

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

I.A. No. 92-2021 (Umar Khalid)

FIR No. 59/2020

PS : Crime Branch (being investigated by Special Cell)

U/S. 13/16/17/18 UA (P)Act, 120B read with Section 109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/353/395/419/420/427/435/436/452/454/468/471/34 IPC & Section 3 & 4 Prevention of Damage to Public Property Act,1984 and Section 25/27 Arms Act

State vs. Tahir Hussain & Ors.

Dated :- 24.03.2022

ORDER

1. This order shall dispose off the bail application of applicant/accused Umar Khalid filed under Section 437 of Code of Criminal Procedure (Cr.P.C) (in short, Cr.P.C) read with Section 43-D(5) of Unlawful Activities (Prevention) Act (in short UAPA) on **06.09.2021**. Notice of the aforesaid application was given to the prosecution under the provision of Section 43D Unlawful Activities (Prevention), Act. Reply was filed by the prosecution and thereafter, the case was fixed for arguments on merits of the bail application. (Initial bail application moved under Section 439 Cr.P.C was subsequently withdrawn by the Ld. Counsel for accused.

2. Arguments on bail application were heard at length on behalf of applicant/accused Umar Khalid by Sh. Trideep Pais, Ld. Senior Advocate for applicant/accused and for prosecution by Sh. Amit Prasad, Ld. Special Public Prosecutor for State. Written submissions alongwith judgments were also filed on behalf of Ld. Counsel for accused. A brief note on the sequence of events

for conspiracy of North-East Delhi riots and additional notes were filed by the prosecution alongwith judgments.

3. I have perused the record including the charge-sheet, its annexures alongwith written submissions and judgments filed on behalf of both the parties.

4. **ARGUMENTS PUT FORTH ON BEHALF OF THE ACCUSED**
UMAR KHALID

In the bail application, Ld. Counsel for the applicant/accused had contended the following :-

4.1 Accused Umar Khalid is 34 years old scholar and researcher and is innocent and has not committed any crime. It was stated that accused's bent of mind can be assessed from the fact that he had done doctoral thesis on "*Contesting claims and contingencies of the rule on Adivasis of Jharkhand*" & several academic writings like on "*Changing Village Authority in an Adivasi Hinterland: State, Community and Contingencies of Rule in Singhbhum, 1830–1897*".

4.2 The entire case of prosecution is false and based upon disclosures which are inadmissible and the statements of a few witnesses are either obtained under coercion or suffers from material inconsistencies and blatant falsehoods. It was stated that on 29.08.2020, an acquaintance of the accused was forced to sign a pre-drafted witness statement on the threat of a Delhi Police officer to the effect that the only alternative to not signing the statement is that the witness would be arrested. Upon being apprised of the same, the accused had written a letter to the Commissioner, Delhi Police on 01.09.2020. The prosecution has

sought reliance on witness statements, who have deposed as to the incidents between over a month to eleven months after the date of the alleged incidents.

4.3 The present FIR is an omnibus FIR, the narrative of which is in itself fabricated and aimed at an open-ended investigation by which any and every person opposed to the CAA/NRC has been falsely implicated.

4.4 The accused was not even present in New Delhi from 23.02.2020 to 25.02.2020. Thus, it is only rhetoric referring to the accused as the 'silent whisper' of the conspiracy or making vague allegations of remote supervision.

4.5 It was stated that the charges under the UAPA, 1967 are not made out in the present case by any stretch of imagination insofar as no act on the accused's part amounts to an 'unlawful activity' within the meaning of Section 2(o) of the UAPA, nor does any act meet the threshold of a 'terrorist act' within the meaning of Section 15 of the UAPA, necessitating the invocation of Section 16. It is not the prosecution's case that the accused has any affiliation or even any remote connection with any banned or terrorist organization, let alone any evidence to contend that the accused was involved in the raising of any funds for a terrorist act. As such, Section 17 of the UAPA is also wholly inapplicable in the present case. The exercise of the constitutional right to free speech and expression of dissent through peaceful protests against the CAA cannot be taken as a terrorist or seditious act.

4.6 Investigation qua the accused is complete and a charge-sheet has already been filed by the investigating agency. Trial is going to take a long time. As such, no useful purpose is served by keeping the accused in custody.

4.7 No *prima facie* case is made out against the accused. No physical evidence has been retrieved from the accused or otherwise which connects the accused to any of the violence that ensued in North-East Delhi. There are no allegations or material of the accused having procured, received, or raised any funds for a terrorist act.

4.8 It was submitted that the accused is neither visible in any CCTV recordings or video footage nor has any public or police witness made any statement that establishes his presence at the scene of the purported violence which took place between 22.02.2020 and 25.02.2020 or on any other occasion.

4.9 The prosecution has sought to fill the lacunae of its case by rhetorically characterizing the accused as a 'remote supervisor' and the 'master mind', among others. In a similar vein, the prosecution has relied on the alleged 'flurry of calls' made on 24.02.2020 to demonstrate the accused's purported control and involvement in the riots. The prosecution has deliberately omitted to place further material on record that would expose the falsity of this contention and has been in their control. A bare perusal of the DPSG WhatsApp group in itself demonstrates that the prosecution's claim is a selective misreading and gross mis-characterization of the true events which occurred on the said date. The prosecution has selectively relied on the messages on the DPSG WhatsApp group to portray the same to be a homogeneous group as against one that consisted of people from different sections of the society, political opinions, and ideologies. Conversations between members of the WhatsApp group and police officials aimed at de-escalating hostilities have been deliberately left out which would show that there was emphasis on

cooperation between law enforcement authorities and protesters at all points of time. The accused's contemporaneous conduct also demonstrates the same.

4.10 It was stated that the prosecution has failed miserably at establishing any incriminating contact or link between the accused and other alleged conspirators, whether by physical presence or remote communication, which could lend any credence to the baseless allegations of a criminal conspiracy.

4.11 It was stated that while the charge-sheets claim that the presence of the accused at several places where the conspiracy was purportedly carried out in parts is established through his call detail records, the Applicant's CDR location key/cell ID chart which would support the said contention or otherwise enable any verification of the accused's location at the relevant points of time has not been provided along with the charge-sheets. Without prejudice to the above mentioned contention, it is submitted that at best, the CDR of the accused applicant or any other person would only show their physical presence in the zone of the particular cell tower, and the same can by no stretch of imagination be taken to be proof of such persons being at the same place or having met, much less proof of any criminal conspiracy. It is settled law that the mere presence of a person at a place is not proof of the commission of an offence by the person at the said site.

4.12 There are no allegations qua the accused's membership or affiliation to any banned terrorist group or unlawful associations under the UAPA. Although the accused is stated to be a member of United Against Hate (UAH), the same is not a banned organization. The other groups that the accused is stated to be a part of are the DPSG WhatsApp group and, before that, the CAB Team WhatsApp group. The accused has negligible involvement in the group.

4.13 The allegation that several WhatsApp groups were created at the accused's behest by co-accused, namely, Sharjeel Imam and Asif Iqbal Tanha is wholly untrue. That no cogent material has been placed on record that establishes the accused's purported control over the WhatsApp groups or any link. Any witness statements to the contrary are dubious, replete with inconsistencies and contrary to documentary evidence. It is also alleged by prosecution that co-accused Sharjeel Imam is the 'disciple', 'protege' and 'chosen commander' of the accused and that Sharjeel Imam started the Shaheen Bagh protests upon the accused's direction. The said allegations are wholly unsubstantiated.

4.14 There is nothing to show that Sharjeel Imam constituted the Whatsapp group Muslim Students of JNU (MSJ) on the instructions of Umar Khalid, or that Sharjeel Imam was introduced to Yogender Yadav by Umar Khalid in the protest organized by UAH at Jantar Mantar, Delhi. The meeting organized on 08.12.2019 at 6/6, Jangpura, Delhi, does not establish any conspiracy. The accused did not attend any protest organized by CAB Team at Jantar Mantar.

The statement of witness "BOND" is ex-facie unreliable and false. The accused never met with Sharjeel Imam on 15.12.2019 nor is there anything to show that Sharjeel moved to Shaheen Bagh on the instructions of Umar Khalid. It was also contended that the allegation that the JCC was constituted on 17.12.2019 in pursuance of the conspiracy and in accordance with the directions of Umar Khalid, is false. There is no witness to support the allegations that the accused Umar met with co-accused Meeran Haider and Khalid Saifi at Shaheen Bagh. It is also incorrect that Indian Social Institute (ISI) was zeroed in as the venue for the first meeting of all organizations/prominent individuals who were

running anti-CAA protest and they realized the need for secular cover, gender cover and media cover. The statement of witness “BRAVO” is false ex-facie and so is witness “SATURN”. The meeting alleged by prosecution on 23/24.01.2020 at Seelampur protest site is false and all the six witnesses who talk of it like SIERRA, SMITH, ECHO, DELTA, GAMA & YANKEE are of questionable credibility. It was submitted that statement of HELIUM is different in 161 Cr.P.C and 164 Cr.P.C. Moreover, statement of CRYPTON was recorded very late and in any case, does not attribute anything incriminatory to the accused. The statement of witness BEETA suffers from contradiction in statement under Section 161 Cr.P.C & 164 Cr.P.C. Statement of JAMES is false as regarding creation of JCC and there is no material to support the contention that Nadeem Khan and Umar Khalid made all the decisions of JCC. The said statement is also hearsay in so far as the incident of 22.02.2020 is concerned. Statement of BOND is also likewise hearsay.

4.15 It was argued that as per prosecution, the accused conducted a ‘secret meeting’ at a ‘secret office’ bearing E-1/13, New Seelampur, Delhi on the intervening night of 23.01.2020-24.01.2020 with co-accused persons Natasha Narwal, Gulfisha, Devangana Kalita, Tasleem and others. The accused is the ‘silent whisper’ who was conniving enough to exit New Delhi on 23.02.2020 just before the alleged violence erupted to create a ‘perfect alibi’ for himself, the cumulative reading of the chargesheet and the witness statements relied upon qua the said ‘secret meeting’ puts forth a narrative where the accused candidly makes vivid descriptions of planned violence calling for ‘spilling of blood’ before complete strangers in what was a ‘secret meeting’. The photograph filed regarding the participants of the ‘secret meeting’ was uploaded on social media.

