



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

238-2

CRM-M-58033-2024

Date of decision: 14.01.2025

Harwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Davinder Lubana, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
147	15.10.2024	Lalru, District SAS Nagar (Mohali) Punjab	221, 132, 109 BNS, 2023

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 17 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts of the case are being taken from the FIR, which reads as follows:

“The copy of statement is given as under:- It is stated that I, Pankaj Chaudhary son of Sh. xxxxxxxx resident of xxxxxxxx, P.S. xxxxxxxx, Teshil xxxxxxxx, District xxxxxxxx, now residing at Flat No. xxxxxxxx, xxxxxxxx xxxxxxxx, aged about 27 years, M.No.78886xxxx stated that I am a resident of the said address and I am working as Draftsman in the Municipal Committee, Zirakpur. On 15.10.2024, during Panchayat Elections, I was performing duty at Booth No.79, Village Hansala Block Dera Bassi as Presiding Officer. Smt. Ranuka Malik was officiating as Assistant Presiding Officer and Amit, Prince Popli, Rajinder Singh were deployed as polling officers. Besides that, police party headed by SI Jagtar Singh, SI Pardeep Singh and HC Sukhpal Singh were also performing their duty. 4 number of candidates were contesting for the post of Sarpanch.



The counting of the votes was being supervised by certain polling agents and certain candidates. After the counting, Swarno who having election symbol Tractor was declared as Sarpanch. Apart from that Satvir Singh from Ward No.2 and Kamaljit Singh from Ward No.1 were also declared elected in the elections and from Ward No.3 two candidates namely Garib Khan and Raj Kumar were having equal votes. After declaring the above said result and process of election had been completed. When all the work of voting was over, we collected all the materials from our polling station including used ballot paper, seal, all forms, and other necessary papers in one bag. We were preparing to leave the polling station after putting it in a bag, it would be around 7:00 p.m. that Sarpanch candiate Preeti wife of Harwinder Singh, Harvinder Singh son of Bhajan Singh, Satveer Singh son of Bhajan Singh, Karan Singh son of Gurdev Singh, Sucha Singh son of Bachan Singh, Manpreet Singh son of Sucha Singh, Daljit Singh son of Harnek Singh, Jasvir Kaur wife of Sucha Singh, Baljit Khan son of Garib Khan, Bahadur Singh and 25 to 30 unknown persons armed with weapons mounted an attack upon us by entering into polling station which was situated in the village school by jumping over the wall and suddenly entered with the intention of killing polling team. On protest, they assaulted Rajinder Singh polling station officer and when the police party tried to save us, then they had assaulted the police party also and they torn the uniform of SI Jagtar Singh and Rajinder Singh got injuries on his right foot. In addition to the above, SI Jagtar Singh had also got some internal injuries. Therefore, a strict legal action should be taken against the above mentioned men and women as well. xxxx xxxx”.

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 his 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:

“ROLE OF THE PETITIONER

10. That the role attributed to the petitioner in the present case/FIR No.147 (supra) is that the petitioner along with his co-accused interfered with the electoral process and obstructed public servants in the discharge



of their official duties. The petitioner and his co-accused were armed with sharp weapons and, with the intent to kill, attacked the complainant and his polling team. They also assaulted the police officials and tore the uniforms of the police officials and polling officers while inflicting injuries upon them.

EVIDENCE AGAINST THE PETITIONER

11. That the evidence against the petitioner is that he has been specifically identified by the complainant in the present case/FIR No. 147 (supra). Furthermore, the evidence includes the disclosure statement of the co-accused Sucha Singh, who stated that he along with his co-accused including the petitioner acted in response to co-accused Preeti's loss in the Sarpanch elections, who is the wife of the petitioner. Acting on the petitioner's instructions, they intended to create a dispute with the election officials, hoping for a re-election. In furtherance of this plan, he and his co-accused including the petitioner, attacked the polling officers and police officials, tore their clothes, assaulted them and inflicted injuries upon them."

7. Although, the allegations are of merciless beating but the medical evidence does not corroborate any such allegations that the complainant party was beaten mercilessly. Prima facie the possibility of exaggeration is writ large. The petitioner did not obstruct the elections but subsequently caused disruption to the election process. Although, any disruption in the election process is a serious offence but considering the prima facie exaggeration in the allegations, it's not a case to deny the 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. 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



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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 Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa 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.

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. 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.

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

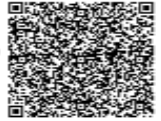


Vikram Singh v Central Bureau of Investigation, 2018 All SCR (Cri.) 458); and Aparna Bhatt v. The State of Madhya Pradesh, 2021:INSC:192, 2021 SCC Online SC 230.

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

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. 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 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

14.01.2025

Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.