

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

**I.A. No. 72-2021 (Gulfisha)**

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 :- 16.03.2022

**ORDER**

1. **1.1** Vide this order, I shall dispose off the bail application of applicant/accused Gulfisha filed under Section 439 of Code of Criminal Procedure (Cr.P.C) on 18.06.2021. Notice of the aforesaid application was given to the prosecution under the provision of Section 43D Unlawful Activities (Prevention), Act ( in short, UAPA). Reply was filed by the prosecution on 26.06.2021 on which counsel had taken an objection. Both the Ld. Counsel and the Ld. Special Public Prosecutor vehemently made submissions about the length of the reply on which an order was passed on 13.08.2021 (not assailed) and thereafter, the case was fixed for arguments on merits of the bail application.

**1.2** Subsequently, Ld. Special Public Prosecutor took the objection that the present bail application has been filed under Section 439 Cr.P.C read with Section 43D of UAPA but instead it should be under Section 437 Cr.P.C. Since both asked the court to deal with the issue first before proceeding to the merits of the case, arguments were heard and detailed order was passed on 27.01.2022 (not assailed) by which the application under Section 437 Cr.P.C was held to be

maintainable and notice issued as such. It must be borne into mind that apart from the counsel for the present accused and couple of other accused, all other counsels for all the remaining accused persons in this case agreed that the bail application is maintainable under Section 437 Cr.P.C and re-filed bail application under Section 437 Cr.P.C. Thereafter, arguments on the bail application were heard.

3. Arguments were addressed by Sh. Mehmood Pracha, Ld. Counsel for accused and Sh. Amit Prasad, Ld. Special Public Prosecutor for State. A brief note on the sequence of events for conspiracy of North-East Delhi riots was filed by the prosecution. Judgments were also filed.

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

## **5. ARGUMENTS PUT FORTH FOR APPLICANT/ACCUSED IN BAIL APPLICATION**

5.1 The bail application, just as the reply that followed it, was extremely brief. It was stated that the Applicant/Accused was arrested by the police on 09.04.2020 in another case, and on 11.04.2020 in the present case, and which is wrong and false implication. Charge-sheet has been filed. The accused is a law abiding and peace loving citizen of India. She has clean antecedents and no previous criminal record.

5.2 Several allegations have been made against the applicant, but the same allegations on the same grounds are also subject matter of other F.I.Rs in which the accused has already been granted regular bail. Apart from such

allegations, there are no other separate grounds for implication of the applicant/accused in the present case.

**5.3** It was stated that although the bail application of co-accused persons placed similarly to the Applicant/Accused was dismissed by this Hon'ble Court, the orders were overturned by the Hon'ble High Court, and the co-accused persons were admitted to regular bail by the Hon'ble High Court of Delhi. It was submitted that the orders of the Hon'ble High Court have crystallized the law in this case. The accused, apart from deserving bail on merits standalone, is now also entitled to be set at liberty on grounds of parity. Ld. Counsel for accused had filed order dated 15.06.2021 passed in Criminal Appeal No. 39 of 202, 82 of 2021 & 90 of 2021 whereby the Hon'ble High Court has granted bail to co-accused persons.

**5.4** It was stated that the involvement of the accused is not even remotely linked to the alleged crime and no role has been attributed to her except vague and unsubstantiated allegations.

**5.5** The accused stays with her family at a permanent address in Delhi and as such there is no apprehension of her absconding or evading the trial. She will not tamper with evidence or intimidate the witnesses. She will cooperate in the investigation and undertook to comply with any bail condition.

It was, thus, prayed that bail may be granted to accused Gulfisha.

**5.6** Ld. Counsel for applicant had filed following judgments :-

- i) Harendra Sarkar vs State of Assam, MANU/SC/7602/2002;*
- ii) Alope Nath Dutta & Ors. vs State of West Bengal in Criminal Appeal Nos. 867-868 and 875/2005;*