4.16. The prosecution's case is characterized by several deep lacunae, which have been retrospectively filled as and when the same have been highlighted in the course of proceedings, by the media or otherwise. He referred to the prosecution's case, as contained in the charge-sheet filed detail in FIR 101/2020, P.S. Khajuri Khas, that the accused participated in a meeting with co-accused persons Khalid Saifi and Tahir Hussain in an office at Shaheen Bagh on 08.01.2020, on which date the said three persons conspired to cause 'riots' at the time of the visit of US President Trump. However, the falsity of the said allegation was exposed by the fact that the first reference to US President Donald Trump's visit was only made on 14 January 2020. The prosecution skirted the correlation between the purported meeting dated 08.01.2020 and the plan for riots during US President Donald Trump's visit, in the supplementary charge-sheet filed in FIR 101/2020 PS Khajuri Khas as well as the charge-sheets filed in the present FIR. Another illustration of the shifting case of the prosecution, while the prosecution was first claimed that co-accused Asif Iqbal Tanha participated in a meeting conducted at the Jaffrabad Metro Station on 22.02.2020 leading up to the purported chakka jam which occurred that evening, upon being unable to establish the said co-accused's presence at the alleged location, the narrative was conveniently altered to state that the meeting dated 22.02.2020 actually took place at Gate No. 18 of Jamia Millia Islamia subsequent to the chakka jam at the Jaffrabad Metro Station.

4.17 It is well-settled that bail is the rule and custodial detention is the exception. The Hon'ble Supreme Court in *P. Chidambaram v. CBI 2019 SCC Online SC 1549* has categorically reemphasized the primary considerations for grant of bail, which are (i) availability of the accused for investigation, interrogation and facial trial; (ii) whether the accused is a flight risk and (iii)

likelihood of the accused to tamper with evidence and influence/intimidate witnesses. In the present case, the Applicant satisfies the aforesaid triple test.

4.18 It is also respectfully submitted that there are no chances or risk of the Applicant tampering with evidence.

4.19 It is relevant to note that at the time of granting bail, the gravity of the offence cannot be the only consideration.

It was, thus, prayed that regular bail may be granted to the applicant/accused herein in the present case.

Ld. Counsel for applicant/accused has relied upon following judgments :-

Bail under Unlawful Activities (Prevention) Act 1967

1. *National Investigation Agency vs. Zahoor Ahmad Shah Watali* (2019) 5 SCC 1;
2. *Union of India vs. K.A. Najeeb* (2021) 3 SCC 713;

Construction of bail provisions under legislations similar to the UAPA

3. *State of Kerala & Ors. vs. Rajesh & Ors* (2020); SCC 122 [S. 37, NDPS Act]
4. *Union of India vs. Shiv Shanker Kesari* (2007) 7 SCC 798 [S. 37, NDPS Act]
5. *State of Maharashtra vs. Anand Chintaman Dighe* (1990) 1 SCC 397 [S. 20(8), TADA]
6. *Kartar Singh vs. State of Punjab* (1994) 3 SCC, 569 [S. 20(8), TADA]
7. *Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr* (2005) 5 SCC 294;
8. *State of Maharashtra v. Vishwanath Maranna Shetty* (2012) 10 SCC 561 [S. 21, MCOCA];
9. *State of T.N. vs R.R. Gopal alias Nakkeeran Gopal* (2003) 12 SCC 237 [S. 49, POTA];
10. *Paza Neduraman and Ors v. State* (2003) SCC, OnLine Mad 166 [S. 49, POTA];

Analysis of Section 15 of the UAPA – meaning of a “terrorist act”

11. *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra* (1994) 4 SCC 602;
12. *Kartar Singh vs. State of Punjab* (1994) 3 SCC 569;
13. *People’s Union for Civil Liberties & Anr. vs. Union Paras of India* (2004) 9 SCC 580;
14. *Yakub Abdul Razak Memon vs. State of Maharashtra through CBI* (2013)13 SCC 1;
15. *Zameer Ahmed Latifur Rehman Sheikh vs. State of Maharashtra & Ors.* (2010) 5

SCC 246;

Constitutional Right to Protest

16. *Mazdoor Kisan Shakti Sangathan vs. Union of India & Anr.* (2018) 17 SCC 324;

Speech That is Not Prohibited by Law

17. *Kedar Nath v. State of Bihar* AIR 1962 SC 955;

18. *Balwant Singh & Anr. v. State of Punjab* (1995) 3 SCC 214;

19. *Clarence Brandenburg v. Ohio* 395 US 444 (1969);

20. *Shreya Singhal v. Union of India* (2015) 5 SCC 1

Test of Disaffection against India

21. *Priya Parameswaran Pillai v. Union of India* (2015) 218 DLT 621;

Confessional statement of co-accused cannot be basis for denial of bail;

disclosure statement in absence of recovery is inadmissible

22. *Indra Dalal v. State of Haryana* (2015) 11 SCC 31

23. *Rajesh Sharma v. Directorate of Revenue Intelligence* 2018 SCC OnLine Del 12372;

24. *Geedarwa alias Faiiaz alias Md. Faiiaz alias Mohammad Faiyaz Alam v. State of Bihar* 2020 SCC OnLine Pat 395;

25. *Avnish Jha v. State of Bihar*, 2020 SCC OnLine Pat 699;

Confessional statement of co-accused not substantive evidence, Court cannot start with such a confession which is corroborative at best.

26. *Pancho v. State of Haryana*, (2011) 10 SCC 165

Investigation is complete on filing of chargesheet; non-furnishing material sought by the IO is not “non-cooperation”.

27. *Navendu Babbar v. State of GNCT of Delhi*; Bail Application No.953/2020, decided on 18.06.2020

Lacuna in prosecution case cannot be made up with subsequent supplementary statements

28. *Deepa Bajwa v. State & Ors.* 2004 (77) DRJ 725;

29. *State (Govt of NCT of Delhi) v. Nitin* 2019 SCC OnLine Del 7239;

Triple test for rejecting bail - flee justice, tamper evidence, influence witnesses

30. *P. Chidambaram v. CBI* (2020) 13 SCC 337;

31. *Devangana Kalita v. State of NCT of Delhi* 2020 SCC OnLine Del 1092;

Gravity of offence or multiplicity of cases not in themselves sufficient for denial of

bail

32. *Ashok Sagar v. State NCT of Delhi* 2018 VI AD, (Delhi) 21;
33. *Prabhakar Tewari v. State of U.P.* 2020 SCC Online 75;
34. *P. Chidambaram vs. Directorate of Enforcement* (2020) 12 SCC 791;

Bail is the rule, detention is exception; humane approach to custodial detention

35. *Devangana Kalita v. State of NCT of Delhi* 2020 SCC OnLine Del 1092;
36. *Dataram Singh v. State of U.P.* (2018) 3 SCC 22;
37. *Sanjay Chandra v. CBI*, (2012) 1 SCC 40;
38. *Firoz Khan v. State of NCT of Delhi*, Judgment in Bail Application No. 945 of 2020 dated 29.05.2020;
39. *Ash Mohammad vs. Shiv Raj Singh & Anr.* (2012) 9 SCC 446;

5. ARGUMENTS PUT FORTH ON BEHALF OF PROSECUTION

5.1 Ld. Special Public Prosecutor had vehemently argued that Delhi Riots 2020 was a large-scale and deep-rooted conspiracy hatched after the passing of the resolution by Cabinet Committee to present CAB in both Houses of Parliament on 04.12.2019. He then referred to the contents of the charge-sheet to allege that prima facie allegations are correct. It was further contended that in this entire conspiracy, there were various organizations like Pinjra Tod, AAZMI, SIO, SFI, etc., through individuals which participated. There was a centrality of JCC in the eco-system. As part of the conspiracy, 23 (24x7) protest sites (against CAB) were created in Muslim majority areas close to mosques/majaar and close to main roads. Before the major riots of February 2020, a replica of the riots took place in December 2019 on a lower scale but with similar characters and modus-operandi. With the lessons learnt, February riots was planned and executed. The idea was to escalate protest to chakka-jam, once critical mass is generated and at an appropriate time to eventually lead to violence against police and then others. In order to give a secular look, secular names/Hindu names were given to protest sites to give secular color. The conspiracy involved moving from the protest sites to designated location on main roads/highways and blockade causing disruptive chakka-jam, creating

confrontational situation, attacking police and paramilitary, spreading communal violence/attacking non-Muslims and damaging public and private property by use of petrol bombs, firearms, deadly weapon, acid bombs, stones, lathi and chilly powder. Finances were also arranged and diverted to protest sites and were utilized in organizing violence.

5.2 Ld. Special Public Prosecutor took the Court to the entire chain of events of the conspiracy as reflected in charge-sheet and referred to various statements of witnesses recorded under Section 161 Cr.P.C and 164 Cr.P.C and other documents and chats of Whatsapp groups like DPSG, JCC to buttress his point of conspiracy.

5.3 It was also argued that the individual role of conspirators is not to be seen rather a holistic view is to be taken while looking at a prima facie involvement of conspirators in the chain of conspiracy.

5.4 It was also contended that at the stage of bail, material/evidence collected by the investigating agency in reference to the accusation against the accused, must prevail unless contradicted and overcome or disproved by other evidence and on the face of it, shows the complicity of the such accused in the commission of the offence. Elaborate dissection of evidence is not required to be done at this stage and the Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the offence.

5.5 Ld. Special Public Prosecutor also vehemently argued as to how Unlawful Activities (Prevention) Act has been rightly invoked and taken

cognizance of and the actions of the conspiracy by accused persons come within the ambit of Terrorist Act. He also highlighted various aspects of how the first phase of riots in December 2019 did not give desired results due to inadequate local mobilization, communal tag, lack of experience and local backlash, absence of synergy between sites and effective police action.

5.6 Ld. Special Public Prosecutor then stressed that the protest was not organic but were created under a planned conspiracy and given facade of organic protest. He also delved on the initiation of the conspiracy with Sharjeel Imam and Umar Khalid, formation of JACT, DPSG, JCC and other aspects delineated in the charge-sheet.

5.7 Ld. Special Public Prosecutor then strongly argued that not only was the protest shown to be secular and organic but also women driven. It was also argued that the sequence of events clearly show how everything was planned, organized and well thought of. The clandestine transportation of people majorly women and children from Jahangir Puri to Jafrabad via Shaheen Bagh for participation in the rioting activity and subsequent prompt call from Janvi to Parvez when alarming messages were posted on DPSG group, indicating cover-up action. The date was intentionally chosen when Mr. Donald Trump, President of United States of America was to come to Delhi.

