

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

(RIOTS CASE)

CNR No. DLSH01-002176-2021

SC No. 103-2021

FIR No. 51/2020

P.S. Jafrabad

U/S. 147/148/149/186/188/307/353/216 IPC & 25/27 Arms Act

State Vs. Shahrugh Pathan & Ors.

State

..... Prosecution

Versus

(1) Sharukh Pathan @ Khan

S/o Sh. Sabir Ali

R/o U-108, Street No.-05, Arvind Nagar, Budh Bazar Road, Ghonda,
Delhi.

(2) Kaleem Ahmad

S/o Sh. Anwar

R/o H.No. 454, Bisatiyan, Khurgaan Road, Kairana, Shamli U.P.

(3) Ishtiyak Malik @ Guddu

S/o Mushtak

R/o U-124, Gali no.05, Arvind Nagar, Ghonda, Delhi.

(4) Shamim

S/o Munna

R/o H.No. L-382, Gali No. 29, L-Block, Janta Majdoor Colony, Delhi.

(5) Babu Wasim (declared Proclaimed Offender)

S/o Babu Khan

R/o H.No. 106, Vikaspuri Colony, Meerut, U.P.

(6) Abdul Shehzad

S/o Aslam

R/o H.No. F-63, New Seelampur, Delhi

.... Accused persons

ORDER ON THE POINT OF CHARGE

1. The present order shall decide the question of charge against 05 (five) accused persons namely **Shahrukh Pathan @ Khan, Kaleem Ahmad, Ishtiyak Malik @ Guddu, Shamim and Abdul Shehzad.**

The charge-sheets were filed against,

- a) Accused Sharukh Pathan @ Khan under Section 147/148/149/186/353/307 IPC & Section 188 IPC & 25/27 Arms Act;
- b) Accused Kaleem Ahmad under Section 216 IPC;
- c) Against accused Ishtiyak Malik @ Guddu under Section 147/148/149 IPC & Section 188 IPC;
- d) Accused Shamim under Section 147/148/149/186/353/307/188/34 IPC & 25/27 Arms Act;
- e) Accused Abdul Shehzad under Section 147/148/149/186/353/307/188/34 IPC & 25/27 Arms Act.

2. (a) As per the case of the prosecution on 24.02.2020 at about 12.30 PM, clashes occurred between two communities/groups at 66 Foota Road between Jafrabad Metro Station and Maujpur Chowk. There was heavy stone pelting from both sides.

(b) The present case relates to a firing incident by Shahrukh Pathan @ Khan at 66 Foota Road, Jafrabad on 24.02.2020. A video went viral showing firing at police officials in uniform in the area of Jafrabad. After disbursal of the crowd, three empty cartridges bearing the mark KF-7.65 were recovered from the spot. On 26.02.2020, Head Constable Deepak

Dahiya who was deployed from Police Training School, Wazirabad for law and order duty in North-East District was identified as police official who had bravely faced rioters brandishing and firing from his pistol on 24.02.2020 at Jafrabad. On his statement, the present FIR No. 51/2020 date 26.02.2020 was registered. As per his statement, at about 1.45 PM while being deputed on 66 Foota Road beneath Metro Line Jafrabad on 24.02.2020 a huge crowd had unauthorizedly gathered which was protesting and shouting slogans against Citizenship Amendment Act. The people in crowd were carrying stones, bottles and pistols and stone pelting was being done. From that 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 did not 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 about 9-10 feet from him, he fired with the intention to kill him aiming at his head. However, he dodged and saved himself. He tried to calm him but he didn't pay any heed and came to him and pointed his pistol towards him. Thereafter, he pushed him by his left hand and at that time he told him to go back and maintain law and order. He had also warned him by showing stick. HC Deepak Dahiya stated that the said person fired on public and on him with the intention to kill him by keeping illegal arms and he can also identify him. A video was also prepared. That person was later on identified as Shahrukh Pathan.

(c) The incident of firing and rioting by Shahrukh was recorded on mobile phone by a journalist namely Saurabh Trivedi, Senior Reporter, The Hindu newspaper. He also identified accused Shahrukh Pathan.