- iii) *Baljeet Singh vs School Management of Guru Harkrishan Public School & Ors.* W.P.C.No.6460/2015 decided on 23.08.2018;
- iv) *Balkar Singh vs State of Haryana* being Criminal Appeal No. 606/2008 decided on 17.11.2014;
- v) *A.R. Antulay vs. Ramdas Srinivas Nayak & Ors.* Criminal Appeal No. 247/1983 decided on 16.02.1984;
- vi) *Hussein Ghadially vs. State of Gujrat*, Criminal Appeal Nos. 92, 110, 303-304, 305, 432-433, 658-659/2009 decided on 18.07.2014;
- vii) *Kartar Singh vs. State of Punjab*, W.P. No. 1833/1994; decided on 11.03.1994;
- viii) *Kunhayammed & Ors. vs. State of Kerala & Ors.*, Criminal Appeal No. 12309/1996 dated 19.07.2000;
- ix) *Narcotics Control Bureau vs. Dilip Pralhad Namade*, Criminal Appeal No. 349/2004 dated 18.03.2004;
- x) *Nikesh Tarachand Shah vs. Union of India & Ors.*, Writ Petition (Criminal) Nos. 67, 103, 144, 152 of 2017, decided on 23.11.2017;
- xi) *Rabindra Kumar Pal vs. Republic of India*, Criminal Appeal No. 1357-1365 & 1259/2007 decided on 21.01.2011;
- xii) *Shaheen Welfare Association vs. Union of India & Ors.*, W.P (Crl.) No. 117/1995;
- xiii) *Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat*, Criminal Appeal No. 2553/1991 dated 29.04.1992;
- xiv) *Aqil Hussain vs. State of NCT of Delhi & Ors.*, W.P. (Crl.) No. 824/2020 dated 22.06.2020;
- xv) *Harsh Mander & Anr. vs. GNCT of Delhi & Ors.*, W.P (Crl.) 565/2020 dated 26.02.2020;
- xvi) *Kailash Gour & Ors. vs. State of Assam*, Criminal Appeal No. 1068/2016 dated 15.12.2011.

**5.7** The bail application did not discuss the merits of the case at all and except to say that the case is false, nothing as such was spelt out in the bail application.

**6.** During oral arguments, Ld. Counsel for accused argued on the following lines :-

**6.1** Accused Gulfisha was only participating in a anti-CAA protest which

is not a crime. In fact, such protests were happening all across India.

The charge-sheet is silent on this aspect why the violence took place in Delhi. There were also pro-CAA protest going on, which is not reflected in the contents of the charge-sheet but is mentioned in several other FIRs registered by Delhi Police in riots cases.

**6.2** There is no merit in the contention that there was a conspiracy which was organized and planned.

**6.3** The name of protected witnesses was revealed by the prosecution.

**6.4** There is no evidence on record to show Gulfisha was a member of Pinjra Tod. Though it is stated, yet, there is no evidence to connect accused Gulfisha with Whatsapp group- Warrior Group and Aaurto Ka Inquilab.

**6.5** Police could not recover phone from the accused Gulfisha.

**6.6** From the record, it is evident that Whatsapp group like DPSG had differing view points.

**6.7** There is no intelligible differentia for arresting an accused while leaving out some others. He referred to the example of Rahul Roy.

**6.8** It was argued that the North-East Delhi was not blocked and there were small galies from where those trapped inside the North-East Delhi during the riots could have escaped. This was to drive home the point that there were escape routes available which could be seen in the Google Map presentation and

the CCTV cameras dislocation chart shown during arguments.

**6.9** The police is biased and thus, the investigation reflects the said approach. The violence took place only after Kapil Mishra entered the picture.

**6.10** It was also argued that witness Saturn does not know Gul and Gama is a hearsay witness. Regarding the witness Helium who talks about mirchi-powder, it is a false story and also it is not a weapon. Regarding the contention of the prosecution of the Bangladeshi women being brought to the protest site, it was argued that they were not made as a witness. He also referred to the statements of Jupiter, Sant Yuvraj and Bravo to say that they are false.

**6.11** Again, It was very forcefully argued that similarly placed accused like Devangana, Natasha and Asif Iqbal Tanha have already been granted bail by the Division Bench of Hon'ble High Court of Delhi and thus, bail to the accused Gulfisha must be granted on the ground of parity. It was stated that parity principle will still apply despite the stay of the said order by the Hon'ble Supreme Court of India. The stay granted by the Hon'ble Supreme Court of India will have no effect on the order of the Hon'ble High Court of Delhi so far as parity is concerned.

**6.12** It was also argued that as per the Watali judgment, no interpretation to material other than the charge-sheet has to be made. No presumption can be drawn and charge-sheet has to be taken at face value.

**6.13** It was argued that the goal of the conspiracy, as stated by the prosecution, is speculative. For an actual fight, two people are required. Section 18 of UAPA and Section 120B IPC will not apply at the same time.

Perusal of the FIR would show that people of Hindu community had attacked Muslims, who had suffered a lot.

**6.14** The anti-CAA protest was secular where national flag and Preamble were used. Leaders were mostly non-Muslims.

**6.15** It was also argued that the court may look into all the case diaries and see if there are discrepancies in them after comparing with the charge-sheet, which could benefit the accused.

**6.16** It was also argued that Certificate under Section 65-B of Indian Evidence Act for CAF Form and Whatsapp chat group is not filed to make it admissible in evidence.

