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

+ **BAIL APPLN. 688/2024**

SHAHRUKH PATHAN @ KHAN

.....Petitioner

Through: Mr. Khalid Akhtar, Mr. Mohd.
Shadan, Mr. Abdullah Akhtar, Mr.
Maaz Akhtar, Advs,

versus

**THE STATE (NCT OF DELHI) THROUGH SHO, JAFRABAD,
DELHI**

.....Respondent

Through: Mr. Anuj Handa, SPP with SI Arvind
Dangi / SI Arvind Kumar, ER-1,
Crime Branch

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

22.10.2024

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1. The present application has been filed seeking grant of bail application in FIR no. 51/2020 registered under Section 147/148/149/186/188/153-A/283/307/332/353 IPC and 27 Arms Act at PS: Jafrabad.
2. Learned counsel for the petitioner submits that the petitioner has been in custody since 03.03.2020, and despite the passage of significant time, only 4 out of 90 listed witnesses have been examined. It is further noted that PW-Deepak Dahiya, the individual allegedly fired upon by the petitioner, has already been examined. Learned Counsel draws the Court's attention to the statement of ASI Deepak Dahiya, wherein the witness admitted in an interview with ABP News and ANI that the petitioner had not aimed at him when firing. The witness, however, later changed his statement, claiming he was instructed by senior officers to



avoid escalating tensions. It has been submitted that the testimony of PW-Saurabh Trivedi, recorded in court, also undermines the prosecution's case.

3. It has also been submitted that this Court had previously rejected the petitioner's bail application in Bail Application No. 664/2021 dated 15.04.2021. However, in the nearly three years that have since passed, no significant progress has been made in the trial. Given the slow pace of the trial, which is likely to take considerable time, and the fact that the petitioner is a first-time offender, counsel pleads for bail.
4. The counsel also emphasizes that under the Proviso to Section 437 Cr.P.C., the petitioner has already served more than one-third of the total punishment prescribed for the most serious charge, i.e., Section 307 IPC. On this basis, it is argued that the petitioner should be granted bail, considering the proportionality of time served in relation to the charges.
5. Additionally, it has been submitted that the petitioner's conduct in jail should not be the sole reason to deny bail. It is submitted that the petitioner had been slapped by a jail warden, against which a complaint was lodged. The warden, also bearing the "*Dahiya*" surname, allegedly assaulted the petitioner, questioning how he could have fired at someone from the same *gotra*.
6. Mr. Anuj Handa, learned SPP for the State has vehemently opposed the bail application. Learned SPP has played the video before the Court showing that the petitioner had aimed at the police official and had also fired upon him. Learned SPP has submitted that the act of the petitioner does not entitle him to bail. It has also been submitted that the subsequent conduct of the petitioner in jail was also not satisfactory.



7. This Court while rejecting the bail application of the present petitioner in Bail Application no. 664/2021 dated 15.04.202 has *inter alia* observed as under:

“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.”

8. This Court has also watched the video being played in the Court by the learned SPP. The conduct of the petitioner, on the face of it, does not entitle him to bail at all.



9. The criteria for granting bail in heinous offences are well-established. The factors to be considered include the nature and gravity of the accusations against the respondent, the applicant's criminal antecedents, the likelihood of the applicant fleeing from justice, and the potential for intimidating or threatening witnesses, along with other relevant circumstances. In the present case, the offence attributed to the applicant is severe and impacts society at large.
10. The applicant's claim that the trial may take time lacks merit. Bail cannot be granted merely on the grounds of prolonged imprisonment or slow progression of trial. Furthermore, the Proviso to Section 437 Cr.P.C., as cited by the applicant, also grants the Court the discretion to deny bail when circumstances do not warrant it. The observations made by this Court in the Order dated 15.04.2021 still hold ground and remain valid.
11. In cases of such serious nature, bail cannot be granted solely based on the passage of time. These offences have a far-reaching impact on society, and there remains a possibility that the applicant if released, could tamper with prosecution witnesses. Keeping in view the applicant's past conduct and the gravity of the offence, the Court finds no grounds to grant bail at this stage.
12. In these facts and circumstances, I consider that in the present case, the petitioner is not entitled to regular bail.
13. In view of above, the present bail applications stands disposed of.

DINESH KUMAR SHARMA, J

OCTOBER 22, 2024/JN/SM..