(d) The accused Shahrukh absconded and his house was found locked. On 02.03.2020, on the receipt of a secret information by Narcotics Cell, Crime Branch, a police team left for Shamli, Uttar Pradesh to trace the accused Shahrukh and came to know that he would be coming between 7 to 9 a.m at Shamli Bus Stand for changing his hideout. A trap was laid and he was intercepted. He was subsequently arrested. HC Deepak Dahiya identified the accused Shahrukh. Accused Shahrukh Pathan made disclosure about his involvement in this case and also disclosed that on 26.02.2020, he was going to Punjab to take shelter from his friend Aman but while crossing Sonapat, Haryana his car developed snag and hence, he dropped the idea of going to Punjab and called his acquaintance namely Kaleem on Whatsapp for his assistance on his number i.e. 9045916506. Kaleem reached there and took him and his car by towing away the same. He further disclosed that he parked his car in front of house of Kaleem at H.No. 454, Khurgan Road, near Kabristan, Kairana, Shamli where Kaleem got his car repaired. After reaching Kairana, he switched off his mobile phone and destroyed his phone while reaching Kairana from Sonapat. On the morning of 03.03.2020, he reached Bus Stand Shamli to change his hideout but was apprehended by police. He had parked his car near the house of Kaleem in which one mobile phone purchased by him at Kairana with the help of Kaleem was also there.

On 04.03.2020, consequent to disclosure statement of accused Shahrukh Pathan, the Ascent Car bearing no. DL-4CS-3564, which was used by him for escaping from Delhi after committing crime on 24.02.2020, was recovered from near Kabristan, Khurgan Road, Kairana, Shamli, U.P

at his instance. From the search of his car one mobile phone make OPPO, Black & White (without SIM) alongwith original bill Invoice No. 68 dated 27.02.2020 of mobile phone issued in his name was also recovered. The accused after absconding had taken shelter in the house of accused Kaleem. Search of accused Kaleem was made but he was found absconding. The said Ascent car was found to be registered in the name of one Samar s/o Aas Mohammad and who stated that one month back, he had sold the said car to Shahrukh but the documents were not transferred in the name of Shahrukh. Accused Shahrukh during interrogation stated that he had hidden the illegal acquired pistol and two live rounds in Pigeon's Cage on the roof of his house and can also get recovered the T-Shirt which he was wearing at the time of incident. At the instance of accused Shahrukh, one pistol and two live rounds were recovered from the place disclosed by the accused. The entire process of recovery was photographed and videographed. The T-Shirt was also produced by his mother. He had also disclosed that in the month of December 2019, he had purchased one pistol and 20 rounds from Babu Wasim S/o Babu Khan R/o Vikas Colony, Meerut against Rs. 30,000/-.

In relation of the CDR of mobile phone bearing no. 9315207759 used by accused Shahrukh (found in his personal search and seized) revealed that on 24.02.2020, his location was at the spot in area of Jafrabad between 02.16 PM to 03.15 PM whereas at 2.30 PM, he was seen in the video seized in the case firing from the pistol on HC Deepak Dahiya and the crowd in the opposite carriageway. On 26.02.2020, his location started moving from Delhi to Haryana and the last location of Delhi is at 6.38 PM at Alipur, Delhi. Thereafter, he entered Kundli, Sonapat at

6.53 PM and stayed at Sonapat till 8.45 PM. Thereafter, his location came at Panipat at 9.30 PM. His last location is in Panipat is of Devika Textile, VPO-Sewah, NH-1, Panipat at 11.12 PM. Thereafter, his last location on the night of 26/27.02.2020 is at Kairana, U.P at 1.57 PM.

As per the CDR analysis of mobile number 9045916506 of accused Kaleem Ahmed, his location was at Kairana, Shamli, U.P at about 09.14 PM and thereafter, his location moved towards Panipat, Haryana. Tower Cell ID of both the mobile phones i.e. Shahrukh and Kaleem may be different due to different telecom service providers but it clearly shows that Shahrukh was waiting for Kaleem at Panipat, HR and Kaleem Ahmad reached Panipat for his help. At 11.20 PM, location at Kaleem was of Ind. Area Section 29, Village Slwah, District Panipat, Haryana i.e. the place where Shahrukh was waiting for him to get his car repaired and to go Kairana with him. Hence, the CDR locations corroborate the disclosure statements of accused Shahrukh and Kaleem. From the night of 26/27.02.2020 to the morning of 03.03.2020 accused Shahrukh Khan stayed in the house of Kaleem at Kairana.

