

IN THE COURT OF SH. VISHAL SINGH, ADDITIONAL
SESSIONS JUDGE – 05: SOUTH EAST,
SAKET COURT, NEW DELHI

SC NO. 116/2020
FIR No. 242/2019
PS NFC (CRIME BRANCH)
U/s. 143/147/148/149/186/353/332/333/307/308/427
/435/323/124A/153A/341/120B/34 IPC & SEC.
109 IPC, SECTION 3/4 PDPP ACT & SECTION
25/27 ARMS ACT
STATE Vs. ANAL HUSSAIN & ORS.

07.03.2025

ORDER ON CHARGE

1. Factual Background:

1.(a) Complainant Inspector Rajesh Kumar Mishra, SHO PS New Friends Colony, received the information on 15/12/2019 that a mob of hundreds of persons had assembled on the road near Surya Hotel to protest against Citizenship Amendment Act passed by the Parliament. He immediately rushed to the spot which was barricaded by police officials to prevent violence. At around 03:30PM, many students of Jamia University, passed out students and persons belonging to political parties were present there and were raising slogans against the Central Government and Citizenship Amendment Act and were proceeding towards the direction of Parliament.

1.(b) Police warned them through banner and loudspeakers not to indulge in any violent or unlawful activity. The complainant noticed the presence of a few known political and student leaders

in the mob. Despite being warned, the mob turned violent and damaged the barricades to remove them from their way. A part of the mob removed the barricades and proceeded towards Mata Mandir through Sujan Mahindra Marg and CV Raman Marg, where the mob set a few buses ablaze. The complainant found two DTC buses and a motorcycle on fire at Mata Mandir Road, that had been torched the mob. Many pelted stones were lying scattered on the road and there was traffic jam on road.

1.(c) In the meantime, the complainant received the information that the violent mob was rioting at Mathura Road. On reaching Mathura Road, Ashram Chowk, with his staff, he found that the mob had torched two DTC buses, one Wagon-R car and a motorcycle. When police officials attempted to control the fire on vehicles, the members of the mob threw stones on them to obstruct them from doing their duty and to injure them. The complainant noticed that the members of mob had damaged 07 DTC buses by pelting stones at them. The passengers ran out of the buses and somehow managed to save their lives.

1.(d) In the meantime, the complainant received the information that the members of the mob were rioting at CV Raman Marg near Bharat Nagar. Complainant reached there and discovered that the mob had set a DTC bus ablaze and damaged another bus with stones. On receipt of information of rioting by the mob at Sarai Julena Chowk, complainant reached there and discovered that the mob had torched two motorcycles and one police QRT Gypsy. Complainant noticed that the mob had used stones, sticks and glass bottles containing petrol which they used as petrol

bombs, to do rioting. Complainant heard firing of gun shots and recovered a spent bullet cartridge from there.

1.(e) In order to contain the violent and unruly mob, police used necessary force and tear gas shells but the large mob kept pelting stones at police officials from all sides. Many police officials sustained injuries caused by stones intentionally thrown at them by the mob. Many private vehicles were also damaged by the violent mob. The CCTV and video footage of the rioting were also obtained by the IO during course of investigation.

1.(f) As per charge-sheet, around 41 vehicles, including government vehicles and private vehicles that were damaged by the mob/unlawful assembly, were seized by police during investigation. As per charge-sheet, 10 police officials were injured by the members of mob/unlawful assembly, out of whom Inspector Hanumant Singh, SHO PS Sunlight Colony, sustained grievous injuries, whereas, other officials sustained simple injuries. The members of unlawful assembly threw stones at police officials, knowing that the thrown stones could hit them on their head and could cause their death or serious bodily injury. For this reason, invocation of Section 308 IPC is justified against the accused persons. However, offence U/s. 307 IPC is not *prima facie* made out in the absence of evidence that the offenders intended to kill anyone.

