

IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI

Bail Application No. 2622-2020

FIR No. 51/20

PS- Jafrabad

U/S. 147/148/149/186/307//353/34 IPC & Section 25/27 Arms Act

State Vs. Shahrukh Pathan @ Khan

04.02.2021

ORDER

1. Vide this order, I shall dispose off an application under Section 439 Cr.P.C for grant of bail of applicant/accused Shahrukh Pathan @ Khan.

2. Arguments were heard on behalf of accused by Sh. Khalid Akhtar, Ld. Counsel for accused and for prosecution by Sh. D.K. Bhatia, Ld. Special Public Prosecutor for State. I have perused the record.

3. Ld. Counsel for applicant/accused Shahrukh Pathan @ Khan had submitted that accused was arrested on 03.03.2020 subsequently he was produced before the court and the police remand was allowed to interrogate the accused. The applicant has been languishing behind bars for the past 10 months despite the non-commencement of trial.

It was further submitted that accused is innocent and has been falsely implicated in this case. The investigation has been biased. Moreover, the statement of complainant/HC Deepak Dahiya, in this case is, contradictory

in terms of various news clippings and statement under Section 161 Cr.P.C. As per the complainant, he was never shot at, in many of the interviews and thus, Section 307 IPC cannot be invoked against him.

He has referred to a judgment of Hon'ble Supreme Court of India passed in *Sanjay Chandra vs. CBI* and many other judgments to seek bail. It was submitted that moreover, due to Covid-19 situation, the trial has been suspended and in the pre-trial stage, the accused is incarcerated.

It was further submitted that accused has been made poster boy by the prosecution without any basis. The court must consider the gravity of the offence, nature of evidence, likelihood of accused committing further offences, previous criminal antecedents; and likelihood of accused absconding or evading process of law while considering the bail application. He has also referred to various orders to contend that the applicant may be granted bail.

It was further submitted that the applicant/accused undertakes to abide by any condition imposed upon him and he also undertakes to appear before the court or any other authority as and when required to do so.

It was, therefore, prayed that applicant/accused may be released on regular Bail

4. (a) Ld. Special Prosecutor has strongly opposed the bail application

stating that the allegations against the accused are serious.

(b) It was stated in the reply that on 24.02.2020 at about 12.30 PM, clashes started on the road between Jafrabad Metro Station and Maujpur Chowk between two groups, one supporting blockage of 66 foota road near Jafrabad Metro Station and the other opposing the blockage of road. Both groups comprising of 5,000/10,000 people from two different communities continuously indulged in heavy stone pelting.

(c) The present case relates to a sensational firing incident by an anti-CAA protesters on a police official in uniform which occurred during riot at 66 foota road, Jafrabad on 24.02.2020. The sensational incident was captured by a Journalist in his mobile phone which became breaking news on all the news channels and news papers. After the dispersal of rioters, three empty cartridges bearing the mark KF 7.65 were recovered from the spot by ASI Naresh Kumar of PS Jafrabad and efforts were made to identify the said police official since outside force was also called and deployed to assist the local police of PS Jafrabad.

(d) On 26.02.2020, HC Deepak Dahiya, who was deployed from Police Training school, Wazirabad for law and order duty in North-East District was identified as the police official who had bravely faced the rioter brandishing and firing from his pistol on 24.02.2020 at Jafrabad. His statement was recorded. He stated that on 24.02.2020 he was deputed from PTS Wazirabad to North East District for Law & order duties and for this