CAF of mobile number 9315207759 used by the accused Shahrukh on the day of incident i.e. 24.02.2020 was obtained which showed that the mobile number is in the name of Shahrukh's mother Sahana Begum. The mobile phone is yet to be recovered.

As per the CAF, mobile no. 9045916506 was found issued in the name of accused Kaleem Ahmad. Shahrukh switched off his phone after reaching Kairana on the night of 27.02.2020 and Kaleem helped Shahrukh

in hiding after committing crime and the same is corroborated by their mobile phone locations. Kaleem also helped Shahrukh in purchasing new mobile phone in Kairana and the Bill No. 68 dated 27.02.2020 of mobile phone purchased by accused Shahrukh from Alina Mobile Shop, Kairana has the mobile number 9045916506 of accused Kaleem written on it.

The DVR installed at the shop Alina Mobile Center, Kairana, Shamli, U.p from where the accused Shahrukh Pathan had purchased the mobile phone was checked and it was found that on 27.02.2020 at about 12.50 PM, both accused Shahrukh and Kaleem had visited together at the said shop for buying a mobile.

(e) As far as accused Ishtiyak Malik @ Guddu is concerned, as per his mobile call details (8076261351 & 9268030209) from the day of the incident, he was in regular touch with accused Shahrukh and his mobile phone location on 24.02.2020 is at Main 66 Foota Road, Jafrabad at about 2.20 PM to 3.15 PM i.e. place of rioting. At 2.20 PM, both accused Shahrukh Pathan and Ishtiyaq Malik @ Guddu are at the same place during the riots. Under the principle of Section 149 IPC, he is liable for offence under Section 147, 148, 188, 186, 353, 307 IPC.

(f) FSL report regarding the video footage recorded by witness/Journalist Saurabh Trivedi was also received stating that “ video files are continuous recording. There is no indication of alteration in continuous recording on the basis of frame by frame analysis using Video Analyst System.

The FSL report with respect to the DVD seized on 25.02.2020 having CCTV footage of the incident in the CCTV Camera installed at TVS Showroom near Metro Pillar No. 208 on 66 Foota Road, Jafarabad also mentions that there was no indication of alteration in continuous CCTV Recording on the basis of frame by frame analysis using Video Analyst System.

(g) Accused Shamim is seen part of the mob of rioters behind accused Shahrukh at 2:35:35 PM to 02:36:02PM and seen actively involved in rioting and pelting stone at 2:35:48 PM & 02:35:54 PM alongwith other rioters in the CCTV video footage for the present incident of riots.

(h) Accused Abdul Shehzad was also arrested and his TIP proceedings initiated but he refused to join the proceedings. During Police Custody remand, accused Abdul Shehzad was correctly identified by complainant HC Deepak Dahiya on 11.03.2021. In the seized CCTV video footage at 25.06.2020, accused Abdul Shehzad is seen as part of mob of rioters behind accused Shahrukh Pathan @ Khan as seen wearing White jacket, Blue color jeans, White shoes and long hairs and seen provoking the other rioters, pelting stone and rioting as captured in the video footage at 02:35:31 PM, 02:35:35 PM, 02:36:08 PM, 02:36:31 PM, 02:36:36 PM, 02:36:39 PM on 24.02.2020 along with other rioters.

(i) There was prohibitory order under Section 144 Cr.P.C and all accused persons have violated the same. The complaint under Section 195 Cr.P.C is on record as regards the offence under Section 188 IPC.

3. Arguments on the point of charge were heard at length on behalf of both the prosecution and Ld. Counsel for accused persons. I have perused the record carefully. Accused Shahrukh Pathan had moved the application for discharge.

4. (a) Ld. Counsel for accused Ishtiyak @ Guddu had submitted that he has no role at all in the present case. In any case, Section 307 IPC is not made out against him as he has not fired at anyone. Accused Shahrukh fired shots and he has no connection with accused Shahrukh Pathan. Moreover, there is no video footage or statement of any witness implicating him.

(b) Similarly, all other accused persons have also stated that they have not fired or caused injuries to anyone and sought discharge from the case.

