

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

I.A. No. 93-2021 (Ishrat Jahan)

FIR No. 59/2020

PS : Crime Branch (being investigated by Special Cell)

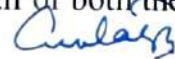
U/S. 13/16/17/18 UA (P)Act, 120B read with Section
109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/353/395/419/
420/427/435/436/452/454/468/471/34 IPC & Section 3 & 4 Prevention of
Damage to Public Property Act,1984 and Section 25/27 Arms Act

State vs. Tahir Hussain & Ors.

Dated :- 14.03.2022

ORDER

1. Vide this order, I shall dispose off the bail application of applicant/ accused Ishrat Jahan filed under Section 437 Code of Criminal Procedure (Cr.P.C) on 29.09.2021.
2. Notice of the aforesaid application was given to the prosecution under the provision of Section 43D Unlawful Activities (Prevention), Act (in short, UAPA).
3. Arguments were heard at length on behalf of both accused by Sh. Pradeep Teotia, Ld. Counsel and for prosecution by Sh. Amit Prasad, Ld. Special Public Prosecutor for State. Written submissions alongwith judgments were also filed on behalf of both accused and prosecution.
4. I have perused the record including the charge-sheet, its annexures alongwith written submissions and judgments filed on behalf of both the parties.



5. ARGUMENTS PUT FORTH FOR APPLICANT/ACCUSED

5.1 Ld. Counsel for the accused had argued that accused is an advocate and has been a Municipal Councilor from Ghondli, Delhi. She has been falsely implicated in this case out of political vendetta. Moreover, she was earlier arrested in FIR No. 44/20, P.S. Jagat Puri in which bail was granted on 21.03.2021 on which date itself, she was again arrested in the present matter. It was further submitted that the accused would not commit such an act as it would spoil her political career. The trial will take a long time. The applicant has clean antecedents and did not violate any condition of interim bail which was granted earlier in this case on account of her marriage. She has deep roots in the society and bail is the rule and jail is an exception.

5.2 It was argued that Section 43D UAPA only puts restrictions but is not an absolute bar to the grant of bail. There is no cogent material in the entire charge-sheet to prima face disclose for commission of a terrorist act or conspiracy or an act preparatory to the commission of a terrorist act. There has been no recovery of any ammunition or firearm from accused or any reading material propagating violence. No independent review of evidence by Committee under Section 45 UAPA has been followed in the instant case, on the date of grant of Sanction.

5.3 Accused is not a member of any banned group or organization or any Whatsapp group. Accused is not involved in any terrorist act or armed rebellion. In fact, it was stated that accused has no connecting links with any co-accused persons. Moreover, FIR No. 44/2020 is not included in the present case despite being overlapping with the present matter. Also, arrest of accused in present FIR would lead to double jeopardy because of ~~FIR No. 44/2020.~~



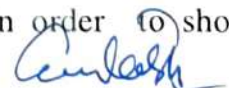
Moreover, there is no video footage or electronic data or recoveries to show the offence alleged against the applicant. The accused had not led any mob violence nor is she part of any meeting called by accused Amanullah to form JACT group. No video footage has been shown by the prosecution where the applicant can be seen inciting the public against the nation or uttering words which could even by a slightest meaning be termed as related to terror. On the contrary in the video footages played during the bail hearing the Applicant was requesting people to remain peaceful and abide by the law.

The prosecution has failed to show any incriminatory message between applicant and accused Amanulla or Devengana Kalita and the only chat with co-accused Tasleem which is not incriminatory.

In rebuttal arguments, Ld. Counsel contended that as per prosecution, over 100 telephonic calls have been allegedly exchanged between the applicant and co-accused Khalid Saiff", however no such calls have been made by the applicant and nothing shown on record to establish they conspired together.

It was also argued in rebuttal that the prosecution has laid great emphasis on 1097 calls and messages exchanged between Applicant and Amanullah. However on perusal of the charge sheet only 132 calls (outgoing and incoming included) have been brought on record. Out of these 29 calls are zero second calls. Moreover the prosecution has failed to show any incriminating messages etc exchanged between Applicant and Amanullah in order to establish conspiracy regarding riots among them.

