



**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRM-M-26888-2026 (O&M)

DATE OF DECISION : 15.05.2026

KHOKHAN HAWALDAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Argued by : Mr. Rakesh Nehra, Sr. Advocate with
Mr. Arjun Dhingra, Advocate and
Mr. Sanyam Khetarpal, Advocate for the petitioner.

Mr. Jasdev Singh Thind, DAG Punjab with
Mr. Eklavya Darshi, Deputy Advocate General, Punjab.

Mr. R.S. Randhawa, Sr. Advocate with
Mr. K.S. Riar, Advocate and
Mr. Varun Tuteja, Advocate for the complainant.

SURYA PARTAP SINGH, J.

This petition for pre-arrest bail is the first petition, filed by the petitioner under Section 482 of 'the Bharatiya Nagarik Suraksha Sanhita, 2023'. It has been filed with regard to a case arising out of FIR No.39 dated 11.02.2026, for the commission of offence punishable under Sections 318(2), 351, 61(2) [Sections 336(3), 338, 340(2) added later on] of Bharatiya



Nyaya Sanhita, 2023, Sections 103 & 104 of Trademarks Act, Police Station Division No.6, Police Commissionerate District Ludhiana.

2. The abovementioned FIR has come into being on a complaint moved by 'Prabhjot Singh', hereinafter being referred to as 'complainant' only. In the abovementioned complaint, which has formed the basis of FIR, it has been alleged that 'M/s G.K. Traders' has been carrying on business of manufacturing cycle/rickshaw and its spare parts since the year 1961, and that various registrations including sales tax, VAT, GST and trademark registrations stand in favour of the firm of the complainant. According to complainant, the accused, namely 'Khokhan Hawildar' (the petitioner herein), 'Papiya Howladar', 'Parthajit Dasgupta' and 'Sandip Ghosh' were associated with the companies, namely 'M/s G.K. Rickshaw Ltd.' and 'G.K.S. Rickshaw Pvt. Ltd.', and that they dishonestly started using the trade name/trademark "G.K." and fabricated documents, brochures and GST related records in the name of firm of complainant, i.e. 'M/s G.K. Traders'. The complainant has further alleged that the above-named accused even applied for registration of complainant's trademark in their own favour on the strength of false documents and therefore, caused wrongful loss to the complainant, which culminated into wrongful gain to the accused.

3. In the abovementioned complaint, the complainant has also claimed that on 27.02.2025, few of the accused visited the office of complainant at Ludhiana and threatened him to withdraw pending cases filed by the complainant against the accused, and pressurized the complainant to stop opposing the abovementioned illegal business activities of the accused.



The complainant has also stated that on the abovementioned occasion, he was manhandled also, by the accused.

4. In addition to above, the complainant has alleged that with regard to abovementioned dispute, even a civil suit has been filed by the petitioner, but despite a restrained order, passed by the Court in the abovementioned civil suit in favour of complainant, the accused continued to sell e-rickshaws and spare parts through dealers and social media platforms.

5. It is the case of the prosecution that pursuant to abovementioned complaint, formal FIR of this case has been lodged and the investigation taken up.

6. Heard.

7. It has been contended by learned Senior Counsel for the petitioner that contents of the abovementioned FIR go to show that main allegations in the FIR, against the petitioner, are with regard to use of trade name/trademark, incorporation, function of certain companies, filing of documents before various authorities and commercial sale of e-rickshaws/spare parts in the brand name 'G.K.', despite pendency of civil litigation. As contended by learned Senior Counsel for the petitioner, the gravamen of the dispute, as narrated in the FIR itself, is with regard to business dealings and corporate entities, and that the present petitioner is alleged to be one of the Directors of 'M/s G.K. Rickshaw Ltd.', against whom the civil suit has been filed by the complainant.



8. According to learned Senior Counsel for the petitioner, before registration of instant FIR, a commercial suit, bearing No.CS/14/2025, titled as 'M/s G.K. Traders & Anr. V/s M/s G.K. Rickshaw Ltd. & Ors.', has already been instituted in the commercial Court, Ludhiana, which demonstrates that the dispute between the complainant and the present petitioner is primarily a dispute of civil nature.

