

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

CRM-M-2811-2025  
Reserved on: 20.03.2025  
Pronounced on: 28.03.2025

Avinash ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mohit Kakkar, Advocate  
for the petitioner.

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

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

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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 7 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:

“4. That the instant FIR has been lodged at the instance of Jasbir Kaur wife of Sukhdev Singh resident of village Chuharwal, Police Station Urban Estate district Kapurthala.

5. That the complainant stated that she was doing the work as maid in the houses of people and now from last 1½ Months, she was working as maid in the house of Vipin Kumar. The complainant further stated that Vipin and his

wife had leveled false allegation of theft of Rs. 11,000/- against her and had beaten her and in this regard a compromise was also affected between them. The complainant stated that her brother Malkeetpal @ Palla had kept the amount of Rs. 11,000/- in the Darbar made in their house and on dated 16.08.2024, she stopped working at Vipin Kumar's house. That she further stated that she was working in 1-2 other houses in that neighborhood i.e. Mohalla Ajit Nagar. Thereafter, they were having grudge against her.

x x x x x

7. That co accused Vipin has caused injuries to her son with Danda, Thereafter, suddenly 10-15 unknown persons came out from their house and on seeing them, her son Harman got released himself from them and ran away from there, then all young men had chased her son Harman stopped him and then have brought him in front of their house, where they all have caused injuries on head, neck, nose and other parts of the body of Harman, due to which, he become unconscious.

8. That in the meantime, due to the noise in the Mohalla, Jagdeep Singh@ Jaggi son of Balwinder Singh resident of Saido Bhulana, who had come to the house of his relatives, came there along with other residents of Mohalla, then the assailants ran away from the spot and while going they threatened the complainant that if you give complaint to the police then they will kill her son. Due to fear of their threats, she took her son home and during night hours, due to bad condition of her son, she along with Raja son of Ruby resident of Chuharwal, got her son admitted in Civil Hospital Kapurthala where she did not disclose to the doctor about the injuries caused by said persons during quarrel and Vipin had also given her financial assistance for the treatment of my son Harman, thereafter, the doctor has not issued MLR.

9. That the complainant further stated that due to serious condition of my son, doctor has referred him on dated 22.08.2024 in the morning to Sri Guru Nanak Dev Hospital, where during treatment, her son Harman has died on dated 29.08.2024 around 9.00 AM. She further prayed that action be taken against the culprits.”

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.3 of the petition which reads as follows:

*“3. That admittedly the petitioner is not named in the FIR, which was registered after a delay of 9 days of occurrence as alleged in the FIR. There is no MLR or PMR of the deceased was ever conducted to corroborate the allegations. The story of the complainant is totally false, concocted and afterthought, even the complainant who is mother of deceased has caught red handed for stolen an amount of Rs. 11000/-from the house of co-accused Rajinder Kaur and Megha Sidhu, where the complainant was working as maid.”*

6. To analyze the argument, it would be appropriate to refer to para no.10 and 11 of status report dated 04.02.2025 which reads as follows:

*“10. That the petitioner has been nominated on the basis of the supplementary statement given by the complainant on dated 02.09.2024. That the complainant stated that petitioner along with other co accused had beaten her son on the head and neck and due to this he passed away. That there are a total of 18 accused in the present FIR. That out of the 18 accused 3 have been declared innocent, one has been Released from custody. That one accused namely Azad singh @ Manga s/o Swaran Singh has been arrested in the present FIR. That the investigation is still underway as the accused are yet to be arrested.*

*B. The evidence against the petitioner:*

*11. That the deponent would humbly submit that the custodial interrogation is essential to uncover the complete truth, particularly to ascertain the petitioner's intentions and actions during the altercation and this would also aid in ensuring a thorough and impartial investigation. That during investigation the CCTV footage was procured of the place of incident and the presence of the petitioner at the spot of occurrence is proven. The petitioner herein along with the other co accused, had with an intention to kill the deceased, come to the place of incident.”*

7. Petitioner along with other persons is attributed injuries on head and neck. Perusal of para no.11 of the reply clearly mentions that petitioner was present at the spot as per CCTV footage. 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 case is that 10-15 people inflicted injuries on the deceased and cause of death was cumulative blows and petitioner was at the spot as per CCTV footage. 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 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 due to which victim expired.

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

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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.