purpose he was further deputed in the area of PS Jaffrabad along with other staff with anti-riot equipments. At about 1:45PM, he was deputed on 66 foota road beneath metro line Jaffrabad where a huge crowd had unauthorizedly gathered which was protesting and shouting slogans against Citizenship Amendment Act. The people in crowd were carrying stone, bottles & Pistols and stone pelting was being done by the violent crowd. From the crowd gathered there, one person brandishing pistol in his hand came running towards him and fired 3-4 rounds towards other people. HC Deepak Dahiya kept warning that person against firing but he did not listen, however, for the safety of life of public and government property, HC Deepak Dahiya stood there strongly. When the said person/rioter was at a distance of about 9-10 feet from him, that person fired with the intention to kill him aiming at his head however, he dodged and saved himself. He tried to calm that person who refused to pay any heed and came near him and pointed his pistol towards him. Thereafter, the person wielding the pistol pushed him by his left hand and at that time, Deepak warned that person by raising his stick and told him to go back. Within few seconds, the said person fired on the public and thereafter started retreating from there. In this manner the said person fired on public and also on him with the intention to kill him by keeping illegal arms. On his statement, the case vide FIR No. 51/2020 dated 26.02.2020 u/s 307/186/353 IPC & 25/27 Arms Act PS Jaffrabad was registered.

(e) During Investigation of the case, the person brandishing and firing

from pistol on 24.02.2020 as captured in the video was identified as the applicant Shahrukh s/o Sabir Ali r/o Arvind Nagar, Ghonda, Delhi. He was found absconding since the day of the incident. On 03.03.2020 the petitioner Shahrukh was intercepted and detained by the Police team of Narcotics Cell, Crime Branch from Shamili Bus Stand Uttar Pradesh on the basis of secret information. Thereafter investigation of the said case transferred to the Narcotics Cell/Crime Branch.

After sustained interrogation the applicant revealed his complete identity as Shahrukh Pathan s/o Sabir Ali @ Baldev Singh r/o H.No. U-108, Gali No-5, Arvind Nagar, Ghonda Delhi, age 23yrs. and also voluntarily disclosed about his involvement in the present case. Finding sufficient grounds of arrest he was arrested in the case. He was produced before the Ld. Duty MM, Karkardooma Court on 03.03.2020 itself and his 4 days police custody remand was obtained. The applicant was correctly identified by the complainant HC Deepak Dahiya.

(f) As per the disclosure statement made by the applicant, the Ascent Car No. DL 4C-S-3564, which was used by him for escaping from Delhi after committing crime on 24.02.2020, was recovered from near Kabrishtan, Khurgan road, Kairana, Shamli, UP at his instance. From the search of car, one mobile phone OPPO Black white (without SIM) along with original Bill Invoice No.68 dated 27.02.2020 of mobile phone which was issued in the name of the applicant was also recovered. The said car, mobile phone and original Bill dated 27.02.2020 were seized through Seizure Memo.

(g) The applicant had disclosed that after escaping from Delhi, he had taken shelter in the house of one Kaleem s/o Anwar r/o near Kabrishtan, Khurgan road, Kairana, Shamli, UP with whom he had come in contact some years ago. Search of Kaleem was conducted but he was found absconding. CCTV of the mobile phone shop at Shamli, UP has also been seized which shows the applicant and the accused Kaleem together at the mobile shop on 27.02.2020, the day mobile phone was purchased by Shahrukh.

(h) On 05.03.2020 during police custody remand, the illegal weapon used by the petitioner on 24.02.2020 along with 2 live cartridges and the shirt worn by him at the time of incident were recovered from his house at his instance and the same were taken into police possession through seizure memos.

(i) The applicant disclosed during interrogation that in the month of Dec.2019 he had purchased the illegal weapon Pistol and 20 rounds from one Babu Wasim s/o Babu Khan r/o Vikaspuri colony, Meerut by paying Rs.35000/-.

(j) On 07.03.2020, the applicant was produced before Ld. Duty MM, Karkardooma Court and his police custody remand was further extended for 3 days. At the instance of the applicant house of the weapon supplier namely Babu Wasimm was identified at Meerut and efforts were made to arrest him however, he is absconding. On 18.07.2020, he has been declared Proclaimed

offender by the Court of Sh. Fahad Uddin, Ld MM, Karkardooma Court, Delhi.

(k) On 08.03.2020, Sh. Saurabh Trivedi, Senior reporter, THE HINDU Newspaper who had captured the sensational crime of the applicant in his mobile phone also correctly identified the applicant and the video made by him has been duly seized as vital piece of evidence in this case.