9. The learned Senior Counsel for the petitioner has further contended that in the backdrop of abovementioned dispute, which is essentially a dispute of civil nature, by concocting a story with regard to intimidation and forging of documents, a false FIR has been lodged, whereas the core of dispute between the parties can be adjudicated upon by a civil Court only. According to learned Senior Counsel for the petitioner, once the FIR in question has been lodged, the petitioner approached the Court of learned Additional Sessions Judge Ludhiana for the concession of pre-arrest bail, but by virtue of order dated 18.04.2026, passed in a pre-arrest bail application bearing No.BA/3113/2026, the learned Additional Sessions Judge Ludhiana dismissed the abovementioned application. As per learned Senior Counsel for the petitioner, the abovementioned order, passed by the learned Additional Sessions Judge Ludhiana, is illegal, arbitrary and untenable, as the same is outcome of improper appreciation of fact as well as the law.

10. It has also been contended by learned Senior Counsel for the petitioner that on 09.05.2026, when the petitioner had gone to 'Netaji Subhash Chandra Bose International Airport, Kolkata', in the wake of



‘Look-Out Circular’ (LOC), he was apprehended by police officials on the Airport and thereafter, produced before the Court of learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas, West Bengal. As per learned Senior Counsel for the petitioner, the learned Additional Chief Judicial Magistrate, Barrackpore, before whom the petitioner was produced, extended the benefit of interim/transit bail to the petitioner on 09.05.2026 itself, with a direction to appear before the learned trial Court at Ludhiana by 12.05.2026. According to learned Senior Counsel for the petitioner, in the meantime, the present petition for pre-arrest bail has been filed.

11. The learned Senior Counsel for the petitioner has further contended that once at the time of filing of present petition, the petitioner was not in custody, the petition for pre-arrest bail is maintainable. In support of his abovementioned arguments, the learned Senior Counsel for the petitioner has referred to the observations made by the Hon’ble Supreme Court of India in the case of ‘Priya Indoria V/s State of Karnataka & Ors.’ 2024(2) RCR (Criminal) 112.

12. The learned State Counsel, as well as learned Senior Counsel for the complainant, have controverted the abovementioned arguments. The thrust of arguments of learned Senior Counsel for the complainant has been upon the plea that once in view of Look-Out Circular, the petitioner was taken into custody, and at the time of interim/transit bail, a direction was given to the petitioner to appear before the learned trial Court by 12.05.2026, the present petition for pre-arrest bail is not maintainable. According to learned Senior Counsel for the complainant, once the petitioner has been



arrested and released on interim/transit bail, he is presumed to be in custody and therefore, in view of principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Dhanraj Aswani V/s Amar S. Mulchandani & Anr.' AIR 2024 SC 4983, the petition for pre-arrest bail is not maintainable.

13. In addition to above, the learned Senior Counsel for the complainant has also referred to the observations recorded by the Gauhati High Court in the case of 'Kamal Sabharwal V/s The State of Assam & Anr.' 2025(5) GauLR 490 and also by the High Court of Kerala at Ernakulam in the case of 'Pankaj Kumar V/s Station House Officer & Anr.' Bail Application No.13662 of 2025. While referring to the observations, recorded in the abovementioned judgments, it has been contended by learned Senior Counsel for the complainant that the present petition for pre-arrest bail is not maintainable and deserves dismissal.