5.8 He also cited the DPSG Whatsapp chat to highlight the conduct of the accused persons during and after the riots including the flurry of calls and deletion of the group. Statements of various witnesses including protected witnesses were read alongwith the major aspects of the charge-sheet including the conspiratorial meetings to highlight how the riots were engineered by

completely blocking the entry and exist point for the North-East Delhi. The video showing how the CCTV cameras installed at Chand Bagh area were systematically dislocated so that the footage of riots could not be found and the footage was played in the Court.

5.9 Thereafter, the individual role of the applicant/accused Umar Khalid was highlighted regarding his participation in the entire conspiracy. His links with other accused persons were also stressed.

5.10 Ld. Special Public Prosecutor, thereafter, argued that in the present case, the bar of Section 43D (5) UAPA for grant of bail would apply as prima facie allegations against the accused are true and the further embargo is created due to Section 437 (1) Cr.P.C.

Thus, it was argued that there are sufficient material on record to establish that the accusation against the accused Umar Khalid is prima facie true and hence the bail application of the accused may be dismissed.

Ld. Special Public Prosecutor for the State has relied upon the following judgments :-

1. *Usmanbhai Dawoodbhai Memon v. State of Gujarat* (1988) 2 SCC 271;
2. *State of Assam, In re.* 2006 SCC OnLine Gau 104 (Full Bench);
3. *National Investigating Agency v. Redaul Hussain Khan*, 2010 SCC OnLine Gau 606 [Cited in *NIA v Zahoor Ahmad Watali Shah* 2019 5 SCC 1];
4. *Jayanta Kumar Ghosh v. State of Assam*, 2010 SCC OnLine Gau 586 [Cited in *NIA v Zahoor Ahmad Watali Shah* 2019 5 SCC 1];
5. *Jibangshu Paul v. National Investigation Agency*, 2011 SCC OnLine Gau 107;
6. *Golan Daulagupu v. National Investigation Agency*, 2012 SCC OnLine Gau 558;
7. *Malsawmkimi v. National Investigation Agency*, 2012 SCC OnLine

Gau 897;

8. *Bharat Mohan Rateshwar v. National Investigation Agency 2012 SCC OnLine Raj 3506;*

9. *Fasih Mahmood versus State (NCT of Delhi), 2016 SCC OnLine Del 1073;*

10. *National Investigation Agency (NIA) v. Victo Swu 2017 SCC OnLine au 1333;*

11. *Nazir Ahmad, Appellant v. King-Emperor AIR 1936 Privy Council 253 (2);*

12. *Thwaha Fasal vs. Union of India, 2021 SCC OnLine SC 1000;*

13. *Shaikh Muhammed Bilal vs. National Investigation Agency, Crl. Appeal No. 585/2021 dated 15.09.2021.*

6. **6.1** The present bail application by accused Umar Khalid was filed under Section 437 Cr.P.C.

The relevant portion of Section 437 Cr.P.C reads as under :-

437. When bail may be taken in case of non- bailable offence.

(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.....

Thus, Section 437 Cr.P.C places an additional condition before releasing a person on bail if there are reasonable grounds for believing that accused has

been guilty of offence punishable with death or imprisonment for life.

6.2 The present case also involves the applicability of Unlawful Activities (Prevention) Act. Section 43D of UAPA deals with the bail provision and it is set out below :

“ Section 43D. Modified application of certain provisions of the Code. – (1)-(4) :-

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub– section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub–sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

Thus, if the court is of the opinion on the perusal of the charge-sheet that there are reasonable grounds for believing that the accusation against such person is prima facie true, than, as per this provision, accused shall not be released on bail.

6.3 In *National Investigating Agency vs. Zahoor Ahmad Shah Watalli*, (2019) 5 SCC 1, in a case under Unlawful Activities (Prevention) Act, 1967, the

Hon'ble Supreme Court of India held that :-

“ 23. By virtue of the proviso to sub–section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise.....

.....By its very nature, the expression prima facie true would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is prima facie true, as compared to the opinion of accused not guilty of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.....”

24. A priori, the exercise to be undertaken by the Court at this stage – of giving reasons for grant or non–grant of bail – is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.

27. For that, the totality of the material gathered by the Investigating Agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the

document and take such document into account as it is.

28. The question is whether there are reasonable grounds for believing that the accusations made against the respondent (Accused 10) are prima facie true. That will have to be answered keeping in mind the totality of materials including the one presented along with the police report. Be it noted that the prosecution is relying on several documents forming part of the first charge-sheet (pending further investigation) filed against the respondent (Accused 10) allegedly showing his involvement in the commission of the stated offences.....”

47. The fact that there is a high burden on the accused in terms of the special provisions contained in Section 43-D (5) to demonstrate that the prosecution has not been able to show that there exist reasonable grounds to show that the accusation against him is prima facie true, does not alter the legal position expounded in K. Veeraswami, to the effect that the charge-sheet need not contain detailed analysis of the evidence. It is for the Court considering the application for bail to assess the material/evidence presented by the investigating agency along with the report under Section 173 CrPC in its entirety, to form its opinion as to whether there are reasonable grounds for believing that the accusation against the named accused is prima facie true or otherwise.....”

6.4 Hon'ble Supreme Court of India in *Thwaha Fasal versus Union of India*, 2021 SCC OnLine SC 1000, inter alia, held as follows :-

“ 22. After considering the law laid down by this Court in various decisions including the decision in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra 7 , in paragraphs 24 and 25 it was held thus:—

*“24. A priori, the exercise to be undertaken by the Court at this stage-of giving reasons for grant or non-grant of bail-is markedly different from discussing merits or demerits of the evidence. **The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.***

25. From the analysis of the impugned judgment, it appears to

*us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded Under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. **That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.**” (emphasis added)*

23. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail.

*Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the Court while examining the issue of prima facie case as required by subsection (5) of Section 43D is not expected to hold a mini trial. **The Court is not supposed to examine the merits and demerits of the evidence. If a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet***

for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is”.

7. 7.1 The law on conspiracy is briefly adverted to. For constituting a conspiracy, meeting of minds of two or more persons for doing an illegal act or any act by illegal means is the condition and it is not at all necessary that all the conspirators must know each and every detail of the conspiracy. It is also not necessary that every one of the conspirators must take active part in commission of each and every conspiratorial acts. The agreement among the conspirators can be inferred by necessary implications. Mostly, the conspiracy are proved by circumstantial evidence as the conspiracy is seldom an open affair. The existence of conspiracy and its object are normally deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy.

7.2 In *State (NCT of Delhi) v. Shiv Charan Bansal & Others, 2019 SCC OnLine SC 1554*, it was, inter alia, held that :

44. A criminal conspiracy is generally hatched in secrecy, and it is difficult, if not impossible, to obtain direct evidence. Reliance is placed on the judgment of this Court in R. Venkatkrishnan v. CBI. The manner and circumstances in which the offence has been committed, and the lever of involvement of the accused persons are relevant factors. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in the general conspiracy, to accomplish the common object.

45. Conspiracy is mostly proved by circumstantial evidence by taking into account the cumulative effect of the circumstances indicating the guilt of the accused, rather than adopting an approach by isolating the role played by each of the accused. The acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its

execution. Reliance is placed on the judgment of State (NCT of Delhi) v. Navjot Sandhu.

7.3 In *State of Kerala vs. P. Sugathan & Another, (2000) 8 Supreme Court Cases 203*, Hon'ble Supreme Court of India held that :

Criminal conspiracy is defined under [Section 120\(A\)](#) of the Indian Penal Code as under: "Definition of criminal conspiracy. When two or more persons agreed to do, or cause to be done.

(1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

*Explanation--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object." [Section 120B](#) prescribes the punishment for criminal conspiracy which by itself is an independent offence, punishable separately from the main offence. The offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. [Section 10](#) of the Evidence Act introduces the doctrine of agency and will be attracted only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable ground, that is say, there should be a prima facie evidence that the person was a party to the conspiracy before his acts can be used against the co-conspirators. This Court in *Bhagwan Swarup Lal Bishan Lal vs. State of Maharashtra [AIR 1965 SC 682]* held that the expression "in reference to their common intention" in [Section 10](#) - is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything, said, done or written by a co- conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it". It was further held: In short, the section can be analysed as follows: (1) There shall be*

a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in V.C. Shukla v. State [1980(2) SCC 665] held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

7.4 Hon'ble High Court of Delhi in *Gopal Ansal vs State*, 2017 SCC

Online Del 8333, after discussing entire law on conspiracy has summarized the legal position which is as follows :-

“.....99. From a conspectus of the above decisions, the legal position that emerges, is collated as follows:

i. The offence of Conspiracy has two elements, viz. (1) an agreement between two or more persons by whom the agreement is effected; and (2) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. The gist of the offence of conspiracy is an agreement to break the law.

ii. Since it is the unlawful agreement which is the gravamen of the crime of conspiracy, the offence of criminal conspiracy is an exception to the general law where intent alone does not constitute a crime.

iii. Conspiracy itself is a substantive offence and is distinct from the offence to be committed, for which the conspiracy was entered into. Therefore, the crime is complete as soon as the agreement is made.

iv. It thus, also follows that the offence of criminal conspiracy is complete even though there might be no agreement as to the means by which the purpose is to be accomplished.

v. However, the offence might not end with the making of the agreement in certain cases. It thus follows that conspiracy is a continuing offence and continues to subsist wherever one of the conspirators does an act or series of acts, in furtherance of the object of the conspiracy. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity.

vi. Therefore, it follows from the above propositions that the offence of conspiracy is punishable independent of its fruition. The parties to an agreement will be guilty of criminal conspiracy, even in the circumstance that the illegal act agreed to be done might not actually have been done. In other words, to prove the charge of conspiracy, it is not necessary that intended crime was committed. If the crime is committed, it may further help prosecution to prove the charge of conspiracy.

vii. Since a conspiracy is hatched in private or in secrecy, it is

rarely possible to establish a conspiracy by direct evidence. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators.

viii. Usually, both the existence of the conspiracy and its objects, have to be inferred from the circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

ix. Conspiracy may comprise the commission of a number of acts.

x. Further, there may be many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested.

xi. There, however, must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators.

xii. Further, in achieving the goal, several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. The means may even constitute different offences by themselves, but as long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts forming a part of the conspiracy.

xiii. All accused persons are guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable. In other words, a criminal conspiracy is a partnership in crime, and there is in each conspiracy, a joint or mutual agency for the prosecution of a common plan. Each conspirator can be attributed each other's actions in a conspiracy by virtue of the application of the theory of agency.

xiv. *Conspirators may, be enrolled in a chain; or there may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. It may however be that both the theories overlap in a given case. But then there has to be present a mutual interest.*

xv. *A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is also guilty though he intends to take no active part in the crime.*

xvi. *Persons may be members of a single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.*

xvii. *There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.*

xviii. *The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy.*

xix. *The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split*

up a conspiracy into several different conspiracies. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

xx. To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary.

xxi. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions

8. 8.1 This has been a very hotly contested bail application wherein both the Ld. Senior Advocate representing the accused and Ld. Special Public Prosecutor representing the State have delved deep into the charge-sheet and the accompanying annexures. This has been one of the primary reason why the bail application has taken so much time.