(c) Dr. Maneka Guruswamy, Ld. Senior Advocate appearing on behalf of accused Shahrukh Pathan had argued that ingredients of Section 307 IPC are not made out in the present matter. For the purpose of attracting Section 307 IPC, not only should there be an attempted act which if not prevented or intercepted would be sufficient to cause death of the victim, but also the intention must be proved by circumstances like attack on the vital part of the body. Thus, there should be an act with the intention or knowledge equivalent to act of committing murder and doing of an act specifically towards commission of offence. She has referred to the various judgments which are as under :-

1. *CBI, Hyderabad v. K Narayana Rao (2012) 9 SCC 512;*

2. *Noorul Huda Maqbool Ahmed vs. Ram Deo Tyagi (2011) 7 SCC 95;*

3. *Hazara Singh & Ors vs. State of Punjab* (1971) 1 SCC 529;
4. *Surjan Singh vs. Suraj Pal* (1993) SCC OnLine P&H 448;
5. *Jerama Rubaji Valvi vs. State of Maharashtra* (1978) SCC;
6. *Prabhu Dayal vs. State of MP* (2003) SCC OnLine MP 445;
7. *Tulsa Devi vs. Chhota Singh & Anr* (1980) SCC OnLine P&H 219;
8. *Hitler Jha vs. State of Bihar* (2015) SCC OnLine Pat 9125;
9. *Banna Lal vs. State of Rajasthan & Ors* (2012) SCC OnLine Raj 3763;
10. *Champa Lal Dhakar vs. Naval Singh Rajput and Ors.*(2019) 4 SCC 146;
11. *Jage Ram v. State of Haryana [Jage Ram v. State of Haryana, (2015) 11 SCC 366;*
12. *Bipin Bihari v. State of M.P., (2006) 8 SCC 799;*
13. *Bhim Singh vs. State* (1992) SCC OnLine Del 320;
14. *Rukmini Narvekar Vs. Vijaya Satardekar & Ors. (2008) 14 SCC 1;*
15. *Madan Kishore, In re, 1940 SCC OnLine Pat 27 : AIR 1940 Pat 446;*
16. *Kothakota Papayya v. State, 1975 Cri LJ 1784;*
17. *Lalchand v. Emperor, 1932 SCC OnLine Sind JC 120 : AIR 1933 Sind 93 (1);*
18. *Sheikh Abdul v. King-Emperor, 1926 SCC OnLine Cal 113;*
19. *Ramdas Singh v. Emperor, 1926 SCC OnLine Cal 227;*
20. *Bachuram Kar v. State, 1955 SCC OnLine Cal 271;*
21. *Niharendu Datta Majumdar v. Emperor, 1939 SCC OnLine Cal 153;*
22. *Sundara Mudaliar AIR 1937 Mad 535;*
23. *Bhoop Singh Tyagi v. State, 2002 SCC OnLine Del 277;*
24. *Fatta v. State of U.P., 1980 Supp SCC 159;*
25. *State of Jharkhand v. Raman Mahto, 2003 SCC OnLine Jhar 307;*
26. *Kuldip Yadav v. State of Bihar, (2011) 5 SCC 324;*
27. *Suresh Budharmal Kalani v State of Maharashtra (1998) 7 SCC 337;*
28. *Selvan v. State 1996 (4) Crimes 186 (Mad));*

It was argued that careful perusal of video footage covering the present incident would show that there was no intention on the part of the accused Shahrukh Pathan to kill HC Deepak Dahiya. The accused Shahrukh Pathan was only trying to threaten or intimidate the police official by firing in the air and the hands of the accused being raised upwards show only an intention to scare but not to kill. It was further argued that it was also not the intention to kill HC Deepak Dahiya because if he had wanted so, he could have easily killed him the second time when he pointed the gun on the body of HC Deepak Dahiya. It was also argued that there is no violation of Section 188 IPC as proclamation order under Section 144 Cr.P.C was not brought to the knowledge of accused in order to make Section 188 IPC attracted.

(d) Ld. Special Public Prosecutor had argued that accused Shahrukh Pathan is visible in the video footage firing at HC Deepak Dahiya who is taller than the accused and missing the target. Section 307 IPC is clearly made out. All accused persons were participating in the riots except Kaleem Ahmed who had harbored accused Shahrukh Pathan when he absconded. It was argued that in prosecution of the common object of rioting and attempted murder, all accused persons would be liable by invoking Section 149 IPC.