## **7. ARGUMENTS BY PROSECUTION**

**7.1** 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.

**7.2** 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.

**7.3** 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.

**7.4** 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.

**7.5** 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.

**7.6** 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.

**7.7** 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.

**7.8** 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.

**7.9** Thereafter, the individual role of the applicant/accused Mohd. Saleem Khan was highlighted regarding his participation in the meeting of 16/17 February and his links with Suleman Siddiqui, Athar and Salim Malik. Various other witnesses were also highlighted to substantiate the allegations. The footage showing him damaging cameras were also played during the proceedings.

**7.10** 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 Gulfisha is prima facie true and hence the bail application of the accused may be dismissed.

Ld. Special Public Prosecutor 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 Gau 1333;

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

8. 8.1 The present bail application by accused Gulfisha has been treated 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.

**8.2** 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.

**8.3** 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.....”*

**9. 9.1** The present case pertains to a conspiracy, and hence, discussion on the subject is required. 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.

**9.2 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.*

**9.3 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.*

**10. 10.1** At this stage, what the Court has to see is the charge-sheet alongwith accompanying documents. 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.

Sharjeel Imam formed a group (Whatsapp) called Muslims Students of JNU (MSJ) and 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. United Against Hate (UAH) organized a protest at Jantar Mantar on 07.12.2019 and Sharjeel joined the protest. Sharjeel 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. A meeting took place at Jungpura office on 08.12.2019 which was attended among others by Yogender Yadav, Umar Khalid, Sharjeel. 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. The CAB TEAM organized a protest at Jantar Mantar on 10.12.2019.

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 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.

**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. 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.

**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 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 23.12.2019, meeting of Umar Khalid takes place with Khalid Saifi. Meeran Haider also is at Shaheen Bagh and a protest sites at Khureji is decided to be formed.

On 24.12.2019, protest takes place at Jantar Mantar attended by many organizations and Yogender Yadav and Umar Khalid gave speeches and it was decided then to call a meeting of all organizations for running and creating of protest sites in Delhi. Consequently, 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.

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 totalling 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.

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.

**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.

**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 Apoorananand 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. 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 18<sup>th</sup> to 21<sup>st</sup> of February 2020 and no rebuttal takes place regarding the accusation of 16/17 February 2020.

**10.13** 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 Rajghat is done.

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.

**10.14** 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.

Again on 23.02.2020, Owais Sultan Khan asks 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.

**10.15** There were meetings held on 22<sup>nd</sup> & 23<sup>rd</sup> February 2020 at Chand Bagh attended by many accused persons including Athar, Shahdab, Salim Malik, Suleman Siddiqui. Violence was openly discussed in the said meeting. There were meeting held, as stated by witnesses Pluto, Radium and Sodium where talks of violence and burning of Delhi were openly discussed. There were talks about finances, arranging arms, petrol bombs to be procured, and for killing of people and arsoning of property. The issue of destruction of CCTV camera was also laid out.

**10.16** 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 predominately 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.

**10.17** 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*”.

**10.18** 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.

**10.19** 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.

**10.20** After the riots began on 24<sup>th</sup> 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.

**10.21** 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.

**10.22** 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. 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.

**10.23** 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 on 23.01.2020, 16/17.02.2020 and 23.02.2020 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.

**10.24** 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 Gulfisha in the entire case set-up by the prosecution & submissions of the counsel for accused.**

**12.1** Accused Gulfisha was not only involved in the entire protest before the period of riots at Seelampur and Jafrabad in North-East Delhi but also actively guiding it.

**12.2** Accused Gulfisha was engaged in mass mobilization at a local level and had created two Whatsapp group called Warrior and Aurton Ka Inquilab.

**12.3** At the time of riots, accused Gulfisha was present in North-East Delhi and in fact, as per the witnesses, she was the one who started the blockade and prompted attack on police personnel and others with weapons like dande, lal-mirchi powder and others in Jafrabad area which had a cascading effect leading to riots.

**12.4** Accused Gulfisha was also part of and representing Pinjra Tod, which was again involved in different groups and individuals. Pinjra Tod was represented in DPSG as well.

**12.5** Accused Gulfisha was in touch with other accused persons like Devangana, Natasha, Umar Khalid, Khalid Saifi, Meeran and others.

**12.6** Accused Gulfisha was involved in the conspiratorial meeting on 23/24.01.2020 at Seelampur and Jafrabad protest site attended among others like Umar Khalid and Pinjra Tod members. She was also present at a midnight secret meeting on 16/17.02.2020 at Chand Bagh for chakka-jam. She is also involved in the incident of 22.02.2020 at Jafrabad Metro Station. There are also messages in DPSG group revealing the stock piling and distribution of mirchi-



powder and other weapons and about what the Pinjra Tod was saying.

**12.7** Accused Gulfisha was the one who, as part of conspiracy, received women protesters at Seelampur, Jafrabad coming from Jahangir Puri to initiate the violence.

