

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-50081-2021

Date of Decision:-07.04.2022

Umar Gujjar @ Umar Ali.

.....**Petitioner.**

Versus

State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Ghulam Nabi Malik, Advocate for the Petitioner.

Mr. Sandeep Singh Deol, Deputy Advocate General Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.186 dated 26.11.2019 under Sections 302, 120-B IPC and Section 25 & 27 of Arms Act (Sections 307, 325, 109, 201, 212 IPC and Sections 54 & 59 Arms Act added later on) registered at Police Station City-1, Malerkotla, District Sangrur.

2. The brief facts of the case are that Mohd. Yameen @ Bobby son of Mohd. Sadiq got registered an FIR to the effect that they were three brothers. The elder brother was Mohd. Yaseen. He himself was second brother and the third brother was Abdul Rashid @ Khudu. He stated that on 25.11.2019 during the reception party of his marriage celebrations four able bodied unknown young persons came to the marriage palace armed with pistols and revolvers and shot at and killed his brother Abdul Rashid

@ Khudu. One Arun Chauhan son of Krishan Pal was also shot in the leg. He stated that his brother Abdul Rashid had previous enmity with Bagga Khan, Ghaiya Khan and one Fraz Ahmed, who in conspiracy with each other had sent unknown persons to commit the murder of his brother.

3. During the course of investigation 14 more persons were nominated as accused including the petitioner. However, keeping in view the seriousness of the allegations, the investigation of the case was entrusted to Sh. Kanwar Vijay Pratap Singh, IPS who constituted an SIT on 13.02.2021.

4. That thereafter another SIT was constituted by the DGP Punjab under the chairmanship of Sh. Vikramjit Singh Duggal for further investigation. The said SIT nominated five additional accused including the petitioner-Umar Gujjar @ Umar Ali who was arrested on 10.07.2021.

5. As per the investigation the statements of co-accused were recorded who disclosed that the petitioner had given information to the attackers after conducting the reccee of the marriage palace at Ludhiana road, Malerkotla. Along with petitioner, Sakib and Ravi conducted the reccee and gave information to Subhan Khan @ Pehalwan.

6. The counsel for the petitioner has argued that the occurrence is of 25.11.2019 and the FIR was registered on 26.11.2019, after which the main accused were arrested and interrogated. In none of their disclosure statements, the name of the petitioner figured. It is further argued that in the previous reports under Section 173 Cr.PC the petitioner was not named. It was only in the last report the name of the accused has figured. Even otherwise the only material against the petitioner is the alleged confessional statement of his co-accused in police custody which has no evidentiary

value and in the absence of any recovery from the petitioner or any other substantive evidence, the petitioner deserves the concession of regular bail.

7. The Counsel for the State on the other hand has admitted the factual position but has stated that a specific role had been attributed to the petitioner and his antecedents do not entitle him to the grant of regular bail.

8. I have heard learned Counsel for both the parties at length.

9. Taking the entire prosecution version to be true, the best case against the petitioner, though based on inadmissible evidence is that he along with his co-accused conducted recce of the place of occurrence. This role attributed to the petitioner has also figured after the earlier reports under Section 173(2) & 173(8) Cr.PC did not inculcate the petitioner.

10. So far as the FIRs pending against the petitioner are concerned, the trial in FIR No.64 dated 15.06.2013 under Sections 420, 467, 471, 120-B, 336, 148, 149 IPC and 25/54/59 of Arms Act registered at PS Amargarh is pending and in FIR No.03 dated 03.01.2015 under Sections 419, 202, 205 IPC registered at PS City Sangrur, wherein he has been convicted.

The Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. & Anr. 2012(1) RCR) Criminal 586** has held as under:-

“ It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc. ”

11. Thus, keeping in view the fact that the petitioner is in custody

since 10.07.2021, and as many as 45 witnesses are yet to be examined, the further incarceration of the petitioner is not required.

12. Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner **Umar Gujjar @ Umar Ali** son of Nawab Ali is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Sangrur.

13. However, the petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial.

14. If the petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

April 07, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>