5. Section 228 Code Of Criminal Procedure, 1973

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he

may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

6. (a) It has been held in catena of judgments that at the time of framing of charge, only prima facie case has to be seen and whether the case is beyond reasonable doubt is not to be seen at this stage. It is not required that detailed reasons must be recorded at the stage of charge.

(b) Hon'ble Supreme Court of India in a case titled as **Bhawna Bai vs. Ghanshyam And Others.**, (2020) 2 Supreme Court Cases 217 held as follows :-

16. After referring to Amit Kapoor, in [Dinesh Tiwari v. State of Uttar Pradesh and another](#) (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 Cr.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

17.For framing the charges under Section 228 Cr.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in [Knuti Bhadra Shah and another v. State](#)

of West Bengal (2000) 1 SCC 722, while exercising power under Section 228 Cr.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused- respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

7. Hon'ble Supreme Court of India in the case of State of Rajasthan Versus Ashok Kumar Kashyap in Criminal Appeal No. 407 of 2021 (Arising from SLP (Crl.) No. 3194 of 2021) observed that :

“23. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to

proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

24. In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N.v. N. Suresh Rajan [State of T.N.v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

“29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the

offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

It was held that.....

.....As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.”

8. (a) The present case FIR was registered on the statement of HC Deepak Dahiya vide Rukka prepared on 26.02.2020 in respect of the incident of 24.02.2020 at main 66 Foota Road near Pillar No. 211-B, Jafrabad. Complainant HC Deepak Dahiya is the eye-witness of the entire incident. As per his statement, at about 1.45 PM while being deputed on 66 Foota Road beneath Metro Line Jafrabad on 24.02.2020 a huge crowd had unauthorizedly gathered which was protesting and shouting slogans against Citizenship Amendment Act. The people in crowd were carrying stones, bottles and pistols and stone pelting was being done. From that 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 did not 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 about 9-10 feet from him, he fired with the intention to

kill him aiming at his head. However, he dodged and saved himself. He tried to calm him but he didn't pay any heed and came to him and pointed his pistol towards him. Thereafter, he pushed him by his left hand and at that time he told him to go back and maintain law and order. He had also warned him by showing stick. HC Deepak Dahiya stated that the said person fired on public and on him with the intention to kill him by keeping illegal arms and he can also identify him. A video was also prepared. That person was later on identified as Shahrukh Pathan.

(b) From the statement of HC Deepak Dahiya, it is quite apparent that accused Shahrukh Pathan led a group of rioters who formed an unlawful assembly at 66 Foota Road on 24.02.2020 at about 2.00 PM and fully armed with deadly weapons, committed rioting, attempt on the life of HC Deepak Dahiya, obstructed a public servant in discharge of his public functions and assaulted or used criminal force on a public servant to deter the public servant from discharge of his duty. This entire incident was also captured on footage by an independent journalist/witness Saurabh Trivedi from The Hindu newspaper. So not only is there a specific statement of complainant HC Deepak Dahiya implicating the accused but also is there additional electronic evidence in the form of video footage to nail the conduct of the accused. HC Deepak Dahiya has also identified accused Shahrukh Pathan as has Saurabh Trivedi. The footage is also found to be correct, continuous and untampered.

(c) The weapon used by the accused Shahrukh Pathan and the two live rounds were also recovered in a pigeon's cage on the roof of his house upon his disclosure consequent to his arrest. The said recovery was also videographed. Thus, Section 25 & 27 Arms Act are attracted.

(d) There was also a matching of the empty shells used at the time of firing at HC Deepak Dahiya with the weapon used by the accused Shahrukh Pathan and recovered from him, in the Ballistic Report.

(e) Ld. Counsel for the accused Shahrukh Pathan has argued for discharge from Section 307 IPC and Section 188 IPC. It was the contention of the Ld. Senior Advocate that the ingredients of Section 307 IPC are not made out as there was no intention on the part of the accused to kill HC Deepak Dahiya.