Moreover, it was argued that, as per prosecution, the "Applicant got connected with Devangana" however there is no evidence produced to establish the same. No calls or messages exchanged between the two have been shown in the charge-sheet. It is merely a cooked up story in the minds of the prosecution. Only one chat has been annexed with the charge sheet in order to show



conspiracy with co-accused. The said chat is with Co-accused Tasleem. In the same chat it can be clearly seen that the applicant is asking him "KAUN" which evidently on the face of it shows that she doesn't even know him. He is a stranger to the applicant. No other chat or phone records have been shown by the prosecution to establish the conspiracy theory qua the applicant.

5.4 It was argued that accused had only protested against the Citizenship Amendment Act (CAA) at Khureji site, which was not banned, and the said site is not even in North-East Delhi. The entire protest was peaceful till the date of alleged firing on police and no riots took place in Khureji. It was also stated that Bheem Army has not been made accused in the present case.

5.5 It was argued that if the applicant had any intent to disturb the social fabric or causing communal violence then why no riots took place in Khureji or East Delhi. The prosecution has not given the statement of any victim of the alleged violence since such victim would disprove her presence during the riots and violence.

5.6 It was further submitted that the witnesses produced by the prosecution are either false or cannot be trusted because of the discrepancies.

5.7 It was further submitted that the statement of witnesses was recorded with a delay of month without any explanation. He then delineated the role of witness Sharad Pandey stating that his testimony is doubtful he has not explained many things. Similarly witness Oscar and Mike have not given complete details and there is also delay in recording the statement of eye-witness Beta. Ld. Counsel again stressed on the credibility of witness Golf.



Witness Bravo cannot be relied upon as he has given a long statement and the contents are false. There is delay in recording the statement of witness Tiger. Moreover, Ld. Counsel stated that the statement of witness Mahadev Vijay Kaste and Sameer @ Abdul Sai cannot be trusted as they are interested witnesses.

5.8 It was also argued that the money trail being shown by the prosecution is false as the pass-book of the applicant's bank would show that her pattern of expenditure had remained the same even for period prior in question. It was further argued that the applicant is in no manner connected with the agreement with Sameer @ Abdul Sai and which is stated by prosecutor to be forged one. The accused is neither named in the said agreement nor she is signatory to the same. Further the nature and authenticity of the said agreement is debatable, and the onus lies on the said witness to establish its authenticity and not on applicant.

It was, thus, prayed that accused Ishrat Jahan may be granted bail.

6. ARGUMENTS BY PROSECUTION

6.1 Ld. Special Public Prosecutor had argued that in the present case, there are two embargoes on the court while considering the application for bail under Section 437 Cr.P.C. The first limitation is Section 437 Cr.P.C which circumscribes the jurisdiction of this court in relation to offences carrying punishment upto life imprisonment. He has referred to Prahlad Singh Bhati vs. NCT of Delhi (2001) 4 SCC 280. The second limitation is the restrictions contained in proviso to Section 43D (5) UAPA. It was contended that the material/evidence collected by the Investigating Agency in reference to the accusation against the accused must prevail until it is contradicted and



overcome or disproved by other evidence and on the face of it shows the complicity of the accused in the commission of the offence. The court is required to record a finding on the basis of broad probabilities after analyzing the entire charge-sheet and accompanying documents. A mini trial cannot be done by dissection of the evidence.

6.2 It was further argued that individual role is not to be considered in a case of conspiracy where there are multiple accused persons who have done their individual bits in formulating and carrying out the conspiracy. It is not necessary that an individual accused must take part in the commission of each and every of the conspiratorial acts. Conspiracy is mostly proved by circumstantial evidence.

6.3 The riots that occurred in North-East Delhi were not spontaneous outburst of violence rather it was a criminal act of causing planned violence under a deep rooted conspiracy. This contention of prosecution has been appreciated by the Hon'ble High Court while deciding bail application in the matter of "Mohd. Ibrahim Vs State" [Bail Appl. 2704/2021] wherein the Hon'ble High Court has been pleased to observe:-

"41. The riots which shook the National Capital of the country in February 2020 evidently did not take place in a spur of the moment, and the conduct of the protestors who are present in the video footage which has been placed on record by the prosecution visibly portrays that it was a calculated attempt to dislocate the functioning of the Government as well as to disrupt the normal life of the people in the city. The systematic disconnection and destruction of the CCTV cameras also confirms the existence of a pre-planned and pre-meditated conspiracy to disturb law and order in the city. This is also evident from the fact that innumerable rioters ruthlessly descended with sticks, dandas, bats etc. upon a hopelessly outnumbered cohort of police officials.";



6.4 The creation of 23 protest sites (including the protest site at Khureji under mentor-ship of the Applicant) were not organic in nature rather the same were meticulously planned and locations were strategically chosen in close proximity to Masjids. Multiple teams were formed to monitor and handle the sites with Remote Supervisors, Locals Leaders and people who visited.

