

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

CRM-M-33486-2021(O&M)

Date of Decision:-07.04.2022

Fraj Ahmed @ Fraji.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Gazi Mohd. Umair, 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, 307, 325, 109, 120-B/201 IPC and Section 25 of Arms Act 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 Fraz Ahmed, the present petitioner 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. In the meanwhile, report under Section 173 Cr.PC was submitted against the petitioner and other accused on 15.03.2021.

4. The investigation was conducted by the SIT. During the course of investigation certain facts came to light which are as follows:-

- (i) *The petitioner was married to one Shama Farazi and the deceased was having illicit relations with the said lady. The petitioner left the matrimonial home and got married to one Sandeep Kaur @ Afreen;*
- (ii) *FIR No.06 dated 16.01.2016 under Sections 451, 323, 506, 427, 120-B, 148, 149 IPC was registered at Police Station Dehlon against Shama Farazi and unknown persons at the instance of Jagdev Singh, the father-in-law of Mandeep Kaur, the real sister of Sandeep Kaur @ Afreen;*
- (iii) *An FIR No.116 dated 26.09.2018 under Sections 451, 323, 427, 506 and 34 IPC was registered at Police Station City 2 Malerkotla at the instance of petitioner against Shama Farazi and the present complainant for assaulting Sandeep Kaur @ Afreen the second wife of the petitioner;*
- (iv) *The complainant party had named the petitioner on account of the aforementioned facts on suspicion;*
- (v) *The petitioner was found to be admitted in Civil Hospital De-Addiction Centre, Malerkotla vide CR No.14212 from 23.11.2019 to 26.11.2019;*
- (vi) *It was found that accused Bagga Khan took the responsibility*

of the commission of the murder by uploading a post on the Facebook;

(vii) During the course of inquiry none of the accused namely Bagga Khan and Gaya Khan and others named the petitioner as being involved in the conspiracy to commit murder.

5. Based on the aforementioned facts a supplementary report under Section 173(8) Cr.PC was prepared on 20.12.2021 based on the SIT report dated 15.12.2021 (Annexure R-1/T).

6. Based on the first investigation report inculcating the petitioner and the subsequent investigation report exonerating the petitioner the charges have been framed against the petitioner on 25.02.2022.

7. The counsel for the petitioner contends that undoubtedly the petitioner is named as accused in the first challan but the same was without any basis because no witness has attributed any role whatsoever to the petitioner and he is named on the suspicion alone. He submits that on a detailed investigation conducted by the SIT, the petitioner has been exonerated by giving comprehensive and detailed reasons. He thus contends that the petitioner deserves the concession of regular bail.

8. The Counsel for the State on the other hand does not dispute the factual position as enumerated hereinabove but submits that now charges have been framed against the petitioner and his criminal antecedents are sufficient to deny him the concession of regular bail.

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

10. Admittedly, the petitioner has been named on suspicion in the first challan but the subsequent challan has clearly exonerated him of any wrong doing. Of course it would be a moot point during the trial as to the culpability of the petitioner but the fact that the petitioner has been exonerated in a subsequent investigation, cannot be denied. It would also

be relevant to mention here that petitioner is in custody since December 2020. As many as 45 witnesses are to be examined and, therefore, the trial is not likely to be concluded in near future.

11. That so far as the criminal antecedents of the petitioner are concerned, it would be relevant to mention here that in the FIR No.11 registered under the Arms Act, the petitioner is on bail, in FIR No.175 under Section 174-A IPC, the petitioner is on bail, in FIR No.13 under Section 307 IPC, the petitioner has been granted the concession of anticipatory bail by this Court. Two other FIRs, namely, FIR No.100 and FIR No.06 offences are relatively minor in nature. It may also be relevant to mention here that in judgment of Hon'ble Apex Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. & Anr. 2012(1) RCR) Criminal 586** it has been categorically held that bail cannot be denied only on account of criminal antecedents of a accused and the role of the accused in that particular FIR must also be examined. Para 6 of the judgment is reproduced hereinbelow:-

*“ 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. ”***

12. Keeping in view the aforementioned facts, the period of custody already undergone along with the fact that the trial is not likely to be concluded in near future, the present petition is allowed and the petitioner **Fraj Ahmed @ Fraji** son of Sh. Nazir Mohd. @ Nazir Ahmed 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>