The necessary ingredients for applicability of Section 307 IPC are an intention to kill alongwith an act to kill the victim. The legal proposition as stated by various courts and in reference to judgments filed on behalf of the accused is not disputed. However, what has to be seen is whether the intention to kill and the act committed with that intention is made out in the facts of the present case or not. In fact, from the statement of HC Deepak Dahiya, it is clearly made out. It has been specifically stated that the accused Shahrukh Pathan had aimed at the head of HC Deepak Dahiya and fired at him but he escaped. This statement is enough for attracting Section 307 IPC at the stage of charge.

Ld. Senior Advocate had repeatedly drawn attention of the Court to the video footage to contend that accused Shahrukh Pathan had not attempted to kill the victim but only threaten him by firing in the air. Firstly, this contention, in the face of the specific statement of HC Deepak Dahiya and the video footage available cannot be the basis for discharge. Secondly, even as per the video footage, accused Shahrukh Pathan has raised his pistol (not sideways but straight) aiming at the victim HC Deepak

Dahiya who is taller in height than him but the direction of the pistol is certainly aimed at the head of HC Deepak Dahiya and even the point at which the trigger is pulled, the aim is straight towards HC Deepak Dahiya. Usually after firing or pulling of the trigger, there is a jerk and the hands and the pistol is raised up because of the jerk. Thus, even the video shows firing by accused Shahrukh Pathan from pistol in daylight with an aim to kill HC Deepak Dahiya. This is enough for framing the charge against the accused Shahrukh Pathan under Section 307 IPC. Though, no injury is caused in the present case to HC Deepak Dahiya, that does not mean that Section 307 IPC is not made out as injury on the part of the body of the victim is a relevant factor but it depends of the facts of the case and in the present case, injury is not material at all.

Ld. Counsel for accused Shahrukh Pathan had also raised contention that even after the first firing, the accused had a second opportunity to kill HC Deepak Dahiya and the fact that he did not kill him shows that there was no intention on his part. This logic has no basis at all. When accused Shahrukh Pathan fired at HC Deepak Dahiya at his head and HC Deepak Dahiya escaped, Section 307 IPC was made out. Subsequently, in the next few seconds, accused Shahrukh Pathan while physically putting the gun on the body of HC Deepak Dahiya did not shoot, this cannot be said to the benefit of accused Shahrukh Pathan when policeman HC Deepak Dahiya in the face of such attack of accused resolutely stood his ground and even showed his danda in front of a gun wielding accused and shows his devotion to duty and work which might have played into the mind of accused Shahrukh Pathan. In any event, this incident occurred in a flash of seconds and to diminish the valour of a

brave policeman by arguing it as an act of magnanimity of accused Shahrukh Pathan in not killing the policeman victim, is neither palatable nor legally sound.

Ld. Counsel for accused Shahrukh Pathan had also raised the contention that the Promulgation Order under Section 144 Cr.P.C was not brought to the knowledge of accused, hence, there was no promulgation under Section 144 Cr.P.C and thus, Section 188 IPC is not made out. Reference was made to judgment of Bhoop Singh Tyagi vs. State, 2002 SCC Online, Delhi 277. Again, on this point, there was a prohibitory order under Section 144 Cr.P.C for the whole North-East District with effect from 24.02.2020 to 24.03.2020 issued 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 and causing injuries.

It is not an ordinary case of individuals or groups committing an unlawful act. The judgment relied upon is in the context of a landlord not asking for verification of the tenant. These riots are of such a nature as has not been witnessed since the Sikh Riots of 1984. There is an order under Section 144 Cr.P.C duly issued in the face of protest against Citizenship Amendment Act and the consequential riots. The knowledge can be presumed in such like cases. This is the stage of charge and not conviction or acquittal. Once the Promulgation Order is in force, knowledge is presumed in the context of the situation that prevailed at that time. Thus, charge under Section 188 IPC is made out.

(f) Though, not argued as such but one of the contention raised in the discharge application by accused Shahrukh Pathan, was that there certain discrepancies between the statement of HC Deepak Dahiya in the charge-sheet and certain interviews given by him. It must be noted at this stage that for the purpose of charge what has to be seen is the contents of the charge-sheet. It has been held by Hon'ble Supreme Court of India in ***State of Orissa vs. Debendra Nath Padhi, (2005) 1 Supreme Court Cases 568*** :-

23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra Case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

In any case, any discrepancy in the statement of witness are to be looked into at the stage of trial and not at the stage of charge.