Identical Placards and Banners used at the Protest sites clearly shows it to be the organized protest and not spontaneous action. Mobilizing people at the protest site in a coordinated manner was evident from reading of chats from charge sheet. The protest sites, as claimed by the applicant, were not women dominated rather the same was actively managed by men and the protest sites were swelled by bringing in women folks from outside. There was strategic bringing together of resources both in manpower and funds mobilization.

6.5 It was vehemently argued that the interrelation between Dec'19 & Feb'20 riots is writ apparent – that is similar pattern of crime is followed – blocking roads, attacking police personnel, destructing property and violence with police and public.

6.6 In the riots, 53 innocent victims were killed in a ghastly, horrendous and horrifying riots which occurred w.e.f. 22nd February, 2020 till 26th February, 2020. Out of 53 persons, a police official namely Rattan Lal who was Head Constable in Delhi Police was brutally murdered and Ankit Sharma who was working in Intelligence Bureau was also killed. It was argued that the riots occurred in two phases – First Phase and Second Phase

(i) First Phase of riots took place in the month of December, 2019 wherein, 101 police officials were injured and 41 public persons were also injured. The total number of injured persons is 142.



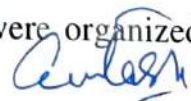
(ii) Second Phase of riots took place w.e.f. 22nd February, 2020 till 26th February, 2020 wherein, 132 police officials were injured and 476 public persons also sustained injuries. The total number of injured police officials and public persons is 608. It is relevant to note that the grand total of police officials and public persons who sustained injuries is 750.

6.7 It was argued that there was loss/damage and destruction of property mentioned in the charge-sheet.

6.8 It was submitted that the report of Delhi Metro Rail Corporation (DMRC) revealed that the Jafrabad and Maujpur Metro Stations were closed on 24.02.2020 and 25.02.2020. Moreover, Central Board of Secondary Education (CBSE) had canceled and postponed the class Xth and XIIth examinations in North-East District, Delhi in February/March 2020 due to riots.

The impact on movement of traffic i.e., disruption of essential services for the public in the National Capital is duly mentioned in the charge-sheet. It was submitted that the total claims disbursed by the Government to the riot victims is 21,93,29,050 and 1661 claims were settled. 185 claims were pending for decision with SDM, Seelampur.

The investigations of riots cases have revealed that fire- arms, petrol bombs, acid attacks, lethal and sharp-edged weapons, Iron rods, sticks, stone-pelting through pre-fabricated very large sized sling shots and by other means were used for attacking and killing police personnel, Govt. employees and public personnel. Petrol pump was set ablaze in an attempt to cause a very large scale explosion and which could have resulted in deaths on a very large scale and to create terror. Recoveries of fire-arms, petrol bombs, acid bombs, lethal and sharp-edged weapons establish the fact that the same were organized in a



premeditated manner.

6.9 It was vehemently argued that from the evidence gathered, there remains not even an iota of doubt that all the accused persons, in connivance and collusion with other co-conspirators, abettors, facilitators and collaborators have acted in a cold, calculated manner and played their respective roles in mobilization of people, creation of protest sites, forming of an unlawful assembly, causing disruptive Chakka Jam, arson and violence directed towards police and innocent civilians resulting in mass scale communal riots and large scale damage and destruction of public and private properties.

6.10 It was further argued that the singular objective of the conspirators was to overawe the Government of India and to undermine the authority of the Parliament which had enacted the CAA, thus destabilizing the very foundations of democracy. They aimed at bringing the Government of India to its knees and enforcing the withdrawal of CAA by timing the execution of their conspiracy with the visit of US President, thereby hitting two birds with a single stone. There could not have been a greater international embarrassment for the Government of India than to have communal riots raging in the National Capital while a visit by the US President was underway. Had the conspirators been fully successful, the foundations of the Government would have been shaken leaving the Indian people exposed to uncertainty, lawlessness and anarchy and inducing a loss of faith in the ability of the State to protect their life and property. The end objective of conspirators was to uproot a lawfully elected Government by sheer use of engineered, vicious and visceral communal violence.