8.2 During the course of arguments, everyone had referred to material beyond the charge-sheet and with numerous references to various examples of Web-series to drive home their points. All that is unnecessary. The principle of criminal law is to decide bail application on the basis of what is on record i.e. charge-sheet and accompanying annexures, particularly, at the stage of post-cognizance and pre-charge.

Moreover, getting into the intricate details and to decipher the merit and de-merits of statement of witnesses is not required at this stage, though I shall make tangential reference to it in the subsequent paragraphs in terms of the arguments. As discussed in previous paragraph no. 6, as held in ***National Investigating Agency vs. Zahoor Ahmad Shah Watalli*** (*supra*), it was held

that the elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise. The totality of the material gathered by the Investigating Agency and presented along with the report and including the case diary, is required to be reckoned and not by analyzing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is. The question is whether there are reasonable grounds for believing that the accusations made against the respondent are prima facie true. That will have to be answered keeping in mind the totality of materials including the one presented along with the police report.

In *Thwaha Fasal case (supra)*, it was held that opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.

8.3 There have been all kinds of adjectives used either for the prosecution or for the accused in arguments. The charge-sheet also makes a reference to various words to describe an act or an accused. It is not required nor shall I deal with those aspects. The discussion will confine itself to the facts and the sequence, as narrated in the charge-sheet, as supported by witnesses.

8.4 This is a case of a conspiracy leading to riots as alleged by the prosecution. The defence argues that it is their constitutional right to protest against the law of CAA/NRC. There is no gainsaying the sacrosanct fundamental right of speech and free expression subject to public order available to every citizen of this country including the accused, as enunciated in Article 19 of the Constitution of India. However the charge-sheet, as filed, presents the case of conspiracy under the guise of a protest. Thus, at times, both the prosecution and accused are arguing on a different presumptive basis. What the court is required to see under the law are the contents of the charge-sheet and the accompanying annexures.

9. 9.1 The prosecution has alleged in the present case that the conspiracy began after the passing of Citizenship Amendment Bill (CAB) by the Cabinet on 04.12.2019. It continued to develop and culminated in the horrific riots on 24th February 2020 in North-East Delhi. The first person who acts after 04th of December 2019 is accused Sharjeel Imam when Muslims Students of JNU is formed on 05/06 December 2019 and propagates the idea of disruptive chakka-jam.

There are two other important factors which were highlighted by counsel and which needs a mention. First is the idea of chakka-jam as used normally in the country. However, a look at the speech of Sharjeel Imam on 13.12.2019 at Jamia University reflects that chakka-jam is envisaged as part of a plan of action. There is a reference of Muslims Students of JNU followed by the desire to do chakka-jam in as many as 50 cities in India where Muslims can do it. However, when chakka-jam or blockage is used in the normal course, the main object is to highlight the point of protest with some inconvenience that might be caused as a result of it. What is different here is that chakka-jam is desired with

a certain goal. The speech says that the cities can be stopped by the Muslims. He then talks of disruption and need to organize. He then states the goal as chakka-jam where milk supply or even water is stopped in the mohallas of Delhi. Sharjeel Imam also gave a speech on 23.01.2020 at Gaya, Bihar where he tells a difference between protest and blocking the highways and lauds complete blockage and disruption of services between Delhi and Noida as a success and himself says that it is a first step and necessary step.

9.2 Secondly, CAA/NRC protest were held across India but riots of this scale happened only in Delhi. Sharjeel Imam in his speech of 13.12.2019 makes a mention about Delhi being the capital of India and gives an illustration that if even a flyover collapses, the whole world will know of it. Also, Mr. Donald Trump, the President of United States of America was to visit Delhi on 24th of February 2020. The happening of riots on the same day when the President of USA was in Delhi and the whole world media was there to cover it, does not appear from the charge-sheet to be mere co-incidence. In fact, there is a mention of the visit of the President before the riots began. Accused Umar Khalid in his Amrawati speech specifically made a mention of the said visit by the President of USA on 24th of February 2020 in Delhi and the need to show to the world with media all around. Various witnesses also referred to enhanced activity after the visit of the President of United States of America was announced. Sharjeel Imam in his Gaya speech of 23.01.2020 while again referring to the blockage of highways in Delhi, says that they will paralyze the government. He makes an interesting reference while referring to the protest across India. He says that Delhi is special because anything that happens here will get international media in five minutes, firing will be covered in media and thus, if army is to be deployed then it will be a humiliation for government and

not for Muslims.

10. 10.1 As per the charge-sheet, the present case pertains to a large-scale and deep-rooted conspiracy which began after the Citizenship Amendment Bill was passed by the Central Cabinet on 04.12.2019 and which became a law on 10.12.2019 after it was passed in the Lok Sabha.

In the night of 5/6.12.2019, a Whatsapp group of Muslim Students of JNU was formed with Sharjeel Imam being its main member. **Umar Khalid** was also the member of the said group. **Witness Tahira Daud** in her statement under Section 161 Cr.P.C stated that Muslim Students of JNU was formed and she was added with the main purpose of coordinating in the protest and chakka jam in Delhi and other parts of India and to take participation in such protest.

Sharjeel Imam started distributing pamphlets in Masjids against CAA/NRC. There is a coordination between Sharjeel Imam of MSJ with Arshad of Students of Jamia (SOJ) for distribution of pamphlets on 06.12.2019 and thereafter. There were meetings organized at JNU and at Jamia University. (Facebook post of SOJ from December 2019 to February 2020 stated that Law of Allah is above all else, La Ilaha Illallah Muhammadur Rasulullah is against secularism, against democracy, against nationalism).

United Against Hate (UAH) organized a protest at Jantar Mantar on 07.12.2019 and Sharjeel Imam joined the protest. Sharjeel Imam wanted to rope in students of Jamia, DU, AMU, etc.

UAH conducted an agitation at Jantar Mantar on 07.12.2019 which was

attended by Sharjeel Imam, Umar Khalid, Yogender Yadav and others. As per prosecution, idea of chakka-jam emerges here. Though stated but it is an inference of prosecution only that Umar Khalid introduced Sharjeel Imam to Yogender Yadav.

After the said meeting, Sharjeel Imam posted a message on 07.12.2019 on core members of MSJ regarding media collaboration, call and protest. On 07.12.2019 itself, Sharjeel Imam had a chat with Arshad Warsi (SOJ) regarding a big mobilization.

A meeting took place at Jungpura office on 08.12.2019 which was attended among others by Yogender Yadav, Umar Khalid, Sharjeel. Photograph from the said meeting was also filed. **Witness Tahira Daud** had stated about the said meeting and about the instruction of Yogender Yadav and Umar Khalid regarding the complete support in chakka-jam. A Whatsapp group “CAB TEAM” was formed consequently on the same day. Its members included Sharjeel Imam, Umar Khalid, Yogender Yadav, Nadeem Khan, Khalid Saifi.

Nadeem Khan and Sharjeel Imam were in continuous touch with each other. Sharjeel Imam visited Aligarh Muslim University on 11.12.2019 propounding chakka-jam and he created another Whatsapp group Muslim Students of JNU_1 on 12/13.12.2019. Sharjeel directed members of MSJ to reach Jamia University to support Parliament March (call given by Asif Iqbal Tanha) on 13.12.2019. Sharjeel Imam gave a seditious speech at Jamia and asked for a disruptive chakka-jam which included disruption and stoppage of supply of water and milk to Delhi. Consequently, violence/riots took place and FIR No. 296/2019, P.S. Jamia Nagar was also registered. In the said violence,

there was an attack on police personnel and damage to public property and arsoning. Various other incidents of riots took place in Delhi in the month of December 2019. This pattern of riots consequent to the initial speech of Sharjeel Imam took place in Delhi and various FIRs in South-East Delhi and even North-East Delhi were registered in December 2019.

Chakka-jam also began consequent to a meeting of Umar Khalid, Sharjeel Imam, Asif Iqbal Tanha and others on 13.12.2019 at Jamia Campus. The said chakka-jam was then to spread to the other parts of Delhi.

Protected witness **BOND** in his statement under Section 164 Cr.P.C, inter alia, has stated that **Umar Khalid, Sharjeel, Saiful Islam and Asif Tanha had come to Jamia University campus on 13.12.2019. In his presence, Umar Khalid said in front of all the protesters that Sharjeel, Saiful and Asif are his brothers and members of his team. Umar Khalid said that he has explained to them the difference between chakka-jam and dharna. Umar told Sharjeel to start chakka-jam at Shaheen Bagh and Asif and Saiful to start chakka-jam at Gate no. 7 of Jamia University. Umar Khalid said that at the right time, they will also start chakka-jam in other Muslim areas of Delhi. Umar further said that government is a Hindu government and against Muslims and they have to overthrow the government and will do so at the right time. On 16.12.2019, Umar Khalid (accompanied with Saiful and Asif) and Nadeem Khan came to AAJMI's office and in his presence, Umar said to Saiful and Asif that Jamia Coordination Committee (JCC) be set up. Nadeem Khan said that JCC will lead protest and chakka-jam in Delhi. Asif and Saiful are agreed to the said suggestions and JCC was**

formed.

(The contention of the Ld. Senior Advocate that the statement of this witness Bond is not reliable at all and is also recorded after a delay, cannot be taken at this stage as the statement of witnesses have to be taken as they have given. Reliability or otherwise of the statement of a witness is to be tested at the stage of trial).

10.2 On 17.12.2019, Jamia Coordination Committee (JCC) was constituted. Gate No.7 of Jamia Milia was declared a protest site. Safoora Zargar created a Whatsapp group JMI Coordination Committee for communication with JCC members which included Safoora Zargar, Asif Iqbal Tanha, Shifa-ur-Rehman, Saiful Islam, Meeran Haider, Amanullah among others. A mobile card no. 9205448022 was activated on forged and fabricated documents for the ulterior purpose and this stated by **witness Robert**. Media team with Safoora Zargar as head and Facebook page for JCC was created on 18.12.2019. JCC, as per its own official release as Facebook post, showed AAJMI, AISA, CFI, MSF, Pinjra Tod, SIO, Khudai Khidmatgar, etc. as part of it.