(l) During the course of investigation it was revealed that the accused Kaleem Ahmad who was absconding and had provided hideout to the applicant in his house i.e. H.No-454, Bastian, Khurgan road, Kairana, Shamli U.P from 27.02.2020 till 03.03.2020, was arrested in case FIR No. 08/26/DZU/2019 u/s 20/25/29 NDPS Act registered at Narcotics Control Bureau, R.K.Puram, Delhi few days after the arrest of the applicant. Kaleem was lodged in Meerut Jail.

(m) On 17.03.2020, accused Kaleem Ahmad s/o Anwar r/o H.No-454, Bastian, Khurgan road, Kairana, Shamli U.P was formally arrested u/s 216 IPC in Meerut Jail. The offence being bailable, Kaleem Ahmad was granted bail by the concerned Court in Delhi on 18.03.2020 while he was produced through video-conferencing.

(n) As per the progress of investigation, Sections 147/148/149 IPC have been added in this case. The mobile phone call details (CDR) and Customer application form (CAF) of mobile number 9315207759 used by

the accused Shahrukh on the day of incident i.e. 24.02.2020 has been obtained. CDR & collected video footage analysis shows that on 24.02.2020 applicant was present on the spot and actively involved in rioting and the mobile phone used by the applicant on the day of incident is yet to be recovered.

(o) The applicant originally belongs from Meergunj, Bareilly, U.P and had been involved in riot while armed with deadly weapon and fired on a police official in uniform in full public view which establishes his brazen and a desperate criminal bent of mind. He may abscond or commit crime of similar nature, if released on regular bail.

(p) The charge sheet has been filed on 01.05.2020. Cognizance has been taken by the Court of Ld. MM, Sh. Fahad Uddin, KarKardooma, Court, Delhi.

(q) There is strong likelihood that he may tamper with the evidence and witnesses, if released on bail. The seized exhibits in the case i.e. fire arm and ammunition, etc. have been deposited at FSL, Rohini and result of the same is still awaited.

(r) Earlier the applicant had filed his 1st application for grant of regular bail on the medical grounds of his father Sabir Ali @ Baldev Singh which are mentioned in this present application also, was dismissed as withdrawn in the Hon'ble High Court on 05.05.2020. Thereafter, applicant's 2nd

application for grant of regular bail on the same grounds has been dismissed after hearing on merits in the District & Session Court, Delhi, Karkardooma on 08.05.2020 (Orders attached for kind perusal)

Applicant had filed his 3rd application for grant of interim cum regular bail in the Hon'ble High Court. After hearing on merit for grant of regular bail, same has been dismissed as withdrawn on 24.06.2020 (order attached for kind perusal). Thereafter, applicant had filed his 4th application for grant of interim bail before this Hon'ble Court which was also dismissed by this court on 09.11.2020.

(s) During the investigation of the case one more CCTV footage has been collected in which it is seen clearly that applicant is leading the mob and firing from his pistol fearlessly aiming on the complainant of the case with a intention to kill him.

(t) The applicant's father Sabir Ali @ Baldev Singh was convicted for 10 years with fine of Rs.1 Lac in FIR No.03/10 PS Kotwali, Delhi registered u/s 14 Foreigners Act, 489B,489C,120B IPC r/w 20/61/85 NDPS Act. As per the available record, the applicant's father was also arrested in the year 1994 by Crime Branch for possession of contraband 'Charas' and in the year 1995 he along with his 4 accomplices was arrested in Bikaner, Rajasthan with 60 kgs. Heroin. Hence, the applicant has a family history of criminal cases.

(u) During investigation accused Shahrukh did not reveal the identity of other rioters present with him at the time of incident. However, with the help of CCTV footage and local enquiries another rioter who was present in the mob and identified as Shamim s/o Munna r/o Janta Mazdoor Colony Welcome has been arrested on 28.10.2020 and he is running in J/C in this case. As investigation of the case is going on and some rioters have been identified and are likely to be arrested soon in the coming days who can throw more light on the wider conspiracy angle and also the role of Shahrukh in leading the mob on the day of the incident.

