

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

I.A. No. 06-2023 (Shahrukh Pathan @ Khan)

SC No. 100-2021

FIR No. 49/20

PS Jafrabad

U/S. 147/148/149/186/188/153A/283/353/

332/307 IPC

State Vs. Salman & Ors.

07.10.2023

Present : Sh. Anuj Handa, Ld. Special Public Prosecutor for the State alongwith Sh. Naresh Kumar, ACP/AGS, Crime Branch and IO/Inspector Arvind on court notice.
Sh. Khalid Akhtar , Ld. counsel for the applicant/accused Shahrukh Pathan @ Khan on court notice.

Clarifications heard.

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 applicant/accused by Ld. Counsels Sh. Khalid Akhtar and Sh. Javed Ansari, and for prosecution by Ld. Special Public Prosecutor Sh. Anuj Handa. I have perused the entire record.

3. 3.1 Ld. counsel for the applicant/accused has argued that applicant/accused has been falsely implicated in this case. Charge-

sheet has already been filed and accused is in custody since 03.04.2020. It was argued that the statement/allegations of Rohit Shukla does not inspire confidence as his statement under Section 161 Cr.P.C on different dates have marked discrepancies and his deposition in court has improvements.

3.2 It was further argued that the police witnesses are planted witnesses and the statements of many police officials i.e. SI Karan Singh, HC Vikash, HC Sonu Kumar, HC Jitender and Deepak Dahiya in the present case are the same as has been recorded in case FIR No. 51/2020 PS-Jafrabad qua accused Shahrukh Pathan @ Khan.

3.3 It was also argued that initially the case of the prosecution was that Rohit Shukla was shot by rioters but he could not identify any of the rioters but later on in his another statement recorded under Section 161 Cr.P.C he disclosed the name of accused persons Aatir, Osama and Gulfam. The applicant/accused was never identified by the name or description by the said witness. However, PW-2 Rohit Shukla in his cross-examination had substantially improved his version to state that one individual person with handkerchief on his face and wearing a red T-shirt had shot him.

3.4 It was also argued that parity principle would apply as all other co-accused persons are already on bail.

3.5 Moreover, the main public eye witness has already been examined in this case. The trial is going to take long time.

It was, thus, prayed that bail may be granted to the applicant/accused Shahrukh Pathan. Ld. counsel for the applicant/accused had relied upon the following judgments:

i) Babba v. State of Maharashtra, (2005) 11 SCC 569,

ii) Mohd Saleem Khan Vs. State of NCT of Delhi
Bail Application No.2349/2021

iii) Rohit Shukla @ Chottu Vs. State NCT of Delhi
Bail Application no.2511/2020

iv) Shiva Vs. State and Nitin Vs. State of NCT of Delhi
Bail Application no.2078/2021 and 2943/2021

v) State of Kerala Vs. Raneef (2011) 1 SCC 784

vi) Urmila @ Mamumia Vs. State of Gujarat
(2017) CrI. Appeal No.1650 of 2011

vii) Prabhakar Tewari Vs. State of U.P. and Anr.
CrI. Appeal no.153/2020 (arising out of SLP (CrI.)
no.92099/2019)

viii) Mohd. Muslim @ Hussian Vs. State of NCT of
Delhi 2023

ix) Bhulabai v. Shankar Barkaji Matre

x) Sanjay Chandra Vs. CBI

4. 4.1 Ld. Special Public Prosecutor has strongly opposed the bail application stating that on 24.02.2020 at about 11.30 PM riots broke out at Maujpur Chowk, Jafrabad leading to stone pelting and firing incidents among Anti & Pro CAA protestors,

resulting in causing injuries to several police officials as well as Public persons.

4.2 One Passerby namely Rohit Shukla sustained gunshot injury caused by the violent mob at Maujpur Chowk. One Person Namely Vinod Kumar died during riots near Brahampuri. Initially MLC's of both of them were attached with the present case i.e. FIR No.49/20 PS Jafrabad, but later on the spot and timings of both were found to be different, Hence, a separate case vide FIR No.153/20 PS-Jafrabad was registered w.r.t the murder of Vinod Kumar and the present case remained regarding the rioting and firing incident at Maujpur Chowk.

4.3 Victim Rohit Shukla who sustained Gun Shot injuries was examined initially who had stated that he was shot near Shastri Gali No.1 by an unknown person who had covered his face. The said Shastri Gali No.1 was in close vicinity of Maujpur Chowk. This aside Ct.Raman and Ct.Deepak Malik who were deployed at Maujpur Chowk for law and order duties also sustained injuries due to stone pelting by rioters.