1.(g) Evidently, the assembling of a huge mob and the mass scale rioting committed by it was not a random or spontaneous happening and could not have been committed except in

pursuance of a larger conspiracy entered into between the self proclaimed leaders and initiators of the mob activity, whereas, other members of the mob / unlawful assembly kept joining in during the course of assembling and rioting.

2. Accused Sharjeel Imam :

2.(a) As per charge-sheet, accused Sharjeel Imam was a Ph.D. student of Modern History at JNU, New Delhi, at the time of incident. In order to provoke the Muslim Community and to incite wide-spread violence against implementation of CAA and NRC, accused Sharjeel Imam conducted public meetings, distributed inflammatory leaflets in areas of Munirka, Nizamuddin, Shaheen Bagh and Jamia Nagar on 05/12/2019 and 06/12/2019, prepared a video of inflammatory speech and uploaded it on social media to influence Muslim brotherhood. He visited Aligarh Muslim University on 11/12/2019 and incited the students against the government for implementation of CAA and NRC. He visited the area of Jamia Nagar on 13/12/2019 at around 02:00PM, where he held meeting with Jamia students and local residents to instigate them to cause traffic jam on public roads in protest of CAA and NRC. Pursuant to the meetings and instigation, a mob gathered outside Jamia University, engaged in rioting and caused traffic jam.

2.(b) Again on 13/12/20219, at around 07:00PM, accused Sharjeel Imam addressed public persons gathered outside gate No.7, Jamia University and gave an inflammatory speech for 10 minutes in which he termed the CAA and NRC as anti-muslim

laws and incited violence to pressurize the government. He got his speech video-graphed and uploaded it on social media groups of Muslim students and Muslim brotherhood to incite them to do ‘*chakka jam*’ (complete stoppage of public movement).

2.(c) On 14/12/2019, accused Sharjeel Imam visited Jamia University and incited the students against the government. On 15/12/2019, he went to Shaheen Bagh where he alongwith some local leaders addressed the public and gave inflammatory speech against the government for implementation of CAA and NRC.

3. The argument of accused Sharjeel Imam is that neither was he part of unlawful assembly that committed rioting on 15/12/2019, nor did he incite the public persons to engage in violent activities by his speech. It is argued that in his speech, accused Sharjeel Imam did not promote enmity, hatred, ill-will or disharmony between different groups on grounds of religion, race, place of birth, residence, language, caste or community etc., on account of which Section 153A IPC cannot be invoked against him. In alternate, it is argued that since a separate case FIR No. 22/2020 dated 25/02/2020, U/s. 124A/153A/505 IPC, PS Crime Branch (Chankaya Puri) had been registered against accused Sharjeel Imam, he could not be charged for offence U/s. 153A IPC in this case as it would violate the principle of double jeopardy.

4. On the other hand, Ld. Special PP argued that a glance at transcript of the provocative speech given by accused Sharjeel Imam on 13/12/2019 would reveal his true intentions – his target

audience was members of Muslim community, as opposed to public in general, to incite them to create mass muslim movement in all States of Northern India. He provoked his audience by saying that despite having significant muslim population in different States of Northern India, why were they allowing the cities to function normally and why were they not causing *chakka jam* (complete stoppage of public movement). He evoked a feeling of fear in the mind of Muslim community by falsely creating impression that thousands of muslims were living in detention camps of the government.

Ld. Special PP argued that, although, *ex facie* the speech of accused Sharjeel Imam sounded like creation of a peaceful public movement against some government policy, it was in essence an invocation of feeling of hatred of Muslim community against other communities in the name of legislation of a law by Central Government that was unfair to Muslim community.

5.(i) Indeed, being a senior Ph.D student, accused Sharjeel Imam craftily clothed his speech in which he avoided the mention of communities other than Muslim community but the intended victims of *chakka jaam* were members of communities other than Muslim community. Why, otherwise, accused Sharjeel Imam incited only the members of Muslim religion to disrupt the normal functioning of the society.