9. (a) Regarding the role of accused Shamim and Abdul Shehzad, both are also part of rioters led by accused Shahrukh Pathan and all were committing rioting on the day and time of the incident. They have been specifically identified by the CCTV footage and the witness.

Section 149 in The Indian Penal Code

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.-- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of

that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Therefore on the principle of Section 149 IPC, all the acts committed by said rioters attributed to every individual. 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 under Section 144 Cr.P.C issued by the DCP(North-East) and the same has been violated attracting Section 188 IPC. Complaint under Section 195 Cr.P.C is also on record.

(b) As far as accused Ishtiyak Malik @ Guddu is concerned, without doubt there is no video footage available as regards him nor is there any statement of witness identifying him at the spot yet it does not absolve him from the offence charged against him. His mobile phone location is of the spot and in fact, exactly of the same spot with accused Shahrukh Pathan on 24.02.2020 at 2.22 PM at the time of riots. For the entire period of 24.02.2020 from 2.22 PM till 3:13:26 PM, both accused Shahrukh Pathan and accused Ishtiyak Malik @ Guddu are sharing the location but also there are calls between them. To add to it is the fact that there was a Prohibitory Order under Section 144 Cr.P.C and accused Ishtiyaq Malik @ Guddu does not reside at the said location. This factum of the location or the presence of the accused Ishtiyak Malik @ Guddu at place of riots where weapons are being brandished and firing done at HC Deepak Dahiya and others by accused Shahrukh Pathan with whom he was in continuous touch and shared the location of riots is enough for framing charges against him.

(c) Regarding the accused Kaleem Ahmed, the allegations against him that he harbored accused Shahrukh Pathan while he escaped after committing the present act. The accused Shahrukh Pathan after absconding had taken shelter in the house of accused Kaleem. Search of accused Kaleem was made but he was found absconding.

As per the CDR analysis of mobile number 9045916506 of accused Kaleem Ahmed, his location was at Kairana, Shamli, U.P at about 09.14 PM and thereafter, his location moved towards Panipat, Haryana. Tower Cell ID of both the mobile phones i.e. Shahrukh and Kaleem may be different due to different telecom service providers but it clearly shows that Shahrukh was waiting for Kaleem at Panipat, HR and Kaleem Ahmad reached Panipat for his help. At 11.20 PM, location at Kaleem was of Ind. Area Section 29, Village Slwah, District Panipat, Haryana i.e. the place where Shahrukh was waiting for him to get his car repaired and to go Kairana with him. Hence, the CDR locations corroborate the disclosure statements of accused Shahrukh and Kaleem. From the night of 26/27.02.2020 to the morning of 03.03.2020 accused Shahrukh Khan stayed in the house of Kaleem at Kairana.

As per the CAF, mobile no. 9045916506 was found issued in the name of accused Kaleem Ahmad. Shahrukh switched off his phone after reaching Kairana on the night of 27.02.2020 and Kaleem helped Shahrukh in hiding after committing crime and the same is corroborated by their mobile phone locations. Kaleem also helped Shahrukh in purchasing new mobile phone in Kairana and the Bill No. 68 dated 27.02.2020 of mobile phone purchased by accused Shahrukh from Alina Mobile Shop, Kairana has the mobile number 9045916506 of accused Kaleem written on it.

The DVR installed at the shop Alina Mobile Center, Kairana, Shamli, U.p from where the accused Shahrukh Pathan had purchased the mobile phone was checked and it was found that on 27.02.2020 at about 12.50 PM, both accused Shahrukh and Kaleem had visited together at the said shop for buying a mobile.

Hence, there is enough material to frame charge against accused Kaleem Ahmed under Section 216 IPC.

10. Thus, on the basis of material on record, I am of the opinion that there are sufficient grounds for presuming that the accused persons namely Shahruk Pathan, Shamim, Abdul Shehzad and Ishtiyaq Malik @ Guddu have committed offences under Section 147/148/186/188/353/307 IPC read with Section 149 IPC and accused Shahrukh Pathan has also additionally committed offence under Section 25 & 27 Arms Act while accused Kaleem Ahmed committed offence under Section 216 IPC. Ordered accordingly.

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