14. The record has been perused carefully.

15. A perusal of record shows that in the present case, the primary question, which needs to be determined, before adverting to the merits of the present petition for pre-arrest bail, is the maintainability of present petition. With regard to above, it is relevant to mention that in the present case, there is no dispute qua the following facts:

- i. that the FIR No.39 dated 11.02.2026 for the commission of offence punishable under Sections 318(2), 351, 61(2) [Sections 336(3), 338, 340(2) added later on] of BNS and Sections 103 &



104 of Trademarks Act, has been lodged at the instance of complainant-Prabhjot Singh;

- ii. that the petitioner has been named as an accused in the abovementioned FIR;
- iii. that the application filed by the petitioner for pre-arrest bail in the Court of Sessions at Ludhiana, has been dismissed by the learned Additional Sessions Judge Ludhiana, vide order dated 18.04.2026;
- iv. that a 'Look-Out Circular' was issued against the petitioner;
- v. that in view of abovementioned 'Look-Out Circular' on 09.05.2026 the petitioner was apprehended at 'Netaji Subhash Chandra Bose International Airport, Kolkata';
- vi. that on the same day, i.e. on 09.05.2026, the petitioner was produced before the Court of learned Additional Chief Judicial Magistrate, Barrackpore, West Bengal;
- vii. that on 09.05.2026, the learned Additional Chief Judicial Magistrate, Barrackpore accorded the benefit of interim/transit bail to the petitioner;
- viii. that while affording the abovementioned benefit to the petitioner, the learned Additional Chief Judicial Magistrate, Barrackpore directed the petitioner to appear before the learned trial Court at Ludhiana within three days, i.e. by 12.05.2026; and
- ix. that on 11.05.2026, the present petition has been filed.

16. In the backdrop of abovementioned facts, which are not in dispute in the present case, now it has to be determined as to whether on



11.05.2026, when the petitioner was on interim/transit bail, the petition for pre-arrest bail is maintainable or not.

17. With regard to above, the observations recorded by the Hon'ble Supreme Court of India in the case of 'Dhanraj Aswani' (supra) are relevant. In the abovementioned case, the Hon'ble Supreme Court of India has observed that 'an accused is entitled to seek pre-arrest bail in connection with an offence so long as he is not arrested in relation to that offence. Once he is arrested, the only remedy available to him is to apply for regular bail either under Section 437 or Section 439 of CrPC, as the case may be'.

18. In the abovementioned case, the Hon'ble Supreme Court of India has also observed that under Section 438 of CrPC, the pre-condition for a person applying for pre-arrest bail is the 'reason to believe that he may be arrested on an accusation of having committed a non-bailable offence'. As per Hon'ble Supreme Court of India, the only pre-condition for exercising the said right is the apprehension of the accused that he is likely to be arrested.

19. While dealing with similar situation, the Gauhati High Court in the case of 'Kamal Sabharwal' (supra) has observed that once a person is arrested and produced before the Jurisdiction Magistrate, option for pre-arrest bail is no longer available to him, despite the fact that the benefit of transit bail has been accorded to him.



20. While dealing with identical situation, the abovementioned view, rendered by the Gauhati High Court, has been followed by the High Court of Kerala in the case of 'Pankaj Kumar' (supra).

21. As far as the law propounded by the Hon'ble Supreme Court of India in the case of 'Priya Indoria' (supra), is concerned, the same is not applicable to the factual matrix of the present case, as in the abovementioned case, although the importance of right to personal liberty of an individual has been highlighted, yet, the same does not deal with a situation, wherein a person has already been arrested.

22. If the facts and circumstances, which erupted in the present case, (discussed above), are taken into consideration, co-jointly with the abovementioned principles of law, it transpires that once the petitioner has been arrested on the basis of a valid warrant issued by a competent Court, irrespective of the fact that the benefit of transit bail has been accorded to him, he is deemed to be in custody. In fact, the status of the petitioner, who is enjoying the interim/transit bail, in other words, may be defined to be 'constructive custody'. Once the warrant of arrest has already been executed and the petitioner has already been arrested, as on today, he is supposed to be in constructive custody. Thus, it is hereby observed that the present petition filed by the petitioner for pre-arrest bail is not maintainable.

23. As a sequel to abovementioned observations, once the petition for pre-arrest bail in itself has been found to be not maintainable, the same is hereby ***dismissed***, accordingly.



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24. It is, however, clarified that the observations, recorded hereinabove, shall not be construed as an expression of opinion on the merits of the case.

25. Since the main petition has been dismissed, pending applications, if any, are rendered infructuous.

15.05.2026

Gaurav Thakur

**(SURYA PARTAP SINGH)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No