

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

CRM-M-37234-2024

Date of Decision:- 29.08.2024

Ashish Kumar.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Amit Agnihotri, Advocate with
Ms. Moni Makkar, Advocate &
Mr. Abhishek Jindal, Advocate for the Petitioner.

Mr. Prabhdeep Singh Dhaliwal, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.186 dated 26.11.2019 under Sections 302, 307, 325, 109, 120-B, 201 IPC and Section 25 of the Arms Act, 1959 registered at Police Station City-I, District Malerkotla.

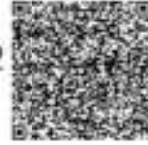
2. The present FIR came to be registered on the statement of Mohd. Yamin @ Bobby and reads as under:-

“ Statement of Mohd. Yamin @ Bobby son of Mohd. Sadiqe resident of Big Edgah Road, Ward No.1 Malerkotla, Mobile No. 90411-68324 aged about 28 years, it is stated that I am resident of above mentioned address. That we are three brothers, my elder brother is Mohd. Yasin and I am younger to him, Abdul Rashid @ Khudu is our youngest brother. That on 25.11.2019 there was



reception party of my marriage at New Rani Mehal Palace near Jarg Chowk Ludhiana Road Malerkotla, in which our relatives and friends joined us at large. It was at about 8:15 P.M. evening time I, and my brother Abdul Rashid were standing at the welcome door of new Rani Palace in order to receive our relatives. Where four able bodied unknown young persons aged about 25 to 35 years suddenly came there from the main gate of the palace and started firing from their pistol/ revolvers towards my brother Abdul Rashid @ Khudu with an intention to kill him and numbers of fire shots hit the chest of my brother Abdul Rashid @ Khudu. My brother tried to save himself by running towards the back side of the palace, then these persons whom I can identified if they are produced before me, they shot fire at the back of my brother. The pellets of the said fire shot also hit on the right leg of Arun Chauhan son of Krishan Pal resident of Bathindia Mohalla aged about 25 years, who was doing the work of lighting at the palace at that time. My brother Abdul Rashid @ Khudu fell down on the ground at the spot, blood was oozing from the body of my brother at the spot. That all the four persons ran away from the spot along with their respective weapons through the main gate of the palace to the outside. Then I, along with my friends Mohd. Javed son of Mohd. Rafiq resident of Mohalla Rahuwalal Malerkotla and Mohd. Yain son of Mohd. Yousaf, resident of Mohalla Langri Bhumsi Malerkolla after arranging the vehicle, we were taking my brother Abdul Rashid @ Khudu to the Civil Hospital Malerkotla in the injured condition, then on the way my brother Abdul Rashid @ Khudu succumbed to the injuries. That my brother Abdul Rashid @ Khudu has previous enmity wit Bagga Khan resident of Takhar and Ghaiya Khan resident of Matoi and Fraz Ahmed resident of near Big Eidgah Malerkotla. Earlier a number of times they have threatened my brother Abdul Rashid @ Khudu to kill him. That Bagga Khan, Ghaiya Khan and Fraz Ahmed after hatching conspiracy with unknown persons got murdered my brother Abdul Rashid @ Khudu by sending four unknown assailants who have killed my brother after firing shots at my brother. I have recorded my statement, read the same which is true and correct. Sd/- Mohd. Yamin @Boby."

3. Pursuant to the registration of the FIR the supplementary statement of the complainant was recorded to the effect that he had come to know that the petitioner had supplied arms for the commission of the offence to the accused.



4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The supplementary statement of the complainant was based on suspicion and there was absolutely no admissible evidence available against the petitioner. The confessional statements of the arrested accused were inadmissible in evidence. Be that as it may, as the petitioner was in custody since 10.02.2020 but none of the 32 Pws had been examined so far, the trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail even though he was a serial offender with multiple other cases registered against him.

4. The Counsel for the State on the other hand has filed reply by way of affidavit dated 28.08.2024 of Mr. Kuldeep Singh, PPS, Deputy Superintendent of Police, Sub Division Malerkotla, District Malerkotla in the court today, which is taken on record. While referring to the said reply he contends that as per prosecution case it was the petitioner who supplied the weapons for the commission of the offence. He was a habitual offender with 08 other cases registered against him including those under the UAPA. Therefore, the nature of the allegations levelled against the petitioner did not entitle him to the concession of bail. He however, concedes that the petitioner was in custody since 10.02.2020 and that none of the 32 Pws have been examined so far.

5. I have heard the learned counsel for the parties.

6. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated upon during the course of the Trial. Admittedly, the petitioner has undergone more than 4-1/2 years of custody which is almost half the maximum sentence of 10 years which could be imposed under the provisions of the Arms Act. Further none of the 32 Pws



have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. In this situation even though the petitioner is habitual offender, his further incarceration is not warranted.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Ashish Kumar** son of Sh. Rambir Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the cases mentioned in the reply dated 28.08.2024 filed by the State.

10. If the petitioner or any of his family members/associates make any attempt to contact/threaten/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this Court.

11. The petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 29, 2024
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No