

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

Bail Application No. 2098-2020

FIR No. 51/20

PS- Jafrabad

U/S. 147/148/149/216/186/307//353/34 IPC & Section 25/27 Arms Act
State Vs. Shahrukh Pathan @ Khan

09.11.2020

(Proceedings through Webex app).

Present : Sh. Devender Kumar Bhatia, Ld. Special Public Prosecutor for
the State with I.O/SI Arvind Kumar.

Sh. Sunil Mehta, Ld. Counsel for applicant/accused Shahrukh
Pathan @ Khan.

Detailed arguments heard on the interim bail of accused
Shahrukh Pathan @ Khan.

1. Ld. Counsel for the accused Shahrukh Pathan @ Khan has submitted
that accused was arrested in the present case on 03.03.2020 and after police
custody, he was sent to judicial custody 10.03.2020. The earlier bail
application of the accused was dismissed by the Ld. Predecessor of this court
on 08.05.2020. The charge-sheet in the present matter has been filed and
accused is not required for any further investigation.

It has been submitted in the application that the people present at the
place of incident were exercising their fundamental rights and criticizing the

government against the Citizenship Amendment Act and accused was initially trying to pacify the matter and when attacked with heavy stones, he rushed to seek a shelter. However, after getting no place to hide, he shot fire in self defence by an armed weapon which was given by some unknown person from the public. There was no intention of the applicant to harm anybody.

It was further submitted that father of the applicant is a chronic patient of arthritis since 2018 and had a left knee surgery in 2019. One surgery of his father was also fixed for 05.05.2020. The applicant has only four members in the family consisting of his old and ill father, mother and another brother who resides separately and has nothing to do with the family. It was submitted that the mother of the applicant has fallen from the stairs while staying in the house of her sister at Bareilli, UP. She has sustained injuries on her back and spinal cord. She has also been asked to undergo surgical operation on 26.10.2020 (now fixed for 10.11.2020) at Maharana Pratap District Hospital, Barelli, U.P.

It is therefore prayed that interim bail may be granted to the applicant for taking care of the mother for operation and post-operation care, on such terms and conditions as the court deems it fit.

2. (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 Jaffrabad Metro Station and Maujpur Chowk between two groups, one supporting blockage of 66 foota road near Jaffrabad 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.

The present case relates to a sensational firing incident by an anti-CAA protestor on a police official in uniform which occurred during riot at 66 foota road, Jaffrabad 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 Jaffrabad 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 Jaffrabad.

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 Jaffrabad. 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 present case was registered.

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 applicant 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.

The applicant 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.

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.

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 Kabristan, 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.

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.

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/-.

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 Wasim 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.

On 08.30.2020, 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.

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 to 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.

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.

As per the progress of investigation, penal 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.

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 interim or regular bail.

The applicant tried his best to mislead police during investigation and several aspects of investigation related to the appellant are still pending. 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.

Earlier the applicant had filed his application for grant of regular bail on the same 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 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.

The applicant had submitted medical papers of his father namely Sabir Ali @ Baldev Singh who is under treatment from SGL Super Speciality Hospital, Jalandhar for knee replacement and the tentative date of surgery was fixed for 05.05.2020. The applicant had sought bail on the ground that he has to arrange money for the surgery of his father. In this regard, an enquiry through email had been done from the said hospital. The report of Medical Superintendent received through email are as under:-

Patient Baldev Singh is operated case of Total Knee Replacement (TKR) left Knee and currently can walk with support.

Total Knee Replacement (TKR) is an elective procedure and not an emergency procedure.

No New date has been issued to Patient Baldev Singh for TKR surgery of Right Knee.

Patient Baldev Singh visited SGL Super Speciality Hospital, Jalandhar on 22.05.2020, but no new date for surgery has been given by the

Orthopedic Surgeon.

It is clear as per the reply of SGL Super Specialty Hospital, Jalandhar, Punjab, that there is no emergency for the applicant's father Baldev Singh@ Sabir Ali for his surgery of Right Knee.

Another application for grant of interim bail was filed by applicant in the Hon'ble High Court and filed new medical papers of his father Sabir Ali@ Baldev Singh showing him to be under treatment from K.S.Nursing Home, Greater Noida, U.P for knee replacement with tentative date of surgery was fixed for 16.06.2020. The applicant had sought bail on the ground that his presence is required for pre and post medical treatment of his father and for other requirements. The medical documents had been verified from the hospital by taking written report regarding the same and found true. The said Nursing Home was visited and checked by me which was being managed by Dr. G.K Nayyar. The reply received from Dr.G.K.Nayyar is reproduced below;

“Patient Baldev Singh is a patient of osteoarthritis due for surgery TKR, the surgery is due for 16.06.2020. Patient will require normal minimum care after surgery and will be discharged in 3 days, surgery is urgent, not emergency. All the documents are from our Hospital.”

After hearing on merit of the case, bail application of applicant was

dismissed as withdrawn again in the Hon'ble High Court, Delhi on 24.06.2020.

