

\$~

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 09.04.2021*

*Pronounced on: 15.04.2021*

+ **BAIL APPLN. 664/2021**

SHAHRUKH PATHAN @ KHAN ..... Petitioner  
Through: Mr. Khalid Akhtar, Mr. Mohammad  
Shadan, Mr. Bilal Khan, Mr. Maaz  
Akhtar & Mr. Sheikh Bakhtyar,  
Advocates

Versus

THE STATE OF NCT OF DELHI ..... Respondent  
Through: Mr. Amit Mahajan & Mr. Rajat Nair,  
Special Public Prosecutors with  
Mr. Shantanu Sharma & Mr. Dhruv  
Pande, Advocates

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**JUDGMENT**

1. By this petition, petitioner is seeking bail in FIR No. 51/2020, under Sections 147/148/149/186/216/307/353 IPC & Sections 25/27 Arms Act, registered at police station Jaffrabad, Delhi.
2. On 26.02.2020, statement of Head Constable Deepak Dahiya, who was deputed to maintain law and order with other members of his team in the area between Jaffrabad Metro Station and Maujpur Chowk, where a

clash between two groups took place on 24.02.2020, was recorded. In his statement, he had stated that one person, leading the agitated crowd and brandishing pistol in his hand, came running towards him and fired 3-4 rounds of shots towards other people. The said person did not hear to his warnings, and continued to walk to approach him and while he was at a distance of 9 to 10 feet, he aimed the pistol at his head and shot the pistol fire. Head Constable Deepak Dahiya further stated that he dodged his head and saved his life and tried to calm down the said person, but he pushed him with his left hand and he again fired at the public. On his complaint, the FIR in question was registered.

3. The incident was captured by a Journalist in his mobile phone and the person brandishing and firing from pistol was identified as *Shahrukh* i.e. the petitioner herein. Efforts were made to apprehend him and he was intercepted and detained on 03.03.2020. Pursuant to a sustained interrogation, petitioner voluntarily disclosed his involvement in the alleged incident and he was arrested in this case and is behind bars since then.

4. At the hearing, learned counsel for petitioner submitted that the alleged incident had taken place on 24.02.2020 and the FIR in question was registered on 26.02.2020 and so, there is 50 hours delay in registration of the

FIR. Reliance was placed upon decision of this Court in *Thulia Kali Vs. State of T.N. (1972) 3 SCC 393* to submit that delay in lodging the FIR is an afterthought and results in embellishment.

5. It was further submitted that merely because petitioner was apprehended from Shamli, Uttar Pradesh, he cannot be said to be an absconder until and unless declared by the court, especially when no notice was issued against him to appear before the authorities. Further submitted that petitioner has been made a scapegoat/ poster boy of the riots and complainant has become the symbol of bravery before the media persons, which is against fundamental rights of the petitioner.

6. Learned counsel further submitted that on the basis of complaint of Head Constable Deepak Dahiya, Section 307 IPC has been invoked against the petitioner, whereas the petitioner had only shot in the side and not towards him and so he had no intention to kill him. During the course of hearing, learned counsel for petitioner placed reliance upon various interview clippings of complainant- Deepak Dahiya with media persons and broadcasting channels, in support of above submissions.

7. Reliance was also placed upon decision of Hon'ble Supreme Court in *State of Kerala Vs. Raneef (2011) 1 SCC 784* to submit that while deciding

the bail application, the court has to bear in mind the delay in concluding the trial. It was also submitted that irrespective of how many criminal cases are pending against an accused, it cannot form the basis to refuse the bail.

8. Lastly, it was submitted that the learned trial court while refusing to grant bail to petitioner has not considered material factual aspects and has mechanically held that the allegations levelled against him are grave. He submitted that petitioner cannot be made to languish behind the jail for an indefinite long period and therefore, this petition deserves to be allowed.

9. On the other hand, learned Special Public Prosecutor has opposed the present petition while submitting that the FIR in question has been registered at the instance of a responsible police officer, who was on duty on the fateful day of riots and there are specific allegations of petitioner heading a pistol towards Head Constable Deepak Dahiya with an intention to kill him. Learned Special Public Prosecutor has played before this Court a video clip as well as a few photographs showing petitioner heading the group of mobs, holding his pistol in hand and walking towards the complainant and also firing the pistol shots.

10. Learned Special Public Prosecutor further submitted that petitioner had absconded since the day of alleged incident and he could be intercepted

only on 03.03.2020 and at his instance, the illegal weapon used by him on 24.02.2020 with 02 live cartridges and the shirt worn by him at the time of incident, were recovered from his house. Further submitted that after dispersal of the rioters, three empty cartridges bearing the mark KF 7.65 were recovered from the spot by SI Naresh Kumar, Jaffrabad Police Station and during interrogation, petitioner has admitted of having purchased the illegal weapon from Merrut for a sum of Rs.35,000/- and as per FSL report, the cartridges seized from the spot have been fired from the weapon of offence.

11. It was also submitted that the call detail record and video footage analysis clearly show petitioner's involvement in the alleged incident of riots. It was submitted that charge sheet in this case has already been filed and trial is in progress. It is, therefore, urged that no leniency is required to be shown towards the petitioner and this petition deserves to be dismissed.

12. The arguments heard by both the sides were heard at length and material placed on record is perused.

13. Before coming to the facts and rendering an opinion in the present case, this Court takes a serious view to the contents of paragraphs No. 14 to 16 of this petition, which are not worth disclosing. Highly derogatory and

serious allegations have been made against the Government of India, Ministers and Judge of this Court, which is deprecated and the Bar is suggested to not make such claims until and unless supported with factual and material evidence in a particular case.

14. Pertinently, the allegations levelled against the petitioner in the present case are that in the unfortunate incident of riots which occurred on 24.02.2020 at the road between Jaffrabad Metro Station and Maujpur Chowk amongst people of different communities, petitioner was a party to the huge crowd which had unauthorizedly gathered and pelted stones, petrol bombs and fired gun/pistol shots.

15. The role attributed to the petitioner is not confined to participation in the mob of rioters but of heading the large crowd, holding a pistol in hand and releasing open fire shots. The video clipping and pictures played before this Court have shaken the conscience of this Court how petitioner could take law and order in his hands. Whether or not petitioner had intention to kill the complainant or any person present in the public with his open air pistol shots, but it is hard to believe that he had no knowledge that his act may harm anyone present at the spot. The worthiness of complainant's statement recorded under Section 161 Cr.P.C. and petitioner's claim that he

had not aimed pistol to shot at the complainant, shall be tested at trial.

16. Moreover, it is not the case of petitioner that he was not involved in the alleged incident. In the opinion of this Court, the learned trial court has rightly held that the petitioner is alleged to have participated in riots and his picture speaks a volume about his involvement.

17. Keeping in mind the gravity of offence committed by the petitioner as also the facts of the present case, I am not inclined to grant bail to the petitioner.

18. The petition is accordingly dismissed while refraining to comment upon the merits of the prosecution case.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**APRIL 15, 2021**

r

भारतमेव जयते