Witness **BOND** had also stated that JCC used to regularly hold secret meetings and had identified 20-22 spots in Delhi for starting of protest like Shaheen Bagh. JCC used to control the protest site by sending one person to protest site and performance review. JCC used to deliberately make women and children sit at protest site so that police cannot take action. This decision to use women and children was taken in the JCC meeting attended by Saiful and Asif, who as per the them, had received instructions from Umar Khalid and Nadeem Khan. AAJMI with contribution by Shifa-ur-Rehman, Arif Hasan and

others was providing money to the protest sites. (Again simply saying that the witness Bond is unreliable and untrue does not help the case of the accused at this stage).

10.3 Shaheen Bagh protest site was also created and though it is shown to be led by women and an organic protest, yet in reality it was the brain child of and executed by Sharjeel Imam, who then at a later stage left it strategically.

10.4 JACT (Jamia Awareness Campaign Team) was formed on 22.12.2019 with campaign for mass local mobilization. It later on covered all the places where the protest sites were later on mushroomed and developed.

On 26.12.2019, meeting takes place at Indian Social Institute (ISI) Lodhi Colony, attended by Umar Khalid, Nadeem Khan, Khalid Saifi, Rahul Roy, Sabha Dewan and others. It was then decided to form Delhi Protest Support Group (DPSG) group and different protest sites in Delhi. In order to avoid police clash, protest sites is decided to be women centric. They were to be set-up in Muslim majority areas with collection of funds for its sustenance and regular meetings to take stock of the progress. (Ld. Senior Advocate contended that the **witness Bravo** who talked about the meeting of 26.12.2019 and attended it and stated about the role of accused Umar Khalid is ex-facie false for various reasons but I find to be not relevant at this stage of bail).

On 28.12.2019, DPSG Whatsapp group was formed by Rahul Roy and Sabha Dewan with key associates of top conspirators. Khalid Saifi (UAH) calls for a protest march at Jantar Mantar which is attended by Asif Iqbal and other members of MSJ and DPSG.

All groups i.e. DPSG, JCC, MSJ, Pinjra Tod, etc. were working in tandem. Members of one group were members in others and there was knowledge and coherence in strategy.

Overtime, different protest sites totaling to 23 were developed in different parts of Delhi. In January, Sharjeel continued to give seditious speeches and spreading his idea of disruptive chakka-jam.

On 08.01.2020, Tahir Hussain entered into the picture for local leadership and local connectivity. A meeting took place between Umar Khalid, Khalid Saifi and Tahir Hussain at PFI Office in Shaheen Bagh area. This is confirmed by statement of **protected witness Saturn**. (Ld. Senior Advocate highlighted that this witness cannot be believed as he was not believed in FIR No. 101/2020, P.S. Khajuri Khas and there are contradictions in his statement under Section 161 Cr.P.C and 164 Cr.P.C. As far as present case is concerned, there are admittedly two statements under Section 161 Cr.P.C and 164 Cr.P.C and both have to be read. Even noting the contradiction, it is clear from the statement that Umar Khalid, Khalid Saifi and Tahir Hussain did meet at PFI Office at Shaheen Bagh on 08.01.2020).

On 14.01.2020, the news of the visit of US President Mr. Donald Trump was announced on television media.

On 15.01.2020, Sharjeel Imam went to Khureji site for mobilization on request of Amanullah (JACT & JCC).

Meeran Haider of JCC was supervising 08 protest sites. AAJMI was funding the protest.

10.5 A conspiratorial meeting took place in the intervening night of 23/24.01.2020 at Seelampur, Jafrabad Protest site between Umar Khalid with Pinjra Tod members and others. It was decided to induce local women of Seelampur to start stock piling knives, bottles, acids, stones, chilly-powder and other dangerous articles to be used in rioting as part of a conspiracy. The plan was to escalate the protest to the next level of chakka-jam and then riots. This is confirmed by statement of **protected witness Smith, Echo and Sierra**. (Again, Ld. Senior Advocate referred to some minor inconsistencies which the witness will be required to explain during trial, but there are incriminating material against the accused in the statement of the said witnesses).

10.6 On 24.01.2020, Sharjeel Imam through his Facebook post continued to propagate the idea of disruptive chakka-jam. The first Whatsapp group of JMI Coordination Committee created by Safoora was left dormant. Safoora removed Asif Iqbal Tanha and Chandan from the group after they were summoned by the police. Three Whatsapp group of JCC were created by Fatima instead of Safoora and Asif was not made a part of this group. The three groups were, JCC JMI Officials, JMI and JCC_JMI.

10.7 On 06.02.2020, a protest site was developed at Jahangir Puri. On 10.02.2020, Umar Khalid met with Jahangir Puri folk at a protest called by Welfare Party of India. Umar Khalid asked that since Bangladeshi live there, they must be made aware of the CAA and asked to fight against the said law. This was said by **witness Helium and Crypton**. (The contention that the statement of witness Crypton was recorded late, does not detract from his testimony, at this stage of bail and certain inconsistencies in statement under Section 161 Cr.P.C & 164 Cr.P.C of witness Helium can only be explained

during trial).

10.8 On 11.02.2020, a formal declaration of visit of US President Donald Trump is announced with specific dates. There is then a flurry of activities by Anjali Bhardwaj and then by Rahul Roy. Athar gave date and time for Mahila Ekta Yatra for Chand Bagh.

10.9 On 13.02.2020, Rahul Roy and Apooranand decide to change the course of protest as a speaker and artists based protest site (which was becoming unsustainable) and for taking a new turn and new direction. The Mahila Ekta Yatra starts doing everyday visit to protest sites with reporting in DPSG.

10.10 On **16/17.02.2020**, a midnight secret meeting takes place at Chand Bagh for chakka-jam. Athar, Suleman Siddiqui, Natasha, Devangana, Gulfisha, Shadab, Salim Malik, Saleem Khan, Tasleem, Ayyaz and others attend the meeting. Planning for chakka-jam during the visit of President of USA and adoption of violent measures to escalate the protest was taken in this meeting.

Protected witness **Johny** in his statement stated that on 15.01.2020, there was protest against CAA/NRC at Seelampur, Old Bus Stand. He also reached there and met with Gulfisha who introduced her with Devangana, Natasha, Proma, Subhashini, Tasleem, Sohail and Adnan as the member of Pinjra Tod and are running this protest. On 26.01.2020, he came to know that they were asking the people to collect acid, mirch, dande, pathar. On 15.02.2020, he came to know that a meeting is likely to be scheduled at Chand Bagh at night at 2-3 am (on 16/17 February) regarding blocking of road. He also joined the meeting and Gulfisha, Devangana, Natasha, Shivangi, Shadab, Athar, Salim Malik,

Suleman Siddiqui, Rashid, etc were present. Athar Khan told in the meeting that they will do riots after chakka-jam. Everyone said yes to the proposal. When somebody opposed it, then they were asked why they have come to the meeting if they do not want to do anything for their community.

Moreover, there is a reference to this meeting in the DPSG chat. DPSG chat revealed that the meeting failed as a result of uninviting and disturbing elements which became aware of time and venue of the said meeting. **There was a clear message on DPSG Whatsapp chat where one member clearly said that “danga nahin karne denge tumhe aur tumhare doston ko”.**

10.11 On 17.02.2020, **Umar Khalid** delivered a speech at Amrawati, Maharashtra referring to the visit of Mr. Donald Trump, President of the United States of America.

10.12 Owais Sultan Khan, member of DPSG was repeatedly messaging about the violence planning discussed at Chand Bagh secret meeting of 16/17.02.2020. He specifically says that the locals are not willing to block the road but outsiders are planning to do it. They want non-violent protest. It was specifically and repeatedly pointed out that they don't want violence in their areas. He specifically says that accused Athar was saying in that secret meeting about the plans of road blockade and the proposal to incite violence (this is an electronic and contemporaneous document).

The DPSG Whatsapp group, thereafter, suddenly became unusually silent between 18th to 21st of February 2020 and no rebuttal takes place regarding the accusation of 16/17 February 2020.

10.13 Meeting on 20/21.02.2020.

Protected witness **Pluto** in his statement under Section 164 Cr.P.C stated that he does the work of Biryani. Before riots on 20/21.02.2020, five persons namely Athar, Shahdab, Salim Munna, **Saleem Khan** and Rizwan Siddiqui came and gave him Rs. 10,000/- for biryani order and told him that biryani has to be sent to Ayyaz's office at basement at Chand Bagh. He gave some money in advance and rest was to be paid by Ayyaz. Same day, he reached the office at about 8.30 PM with biryani. Athar told him that Ayyaz would pay the money when he comes. They started eating biryani. **Athar was telling to others that time has come to burn Delhi. Rahul Roy had called him and all preparations have been done. Arms, petrol, etc., has been filled. There is no shortage of money and Delhi will be destroyed. Their issues will not be settled till 100-200 people are killed and 100-200 places are arsoned.** He asked them to be ready and they all said that they were with him. In the meantime, Ayyaz came and gave him money and he left.

10.14 On the night of 22.02.2020, protesters from Madina Masjid, Seelampur moved and occupied 66 Foota Road at Jafrabad Metro Station completely blocking the traffic i.e., Chakkajam.

Immediately after chakkajam at Jafrabad, a meeting of JCC is called at Jamia to escalate protests in Muslim Majority Areas to higher level by engineering riots by inciting violence. The protesters from other protest sites of North East Delhi visited the site of Chakkajaam at Jafrabad Metro Station so as to support and learn the modus operandi of Chakkajaam from a live Chakkajam spot and to assess the response and response mechanism of police. Bhim Army call of Bharat Band for CAA/NRC and purportedly march to Raj Ghat is done. This is testified by **protected witness Bond** in his statement recorded under

Section 164 Cr.P.C. The witness specifically said that chakka-jam was done at Jafrabad on 22.02.2020 and JCC meeting was called urgently. Safoora said that chakka-jam has to be started in North-East and other sites and Asif said that he has received instructions from Khalid and Nadeem and that they have to go to protest site and start riots by chakka-jam. Saiful also said that he has received same instructions from Umar and Nadeem Khan that when shots are fired or bomb is set-off during riots, then leave well within time.

