

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

I.A. No. 01-2021

SC No. 100/2021

FIR No. 49/20

PS- Jafrabad

U/S. 147/148/149/186/188/153A/283/353/332/323/307/505/120B/34 IPC &
Section 27 Arms Act

State Vs. Shahrukh Pathan @ Khan

07.12.2021

ORDER

1. This order shall dispose off the application under Section 439 Cr.P.C of applicant/accused Shahrukh Pathan @ Khan for grant of regular bail in the present matter.

2. Arguments were heard on behalf of both applicant/accused and prosecution. Written arguments alongwith certain judgments were filed on behalf of accused. Rebuttal arguments were filed by the prosecution. I have perused the entire record.

3. It was submitted on behalf of applicant/accused Shahrukh Pathan @ Khan that accused has been falsely implicated in this case. Charge-sheet has already been filed and accused is in custody since 03.04.2020. The present FIR No. 49/2020 was filed regarding the death of Vinod Kumar but a different case has been investigated. The victim, witnesses and police officials have been falsely planted in this case. The case is hit by the

principle of double jeopardy as in the charge-sheet almost all the witnesses, evidences against the accused Shahrukh Pathan are the same as in FIR No. 51/20, P.S. Jafrabad. It was argued that the statement/allegations of Rohit Shukla does not inspire confidence as his statement on different dates have marked discrepancies regarding the location and the identification of the accused. The statement of HC Deepak Dahiya is also suspicious as there are discrepancies in his statement under Section 161 Cr.P.C and some of the interviews that he had given post riots. The trial is going to take long time and there is presumption of innocence of the accused. The co-accused persons have already been granted bail.

It was, thus, prayed that bail may be granted to the applicant/accused Shahrukh Pathan.

Applicant/accused had filed number of judgments to support the principle governing the bail.

4. (a) Ld. Special Public Prosecutor has strongly opposed the bail application stating that initially the case was registered for the incident of riots and murder. However, it was felt that for proper investigation of the incident of murder of Vinod Kumar, a separate FIR needs to be registered and FIR No. 153/2020 was registered separately and the present case remained regarding rioting and firing on the incident at Maujpur Chowk. The CCTV footage camera (installed near Metro Pillar No. 208 a mere 40-50 meters away from Maujpur Chowk) of nearby spot was examined which

shows applicant/accused Shahrukh Pathan carrying a pistol and firing from the same and running towards Maujpur Chowk alongwith rioting mob. The said mob is visibly moving at a fast pace forward and backward and apart from main road, the spot i.e. Shastri Gali No.1 is also connected internally in a network of streets. As per the CDR in relation of the mobile phone used and recovered from the applicant, he was present on the spot. There was statement of HC Deepak Dahiya identifying the accused Shahrukh Pathan as involved in the case.

(b) It was also argued that victim Rohit Shukla had suffered a gunshot injury. It was also argued that there is no question of double jeopardy, as alleged by the accused, since present case pertains to the injury caused to victim Rohit Shukla, Ct. Deepak and Ct. Raman and the incident of rioting at Maujpur Chowk on 24.02.2020 and merely because certain evidences collected in FIR No. 51/2020 also forms part of the record in the present case since same establishes the presence of the accused at the scene of crime. Hence, the present case cannot be stated to be hit by the principle of double jeopardy. It is also stated that the contention regarding place of incident behind Shani Mandir as raised by the defence has no basis as there is a Temple right under Maujpur Chowk which is 30-40 meters away from the Shastri Gali No.1 where victim Rohit Shukla was injured. Also, the victim has identified the place where he got injured and at his instance, site plan was prepared. The MLC also mentions the Maujpur Chowk which the counsel for accused has conveniently chosen to ignore. Moreover as per the

DD No. 64A, the place of injury identified as Seth Bhagwandass School which also happens to be situated near the Maujpur Chowk towards Jafrabad Metro Station at a distance of 70 meters away approximately.

