

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

CRM-M-214-2025 (O&M)

Reserved on: 01.04.2025

Date of Pronouncement: 08.04.2025

Shishpal @ Shishan

.....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Edward George Masih, Advocate
for the petitioner(s)

Ms. Harpreet Kaur, AAG, Haryana.

Mr. Manish Soni, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
436	28.10.2023	Kherki Daula, District Gurugram	147/148/149/285/307/323/ 427/506/212 IPC & 25(1-B)(a), 27(2) Arms Act

1. The petitioner incarcerated in the FIR captioned above came before this Court, second time, under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 20 of the bail petition and paragraph 19 of the reply dated 29.1.2025, the criminal antecedents of the petitioner-accused have been narrated, which read as under:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	224	29.5.2022	148, 149, 323, 429, 506, 34 IPC	Kherki Daula, Gurugram
2.	285	15.7.2022	148, 149, 323, 429, 506, 34 IPC	Kherki Daula, Gurugram

3.	232	16.8.2022	323, 34, 382, 506 IPC	Kherki Daula, Gurugram
4.	283	2024	148, 149, 323, 429, 506, 34 IPC	Kherki Daula, Gurugram

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

“3. That the brief facts of the present case are that on the intervening night of 27/28.10.2023, information was received that Lalit and Chirag @Chintu were admitted in Fortis Hospital after getting injured in a fight. On this information, the police party reached Fortis Hospital and obtained the rukka and MLRs. The injuries were mentioned to be inflicted with firearm. Jatin (brother of injured Chirag) submitted complaint alleging that he was resident of village Shikohpur, District Gurugram. On 25.10.2023, his uncle Joginder and Parasram were beaten up by his co-villagers, namely, Hemant and Ankit and their friends. Regarding the said incident, they came to know that on that day Hemant, Ankit and Sumit and 2.3 other boys along with them were sitting at Shishpal's (petitioner herein) office at Shikohpur turn. In order to talk with them, he along with his brother Chirag @ Chintu and Lalit, Kapil, and Yoginder reached petitioner's office on Shikohpur turn. When they were having the talks, then Sumit and 2-3 boys sitting there got angry and started abusing them. When they protested, Ankit took out his pistol and pointed towards them and asked them to go away from there, else he would shoot them. When they were returning home after coming out of their office, then Kamal son of Narender came in Brezza Car No. HR-26-ES-6016 and as soon as he got out of the car, he started abusing them as to how they dared to come to their office, then a car make Scorpio color white came and stopped, from which Shishpal (petitioner herein) son of Jai Bhagwan, Sanjay son of Dharmender and Rohit son of Sube Singh got down from their car Scorpio armed with sticks and pistol and started abusing. Meanwhile, Ankit, Hemant and Sumit and their 2-3 other friends sitting in his office came out and as soon as they came out, they fired 2-3 shots in the air and started beating them with the sticks in their hands. Then Shishpal (petitioner herein) fired a direct shot from the pistol in his hand which hit Lalit. Sumit and Ankit fired at them directly with the pistols in their hands, whose bullet hit Chirag @ Chintu's leg. Kamal fired directly with the pistol he was holding in his hand, but he had narrowly escaped. Shishpal (petitioner herein), Rohit, Kamal, Hemant, Ankit, Sanjay, Sumit and their other friends together, beat them with sticks and fired direct bullets at them with the intention of killing them. They fled from the spot in their respective vehicles. Lalit and Chirag were taken to Aarvy Hospital, Sector-90, Gurugram for treatment. Thereafter, they got them admitted to Fortis Hospital, Gurugram for better treatment. The complainant prayed for taking legal action against the accused. Thereupon, the above-mentioned FIR was registered and investigations were taken up in the matter.

4. That during the course of the investigation, offences punishable under Sections 427, 506 IPC were added in the present case. On 01.11.2023, accused Ankit Yadav @ Sonu and Hemant Yadav were joined in the investigation and arrested upon the receipt of appropriate incriminating evidence against them. They were interrogated while being in custody, upon interrogation they suffered their respective disclosure statements admitting their involvement in the commission of present crime. In pursuance of their disclosure statement accused Ankit got recovered the country made pistol used in the present crime and accused Hemant Yadav got recovered the wooden danda used in the present crime. They got demarcated the place of occurrence.”

4. The petitioner's counsel prays for bail and submits that he has no objection to imposing of any stringent conditions, including surrender of firearms, restricting entry of the petitioner in the property/home/workplace of the complainant/ victim and during the period of bail, he shall not commit any offence and in case the petitioner commits any offence in which the sentence prescribed is three years or more, the State shall be at liberty to file an application for cancellation of bail. He further submits, on instructions, that the petitioner shall live as a decent and civilised human being and shall not hamper the investigation/evidence.

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:

“That the role of the petitioner in the present case is that he along with other accused had given lathi and danda blows to the complainant party. In the CCTV footage of the place of occurrence, the petitioner is seen giving beatings to the complainant party and had opened fire in the air with country made pistol.”

REASONING:

7. Petitioner was holding pistol in his hand, he instead of targeting the victim by the said pistol, fired the shot in the air and also not targeted the vital part of victim, which he could have. 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.

8. Per paragraph 7 of the bail petition, the petitioner has been in custody since 26.11.2023. Per the custody certificate dated 13.3.2025, the petitioner's total custody in this FIR is 1 year 3 months and 12 days.

9. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the *prima facie* analysis of the nature of allegations, role attributed and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

10. 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.

11. 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.

12. 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)	

13. 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.

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

15. 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.

16. 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."

17. 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.

18. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any offence for which sentence prescribed is more than three years, the State shall file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.**

19. The concerned Judicial Magistrate/Trial Court is authorized to delete, modify, or relax any of the conditions mentioned above and is competent to do so following the law.

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

08.04.2025

AK

Whether speaking/reasoned: Yes
Whether reportable: No.