10.15 Meeting of 22.02.2020.

Protected witness **Sodium** in his statement under Section 164 Cr.P.C stated that on 22.02.2020 at about 9/9.15 PM, when he was present outside his house then three persons namely Shahdab, Athar and Saleem Khan came approached him and told that a meeting is about to take place at Gali No.10, Chand Bagh, Ayyaz's building. He was asked to come there. When he reached there, accused Shadab, Athar and Saleem Khan were present. Athar said that they have to do road block at Chand Bagh and other places on similar lines as below Jafrabad Metro Station so that the fight and riots can take place and the government will withdraw the black laws. All others were saying yes to this proposal. He did not like the discussion and left for his house.

10.16 Owais Sultan Khan categorically mentions on 22.02.2022 that if something wrong happens, Athar you will be responsible. You are putting the lives of locals in danger. Your wild entertainment for easy publicity will cause them heavily. He again reminds in a post that the locals of Seelampur and Trans-Yamuna are in great trouble because of fantasies. He cites what the Pinjra Tod is saying that **“Kafan Baandh ke aaye hain; aur joh humare saath nahin, who desh ka gaddar hai”** in response to the local women protesters

requesting them not to block the road.

10.17 On 23.02.2020, Janhavi, Rahul Roy and Tabrej are involved in clandestine transportation of large number of people, mainly women and children from Jahangir Puri to Jafrabad via Shaheen Bagh. These women are received by Natasha, Devangana and Gulfisha at Jafrabad and they are the ones who initially do the stone pelting at police and others.

Witness **Radium** in his statement under Section 164 Cr.P.C stated that on 23.02.2020 at around 7.00 in the evening when he was standing outside in his gali, he met an acquaintance. He asked him for some work at Mukhtiyar's house at Gali No.3, Chand Bagh, Delhi. Athar, Suleman Siddiqui, Shadab and Ayyub were present. Athar was saying that Nadeem Bhai was angry as the scale of riots which he wants, is not getting done because of CCTV cameras. Either the cameras should be destroyed or covered. Athar, thereafter, said that he has talked to Saleem Khan and Salim Munna who will get it done. Shadab also said that he will also use his team to get this done. Everyone was in agreement. He felt very troubled.

On next day, on 24.02.2020 at around 11/11.30 PM, when he was sitting outside his house, someone came and asked him to put a stairs at someone's house. After some time, many people came and started CCTV cameras and some were covered.

Thus, the said witness makes a mention about accused Saleem Khan being discussed in the said meeting of 23.02.2020 in relation to the proposed destruction of the CCTV cameras on 24.02.2020. This has to be read with the actual destruction and covering of CCTV cameras on 24.02.2020 by many

including accused Saleem Khan, which was also recorded.

10.18 In the supplementary charge-sheet, the analysis of CCTV cameras in the streets on 25 Foota Road, Chand Bagh and Mustafabad area based upon the footage was filed and it showed mobilization of rioters prior to dislocation and disconnection of all the 26 functional (out of 33) CCTV cameras on 24.02.2020. The said large-scale mobilization of rioters was purposely done and it was to carry out the riots in the Chand Bagh area and which actually happened. Within 10 minutes of the final camera being dislocated/disconnected, one of the major casualty of the riots i.e. death of Rattan Lal and injuries to various police personnel including DCP (Shahdara) took place on the road on which the rioters has descended. This was also captured in a video footage.

As per the charge-sheet, on the analysis of 33 CCTV cameras of Chand Bagh and Mustafabad and 43 CCTV cameras of predominantly non-Muslims areas of Khajuri Khas, Karawal Nagar, Sonia Vihar and Jyoti Nagar, shows that not only the riots were premeditated and preplanned but also began when the Muslims living in Chand Bagh, Mustafabad area mobilized and came out of lanes and bye-lanes passing through Chand Bagh and descended on Main Wazirabad road having Yamuna Vihar and Bhajanpura localities having mixed population to put in to effect a violent chakka-jam and brutalized attack on police personnel and non-Muslims community while at the same time, the footages from the PWDs cameras at the places inhabited by non-Muslims communities showed the life to be tranquil.

The footages filed by the prosecution does show a concerted and premeditated effort of mobilization of rioters who are armed and who ultimately blocked the Main Wazirabad road and attacked police personnel in the most

brutal manner. Accused Mohd. Saleem Khan is seen in the mobilization carrying a stick like thing and dislocating the camera. His presence in the entire footage of the entire area where armed people are calculatingly moving forward towards the main road for nefarious end of rioting shows his involvement and design. Moreover, footage also shows some rioters carrying National Flag.

10.19 Again on 23.02.2020, Owais Sultan Khan asks in DPSG why the comment about the road block plan was deleted. He further asked why the packets of red-mirchi powder have been distributed to women for attacking the police and paramilitary. Their families are protesting and their lives are now being put in danger.

On 23.02.2020, the conspirators from various protest sites had completely blocked the traffic at predesignated spots on main roads. Message on JCC JMI from JCC Number at 6:16 PM to say – “we need members to reach at protest sites rather giving an ITO call and making it a normalization.

10.20 When the violence had erupted, Anas Tanvir (member of DPSG and a lawyer) posted the message “ *I’m very disturbed with the development that has taken place since yesterday and to me it seems like a concerted plan. So I really need to know whether this group is ready to identify and condemn organization and individuals who instigated this violence. As far as I am concerned I have identified all those who shared the call for action and protest posters. I will not be leaving anyone who’s behind all this. We need to deescalate*”.

10.21 When certain messages which reflected the intentional incitement

to violence followed by actual violence by certain members were flagged in the DPSG group, Rahul Roy specifically asked that messages written here, are being shared on other Whatsapp group and it should not be done and those who have done it, should delete them. Moreover, anyone who forwards messages of this group to any other group will be removed from the group.

10.22 As a post conduct of accused persons subsequent to the riots which began, the DPSG group started adding people and showing its concern for humanitarian which was again only a way of deflection and covering of their designs and again a facade.

10.23 After the riots began on 24th of February 2020 and few members of DPSG group raised alarms with threat of exposure, there was a flurry of calls exchanged between various persons. Umar Khalid, who was in Bihar, called Natasha who was at Seelampur. Janhavi at Vasant Kunj called Tabrej at Jahangirpuri. Nadeem Khan called Khalid Saifi who was at Seelampur metro Station. Then Nadeem Khan called Umar Khalid who called back again by which time Nadeem Khan had reached Sanchar Bhavan, New Delhi. Rahul Roy was at Sanchar Bhavan New Delhi and called Umar Khalid and who called Meeran Haider who was at Jamia Nagar. Nadeem Khan then called Khalid Saifi who was at Khureji. Natasha Narwal who had now reached Sanchar Bhavan, New Delhi called Sabha Dewan who was at near Sansad Marg. Nadeem Khan called Khalid Saifi who had reached Sanchar Bhavan. This shows that while these persons were coordinating with each other; Khalid Saifi, Nadeem Khan, Sabha Dewan, Rahul Roy, Natasha Narwal ultimately reached a common place. (The contention of the Ld. Senior Counsel was that calls must not be looked in isolation as normal pattern of calls must also be studied. The

principle is correct; however the calls still show how different accused persons are linked and talking to each other after the riots have begun and more importantly, most of the accused persons involved reached a common place).

10.24 The first arrest made in this case came in public domain on 11.03.2020 and thereafter, message saying for the deletion of the group and all chats and moving to SIGNAL was also recorded. It asked every member of the group to individually delete all the messages. Settings were changed to allow Adms. to send messages. It is also relevant that many of the accused persons' mobile seized did not contain the data regarding the groups.

10.25 It is also a fact that the riots had occurred in Delhi in February 2020 and it entailed loss of lives of 53 victims including police officials and a huge scale destruction of public property and disruption of essential services. Five security officials suffered acid injuries as corroborated by FSL report and statements of injured persons. The cases of riots have also shown that firearms, acid, petrol bombs, rods, etc. were used. Huge sling shots were used at large scale. Accused Tahir Hussain had also taken part in financing and execution of riots. From the riots that ultimately ensued, it can easily be said that it was not a sudden act but a thought out premeditated act.

10.26 Different roles were ascribed to different people (accused) in carrying out the said conspiracy. The violence in February 2020 in North-East Delhi began with by firstly choking public roads, attacking policemen and then public and where firearms, acid bottles and instruments were used, resulting in loss of lives and property and was a result of the said conspiracy. There were meetings from December,2019 till February,2020 which took place in

continuation of a conspiracy. Different protected witnesses have stated the role of accused persons and about open discussion on violence, riots, finance and weapons.

10.27 *i. Delhi Protest Support Group (DPSG) Whatsapp Group comprised of many persons including accused persons namely Khalid Saifi (UAH), Shadab Ahmed, Natasha (Pinjra Tod), Devangana Kalita (Pinjra Tod), Athar Khan and Umar Khalid (UAH).*

ii. Muslims Students of JNU (MSJ) comprised of many persons including accused persons namely Sharjeel Imam, Meeran Haider, Safoora, Shafa Ur Rehman and Asif Iqbal Tanha.

iii. Jamia Coordination Committee (JCC) comprised of many persons including accused persons namely Safoora, Shifa-ur-Rehman, Sharjeel Imam and Umar Khalid.

iv. Pinja Tod comprised of many persons included accused persons namely Devangana Kalita, Natasha Narwal and Gulfisha.

11. 11.1 For the limited purpose of bail application, the applicability of the Unlawful Activities (Prevention) Act, 1967 is touched upon.

Chapter IV of the said Act deal with Punishment for Terrorist Activities.

Section 15. Terrorist act.-- [(1)] *Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,--*

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise)

of a hazardous nature or by any other means of whatever nature to cause or likely to cause--

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organization or any other person to do or abstain from doing any act; or] commits a terrorist act.

Section 16 provides punishment for commission of terrorist act.

Section 17. Punishment for raising funds for terrorist act.--

Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may

extend to imprisonment for life, and shall also be liable to fine.

Explanation.--For the purpose of this section,

(a) participating, organizing or directing in any of the acts stated therein shall constitute an offence;

(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and

(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organization for the purpose not specifically covered under section 15 shall also be construed as an offence.

Section 18. Punishment for conspiracy, etc.--*Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.*

(i) As per Section 15 of UAPA, any act the intention of which is to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or done with an intent to strike terror in the people of India or any section of people in India by using bombs or other explosives substance or..... or any substance of hazardous nature or by any other means of whatever nature to cause death of or injury to persons or loss or damage or destruction of property or disruption of any supplies or services essential to the life of community in India is a terrorist act.