5.(ii) Secondly, an accused who openly invoked feeling of anger and hatred in the mind of Muslim community and instigated them to cause mass scale disruption in public life in multiple

cities of Northern India through *chakka jaam* (complete stoppage of public movement) could not be heard arguing that the rioting committed by mob on public roads was not intended consequence of his speech and he could not be fastened with criminal liability for the same. His speech was calculated to evoke anger and hatred, the natural consequence of which was commission of wide-spread violence by members of unlawful assembly on public roads. His speech was venomous and pitted one religion against another. It was, indeed, a hate speech. He committed abetment by instigating violent mob activity through his communal speech, for which penal provision of Section 109 IPC r/w Section 153A IPC is justifiably invoked against him.

5.(iii) It needs to be observed here that there could be nothing peaceful about a *chakka jaam*. In a populous city like Delhi, at any given time scores of critically ill medical patients requiring urgent treatment are in a rush to reach hospitals. *Chakka jaam* can potentially lead to deterioration of their condition or even death if they do not receive medical care in time, which would be nothing short of culpable homicide. Vehicles supplying essential and emergency services are on the roads. *Chakka jaam* essentially results in violation of fundamental right to life and health of public. Even if the mob does not indulge in violence and arsony while enforcing *chakka jaam*, it would still be a violent act by one section of society against the other.

Accused Sharjeel Imam was not only an instigator, he was also one of the kingpins of larger conspiracy to incite violence.

6. **Accused (i) Sharjeel Imam** is liable to be charged for offence U/s. 109 IPC r/w Section 120B IPC r/w Section 153A IPC r/w Section 143/147/148/149/186/353/332/333/308/427/435/323/341 IPC & Section 3/4 Prevention of Damage to Public Property Act.

7. The charge for offence U/s. 124A IPC shall be subject to further orders of Hon'ble Supreme Court in Writ Petition (C) No. 682/2021. The operation of said provision remains in abeyance in view of order of Hon'ble Supreme Court dated 11/05/2022 in aforementioned case.

8. **Accused (ii) Ashu Khan, (iii) Chandan Kumar, (iv) Aasif Iqbal Tanha :-**

8.(a) **Accused Ashu Khan** is named in the FIR as one of the persons who was present at the spot of violence and instigated the mob that committed rioting and violence. Witnesses Ct. Dharmender and Ct. Mukesh have also stated about his presence and participation at the spot. The CDR and location of his mobile number also confirms his presence at the spot of violence. He also gave interview to Media Channel TV-9 about his participation and involvement.

8.(b) **Accused Chandan Kumar** is named in the FIR as one of the persons who was present at the spot of violence and was leading the mob. The CDR and location of his mobile number also confirms his presence at the spot of violence.

8.(c) **Accused Aasif Iqbal Tanha** is named in the FIR as one of

the persons who was present at the spot of violence and was leading the mob. The CDR and location of his mobile number also confirms his presence at the spot of violence.

Accused Ashu Khan, Chandan Kumar and Aasif Iqbal Tanha committed abetment by prior conspiracy as well as by instigating violent mob activity at the spot, for which penal provision of Section 109 IPC is justifiably invoked against them.

8.(d) Accused Ashu Khan, Chandan Kumar and Aasif Iqbal Tanha are liable to be charged for offence U/s. 109 IPC r/w Section 120B IPC r/w Section 143/147/148/149/186/353/332/333/308/427/435/323/341 IPC & Section 3/4 Prevention of Damage to Public Property Act.

9. Accused (v) Anal Hussain, (vi) Anwar @ Kala, (vii) Yunus, (viii) Jumman, (ix) Rana, (x) Mohd. Harun, (xi) Mohd. Furkan :-

9.(a) Accused Anal Hussain, Anwar @ Kala, Yunus, Jumman, Rana, Mohd. Hanif @ Ali Hanif (since proclaimed person), Mohd. Harun and Mohd. Furkan were identified by witness Ct. Dharmender (beat police official) as the persons who were present at the spot at the time of incident and were indulging in rioting by pelting stones at police officials and torching the vehicles.