(c) It was also submitted that the accused is a flight risk and can tamper with the evidence.

It was, thus, prayed for that bail application be dismissed.

5. (a) The present FIR has been registered regarding the rioting and injuries to police personnel and gun shot injury sustained by Rohit Shukla, on 24.02.2020 at Mauzpur chowk by an armed mob/unlawful assembly.

(b) There was prohibitory order under Section 144 Cr.P.C for the whole North-East District with effect from 24.02.2020 to 24.03.2020 by DCP (North-East). Despite this, hundreds of people had gathered and formed an unlawful assembly. There were violent protest and stone pelting and damage to public property, assault and attempt on the life, injuries were caused. If an unlawful assembly is committing an act, then every member of the assembly is guilty of it, if it is done in prosecution of common object. There was a prohibitory order and violence by the assembly.

(c) The witness/injured Rohit Shukla gave a statement that on 24.02.2020 at Mauzpur Chowk, there were two groups of people. One group was shouting “ Allah-hu-Akbar” and protesting against CAA and NRC and

the unlawful assembly turned violent and started throwing stones and one person holding a pistol shot at him. The police personnel were also injured. However, he had given another statement on 01.04.2020 whereby he stated that on 24.02.2020 at about 1.30 pm there were two groups of people, who were shouting slogan and protesting against CAA and NRC. In the crowd, one Sonu Chikna R/o Gali No.3, Janta Majdoor Colony, Welcome and his brother Aatir and Osama R/o Gali No. 30/2, Jafrabad and were shouting “maro in kafiro ko”. The crowd got violent and started stone pelting. Out of this crowd, one boy aged 24-25 years having red color hair wearing red color T-shirt and Blue color Payjama and his mouth was tied with handkerchief, came out with pistol and tried to kill him. He also fired at the witness who received injuries in his left thing and blood started oozing out. Thereafter, the boy ray away.

(d) It is important to mention here that the various aspects raised by the defence regarding the place of incident being behind Shani Mandir and its distance from Maujpur Chowk and also clarified by the prosecution regarding distance and location of Mandir, are matters to be discussed at the stage of trial and not at this stage. Victim Rohit Shukla had suffered gunshot injury and he has given his statement under Section 161 Cr.P.C regarding the same. HC Deepak Dahiya had also given statement regarding the accused under Section 161 Cr.P.C. Ld. Counsel for accused had raised contention that the statement of these two witnesses cannot be relied upon as there are discrepancies/additions in their different statements. This aspect is

not to be considered at the stage of bail. What is to be seen is the charge-sheet and its contents. The statement of all the witnesses have to be taken at their face value and the accused can cross-examine the said witnesses on the aspect he deems it fit. However, the statements cannot be straightaway negated as agitated by the counsel for accused.

There is also a CCTV footage of camera installed near Metro Pillar No. 208, a mere 40-50 meters away from the Maujpur Chowk and its shows the presence of accused Shahrukh Pathan in the riotous mob. Even, as per his CDR location, he was present at the spot. HC Deepak Dahiya has also identified accused Shahrukh Pathan in the case.

(e) Moreover, the applicant/accused Shahrukh Pathan is not only involved in the present FIR but also involve in FIR No. 51/2020, P.S. Jafrabad. Accused had evaded his arrest in the riots cases and after a great deal of efforts, he was apprehended by a team of Crime Branch on 03.03.2020 from Shamli Bus Stand, Uttar Pradesh on the basis of a secret information. The illegal weapon and cartridges were recovered and T-Shirt worn by him at the time of incident were recovered from his house at his instance during police custody remand. Thus, the conduct of the accused, the manner in which he absconded and was apprehended goes to show that he is indeed a flight risk and can tamper with the evidence or influence the witnesses. The charges are yet to be framed.

6. In view of the above discussion, I do not find it a fit case to grant the bail to applicant/accused at this stage. 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 applicant/accused as also to Ld. Special Public Prosecutor and Investigating Officer concerned.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 07.12.2021