Moreover, Section 13 under Chapter III of the said Act states that whoever, commits, advocates, abets, advises or incites the commission of, any unlawful activity, shall be punished. Section 2 of the Unlawful Activities (Prevention) Act, 1967 states that any action taken by an individual or

association which causes or is intended to cause disaffection against India is an unlawful activity.

In the present case, as per the charge-sheet as discussed above, taken at face value, there was a premeditated conspiracy of the disruptive chakka-jam and a preplanned protest at 23 different planned sites in Delhi which was to escalate to confrontational chakka-jam and incitement to violence and resulting in riots. There was intentional blocking of roads to cause inconvenience and to cause disruption of the essential services to the life of community residing in North-East Delhi, causing violence with various means and then leading to February riots. The target was to block roads at mixed population areas and encircle the entire area completely stopping the entry and exit of citizens living there and then creating panic to attack on police personnel by women protesters in front only followed by other ordinary people and engulfing the area into a riots and the same would be covered by the definition of terrorist act. The weapons used, manner of attack and the destruction caused shows it to be preplanned. Acts which threaten the unity and integrity of India and causes friction in communal harmony and creates terror in any section of the people, by making them feel surrounded resulting in violence, is also a terrorist act.

12. Role of Umar Khalid in the entire case set-up by the prosecution & submissions of the counsel for accused.

12.1 In terms of the charge-sheet, as discussed above, it is noticed that the name of accused Umar Khalid finds a recurring mention from the beginning of the conspiracy till the riots. He was a member of Whatsapp group of Muslim Students of JNU. He participated in various meetings on 07.12.2019, 08.12.2019, 13.12.2019, 26.12.2019, 08.01.2020, 23/24.01.2020, 10.02.2020.

He is also a member of the DPSG group and attended meeting at Indian Social Institute (ISI) on 26.12.2019. He gave reference to Mr. Donald Trump, President of USA in his Amrawati speech on 17.02.2020. He was also mentioned in the flurry of calls that happened post riots, as mentioned above. He was instrumental in creation of JCC.

12.2 There are statements of numerous witnesses including protected public witnesses, who have given statements recorded both under Section 161 Cr.P.C & 164 Cr.P.C highlighting the incriminating material against the accused Umar Khalid. From a broad reading of all the statements, the role of the accused Umar Khalid in the context of conspiracy and riots is apparent. Ld. Counsel for accused had submitted that the statements of witnesses are either false being delayed or contradictory or could be concocted or coerced and should not be relied upon. However, at this stage of bail, the statements of all the witnesses have to be taken at face value and their veracity will tested at the time of cross-examination.

12.3 The relevant witnesses qua accused Umar Khalid are Tahira Daud, Bond, Saturn, Smith, Echo, Sierra, Helium, Crypton, Johny, Pluto, Sodium, Radium, Gama, Delta, Beeta, Neon, Hotel, Romeo and Juliet. Statement of some of the witnesses have been taken note of in the previous paragraphs in the sequence of conspiracy.

12.3 Protected witness "GAMA" had stated that he went to meet one of his friends at Seelampur. He introduced him to his friends including Natasha, Devengana, Gul and Tasleem. He started visiting the protest sites to meet them. Later when he went there, **Umar Khalid** had come and was giving provocative

speeches. After some days in February, road block was planned by Sohail and others alongwith Gul. It was also decided to assemble ladies and children and they were asked to get red-chilly, dande, pathar, lathi to be used when required. On 22.02.2020, Gul alongwith her team started protest at below Jafrabad Metro Station. Devangana said to women that they will not move till their death and gave provocative speeches. He was present there. She also told that they will show their power to the police and gave provocative statement. He, thereafter, stopped going there. Next day, he came to know that the fight/violence had begun.

Later, when they thought that how far can they run, Sohail talked to Devangana and next day, they went to a house near Delhi University and one Aunty took Gul and Sohail inside. There one uncle, one aunty, Natasha, Devengana, Sohail and Gul were present and they were calling the said uncle a professor, and it was said that they were to bring the government to its knees. Uncle stated that nobody's name has to be taken and that government has to be brought down and make it a Hindu-Muslim issue. He asked Gul who that uncle was and she told that he was Apurvanand.

12.4 Another protected witness "**DELTA**" in his statement under Section 164 Cr.P.C mentioned about the protest at Old Seelampur Central area on 05.01.2020, which was led by Gul @ Gulfisha, which was removed. He identified Gulfisha as residing near his house. He stated that Gul continued to do her activities in the guise of candle march. Alongwith Gul were other lady like Devangana, Natasha and men like Sohail, Tasleem. One day on 15.01.2020, on Seelampur Bus Stop, 66 Foota Road, these people sat on a dharna. Police tried to remove them when Mehmood Pracha their lawyer came. They again sat there and police could not remove them. Thereafter, some political personalities

came. He also said that later on, he came to know that Gul was a member of Pinjra Tod and so were her associate.

Slowly, Gul's team came to control the stage. Later on, he came to know that Gul was talking about road block plan to ladies. Gul was talking of mirchi-powder, dande and bottles for facing the police. **Umar Khalid** also came at the protest site and gave speeches against the government.

After 12.02.2020, when he again came at the protest site, it came to his knowledge that they were again trying to block the road but they could not block it at the protest site. There was some code words like 'Eid per Nainital jana hai' which means 'road block karna hai'; 'aaj chand raat hai' and also gave provocative speeches like 'aandolan khon maangta hai'. On the pretext of candle march, on 22.02.2020, they blocked the road beneath Jafrabad Metro Station. Police also reached at the spot but protesters did not budge and then they returned back to their home. Thereafter, Hindu-Muslim riots occurred.

12.5 Protected witness "**SATURN**" stated that before the riots, he used to go with Tahir Hussain on his instructions. Tahir Hussain used to call Suleman Siddiqui at Chand Bagh protest site and used to give him money and tell him that this money would be used for riots. Thereafter, he used to go to Seelampur protest site where he used to give money to a lady called Gul and he again used to say that this will be used for riots. Tahir Hussain also went to Shaheen Bagh on 08.01.2020 where **Umar Khalid** and Kahid Saifi were also present. He then narrated about financial transactions pertaining to money obtained by Tahir Hussain.

12.6 Protected witness "**HELIUM**" stated that on 10.02.2020, he reached Jantar Mantar in a protest and met **Umar Khalid** and his father S.Q Illyas who

said that he comes from Jahangir Puri where there are lot of Bangladeshies and asked them to educate them and fight against CAA/NRC. On 22.02.2020, he received a call from Janhavi madam. He was asked if he was coming and on 23.02.2020 at around 11.30 to 12.00 PM he started with around 300 people mostly comprising women and children. On his way, he received a call from Janhavi madam that instead of going to Shaheen Bagh, he should go to Jafrabad. He said that the buses are not sequentially running to which madam said that you may come to Jafrabad via Shaheen Bagh. He was told that in Jafrabad, he will meet Natasha, Gul and Devangana who will pay the expenses. When they reached Seelampur Pulia, they met the said ladies and who took the burqua clad women to Jafarabad Site and thereafter, to Maujpur Metro Station. Natasha, Devangana and Gul were distributing stones, broken glasses and mirchi powder to these burqua clad women and asking them to throw at those protesting in favor of CAA/NRC. He got angry and told them that he was called by deceit and the riots caused by them was wrong. They had told us for our participation and peaceful protest but they had indulged in riots.

12.7 Protected witness "**BEETA**" had stated that he saw news on television on 16.12.2019 where students, in protest against CAA/NRC, had burnt buses. He watched the incident at Jamia library and decided to join the protest. He noticed that various persons attended the said protests. He then details the events around 28.12.2019 about protests sites. Amanullah said that they would soon start Jamia Awareness Campaign Team and will campaign against CAA/NRC in Muslim prominent areas. On 10.01.2020, they again went to protest site and it was decided that 24x7 local sitting will be done. There used to be one-two students from Jamia at every protest site. At the Seelampur Protest sites, there were members of Pinjra Tod like Devangana, Gul and other students and they were doing local sitting at the said site. He then one day saw

a video wherein **Umar Khalid** gave a speech in Amrawati, Maharashtra stating that Trump is coming to India and they have to show their power by coming on to the roads. Thereafter, meetings started happening continuously at Jamia Coordination Committee room. Amanullah told that it was decided to do chakka-jam by the JCC in coordination with Pinjra Tod. On 22.02.2020, he came to know that girls from Pinjra Tod had done chakka-jam at Jafrabad. On 23.02.2020, chakka-jam happens on all the protest sites. Stone pelting took place. He realized that entire protest has been done in a planned manner. Pinjra Tod alongwith others had done it in a planned manner due to which people have died, property burnt and damaged. They used to give provocative speeches. Mehmood Pracha used to come at protest site and used to say that he will provide the legal support.

12.8 Protected witness "**ECHO**" had stated that Gul and her friend Devangana and Proma Roy were doing protest near Central Bank, Seelampur. Natasha was also present. Gul told the women to bring their children along so that police is not able to take any action and if police was to take action, then because of children, they would get sympathy.

After some days, candle march was carried out in galies. On 15.01.2020, Gul alongwith other women sat on a Dharna at near Nadima Masjid near Metro Pillar No. 164, Seelampur. Gul and others refused to leave despite being asked by the police. After some time, Mehmood Pracha came and provoked people to protest which is their right. Various leaders started coming there. Gul used to decide who will coordinate and who will speak. In January last, Khalid of JNU also came and provoked people by referring to CAA, Article 370 & Ram Mandir. Gul name is Gulfisha. Gul, Devangana, Natasha and others had established their office at E-1/13, Seelampur. **Umar** stated to Gul that speech

will not work, they all have to understand that government is against Muslims and they will have to spill blood. Chakka-jam is the last resort and they will have to bring government to its knees. Photograph was also taken. After some days, Gul started asking women to bring Lal Mirch powder, dandey, acid bottles. She also stated code words like 'kal eid hai', 'kal Nainital jana hai' which means that road block karne chalna hai and ' aaj chand raat hai' which means today is road block's night. These code words were known to the women and girls there only. Gul alongwith Pinjra Tod girls, Shadab, Tasleem and others decided to do road block. He opposed the move and tried to reason out Gul and her team but they did not agree. He did not find their intentions to be correct. On 22.02.2020 at Seelampur protest site, they assembled the people and provoked them saying that they would be put in detention center and blocked the road at Jafrabad Metro Station. Realizing that it will not be a peaceful protest but a chakka-jam, he decided not to go there. Pinjra Tod girls and Gul used to give provocative speeches. The motive of JCC and these people was to cause riots in Delhi.