9.(b) Accused Anal Hussain, Anwar @ Kala, Yunus, Jumman were also identified by witness Constable Mukesh (beat police official) as the persons who were part of the mob and were

indulging in rioting by torching the vehicles. The presence of accused Rana, Mohd. Hanif @ Ali Hanif (since proclaimed person), Mohd. Harun and Mohd. Furkan at the spot of violence has been additionally confirmed by CDR and location of their mobile numbers.

9.(c) Accused Anal Hussain, Anwar @ Kala, Yunus, Jumman, Rana, Mohd. Harun and Mohd. Furkan are liable to be charged for offence U/s.143/147/148/149/186/353/332/333/308/427/435/323/341 IPC alongwith Section 120B IPC & Section 3/4 Prevention of Damage to Public Property Act.

10. Accused (xii) Mohd. Adil, (xiii) Roohul Ameen, (xiv) Mohd. Jamal, (xv) Mohd. Umar, (xvi) Mohd. Shahil, (xvii) Muddussir Faheem Hasmeem, (xviii) Mohd. Imran Ahmad S/o. Safa-ur-Rehman, (xix) Saqib Khan, (xx) Tanjil Ahmad Chaudhary, (xxi) Mohd. Imran S/o. Mohd. Hashim, (xxii) Muneeb Mian, (xxiii) Saif Siddique, (xxiv) Shahnawaz, (xxv) Mohd. Yusuf :-

10.(a) As per charge-sheet, there is no witness who saw the said accused persons at the spot at the time of incident. There is no CCTV footage in which any of the aforementioned accused, except accused Mohd. Yusuf was allegedly seen to be present at the time of incident. In respect of accused Mohd. Yusuf, it is alleged that he was identified through rioter's poster developed on the basis of CCTV footage. However, there is no witness on record who knew accused Mohd. Yusuf and identified him to be same as the one seen in rioter's poster. Thus, the rioter's poster

could not be the basis of identification of accused Mohd. Yusuf as an offender.

The aforementioned accused persons have been arraigned on the limited ground of location of their mobile phones at the time and place of rioting.

10.(b)Ld. Special PP submitted that violence was committed at multiple places, whereas, the mobile location of aforementioned accused persons also chartered the same course in respect of time and place during which the rioting was committed by the mob.

11. It is observed that unless supported by any other credible evidence of physical presence, the location of mobile phone is a poor and unreliable indicator of presence or absence of a person at a given place. On its own, the location of mobile phone cannot be used to either inculcate or exculpate a person in respect of a criminal liability. Even if location chart and CDR of the said accused persons are treated as proof of their presence in the areas indicated in the location chart, the Court cannot assume that it was for the purpose of participation in violent mob activity *vis a vis* innocent presence as mere bystander. There is no positive identification that the said accused persons were part of unlawful assembly and shared its common object. Even if aforesaid accused persons admit the contents of charge-sheet filed against them, they would still not be liable to face trial in this case. There is absence of sufficient ground to proceed against them. **Accused Mohd. Adil, Roohul Ameen, Mohd. Jamal, Mohd. Umar, Mohd. Shahil, Muddussir Faheem Hasmeem, Mohd. Imran Ahmad S/o.**

Safa-ur-Rehman, Saqib Khan, Tanjil Ahmad Chaudhary, Mohd. Imran S/o. Mohd. Hashim, Muneeb Mian, Saif Siddique, Shahnawaz and Mohd. Yusuf, are hereby discharged from this case.

Charge shall be separately decided against accused Asad Ansari and Mohd. Hanif @ Ali Hanif, who are declared 'proclaimed persons', on their appearance or production before the Court.

12. Offence U/s. 25/27 Arms Act:

As per charge-sheet, a used cartridge of .32 bore was recovered as lying abandoned from place of incident; it was not seized from possession of any person. There is no witness on record who actually saw any member of the unlawful assembly using a firearm or disclosed the nature or shape of the firearm. Thus, the offence U/s. 25/27 Arms Act cannot be invoked in present case.

**Announced in open Court
dated: 07.03.2025**

**(Vishal Singh)
Addl. Sessions Judge-05 (South-East)
Saket Courts, New Delhi**