4.4 After separation of investigation, the injured persons related to the present case i.e Rohit Shukla was re- examined on 1.4.2020 in detail w.r.t. the identity of the rioting mob which inflicted gunshot injuries upon him. During the re-examination injured Rohit Shukla revealed the identity of 03 rioters namely 1). Aatir 2). Osama and 3).

Gulfam@ Sonu Chikna, who were part of the rioting mob and were raising communal slogans and instigating the mob to kill the persons of other religion. Further w.r.t the person who inflicted gunshot injury upon him he again reiterated his inability to identify the person as he was tying a handkerchief on his face to conceal his identity. However, upon further questioning he was able to provide his description as a person wearing red t-shirt, blue pants and holding a gun in his hands. He further stated that he was taken to hospital by one Shrikant.

4.5 That injured Rohit Shukla was treated at G.T.B Hospital, Dilshad Garden and it was mentioned on his MLC “*A/H/O Firearm injury at Maujpur Chowk, Shani Mandir at around 2:30 PM dated 24.2.20 as stated by patient himself*”. The date and time on MLC is 24.2.2020, 3:13 PM.

4.6. That during investigation CCTV Camera footage of the nearby spot was also collected and were examined in the wake of statement of injured Rohit Shukla. In the CCTV. Footage of a camera installed at Metro Pillar NO.208 showed accused Shahrukh Pathan carrying a pistol a firing from the same and running towards Maujpur Chowk(Situated at Metro pillar No.216) along with other rioting mob. The CCTV Footage wherein accused Shahrukh was visible showed him wearing Red T-shirt and blue pants similar to the description provided by injured Rohit Shukla. The timing on the footage was found to be 2:35 PM.

4.7 It was found that Shahrukh Pathan was arrested in case FIR No.51/20 P.S. Jafrabad wherein he fired upon a police official namely HC Deepak Dahiya near pillar no.212. Consequently, he was arrested formally in Mandoli Jail complex and his one Day PC Remand was obtained. During PC Remand he identified himself from the videos/CCTV Footages of pillar No.208. The CCTV Footage of 2:35 PM at Pillar no.208 not only established presence of accused Shahrukh near maujpur Chowk where Rohit Shukla had sustained Gunshot injury at around 2:30 PM but also showed him carrying and firing from a pistol and wearing red t-shirt and blue pants.

4.8 During investigation HC Deepak Dahiya, was also examined who stated that on 24.2.2020 he was deployed at Maujpur Chowk for law and order duties where ,petitioner Shahrukh Pathan, who was part of a rioting mob which was raising communal slogans against CAA & NRC and were saying "*maaro in kafiro ko ye hume desh se nikalna chahte hai*" and fired upon him as well as in other directions. The spot where Petitioner had fired upon HC Deepak Dahiya was identified to be near Pillar No.212.

4.9 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 were obtained. As per CDR accused Shahrukh Pathan did not receive any from 13:14:00 to 13:52:SS (A **gap of 35 Mins**) & 14:22:51 to 14:49:56 on 24.2.20(A **gap of 27 Mins**), and for the time in between

there in no location log. at 13: 14:00 He was receiving signal from a mobile tower located approx. 1km away and at 13:52:55 he received a signal from a mobile tower located 1 Km away. At 14:22:51 his mobile phone was receiving signal from a mobile tower located near Jafrabad Metro Station, which is approximately 1500-1800 meters away from Maujpur Chowk, and a mobile tower can cover a distance from 2 to 3 kilometers. The CDR Location reinforces the fact of presence of Petitioner Shahrukh Pathan near Maujpur Chowk and indicates that for a period of 27 minutes he did not use his mobile phone for receiving/making a phone call, probably due to his active participation in riots that broke out at Maujpur Chowk.

4.10 The pistol with which petitioner opened fire during the riots has been recovered from his possession in case FIR No. 51/20 P.S. Jafrabad. However, the bullet had pierced the thigh of injured Rohit Shukla and was not recovered in the present case That the charge sheet in this case has been filed in the Court of Duty, MM, Karkardooma on 09.06.2020 where vcharge has been framed against applicant/accused Shahrukh Pathan.

4.11 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.

4.12 That after actively participating in the Riots on 24.2.2020 and firing upon HC Deepak Dahiya, Petitioner absconded and could only be arrested after much ordeal by Crime Branch 03.03.2020 from Shamli Bus Stand, Uttar Pradesh.