12.9 Protected witness **NEON** in his statement under Section 164 Cr.P.C stated that in December 2019, JCC and AAJMI started the protest against NRC & CAA but they were not able to attract much crowd. Then they decided that like Shaheen Bagh they will set-up 24x7 sit in protest in Muslim majority areas, where women would be put in front and would be a guise for men for movement against the Indian Government. Saiful Islam and Asif Iqbal Tanha, on instructions of Nadeem Khan and Umar Khalid set-up Jamia Awareness Campaign Team with Amanullah as Incharge. JACT was to distribute pamphlets, to do door-to-door campaigning and bring women to protest site in Muslim majority areas. Shifa-ur-Rehman from AAJMI and others used to give

funding to JACT. Shifa-ur-Rehmand, Safoora, Asif were running the protest from behind. He attended various JCC meetings and later stopped going to meetings. In February, Amanullah told JACT members that Umar Khalid has given a provocative speech in Maharashtra where he has referred to the visit of American President to India for which more and more people should come on road for protest so that a message goes in the international level that Indian Government is against Muslims. Amanullah said that in terms of the conspiracy on 23.02.2020, Umar Khalid will not stay in Delhi so that there is no doubt on him. For riots in Delhi, during the visit of American President, Umar Khalid, Amanullah, JCC and other groups are responsible.

12.10 Protected witness "**SMITH**" had stated that last year, CAA/NRC Act was passed by the government and thereafter, dharna pradarshan started. Dharna also started near to his house (66 Foota Road). He used to remain there from 9.00 pm to 12.00 am. In his presence, Umar Khalid and Mehmood Pracha gave speeches. Gulfisha, who was living in Jafrabad, was organizing the protest. She met with her during protest. Devangana, Natasha, Gulfisha, **Tasleem** and other girls used to instigate local women of Seelampur-Jafrabad to come outside. They used to tell people if they would not have documents with them then they alongwith their families will be sent to detention center. In the night of 15.01.2020, Devangana, Natasha, Sohail and Shadab alongwith other girls and 100-150 women had carried out Dharna at Old Bus Stand, Madina Masjid. Yameen's house at E-1/13 was their office where their meeting used to happen. On 23.01.2020, Umar Khalid gave speech. Thereafter, Gulfisha, Devengana and Natasha brought Umar Khalid to their office. He also followed them and saw that Gulfisha, Natasha, Devengana, Sohail and Shadab alongwith other girls were also sitting there. Umar Khalid was saying that in the protest against

CAA/NRC and to bring the Indian government down, they are ready even if riots occurred in Delhi; we have collected arms upon which all the persons stated that they are ready. Their motive was quite dangerous and he got scared after hearing this and came out from there. After two-three days, Gulfisha, Devangana, Natasha were asking ladies to collect empty glass bottles, acid, pathar, chhuri, etc. On 23.02.2020, he saw that Gulfisha, Devengana and Natasha alongwith many other women had blocked the road at Jafrabad Metro Station and they were asking to attack on the police officials. After some time, Wazirabad, Ghaziabad and Seelampur Road, were all jammed and movement stopped. Local ladies pelted stones on people who were struck there due to which Hindu-Muslims riots started. Riots also started across Yamuna between Hindu-Muslims resulted killing of innocent people. They are very dangerous people and his name may be kept secret.

12.11 Protected witness **CRYPTON** stated in his statement under Section 164 Cr.P.C that a protest site was created at C-Block, Eidgah Park at Jahangir Puri on 06.02.2020 and ladies living nearby alongwith illegal Bangladeshi joined it. As directed on 10.02.2020, he took 250 people to Jantar Mantar where among others was Umar Khalid at the stage, Dr. S.Q. Iliyas introduced his son to people from Jahangir Puri. **Umar Khalid** said that you people are illegally from Bangladesh and till you do not oppose CAA, the Government will not take back the said laws. On 22.02.2020, in the evening, it was told that women would go from Jahangiri Puri to Shaheen Bagh on 23.02.2020. On the night of 23.02.2020, he came to know that the buses carrying the Bangladeshi women were taken from Shaheen Bagh to Jafrabad, Seelampur where they had done stone pelting and riots.

12.12 Protected witness **HOTEL** stated in his statement under Section

164 Cr.P.C that Faizan Khan and Anjum Aamir had provoked women on 26.01.2020 sitting at SDMS Park, Nizamuddin against CAA & NRC. Then the protest continued at the footpath and which was attended among others by Khalid Saifi, **Umar Khalid**, Asif Tanha, Meeran Haider. They used to say that Muslim would face problems as they would have to show documents failing which they would be sent to detention center. In one of such meetings, Nadeem Khan said that they will talk of Hindu-Muslim unity from the stage and protest being peaceful but our real intention is to do chakka-jam and when it is assembled in good numbers to do stone pelting on police. They are ready to spill blood on the roads for asking to take back the law. Once, Faizan Khan said that Nadeem Bhai sent a message that they have to do chakka-jam and stone pelting on police at the time of visit of Donald Trump.

12.13 Protected witness **ROMEO** stated in his statement under Section 164 Cr.P.C stated that on 15.12.2019, a protest began in Shaheen Bagh against CAA/NRC. Sharjeel Imam, Sharjeel Usmani, Amantullah, Shaheen Kausar, Asif Mohammad Khan were involved in the same. It was done from Al-Habibi Mosque at Shaheen Bagh. Accused Sharjeel Imam, Asif Mujtaba and Shaheen Kausar provoked the crowd saying that this government is against Muslims and CAA Act is meant to target them. They say that without pressure government will not take back and for putting the pressure they will have to do chakka-jam. They said that Muslims will have to get together to uproot the government and protest by peaceful means will not give any result and Muslims will have to do chakka-jam. Sharjeel Imam called 200 students from Jamia and JNU and on 16.12.2019, the entire Shaheen Bagh road was completely blocked. Thereafter, small-small teams were constituted and they used to go door-to-door and provoke Muslims. Sharjeel Imam created Shaheen Bagh Protest group. Twitter handle was also created. Sharjeel Imam used to say that in a place like Delhi having good population of Muslim, they have not been able to do anything,

neither riots nor chakka-jam. He said that many more Shaheen Bagh will have to be created. In the first week of January 2020, Sharjeel Imam stopped coming to Shaheen Bagh and protest continued. Rahul Roy used to provoke the crowd and asked them to spread terror so that the government bents. In the protest, Meeran Haider and others used to come. **Umar Khalid** also came at Shaheen Bagh and gave provocative speeches. Sharjeel Imam, Umar Khalid and Rahul Roy and his team used to tell people till the time, blood is not spilled, the government will not bend. Their speeches created fear among Muslim which created riots. Even when mediators of Supreme Court came, Umar Khalid and others provoke people not to stop the protest. In February 2020, When Donald Trump came to India, these people provoked the protesters and said that till the time atmosphere of terror and violence is not created, nothing will happen. It should be created in a way that government should create separate country for Muslims.

12.14 Protected witness **JULIET** stated in his statement under Section 164 Cr.P.C stated that on 23.01.2020, Abid, Devika and Suhail Khan from JNU and 10-15 boys and girls from Jamia came and assembled people at Gandhi Park, Hauz Rani and stated that they have to start protest on the lines of Shaheen Bagh. Various persons came and continue to give speeches including Swami Agnivesh, Chandra Shekhar Azar, **Umar Khalid** and Vrinda Karat. They used to say that CAA/NRC is against Muslims, it should be opposed otherwise they will have to show papers failing which they will be sent to detention camps.

12.15 I agree with the Ld. Senior Advocate that there are some inconsistencies in the statements of some protected witnesses; however, a finding has to be given on a cumulative reading of statements of all the witnesses and other events presented in the charge-sheet.

13. It is also important to highlight that in a conspiracy, various continuous acts are committed by different accused persons. One act cannot be read in isolation. At times, if read by itself, a particular act or an activity may appear innocuous, but if it is a part of chain of events constituting a conspiracy, then all the events must be read together.

I also agree that assertion of prosecution of holding of protest at Jantar Mantar on 10.12.2019 or on 24.12.2019 is not substantiated.

14. Ld. Senior Advocate for the accused had correctly argued that accused Umar Khalid was part of the Whatsapp group MSJ and DPSG but he has not written many messages in those groups and they are not overtly .provocative or incriminatory. However, the fact that he was part of such groups created for specific objects and his acts or presence throughout the period beginning from the passing of the CAB Bill in December 2019 till the February 2020 riots, as mentioned above, has to be read in totality and not piecemeal. He has connectivity with many accused persons.

15. Another contention raised by the Ld. Senior Advocate was that accused Umar Khalid was not present in Delhi during the time of riots. In this regard, in a case of a conspiracy, it is not necessary that every accused should be present at the spot. Moreover, as per witness Neon, Amanullah had said that accused will move out on 23.02.2020 before riots. Witness Tariq Anwar had stated that Umar Khalid had told him to book tickets for him, specifically, for 23.02.2020 for traveling to Patna. When he said that the flight tickets are costly and he may book tickets after a few days, then Umar Khalid refused and thereafter, flight was booked for Umar Khalid for 23.02.2020 at 9.30 AM.

16. The contention that accused Umar Khalid is a researcher and his bent of

mind can be assessed from his doctoral thesis on Welfare aspects of Adivasis of Jharkhand and other writings is not a relevant consideration while deciding the bail application. If the bent of mind is to be assessed in this manner, then the co-accused Sharjeel Imam has written thesis on riots but any thesis or research work, by itself, done by any accused cannot be a ground for assessing *mens rea* or his bent of mind. A bail application must be decided on facts presented in charge-sheet.

17. Thus, on the perusal of the charge-sheet and accompanying documents, for the limited purpose of the bail, I am of the opinion that allegations against the accused Umar Khalid are prima facie true.

18. In view of the above discussion, since there are reasonable grounds for believing that the accusation against the accused Umar Khalid are prima facie true, hence, embargo created by Section 43D of UAPA applies for grant of bail to the accused and also, the embargo contained in Section 437 Cr.P.C.

Hence, the present application for bail of accused Umar Khalid stands dismissed.

Application is disposed off accordingly.

Copy of digitally signed order be e-mailed to the Ld. Counsel for applicant/accused, Ld. Special Public Prosecutor for the State as also to the concerned Investigating Officer.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 24.03.2022