The accused persons had incited the people to insurrection and rebellion. They wanted to induce discontent and to disturb the tranquility and harmony of



the society. The transcripts of the accused persons and the statements of witnesses recorded during the investigation would reveal and discovered that they have pernicious tendency or intention of creating public disorder.

Ld. Special Public Prosecutor had referred to the judgment of “Madan Singh v. State of Bihar” [(2004) 4 SCC 622], wherein it was held :

“15. A “terrorist” activity does not merely arise by causing disturbance of law and order or of public order. The fallout of the intended activity is to be one that it travels beyond the capacity of the ordinary law-enforcement agencies to tackle it under the ordinary penal law. It is in essence a deliberate and systematic use of coercive intimidation.”

6.11 Ld. Special Public Prosecutor has also taken the Court to the judgment of “Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.” [(1994) 4 SCC 602] and thereafter, contended that in the present case of conspiracy, all the provisions of UAPA are made out besides the other sections of IPC and other laws.

It was argued that Terrorist Act has been committed as defined under the Act which has been committed by rampant use of fire-arms, petrol bombs, acid attacks, lethal and sharp- edged weapons under a deep rooted conspiracy and funds have been raised for the same. Hence clearly all requisite ingredients of the offences are made out in the present case.

6.12 Ld. Special Public Prosecutor had then delineated the role of accused Ishrat Jahan. It was argued that she had attended a meeting which was organized by Amanullah (JCC, JCAT) & others from the ‘Jamia Awareness Campaigning Committee’ at ‘Alia Madarsa’ Khureji in connection with initiation of an anti CAA/NRC protest site in Khureji area. Accused was




instrumental along with Khalid Shaifi & others in starting 24X7 at Khureji Protest site. On 23.02.20, while blocking the main Patparganj Road, she referred that the revolution has reached the 2nd level. Thereafter protest was escalated to disruptive Chakka jam and engineered riots. On 26.02.2020, she along with Khalid Saifi instigated the public for attacking on the police personnel, regarding which FIR No. 44/20 was registered at PS Jagatpuri and she was arrested in this case along with others. She was part of the conspiracy hatched for riots by the JCC, other groups & individuals. She delivered provocative speeches in order to incite the feelings of the gathered public against the other communities as well as against the elected government of India and also showed her disaffection against the country. As main organizer of protest site, she called the other speakers including Shifa-Ur-Rehman, Meeran Haider, Sharjeel Imam, Nedeem Khan and remote supervisor of DPSG at Khureji site. She was involved in raising funds by suspicious/unaccounted means and used the same in the protests which ended with riots. Forged and fabricated documents were used to colour the transfer of legitimate funds. Illegitimate fund was used for procuring weapons in order to prepare for the riots. Her purpose was to create Islamic State purportedly. She instigated crowd to use arms and ammunition against police. She was aware of purpose, objective and process of conspiracy. At Khureji protest site, women and children were used as a shield which is a part of larger conspiracy as decided in the meeting of DPSG. She is connected with Ammanullah (P.O), Khalid Saifi, Tasleem Ahmad, Natasha Narwal, Safoora Zarger (all accused in this case). There were 1097 incoming/outgoing calls & SMSs between Ishrat and Ammanullah within a period of 01/12/19 to 26/02/20.

6.13 Ld. Special Public Prosecutor, thereafter, taken the Court to the statements of various persons recorded under Section 161 Cr.P.C and 164



- ★ Cr.P.C including the protected witnesses namely Mike, Oscar, Beeta, Hector, Golf, Peter to highlight the role of the accused/applicant.

6.14 On financial aspect, Ld. Special Public Prosecutor contended that apart from some unaccounted deposited cash, one Online deposit entry for Rs. 4 lacs was found in her account which was received in her account on 10/12/19. This amount was transferred from account No. 520101265282662 (Corporation Bank) which was in the name Sh. Mahadev Vijay Kaste. Sh. Mahadev Kaste told that on instructions of his employer namely Shri Samir Abdul Sai where he is working as a driver he took gold loan worth Rs. 4,31,700/- by depositing gold which was given to him by his employer and transferred Rs. 04 lacs in the account of Ishrat Jahan. Sh. Samir Abdul Sai stated that Sh. Imran Siddiqui was his business partner and he was relative of Ishrat Jahan. Sh. Imran Siddiqui told him to transfer Rs. 10 lacs in the account of his relative Ms. Ishat Jahan and also wanted to hide the track of transfer of money because money was to be used in anti CAA/NRC protests and riots. He further told that on the instruction of Sh. Imran Siddiqui, he transferred the said money to Ishrat Jahan through his driver Mahadev Kaste. Sh. Imran Siddiqui confirmed the transfer of Rs. 04 lacs to Ishrat Jahan's account through his business partner Sh. Samir Abdul Sai. However, he tried to mislead by saying that he had taken loan of Rs. 04 lacs from Ishrat Jahan which he returned. But he didn't explain any reasonable answer regarding the way of transferring on money. It was submitted that during investigation, it has also come on record that to cover up the transfer of money in to the account of Ishrat Jahan, a fake partnership deed was prepared by Sh. Abdul Sameer Sai to show the partnership between Sh. Abdul Sameer Sai and Sh. Imran Siddiqui and notarized by Notary. However, this partnership does not bear the signature of Sh. Imran Siddiqui. Interestingly, the date of



