

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

1)

CRM-16255-2020 in/and
CRM-M-43447-2019 (O&M)
Date of decision: 01.10.2020

Shekh Riazudeen @ Riaz

.....Petitioner

versus

State of Punjab

.....Respondent

2)

CRM-M-6910-2019

Shekh Riazudeen @ Riaz

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Narender Pal Bhardwaj, Advocate
for the applicant/petitioner.

Mr. Jagmohan Ghuman, DAG, Punjab
for the respondent-State.

Mr. Satya Pal Jain, Addl. Solicitor General with
Ms. Alisha Arora, Advocate
for Union of India.

FATEH DEEP SINGH, J. (ORAL)

Due to outbreak of pandemic COVID-19, the instant bail

matters are being taken up for hearing through video conferencing.

The above detailed applications for bail, one, under Section 437 (6) Cr.P.C. (CRM-M-43447-2019) read with Section 482 Cr.P.C, second, under Section 439 Cr.P.C. (CRM-M-6910-2019) and third, under Section 436-A Cr.P.C. (CRM-16255-2020), having arisen in the same very case and got registered by way of FIR No.121 dated 03.11.2018 under Sections 3 and 4 of the Official Secret Act, 1923 and Section 3-A of the National Security Act, 1980 registered at Police Station Mamdot, District Ferozepur Punjab and subsequently, charge framed under Section 3(1) of the Official Secrets Act, 1923, against the same accused/petitioner, are being taken up and disposed off together through this common order for the sake of brevity.

The brief facts culminating into the present case are that on the basis of reliable information received by the Police Station Mamdot (Ferozepur, Punjab) that the accused/petitioner-Shekh Riazudeen @ Riaz, permanent resident of Latur (Maharashtra) and being a constable with the Border Security Force (BSF) and posted in the forward border area of Police Station Mamdot was involved in sharing, passing of classified and secret information about the service and infrastructures in the defence sensitive area through social media on to agents and Pakistan Intelligence Operative including Mirza Faisal in lieu of getting monetary benefits. It was

further revealed that certain amounts were transferred in the State Bank of India branch of Beed (Maharashtra) in the name of brother-in-law of the petitioner leading to arrest of the petitioner on 03.11.2018.

Learned counsel for the petitioner has led scathing attack on the prosecution terming it to be a false implication unsubstantiated on the records of the case and an outcome of personal vengeance and rivalry within the force. The counsel has sought to rake up the plea that the petitioner is behind the bars for more than 01 year 11 months and, therefore, by virtue of provisions under Section 437 (6) thus, he was entitled to bail and has sought to take refuge of present COVID-19 pandemic. Counsel has sought to even rake up the plea that the learned Sessions Judge, Ferozepur had earlier set aside the proceedings being vitiated. It is urged before this Court, with much force, by the counsel that on account of certain serious remises, the proceedings against the petitioner have been put to hold which entitles him to consideration of his bail and as a last resort, had prayed for allowing him interim bail.

Mr. Satya Pal Jain, Addl. Solicitor General assisted by Ms. Alisha Arora, Advocate for Union of India and Mr. Jagmohan Ghuman, DAG, Punjab, has strongly opposed the bails taking the plea that the petitioner was carrying on subversive activities against the State and his own force, for which the punishment might go upto

14 years mere incarceration claimed by the petitioner does not bestow upon him right to bail. It is submitted that since the petitioner is in league with the agencies across the border and if allowed bail, he might abscond and run away from the country and sought dismissal of his pleas.

Giving a thoughtful consideration to these submissions and on perusal of the records. It is well established on the records that the petitioner has been detained under the National Security Act and which provides for detention for a specific period. The counsel could not highlight, if any representation/challenge to this detention order, by the petitioner has been made or not. Thus, by that analogy as long as the detention order is in operation, no cause for grant of bail is made out. Secondly, the provisions of Section 437 (6) Cr.P.C. by way of proviso lays down that no person shall, if the offence is alleged to have been committed which is punishable with death or imprisonment for life, imprisonment for seven years or more, can be released on bail, if the Court holds reasonable belief on the grounds that he is guilty of such a heinous offence and, therefore, in that case, in light of the allegations and detention, even this plea of the petitioner's side falls to the ground. The petitioner apparently has come up with three bail applications under different provisions whereby he could have either filed a cumulative bail application. To the mind of this Court is nothing short of indiscipline and which is in

contravention of the dispensation of justice besides the fact as has been brought to the notice of this Court that the petitioner has already been involved in another jail offence while under detention, is another ground increasing the gravity of his misconduct, thus, in light of the foregoing discussions, keeping in view the nature of the offence which is prejudicial of the State's interest and security, no cause in allowing these three prayers of the petitioner is made out and thus, all the three bail applications, as such, stand dismissed.

01.10.2020

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No