved on: 09.01.2025
Pronounced on: 30.01.2025

Harjinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sahilpreet Singh, Advocate for
Mr. Gopal Singh Nahel, Advocate
For the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
50	22.07.2024	Sandaur, District Malerkotla	109(1), 126(2), 115(2), 117(2), 191(3) and 61(2)(a), BNS

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. Per paragraph 14 of the bail application, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	42	27.05.2023	21 of NDPS Act	Sudhar, District Ludhiana Rural

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“That pursuant to the said order, it is respectfully submitted that, the brief factual matrix pertaining to the present case are that On 21st July 2024, an information was received from the Civil Hospital, Malerkotla regarding the admission of Jaswinder Singh and Gurdhaian Singh sons of Avtar Singh, resident of Village Kalyan, due to injuries and it was further informed that the injured(s) have been referred to Rajindra Hospital, Patiala. Whereupon, on 22.07.2024, A.S.I. Harjinder Singh No.1366/SGR of Police Station Sandaur along with co-officials visited the

Rajindra Hospital, Patiala and obtained the opinion of doctor regarding the fitness of injured(s) Jaswinder Singh and Gurdhian Singh to give statement and the doctor declared the injured(s) fit for giving statement. Then, injured Jaswinder Singh got recorded his statement to the effect that on 21.07.2024, at about 01.00 PM, he along with his mother had gone to biscuit factory of his parental uncle namely, Tarsem Singh son of Ajaib Singh, resident of Village Kalyan for preparation of biscuits, where his aunt Baljeet Kaur was also present. At about 02.15 PM, his brother Gurdhian Singh also came there. At about 02:30 P.M., one Swift Car, one Scorpio Car bearing registration No.PB-11-CZ-9361, followed by one Alto Car and i-20 Car came from the side of his village. The occupants of the car were namely, Harpreet Singh @ Happy son of Rajinder Singh armed with Gandasa, Manpreet Singh @ Mani son of Rajinder Singh armed with Iron Rod, Gurkamal Singh @ Landa son of Ruldu Singh armed with Kirpan, Baljit Singh @ Booby son of Rajinder Singh armed with Stick, Mani son of Singara Singh armed with Iron Daah came out of the vehicle. From the car, behind Jasni son of Harmail Singh armed with Stick, Yad @ Yadu armed with iron Rod and 15-16 unidentified persons came out who were armed with Sticks, Iron Rods and Kirpan. Harpreet Singh @ Happy raised lalkara not to spare the complainant Jaswinder Singh and Gurdhian Singh and that they be taught a lesson for opposing them. Complainant and his brother ran away from the spot. Harpreet Singh @ Happy and Manpreet Singh @ Mani again raised lalkara to catch hold of them. Harpreet Singh gave a Gandasa blow to his brother Gurdhian Singh who fell down near biscuit factory. Manpreet Singh @ Mani gave a blow on his head. Manpreet Singh gave an Iron Rod blow on the head of his brother Gurdhian Singh with an intention to kill him. His brother fell down whereas he raised hue and cry. Then Gurkamal Singh gave Kirpan blow on the left knee of his brother Gurdhian Singh. Gurkamal Singh gave another on the left knee of his brother. Then Gurkamal Singh gave Kirpan blow on his head with an intention to kill him. Manpreet Singh gave an Iron Rod blow on his head and he fell down. Harpreet Singh @ Happy gave Gandasa blow on the left arm of his brother Gurdhian Singh due to which his left arm got fractured. Remaining accused with their respective weapons also inflicted injuries. His paternal Uncle Tarsem Singh, his paternal aunt Baljit Kaur and mother Harjit Kaur raised alarm and on the road many passerby were gathered. Then all the accused along with their respective weapons fled away from the spot on their vehicle. Around 15/20 days ago, a dispute was occurred in his Village with which he and his family members have nothing to do. Gorakh Nath son of Harnam Singh and Rajinder Singh Fauji son of Nirmal Singh of their Village, who uses to stare at him and used to extend threats that they will teach him a lesson, due to which Gorakh Nath and Rajinder Singh nurturing the grudge Harpreet Singh @ Happy, Manpreet Singh @ Mani, Gurkamal Singh, Baljit Singh, Mani, Jashni, Yaad ® Yadu and 15/16 unidentified persons in connivance with each other gave beatings to him and his brother Gurdhian Singh. Then his father, Avtar Singh arranged a

vehicle and got admitted him and his brother Gurdhian Singh to Civil Hospital, Malerkotla, where after giving first aid, doctor has referred them to Rajindra Hospital, Patiala, where they are under treatment. Legal action may be taken against said accused persons.”

4. 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:

“14. ROLE OF THE PETITIONER.

That the present FIR was registered against the co-accused of the petitioner and the name of the petitioner was cropped up during investigation and based on the statement of Avtar Singh, the father of complainant Jaswinder Singh. There are specific allegations against the petitioner to be a member of unlawful assembly which was armed with deadly weapons and leashed out the murderous attack upon the complainant and his brother, whereby they due were badly attacked on their heads, legs, and they remained admitted in P.G.I., Chandigarh and Rajendra Hospital, Patiala. Co-accused Gorakh Nath, Rajinder Singh and others have previous rivalry with the complainant party. During investigation, CCTV footage was checked, which shows that the petitioner was not only member of unlawful assembly, which was armed with deadly weapons, but also actively has participated in the commission of this heinous crime. The petitioner along with his other co-accused inflicted seven injuries on the person of complainant and his brother with an intention to kill them. The photograph of injured persons speaks volume of the intensity of this murderous attack and it is sheer luck that injured s) have survived this attack. Due to these injuries, the complainant and his brother remained admitted in Rajindra Hospital, Patiala. So, a NOTARY specific role is attributed to the petitioner in the commission of present offence.”

7. The petitioner is neither named in the FIR nor any weapon or injury is attributed to him. He appears to be one of the 15/16 identified persons but that would not be a sufficient ground to reject his bail. Although the petitioner has criminal antecedents under NDPS Act, this Court wants to afford petitioner one opportunity to mend his ways.

8. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible. A perusal of the reply does not point out the steps taken to arrest the accused.

9. 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.

10. 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.

11. 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.

12. 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. This order shall come into force from the time it is uploaded on this Court's official webpage.

13. 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.

14. 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)	

15. 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.

16. 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.

17. 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 (Cr.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

18. Given the background of allegations against the petitioner, it becomes paramount to protect 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 firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a 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 of release from prison and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under 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.

19. 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.”

20. 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.

21. It is clarified that if the petitioner violates any bail condition, the State and/or the victim may file an application for bail cancellation before the trial court, which shall be competent to cancel the bail or add more conditions. Furthermore, if the petitioner moves for deletion or dilution of any bail conditions, the trial court is empowered to do so.

22. **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 have the liberty to cancel this bail.**

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

24. 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.

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

(ANOOP CHITKARA)
JUDGE

30.01.2025
M.Sikka

Whether speaking/reasoned: Yes
Whether reportable: No.