➤ preparing of partnership deed is mentioned as 26.11.2019 but entry made in the register of Notary is 13.04.2020. It is also pertinent to mention that Sh. Imran Siddiqui has joined the investigation on 01.04.2020 and was asked about the transaction and thereafter the alleged partnership deed was prepared. Apart from it, cash amount of Rs. 1,41,000/- was also deposited in the account of accused Ishrat Jahan and the source of said amount could not be explained by the accused Ishrat Jahan.

6.15 It was argued that from the statement of witness Peter that the accused Ishrat Jahan had used ill-gotten money to manage the protest sites and in purchasing the weapons through the accused Abdul Khalid. One country made weapon was recovered from one JCL arrested in FIR No. 44/20 PS Jagatpuri. This FIR No. 44/20 PS Jagatpuri was registered regarding the riots at Khureji protest site where accused Ishrat Jahan was one of the main organizers.

Thus, it was argued that there are sufficient material on record to establish that the accusation against the accused Ishrat Jahan 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);

7. 7.1 The present bail application by accused Ishrat Jahan has been moved 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. It also



provides for a special case for woman.

7.2 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:

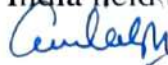
Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(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.

7.3 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.....”

8. **8.1** Since the case pertains to a conspiracy, it is necessary to dwell on the same. 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.

8.2 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.*

8.3 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

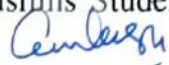
offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. Section 10 of the Evidence Act introduces the doctrine of agency and will be attracted only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired 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.

9. 9.1 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.

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



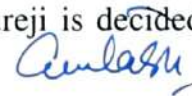
took place in Delhi and various FIRs in South-East Delhi and even North-East Delhi were registered in December 2019.

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.

9.2 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.

9.3 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.

9.4 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.

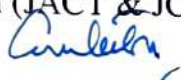
All groups i.e. DPSG, JCC, MSJ, Pinjra Tod, etc. were working in tandem. Members of one group were members in others and there was knowledge and coherence in strategy.

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.

9.5 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. 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.

9.6 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.

9.7 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.

9.8 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

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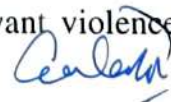
Ekta Yatra for Chand Bagh.

9.9 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.

9.10 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”.**

9.11 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.

9.12 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.

9.13 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.

9.14 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.

9.15 There were meetings held on 22nd & 23rd 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.

9.16 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.

9.17 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*”.

9.18 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.

9.19 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.

9.20 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.

9.21 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 Admns. to send messages. It is also relevant that many of the accused persons' mobile seized did not contain the data regarding the groups.

9.22 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.

9.23 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.

9.24 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.

10. 10.1 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

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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

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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.

11. Role of Ishrat Jahan in the entire case set-up by the prosecution.

11.1 The entire conspiracy case is stated to involve various groups and individuals, who coordinate with each other in carrying out the confrontational chakka-jam in the guise of protest and which results into violence and riots in North-East Delhi.

11.2 As per Section 43D of UAPA, the Court should be of the opinion that there are reasonable grounds for believing that accusation against the accused is prima facie true. Thus, what has to be seen apart from a general conspiracy and applicability of UAPA is the material against the specific accused (Ishrat Jahan in this case).

It must also be pointed out that this is the stage of bail at pre-charge stage.

In *National Investigating Agency vs. Zahoor Ahmad Shah Watalli*, (2019) 5 SCC 1, the Hon'ble Supreme Court of India held that :-

“ 23.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.....”