**12.8** Accused Gulfisha was using a mobile but the same could not be recovered by the police.

**12.9** It was argued that CAA/NRC protest were held across India but the case is in Delhi. Firstly, the riots of this horrendous scale happened in Delhi. Regarding the relevance of Delhi, accused 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 24<sup>th</sup> 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 24<sup>th</sup> 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 (discussed in subsequent paragraphs). 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.

**12.10** Ld. Counsel for accused had made submissions regarding general denial of any conspiracy and harping on the investigating aspects. It is a case of UAPA and like any criminal case requires submissions and analysis based upon the contents of the charge-sheet and the accompanying documents. Most of the arguments are not relevant for the bail application where the embargo of Section 437 Cr.P.C and Section 43D UAPA have to be met. In fact, even the judgments filed are not applicable.

**12.11** Moreover, a look at the statement of protected witnesses under Section 164 Cr.P.C, show sufficient incriminating material against the present accused.

Ld. Counsel for accused had submitted that the statements of witnesses are either false or contradictory and should not be relied upon. However, at this stage of bail, the statements of witnesses have to be taken at face value and their veracity will tested at the time of cross-examination.

**12.12** 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.

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.

Protected witness "**ECHO**" had stated that **Gul** and her friend Devangana and Prama 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.

Protected witness "**JUPITER**" had stated that he was the member of Whatsapp group DSPG (Delhi Solidarity Protest Group). Rahul Roy had added him in the group. It was created for discussion of the protest carried out from December to February in Delhi regarding CAA/NRC. Natasha, Athar were also members of the group. Athar was related to Chand Bagh protest. **Gul was not a member; she was member of 'Pinjra Tod Group'**. Natasha was also in that group. On 20.02.2020, he received a call that there was a meeting held in Chand Bagh attended by **Gul**, Natasha, Athar alongwith others and he came to know that these three were planning 'chakka-jam' and violence and for this purpose, they had also distributed chilly powder to protesters. Some people have decided to stop and oppose them as it will cost the life of people. His

motive was to stop chakka-jam and violence. Question was also put in the DPSG Whatsapp group. He called Rahul Roy who said that when chakka-jam happens, violence also happens. They requested to have a talk with **Pinjra Tod** members but it was ignored.

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.

Protected witness "**JOHNEY**" 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. In the last week of January, he came to know that these people have started to collect dande, pathar and Lal Mirch and also asked the people to collect these things. 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 around 50-100 persons were there in the meeting besides **Gulfisha**, Devangana, Natasha, Shivangi, Shadab, Athar, Rashid, etc. Athar Khan told in the meeting that they will do chakka-jam in the protest site of North-East Delhi and nothing will happen by sitting silently. In the meeting, people were asked to collect acid beside pathar.

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.

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.

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 Ilyas 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.

**13.** Ld. Counsel for the accused had vehemently argued that the Division Bench of Hon’ble High Court of Delhi vide its order dated 15.06.2021 had granted bail to accused Devengana, Natasha and Asif Iqbal Tanha and filed the said judgment of the Hon’ble High Court of Delhi with the bail application. It was argued that accused Gulfisha is similarly placed as Devengana and Natasha

and thus, bail must be granted on the ground of parity. It was contended on being asked, that the order dated 18.06.2021 of Hon'ble Supreme Court of India granting stay of the effect of the order of the Hon'ble High Court of Delhi and directing the High Court judgment not to be treated as a precedent, will have not any effect as it is not speaking order and bail can still be granted on parity in view of the Hon'ble High Court judgment.

In the opinion of this Court, by making such a submission in the bail application, by filing the bail order dated 15.06.2020 of the Hon'ble High Court of Delhi and during arguments, and that too so vehemently, not only is the counsel negating the order of Hon'ble Supreme Court of India granting stay of the order of bail dated 15.06.2021 of the Division Bench of the Hon'ble High Court of Delhi, but also asking this Court to essentially follow the High Court order, the effect of which has been stayed by the Hon'ble Supreme Court of India and thus, to disregard the order of the Hon'ble Apex Court.

The Hon'ble Supreme Court of India, in Special Leave to Appeal (Crl.) No. (s) 4289/2021, 4288/2021 & 4287/2021 against the order dated 15.06.2020 of the Hon'ble High Court of Delhi, vide order dated 18.06.2021 had stated :-

***“In the meantime, the impugned judgment shall not be treated as a precedent and may not be relied upon by any of the parties in any of the proceedings”.***

Hence, in view of the order of the Hon'ble Supreme Court of India, it is clear that impugned judgment dated 15.06.2020 was neither to be treated as a precedent nor to be relied upon by any of the parties in any of the proceedings.

The Court is bound by the law of the land and the judicial discipline. This argument is strongly rejected.

**14.** 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 Gul @ Gulfisha are prima facie true.

**15.** In view of the above discussion, since there are reasonable grounds for believing that the accusation against the accused Gulfisha 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 Gulfisha 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: 16.03.2022