

2025:PHHC:118835



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

333

CRM-M-47816-2025 (O&M)

Date of decision: 03.09.2025

Sakrulla Khan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Saleem Ahmed, Advocate
for the petitioner.

Ms. Himani Arora, DAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, is for grant of anticipatory bail to the petitioner in case arising out of FIR No. 143 dated 12.08.2025, registered under Sections 191(3), 190, 115(2), 324(4), 126(2), 326(F), 351(2) of Bhartiya Nyaya Sahnhita, 2023 (*for short 'BNS'*) [Sections 326(G), 117(4) and 117(2) of BNS added later on] at Police Station Ferozepur Zhirka, District Nuh.

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforesaid FIR was registered on the basis of a complaint filed by complainant Samay Singh Saini alleging therein that on 12.08.2025, *rasam* ceremony of his grandfather was solemnized in the village Mundaka and at about 04.15 PM, there was requirement of some utensils and other articles and he had loaded the same in a trolley and started from his shop to

the village. On the way, a truck was parked, in which, a driver was sitting. He requested the driver to remove the truck from the way. In the said truck, two persons, namely Nassi and Lukman, were consuming beer and they said that they would not remove the truck from the way and they gave blow of broken bottle of beer on the head of complainant. In the meanwhile, co-accused Lukman called the other accused persons from the village by making a telephonic call. All the accused persons came at the spot carrying *lathis*, *dandas*, stones, *farsa* etc. in their hands. On hearing the noise of complainant, his brother Chunni, Gopal, Bir Singh came there and tried to save him but accused Isra gave *farsa* blow on the head of his brother Chunni due to which Chunni fell down on the ground. They had also given *lathis* blows to Gopal, complainant and Bir Singh, besides pelting stones upon them. They had also set ablaze a motorcycle and one shop. After registration of the FIR, investigation proceedings were initiated. Apprehending his arrest, the petitioner along with co-accused Rustam approached the Court of learned Additional Sessions Judge, Nuh for grant of anticipatory bail but their application was dismissed, vide order dated 25.08.2025. Thereafter, the petitioner and some other accused were arrested. The petitioner and co-accused moved an application for grant of regular bail before the Court of learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, which was allowed and they were admitted to bail, subject to their furnishing personal/surety bonds, vide order dated 13.08.2025. During the course of investigation, offences punishable under Sections 326(G), 117(4) and 117(2) of BNS have been added. The petitioner is apprehending his arrest after addition of these offences. Hence, he has filed the present petition.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. He had neither caused any injury to the victim nor any specific injury or overt act has been attributed to him. He was already extended benefit of bail. He is ready to join the investigation even now. Since nothing is to be recovered from him, his custodial interrogation is not required. It is, therefore, urged that the petition deserves to be allowed and the petitioner deserves to be given benefit of anticipatory bail. Learned counsel for the petitioner has relied upon the authority cited as ***Manoj Suresh Jadhav and others vs. the State of Maharashtra, 2018 (5) RCR (Criminal) 397.***

4. Learned State counsel, who has advance notice of the petition and is ready to argue the matter, has taken a preliminary objection as to the maintainability of this petition while relying upon the authorities cited as ***Manish Jain vs. Haryana State Pollution Control Board : 2022 (1) SCC (Cri) 676*** and ***Zubair Ahmad Wani vs. Governor of J & K, Bail Application No. 78 of 2022, decided on 15.07.2022,*** decided by the High Court of Jammu & Kashmir and Ladakh. It is argued by learned State counsel that the allegations levelled against the petitioner are quite serious. He along with co-accused had caused injuries to the complainant and other victims. Specific role has also been attributed to him. For conducting thorough and proper investigation in the matter on addition of offence punishable under Sections 326(G), 117(4) and 117(2) of BNS, his custodial interrogation is must. It is also argued that even otherwise, the petition is not maintainable as the petitioner is presumed to be in constructive custody of the Court and hence the proper course for him was to surrender before the trial Court and to move an

application for grant of regular bail. Therefore, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

6. The petitioner had been extended benefit of regular bail by the Court of learned Sub Divisional Judicial Magistrate First Class, Ferozepur Jhirka, vide order dated 13.08.2025. Now offences under Sections 326(G), 117(4) and 117(2) of BNS have been added in the FIR. In **Manish Jain**'s case (supra), it was observed by Hon'ble Supreme Court that a person released on bail is already in constructive custody of law and if the law requires him to come back to custody for some specified reason, an application for anticipatory bail apprehending his arrest would not lie since there cannot be any apprehension of arrest by a person already in constructive custody of law. In **Juber Wani**'s case (supra), the petitioner/accused had been given benefit of interim bail for commission of offence punishable under Section 489-C of IPC. Subsequently, offence under Section 489-D of IPC was added. He moved an application for grant of anticipatory bail, which was dismissed. It was observed that the proper course for the petitioner was to surrender before the Sessions Court and apply for grant of regular bail as he was in constructive custody of law. Reliance was placed upon **Manish Jain**'s case (supra) and it was further held that there can be no apprehension of arrest by a person, who is already in constructive custody of law.

7. The petitioner herein was extended benefit of regular bail for commission of offences punishable under Sections 191(3), 190, 115(2), 324(4), 126(2), 326(F), 351(2) of BNS and offences punishable under

Sections 326(G), 117(4) and 117(2) of BNS have been added later on. Accordingly, in view of ratio of law laid down in **Manish Jain's** case and **Juber Wani's** case (supra), the petitioner is deemed to be in constructive custody of law and as such, in the considered opinion of this Court, since the law now requires him to come back to custody on account of his committing offences under Sections 326(G), 117(4) and 117(2) of BNS, hence, an application for grant of anticipatory bail apprehending his arrest would not lie as there can be no apprehension of arrest by a person already in constructive custody of law. So far as the ratio of law laid down in **Manoj Suresh Jadhav's** case (supra) is concerned, the same is not disputed. However, a perusal of this authority would show that it was held by Hon'ble Supreme Court that if after grant of bail, a graver offence is added later on, it is not permissible to simply re-arrest the petitioner by ignoring the earlier bail order and that State may apply for cancellation of bail and seek custody of the petitioner. In the present case, admittedly and evidently, an application has been filed by the respondent-State seeking re-arrest of the petitioner, which is pending before the learned trial Court. During the pendency of the said application, the petitioner has no right to seek concession of anticipatory bail. The proper course for the petitioner is to surrender before the Sessions Court and apply for grant of regular bail. Reliance can also be placed upon the authority cited as **Pradeep Ram vs. State State of Jharkhand and another : AIR 2019 SC 3193**, wherein it was held that it is open to the investigating agency to approach the concerned Court seeking cancellation of the bail or for obtaining an order for arrest of the accused on addition of a new offence, which shall be considered on its own merit.

8. In view of the proposition of law laid down in aforecited cases and also keeping in view the gravity of the allegations levelled against the petitioner as well as the attendant facts and circumstances of the case, there is no hesitation in holding that since the petitioner was presumed to be in constructive custody of law, the prayer for grant of pre-arrest bail is not maintainable. Accordingly, finding no merit in the petition, the same is hereby dismissed.

03.09.2025

Waseem Ansari

**(MANISHA BATRA)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*