11.3 As per the charge-sheet and the statement of witnesses, accused Ishrat Jahan is not the one who created the idea of chakka-jam. She is also not a member of any of the organizations or incriminating Whatsapp group which plays a role in the entire conspiracy. She is not a member of Muslims Students of JNU (MSJ) or Jamia Coordination Committee (JCC) or any of the four Whatsapp groups created by JCC, or Pinjra Tod, or Students of Jamia (SOJ) or Alumnae Association of Jamia Milia (AAJMI), or DPSG. It is also not the case of the prosecution that she attended any meetings called by any of these organizations.

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11.4 As per charge-sheet, accused Ishrat Jahan was involved in the protest site at Khureji, Delhi. It is one of the protest sites against CAA/NRC but it is not located in North-East Delhi where the horrendous riots took place in February 2020. It does not appear to be contiguous to the North-East Delhi.

On the Khureji site, there is a violence reported and there is also an FIR No. 44/20, P.S. Jagatpuri registered in this regard.

However, the arguments of the Ld. Special Public Prosecutor was that the whole North-East Delhi was surrounded from all sides and all the roads providing ingress and egress to the said area were closed accompanied with disruption of essential services and supplies and targeting of mixed population areas, creating panic and attack on police with facade of women protesters followed by other community citizens leading to riots. However, this thing did not happen at Khureji.

There are indeed allegations of attacking on the police personnel at Khureji for which FIR no. 44/2020 has been registered at Police Station Jagatpuri. The allegations of the prosecution about accused is that she was the main organizer of Khureji protest site and called other speakers like Shifa, Meeran and Sharjeel, etc.,

Her connectivity is shown with accused Amanullah, Khalid Saifi, Tasleem, Natasha and Safoora Zargar. Her connectivity is through mobile or presence at the same time at Khureji. It ranges from high to very low. Even if it is accepted that she had connectivity with the other accused persons, yet the fact remains that she was neither physically present in North-East Delhi for riots nor was she was part of any group, organization or Whatsapp groups or her name cropped up in flurry of calls or in any CCTV footage or in any of the conspiratorial meetings on 23.01.2020, 16/17.02.2020, ~~22.02.2020~~ or

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23.02.2020.

Moreover, it is not the case of the prosecution that she was giving directions to other accused persons to contend that her position and conspiracy was bigger than others. The prosecution has relied upon the statement of protected witnesses like Mike, Oscar, Beta, Hector, Golf and Peter. The gist of these statements are that accused was giving provocative speeches and saying that the government was against Muslims. She was, as per the statements, giving obnoxious utterances and doing local mobilization and was entrusted with the task of systematic organizations. She was giving provocative speeches which contributed towards the environment which might have motivated others to lead to violence in North-East Delhi.

There are also allegations of accused Ishrat getting Rs. 4,00,000/- in her account from Mahadev Vijay Kaste who acted on the directions of his employer Sameer Abdul Sai. Also, cash amount of Rs. 1,41,000/- was deposited in the account of Ishrat Jahan and source of said amount could not be explained by her. As per prosecution, this amount was then used for protest at Khureji site and for purchasing weapons which was used in the incident at Khureji at Jagatpuri which is covered by FIR No. 44/20. The money was given to Khalid Saifi, who is an accused in this case and was a member of DPSG and thus, the connection is drawn to the North-East Delhi riots.

It again needs reiteration that this is the stage of bail application and that too before charge. This order does not discharge the accused from this case.

12. The entire conspiracy as spelt out in the charge-sheet, as far as it ascribes the role of accused Ishrat Jahan, who is a woman, for the limited purpose of bail application on a prima facie considerations, persuades this Court to allow the present application for bail despite the embargoes contained in Cr.P.C and UAPA. The bail application is accordingly allowed and applicant/accused


Ishrat Jahan is admitted to bail on her furnishing of personal bond in the sum of Rs. 50,000/- with two local sureties in the like amount subject to the following conditions:

- (a) The accused shall neither leave the jurisdiction of NCT of Delhi without prior permission of the court nor shall she indulge in any kind of criminal activity.
- (b) She shall also not tamper with any evidence or contact any witness;
- (c) She will cooperate in the investigation and shall not indulge in any activity influencing the investigation;
- (d) She shall attend the court on every date of hearing or as directed by court.
- (e) She will not indulge in any activities for which she is investigated /tried during the period of bail.

It is made clear that bail bond and surety bond shall be accepted only after due verification.

Application is accordingly disposed off.

Copy of this 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: 14.03.2022