(v) The present case is one of the several incidents of riots were reported in North-East Delhi between 23rd to 26th February in which 53 persons died, 581 persons got injured out of which about 97 persons sustained gunshot injuries. 751 FIRs have been registered in respective police stations regarding these riots.

It was prayed that the application maybe dismissed.

5. (a) The present case has been registered under Section 147/148/149/216/186/307//353/34 IPC read with Section 25/27 Arms Act.

(b) In the instant case, when the clashes happened on 24.02.2020 at near Jafrabad Metro Station, Delhi and heavy stone pelting and firing occurred, as per prosecution, the applicant/accused Shahrukh Pathan was caught brandishing a pistol and with audacity of firing and pointing it at

police personnel HC Deepak Dahiya, who was deputed on that day for law and order arrangements. The accused is alleged to have participated in the riots and has been duly identified. His picture speaks volumes about the involvement and the conduct of the accused on the said day.

As per the statement of complainant/HC Deepak Dahiya, he was deputed in the area of PS Jaffrabad along with other staff with anti-riot equipments. At about 1:45PM, he was deputed on 66 foota road beneath metro line Jaffrabad where a huge crowd had unauthorizedly gathered which was protesting and shouting slogans against Citizenship Amendment Act. The people in crowd were carrying stone, bottles & Pistols and stone pelting was being done by the violent crowd. One person brandishing pistol in hand came running towards him and fired 3-4 rounds towards other people. He kept warning that person against firing but he didn't listen, however, for the safety of life of public and government property, he stood there strongly. When the said person was at a distance of 9-10 feet from him, he fired with the intention to kill him aiming his head however, he dodged and saved himself. He tried to calm him but he didn't pay any heed, he came to him and pointed his pistol towards him. Thereafter, accused pushed him by his left hand and at that time, HC Deepak Dahiya told him to go back and to maintain law and order. He had also warned him by showing stick, however, within few seconds, the said person fired on the public and thereafter, started retracting from there. The said person was of 30-35 years of age and he was wearing red color T-Shirt, Blue color jeans and white

sports shoes. The people standing on the roof had also pelted stones on him. In this manner, the said person fired on public and also on him with the intention to kill him by keeping illegal arms.

The person identified was accused Shahrukh Pathan @ Khan.

(c) Equally important in the present case is the conduct of the accused. After the incident of 24.02.2020, he absconded. After a concerted effort, the applicant was arrested by the team of Crime Branch on 03.03.2020 from Shamli Bus Stand, Uttar Pradesh on the basis of a secret information. The car used for escaping from Delhi after committing the crime was recovered from Uttar Pradesh at his instance. One Kaleem, who had given shelter to the applicant after his escape from Delhi, initially absconded but was later on arrested. The illegal weapon alongwith two live cartridges and the shirt worn by him at the time of incident was also recovered at his instance from his home on 05.03.2020 during police custody remand. The presence of the applicant is also established through his CDR location.

Going by the conduct of the accused and the manner in which he absconded and was arrested later on, suggests that he is a flight risk.

As per record, even applicant's father Sabir Ali @ Baldev Singh was convicted earlier in a NDPS case.

(d) The arguments of the Ld. Counsel for accused that there are discrepancies in the statement of the complainant and most of the interviews of the said complainant, is not relevant for the purpose of bail as firstly, the contents of the charge-sheet alongwith documents/annexures only have to be looked into for the purpose of bail. Secondly, there are no interviews in the present charge-sheet and even, if there are minor discrepancies, at the stage of bail, it is not material.

What is material is the gravity of the offence and the allegations against the accused which are quite grave. And added to it is the conduct of the accused showing that he does not satisfy the triple test for grant of bail.

6. In view of the above discussion, I am not inclined to grant the relief prayed for. Accordingly, the bail application under Section 439 Cr.P.C of accused Shahrukh Pathan @ Khan stands dismissed.

Application is accordingly disposed off.

Copy of this order be e-mailed to Ld. Counsel for accused as also to Ld. Special Public Prosecutor and I.O. concerned.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 04.02.2021