

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

CRM-M-9420-2025
Reserved on: 20.03.2025
Pronounced on: 28.03.2025

Sunny Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sumit Dua, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab.

Mr. P.S. Hundal, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
224	30.08.2024	City Kapurthala, District Kapurthala	105, 190, 191(3) of BNS (Section 103(2), 61(2) added later on and 105 of BNS deleted)

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

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

“4. That facts according to the FIR no. 224 dated 30.08.2024 the allegations of the prosecution are that complainant Jasbir Kaur suffered a statement that she has two sons namely Sukhman aged about 19 years and younger Harman aged about 17/18 years. She is working as maid in houses of the people. About one and half month ago, she was doing the work of cleanliness in the house of Vipran resident of Ajit Nagar, Kapurthala and they had levelled a

false allegations regarding theft of Rs. 11000/- against her and gave beatings to her. The matter was compromised and her brother namely Malkitpal @ Palo put the money in front of holy darbar made in the house of Vipin and Vipin and his family accepted the same. On 16.08.2024 she left the work in the house of Vipin. But she kept on working as maid in two other houses in the neighbour of Vipin, due to which they started nourishing grudge against her. On 21.08.2024 at about 5:15 p.m after completing her work in the Kothi/house in front of the house of Vipin when she was about to leave alongwith her son Harman, then Vipin her wife Megha and mother of Megha namely Rajinder Kaur starting taunting them for committing theft in their house. Harman opposed their such act upon which they manhandled Harman. Vipin gave beatings to her son Harman with danda. In the meantime, 10/15 unknown persons armed with weapons came from the house of Vipin. Harman escaped himself and ran away from the spot. But all the aforesaid persons chased her son Harman and gave internal injuries on his neck, nose and other parts of the body. Harman fell unconscious. On hearing the noises, Jagdeep Singh @ Jaggi along with other came at the spot, upon which the assailants fled away from the spot while hurling threatening to life of Harman if the matter is reported to the police. Due to fear, she took her son Harman to her house, but seeing his deteriorating condition she alongwith Raj took him to Civil Hospital, Kapurthala but she could not disclose the doctor about the injuries being received in a quarrel. The doctor did not conduct medico legal examination of her son Vipin and his party gave her financial help during the treatment of her son Harman. Due to deteriorated condition of her son Harman, on 22.08.2024, the doctor referred her son to Sri Guru Nanak Dev Hospital, Amritsar where he succumbed to injuries on 29.08.2024 at about 9.00 a.m. Ultimately she reported the matter to the police.”

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. Counsel for the petitioner has drawn attention of this Court to para no.4 to 8 of the petition which reads as follows:

“4. That the name of the petitioner not mentioned in the FIR. It is

pertinent to mention here that neither petitioner has no concern with the alleged incident nor any injury attributed to the petitioner.

5. *That petitioner nominated as accused on the basis of disclosure statement. That except than the disclosure statement which is otherwise inadmissible in the eyes of law, there is no other evidence available on record against the petitioner qua the offence in question.*

6. *That there is delay of 9 days in lodging the FIR as the occurrence took place on 21.08.2024 and the present FIR registered on 30.08.2024, the same delay part has not explained in any manner. It is pertinent to mentioned here that earlier FIR has been registered u/s 105 of BNS but after some times same has been deleted and section 103(2) and 61(2) added in the main case after the supplementary statement of the complainant. It is pertinent to mention here that complainant didn't take/mention the name of the petitioner in her supplementary statement. A copy of the Supplementary statement recorded vide DDR no.36 dated 02.09.2024 is annexed herewith as annexure P-2.*

7. *That in the present case, the deceased was admitted in the Civil hospital, Kapurthala on 21.08.2024 but no MLR has been conducted regarding received injuries by deceased as the complainant didn't disclosed regarding any occurrence in the hospital.*

8. *That the custodial interrogation of the petitioner in the present case would be wholly unwarranted as nothing is to be recovered from the petitioner. The petitioner is permanent resident of above mentioned address and there is no likely hood of his fleeing from the course of justice. Petitioner is ready and willing to join investigation, as and when called upon to do so. Petitioner further undertakes to abide by all the conditions, which may be imposed upon them by this Hon'ble Court at the time of granting the concession of anticipatory bail.”*

6. To analyze the argument, it would be appropriate to refer to para no.8 of short reply which reads as follows:

“8. Role of the petitioner and Evidence against the petitioner

During the course of the investigation, the petitioner was named in a supplementary statement made by the complainant, as recorded in DDR No. 36 dated 02.09.2024. Additionally, the offence under Section 103(2) and Section 61(2) of the BNS was incorporated, following a reduction of the charge under Section 105 of the BNS. The petitioner, in conjunction with the other accused, acted in furtherance of a common intention and played a significant role in inflicting injuries on the deceased and committing the murder of Harman while armed with deadly weapons. The petitioner actively participated in the violent act, thereby exacerbating the severity of the crime. The collective actions of the petitioner and the co-accused led to the commission of the offence under Section 103(2) of the BNS. The petitioner's involvement is pivotal, as the use of lethal force escalated the gravity of the offence, resulting in both physical harm and the loss of life.”

7. Petitioner along with co-accused has inflicted injuries on the deceased and committed the murder of the deceased. Perusal of the petition does not refer to any averment about petitioner's absence. The question is even if petitioner was present

whether there is presumption that he did not participate. Petitioner has referred to judgment of Hon'ble Supreme Court in **Vasant @ Girish Akbarasab Sanavale and another vs The State of Karnataka, 2025(2) RCR (Criminal) 34** and the relevant portion is extracted as follows:

“86. It is true that to convict any particular accused constructively under Section 34 of an offence, say of murder, it is not necessary to find that he actually struck the fatal blow, or any blow, but there must be clear evidence of some action or conduct on his part to show that he shared in the common intention of committing murder”, (pp. 457-458).

87. The net result of the above discussion is that although Section 34 deals with a criminal act which is joint and an intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects.

88. On the other hand, it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others.

89. In other words, he must be a sharer both in the 'criminal act as well as in the 'common intention' which are the twin aspects of Section 34, IPC. In view of the above position, it is difficult for the accused to legitimately urge before the Court that owing to the mention of Section 34, IPC, in the charge, he was misled or prejudiced in his defence by being persuaded to presume that all consideration of his individual liability was completely shut out as a result thereof. He would be presumed to know the law on the point and if, in spite of it, he deluded himself into any such belief, he would be doing so at his own peril. (See: Om Prakash(supra)]

90. As held by this Court in Suresh Sakharam Nangare v. The State of Maharashtra, 2012 (9) Judgements Today 116, if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre supposes prior concert therefore there must be meeting of mind.”

8. The said judgment was passed on conviction after recording of the entire evidence and not at the stage of bail. After recording of the evidence, opportunity is given to the witnesses as well as defence to cross-examine and as such, the analysis is different. In the present case, the prosecution's case is that 10-15 people inflicted injuries on the deceased and cause of death was cumulative blows. It is not the case where an isolated injury has been attributed to one of the person like a bullet shot fired by one which would

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clearly differentiate the role of the other accused fixing it on the one who had fired. In the present case, a group of 10-15 people jointly gave beatings to which deceased expired. It is not a case for consideration for anticipatory bail.

9. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for anticipatory bail. The impact of crime would also not justify anticipatory bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

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

11. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

28.03.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.