

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

CRM-M-12649-2025
Reserved on: 19.03.2025
Pronounced on: 28.03.2025

Vipin Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sushil Sheoran, Advocate
for the petitioner.

Mr. Aashish Bishnoi, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
631	11.12.2024	Bhiwani Sadar, District Bhiwani	109(1), 126, 3(5), 351(2) of BNS and 25 of Arms Act

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. In paragraph 9 of the bail petition, the accused declares that he has no criminal antecedents.

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

“2. That the present case was registered on the complaint of Nitish son of Shri Vedpal, resident of Devi Panna, Manheru on the allegations that about 20-25 days earlier, he had minor altercation with Neeraj @ Desi, Pardeep @ Painter and Vipin regarding bike collision, however no report was lodged in that regard and since then there was rivalry between them. On 11.12.2024, he along with his friends Mohit son of Vinod, Ankit son of Manjeet, Yogesh son of Sadhu and Hemu, residents of Manheru were going to their houses on two motorcycles bearing registration No.HR-34H-6315 and HR-16T-9479 after taking fuel from petrol pump for marriage ceremony and when they reached near the plot of Amarpal son of Rishal Singh, Neeraj @ Desi, Pardeep @Painter, Vipin and Mukesh and Noliya, came on the road and forcibly stopped their motorcycles and started beating them with lathies and dandas Neeraj @ Desi fired shot with intention to kill him, but he

(complainant) saved himself by bending down. Thereafter, they all threatened to kill him and his friends and fled away with their respective lathi, danda, bodkin and pistol. The complainant has sought legal action against the assailants. On the basis of above allegations, present case was registered under Sections 109,126(2),351(2)3(5) of B.N.S. and Section 25 of the Arms Act.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that 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 status report.

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

“10. That the role of the present petitioner is that he along with his co-accused caused injuries to the complainant as well as his friends and also fired shot upon the complainant Nitish @ Desi in order to kill him. Hence, there are serious allegations against the present petitioner and co-accused Neeraj @ Desi, Vipin and Noliya are yet to be arrested. The danda (stick) used in the commission of crime is to be recovered from the present petitioner and hence, custodial interrogation of present petitioner is required in this case. If the present petitioner is granted concession of bail, then he may create hindrance in arrest of co-accused; may abscond from the trial or may overawe complainant and other private witnesses. In this way present petitioner is not entitling for any relief as prayed for.”

REASONING:

7. Perusal of the facts clearly point out that it is Neeraj who had fired shots at the complainant. The inspection of the spot of crime corroborates the presence of empty cartridge bullet which corroborated the evidence of the complainant about firing. Needless to say that firing was done with an intent to kill but the allegations of motive are not attributed. 20-25 days earlier, complainant had altercation with Neeraj, Pardeep and Vipin regarding bike collision and for that, they were nursing grudges. Although the petitioner was part of the gang who had fired upon the victim but petitioner's criminal bent of mind is missing because of absence of criminal past. If the petitioner has criminal antecedents, it would certainly corroborated his involvement and participation through his previous criminal past but in the present case, the factor which goes in favour of the petitioner is that he has no criminal history and is a first offender. Thus, on this ground alone, petitioner's role is different to the other accused and this Court does not deem it appropriate to send the petitioner for custodial interrogation or pre-trial incarceration with clarification that petitioner has been granted bail on the ground that he has no criminal history and did not fire upon the complainant, as such any other accused who has criminal antecedents or the main accused who had fired shall not be entitled to bail on parity with the petitioner for the reason for which the petitioner is granted bail.

8. 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.

9. 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.

10. 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.

11. 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.

CONDITIONS:

12. 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.

13. 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)	

14. 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.

15. 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.

16. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, 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 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.

17. 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."

18. 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.

19. 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.

20. **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.**

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

22. 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.

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

(ANOOP CHITKARA)
JUDGE

28.03.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.