

CRM-M-57021-2024

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

CRM-M-57021-2024
Reserved on: 09.01.2025
Pronounced on: 24.01.2025

Gopal Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rohit Joshi, Advocate and
Mr. Jashandeep Singh, Advocate
for the petitioner.

Mr. Akshay Kumar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
175	13.07.2023	Kotwali, District Kapurthala	160, 302, 303, 323, 324, 325, 326, 332, 186, 353, 148, 149, 120-B IPC and 42 of Prisons Act

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 439 CrPC seeking regular bail.

2. Per paragraph 9 of the bail application and 8 of affidavit, the accused has the following criminal antecedents:-

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	66	20.10.2018	354-A, 452, 427, 148, 149 IPC	Rawalpindi
2.	53	08.12.2022	25-54-59 of Arms Act	Rawalpindi
3.	181/2023	-	-	District Kapurthala
4.	87	23.11.2015	323, 341, 34, 120-B IPC	Rawalpindi
5.	27	14.04.2018	353, 186, 332, 34 IPC	Rawalpindi

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

“3. That it is respectfully submitted that the present case bearing FIR No.175 dated 13.07.2023 (P-1) under Section 160, 302, 303, 323, 324, 325, 326, 332, 186, 353, 148, 149, 120-B IPC and Section 42 Prison Act, was registered at Police Station Kotwali, District

Kapurthala on the complaint of Hemant Sharma, the then Additional Superintendent, Central Jail, Kapurthala initially against 22 prisoners. The present petitioner was subsequently nominated in the present case on 16.08.2023, following the receipt of letter no. 3153 from the Superintendent of Central Jail, Kapurthala, dated 16.08.2023, which recommended the inclusion of four additional accused in the investigation, including Gopal Kumar, son of Hans Raj, of Village Panshta, PS Rawalpindi, District Kapurthala, as per Rapat No. 28, dated 16.08.2023.

That after the registration of the above said FIR, thorough investigation was conducted and from the footage of the CCTV cameras at the spot, it has transpired that on 13.07.2023 at about 7.30 AM, about 30-35 inmates in collusion with each other gather at Phase-2 gate from their barracks, at Central Jail Kapurthala, out of which 31 prisoners have already been identified, out of whom, some of the inmates had weapons and some were empty handed. 21 inmates crossed the gate of Phase-II and proceeded towards security ward-E. On the way, on being stopped by the police and security forces, they scuffle with them as well. These prisoners entered the Chakki No. 17 of the Security Ward - E and gravely beaten Simranjit Singh @ Simar son of Resham Singh, and his 3 companions Surinder Singh @ Jimmy son of Mann Singh, Amanpreet Singh @ Sonu son of Sarabjit Singh and Varinder Pal Singh @ Raja were also beaten and Simranjit Singh @ Simar was Seriously Injured. The remaining 11 inmates along with about 7-8 unknown inmates stopped the police personnels from closing the gate of Phase-II, So that there is no disturbance to their fellow inmates while returning from security Ward-E after the incident.

The injuries were inflicted upon the deceased and injured prisoners with sharp edge Iron Weapon- Patti type on the head and other parts of Simranjit Singh. Subsequently during the treatment, the abovesaid injured Simranjit scummed to his injuries at Guru Nanak Medical College Amritsar on 13.07.2023 after which a case was registered and an investigation was carried out.

5. During the investigation it was also found that the present petitioner was involved in the conspiracy and he himself has not gone to the place of the Incident whereas it has been found that he remained at or near the gate of Phase-2 and prevented the closing of the gate of Phase-2 so that their fellow prisoners could go back to their barracks after carrying out the incident in security ward E. The Petitioner Gopal Kumar was produced before the Ld. Court on 19.08.2023 through a production warrant. Upon seeking the permission of the court, they were included in the investigation process. The accused were then arrested, and 2 days police remand was granted for further interrogation. Following the interrogation, disclosure statements were recorded, and the accused were placed under judicial custody thereafter.”

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 affidavit.
6. It would be appropriate to refer to the following portions of the affidavit, which read as follows:-

"2. Role of the Petitioner and evidence against the petitioner:

From the final investigation proceedings instituted as yet, The present petitioner was subsequently nominated in the present case on 16.08.2023, following the receipt of letter no. 3153 from the Superintendent of Central Jail, Kapurthala, dated 16.08.2023, which recommended the inclusion of four additional accused in the investigation, including Gopal Kumar, son of Hans Raj, of Village Panshta, PS Rawalpindi, District Kapurthala, as per Rapat No. 28, dated 16.08.2023.

During the investigation it was also found that the present petitioner was involved in the conspiracy and himself has not gone to the place of the Incident whereas it has been found that heremained at or near the gate of Phase-2 and prevented the closing of the gate of Phase-2 so that their fellow prisoners could go back to their barracks after carrying out the incident in security ward E. He has a clear motive to commit the crime and played an active role in carrying out the murder. The offence is particularly serious, as the murder was premeditated and carried out within the confines of the jail."

7. The incident took place in the prison in which number of inmates were present. Even as per affidavit filed by the State, allegation against the petitioner is of criminal conspiracy and it is explicitly mentioned that he did not cause any injury to the deceased. Even the evidence of conspiracy is sketchy which might be sufficient to launch prosecution or frame charges but is insufficient to deny bail.

8. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing.

9. Per paragraph 10 of the affidavit, the petitioner has been in custody since 19.08.2023.

10. Given the penal provisions invoked viz-a-viz pre-trial custody, 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 further 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 concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned 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.

16. 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.

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. *This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State shall file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.*

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

21. 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.

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

(ANOOP CHITKARA)
JUDGE

24.01.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.