Later on, after enquiry of documents issued by Dr. G.K. Nayyar to different accused persons in others case, a case FIR No.85/2020, U/s 420/467/468/471/474 IPC& 120B IPC was registered at PS Crime Branch against Dr. G.K. Nayyar and he was arrested for issuing fake medical documents/certificate.

Another application for grant of interim bail has been filed by applicant before this Hon'ble Court and filed the same previously verified medical papers of his father Sabir Ali @ Baldev Singh and some new medical paper of his Mother Shahana and showing her to be under treatment from Maharan Pratap District Hospital, Bareilly, U.P as she had suddenly fallen from the stairs while she had been staying in the house of her sister at Bareilly, UP. She sustained grievous injuries on her back and the spinal chord and tentative date of her surgery was fixed for 26.10.2020. The applicant has sought interim bail on the ground that his presence is required for pre and post surgery work. The medical documents of applicant's father had already been verified from SGL hospital as stated above and no new documents related to his father is attached with the application. The medical documents of his mother Shahana have been verified from Maharan Pratap District Hospital, Bareilly by taking written report regarding the same and found true. The reply received from Dr.Sanjay Singh, Orthopaedic Surgeon

of above hospital is reproduced below:-

“रोगी शहाना से संबन्धित पत्र के साथ संलग्न प्रपत्र सही हैं।

- रोगी शहाना **LBP & Radiculopathy** बीमारी से पीड़ित हैं तथा **Patient advised operation for heel ailment.**
- हाँ, (ये **emergency** केस हैं)
- रोगी शहाना को उनकी बीमारी की गंभीरता को दृष्टिगत रखते हुए ऑपरेशन की तिथि दिनांक **26.10.2020** निर्धारित की गयी थी परंतु दिनांक **26.10.2020** को रक्तचाप बढ़ा होने के कारण ऑपरेशन नहीं हो सका। पुनः ऑपरेशन की तिथि **09.11.2020** को भर्ती एवं **10.11.2020** को ऑपरेशन की तिथि निर्धारित की गयी है।”
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The applicant's elder brother is very well capable of looking after his ailing father & mother. Hence, the contention that the applicant's presence is necessary to look after his ailing father & mother has no merit.

Nothing has come on record so far as to suggest that the applicant is the financial strength of his family. In fact, investigation conducted so far and the disclosure statement of the applicant prove that he was dependent on his mother and elder brother and used to assist them in their work of socks.

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.

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 his TIP is to be conducted in the coming days and his interrogation is likely to throw more light on the wider conspiracy angle and also the role of Shahrukh in leading the mob on the day of the incident.

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.

3. (a) The present case was registered under Section 147/148/149/216/186/307//353/34 IPC read with Section 25/27 Arms Act. The gravity of the offence is also relevant for deciding an interim bail application.

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 with the temerity 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, as recorded by the brave journalist Sh. Saurabh Trivedi, Sr. Reporter, The HINDU speaks volumes about the involvement and the conduct of the accused on the said day.

Thus, the gravity in the present case is sufficient to deny any benefit of interim bail to the accused.

(b) 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, though the mobile phone used by the applicant on the day of the incident could not be recovered.

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.

(c) The applicant had moved the regular bail application, which was dismissed. Even the interim bail application moved on the ground of the medical condition of his father and surgery was also disposed off as withdrawn by the Hon'ble High Court of Delhi.

(d) As per the reply filed by the I.O, applicant's father Sh. Baldev Singh was to be operated on 22.05.2020 but no new date has been given so far by the Orthopedic Surgeon. This suggests that there is no emergency for the surgery of the right knee of applicant's father Baldev Singh @ Sabir Ali.

It is also germane to mention here that earlier an interim bail application was moved before the Hon'ble High Court of Delhi and some new medical paper of his father was filed showing him to be under treatment from K.S. Nursing Home, Greater Noida, U.P for knee replacement with

tentative date of surgery for 16.06.2020. The said Nursing Home when visited, was found to be managed by Dr. G.K. Nayyar.

It is quite strange that Dr. G.K. Nayyar was later on arrested in FIR No. 85/2020 under Section 420/467/468/474 IPC & 120B IPC for issuing fake medical documents to different other accused persons in other cases.

(e) Interim bail is also sought for attending to the medical requirement as his mother Mrs. Shabana under treatment from Maharana Pratap District Hospital, Barrelli UP has to be operated for her back and spinal cord. The mother was at Barrelli at his sister's place when she fell, necessitating the surgery.

The medical documents of the mother of the applicants were verified and found to be correct. However, applicant's father and the relatives can take care of the mother of the accused at this time. There is also applicant's brother who can provide assistance and necessary help. Though claimed, yet there is nothing to suggest that applicant's elder brother has no relations with the family.

4. In view of the above discussion, I am not inclined to grant the relief prayed for. Accordingly, the interim 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 mailed to Ld. Counsel for accused as also to Ld.
Special Prosecutor and I.O. concerned.

AMITABH
RAWAT

Digitally signed by
AMITABH RAWAT
Location: Shahdara District,
Karkardooma Courts, Delhi
Date: 2020.11.09 16:58:40
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(Amitabh Rawat)

Addl. Sessions Judge-03

Shahdara District, Karkardooma Courts,

Dated: 09.11.2020