4.13 The presence of accused Shahrukh has been established near the spot by witnesses HC Deepak Dahiya, HC Jitender, HC Sonu, HC Vikas and description of his clothing has been given by victim Rohit Shukla.

4.14 Victim Rohit Shukla has been receiving threats from unknown persons to not appear before trial court to give testimony in present case. A complaint in this regard has been given by Rohit Shukla in P.S. Jafrabad on 7.1.22 and a Non Cognizable report vide No.10/22 dated 7 /4/22 u/ s 506 IPC has been lodged at P.S. Jafrabad in this regard. This aside Rohit Shukla again received threats over phone and in this regard a Non Cognizable report u/s 506 IPC has been registered at P.S. Sonia Vihar vide DD No.BSA dated 21/4/22.

5. During the course of arguments, a set of document were filed by the prosecution regarding the conduct of the applicant/accused in jail.

5.1 On 30.01.2023, the accused was supposed to be produced before this Hon'ble Court in the present case. That after completion of

the court production, the accused was asked to go back to his ward; but he intentionally went on roaming within the Jail premises, especially visiting the cells of ward no.05A in this Jail. (CCTV footage has been attached for kind reference). The accused deliberately and without informing anyone went to ward 5A and stayed there for more than 2 hours which is in violation of Jail Prison Rules.

5.2 It is stated that the accused is lodged in the high risk ward and his roaming within the jail could lead to serious security breach in the Jail premises. Hence noticing such activity the accused was brought to the control room and produced before the higher officials. The accused suddenly started mis-behaving and arguing with the Jail officials, in order to defend his act of breaching the Jail rules. Copy of the statements of Deputy Superintendent, Assistant Superintendent and other jail officials were also filed.

5.3 Despite of sincere efforts to counsel the accused, he continued with his act of aggression and threatened the Jail officials of dire consequences for their family outside the Jail. That the UTP was sent back to his ward immediately, using minimum force. A punishment ticket was made against the accused for breaching the Prison rules including mis-behaviour against the Jail officials. A letter was also sent to the Court apprising the conduct of the accused in the Jail premises.

5.4 Further, again on 10.02.2023 after completing his Mulakat, instead of going back to his ward he was seen roaming within the Jail premises, especially visiting ward no.06 of this Jail. He was asked by the on duty warder to go back to his ward. The accused started mis-behaving with the on duty warder using foul and un-parliamentary language. The on duty warder reported the matter to the higher officials. The senior officials immediately reached the spot and intervened; however inmate Shahrukh displayed his usual violent behaviour and started abusing the Jail officials. Thereafter, it was also revealed on reviewing the CCTV footage that the accused went back to his ward and instigated a fellow inmate inflicted self-injury and filed false complaint against a Jail official, against whom UTP Shahrukh has filed false complaints earlier too. The CCTV footage is preserved for future reference in the matter. It is also brought to the notice of the Hon'ble Court that inmate Sharukh has been frequently found misbehaving with the Jail staff and subsequently filing false and fabricated applications against the Jail officials, similar to the present one. It was, thus, prayed for that bail application be dismissed.

6. 6.1 In the present case, accused Shahrukh Pathan is in judicial custody since 03.04.2020. Charges were framed against five accused persons namely Salman, Shahrukh Pathan, Gulfam @ Sonu Chikna, Aatir, Atif and Osama vide order dated 23.12.2021.

6.2 The case of the prosecution, as per the charge-sheet, was that there were riot committed by an armed unlawful assembly on

24.02.2020 at 1.30 PM onwards near Maujpur Chowk in which Rohit Shukla suffered gunshot injury while two police personnel namely Ct. Deepak Malik and Ct. Raman suffered injuries while they were performing their official duties near Maujpur Chowk in the areas of PS-Jafrabad. The injured/public witness Rohit Shukla had identified three accused persons namely Sonu Chikna, Aatir @ Atif and Osama. Accused Salman was identified by public witness Tahir. Accused Shahrukh Pathan was identified by witnesses namely SI Karan Singh, HC Vikash, HC Sonu and SI Jitender as part of said riotous mob/unlawful assembly which tried to kill Rohit Shukla and caused injuries to police officials namely Ct. Deepak Malik and Ct. Raman. The witness stated that the public way i.e. Main 66 Foota Road going towards Maujpur Chowk from the side of Jafrabad Metro Station, Pillar No. 215 (beneath Metro Line) was obstructed.

6.3 After framing of the charge, **so far six witnesses have been examined.** This includes public eye witness/injured Rohit Shukla. Rohit Shukla was examined as PW-2 in this case.

6.4 PW-2 Rohit Shukla in his deposition has deposed that,

“I am dealing in the work of RO service/repairing. On 24.02.2020, at about 9.30 AM, I left my residence to distribute pamphlets for RO service. At around 1/1.30 PM, I came back to Maujpur Chowk and saw that a mob of around 700-800 people had assembled there and they were raising anti-CAA/NRC slogans and slogans of "maro kafiron ko". Also, there is a mandir called Shani Mandir near Maujpur Chowk

where around 150-200 people were assembled who were reciting 'Hanuman-Chalisa'. From the mob of 700-800 people who were raising anti-CAA/NRC slogans and slogans of " maro kafiron ko", around 200-300 people came towards went from Maujpur Chowk towards Go Mobile shop (near the place of incident) and started stone pelting. Stone pelting started from both sides. I went towards my residence on my motorcycle bearing no. DL5S-G-8324 make HF Deluxe, I was wearing my uniform. From that mob of 200-300 people, one boy came out who was tied handkerchief on his face and was wearing a red T-shirt who was firing indiscriminately and I requested not to shoot at me as I am only a RO technician. However, he still fired at me and I received a gunshot injury on my thigh. In the mob as aforesaid, apart from the boy who fired at me, I recognized Sonu, Aatir and Osama as I have been living in the locality for the past 25-30 years and seen them in the locality . These accused persons were leading the mob at the incident and were constantly shouting " Allah-ho-Akbar" and " maro in Kafiron ko" on that day and had instigated the mob into committing stone pelting and rioting. Had these accused persons not instigated the mob, perhaps this incident might not have taken place. I can identify these three accused persons whom I have named above.”

6.5 PW-2 Rohit Shukla in his statement under Section 161 Cr.P.C and his deposition in the court has categorically identified accused persons Sonu Chikna, Aatir @ Atif and Osama as part of that

mob, which were raising religious inflammatory slogans and shot at him. Thus, in his evidence PW-2 Rohit Shukla (as was his statement under Section 161 Cr.P.C) has not identified accused Shahrukh Pathan as an accused who shot him.

Accused Shahrukh Pathan, as per the charge-sheet, has been identified on the basis of statement of police witnesses as part of the riotous mob which shot at Rohit Shukla. In the present case, accused Shahrukh Pathan is not alleged to have shot Rohit Shukla but he is stated to be part of the riotous mob, which shot at Rohit Shukla.

6.6 In any case, public witness/injured Rohit Shukla (PW2) has been examined and discharged. The rest of the witnesses are police officials only i.e. SI Karan Singh, HC Vikash, HC Sonu Kumar, HC Jitender and HC Deepak Dahiya and relevant for identification of the applicant/accused as being part of the riotous mob, which shot at the victim.

6.7 Importantly, rest of co-accused persons Sonu Chikna, Aatir @ Atif, Osama and Salman are already on bail in this case.

6.8 The court is conscious of the fact that the conduct of the accused in this case before he was arrested and even during trial, during judicial custody has been atrocious. However, it remains a fact that he has been judicial custody since 03.04.2020.

6.9 The court is also conscious of the fact that accused Shahrukh Pathan is also involved in another riot case FIR No.51/2020 PS-Jafrabad where he is stated to have made an attack on the life of the police official, however, said case will be dealt with on its own facts.

6.10 In the overall facts and circumstances of the case where accused Shahrukh Pathan is in custody since 03.04.2020, the stage of the prosecution evidence, where public witness/injured PW-2 Rohit Shukla has been examined and relevant remaining witnesses are all police officials and all other co-accused persons are on bail, the present bail application of accused Shahrukh Pathan @ Khan is allowed and he is admitted to regular bail on furnishing his personal bond in the sum of Rs.50,000/- with two local sureties of the like amount subject to the following conditions:

- (a) The applicant/accused shall not leave the jurisdiction of NCR without prior permission of the court nor shall indulge in any kind of criminal activity;
- (b) He shall also not tamper with any evidence or contact any witnesses;
- (c) Applicant and surety shall inform the court immediately on change in residential address.

Application is accordingly stands disposed off.

Copy of this order be given dasti and be e-mailed to the Ld. SPP as also to Ld. Special Commissioner of Police (Crime), Delhi.

(Amitabh Rawat)
Addl. Sessions Judge-03,
Shahdara, Karkardooma Courts,
Dated: 07.10.2023