



2025:DHC:7632-DB



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

Reserved on: 09.07.2025

Pronounced on: 02.09.2025

+ **CRL.A. 184/2022**

SHARJEEL IMAM

.....Appellant

Through: Mr. Talib Mustafa, Mr. Ahmad Ibrahim, Ms. Ayesha Zaidi, Mr. Abhishek Singh, Mr. Jeet Chakrabarti, Mr. Akif Abidi and Mr. Kartik Venu, Advs.

Versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tushar Mehta, Solicitor General, Mr. Chetan Sharma, ASG, Mr. Amit Prasad, SPP for State, with Mr. Dhruv Pande, Mr. Aarush Bhatia, Mr. Ayodhya Prasad, Ms. Ruchika Prasad, Mr. Harshil Jain, Mr. Saravjeet Singh, Mr. Amit Gupta, Mr. Shubham Sharma, Mr. Vikramaditya Singh, Advocates. Mr. P.S. Kushwaha, Addl. CP (Special Cell), Insp. Anil Kumar, Insp. Suhaib Ahmad, ASI Sanjay Kumar, HC Dheeraj Goswami (Special Cell)

+ **CRL.A. 631/2024**

UMAR KHALID

.....Appellant

Through: Mr. Trideep Pais, Sr. Adv. with Ms. Sanya Kumar, Mr. Sahil Ghai, Ms. Sakshi Jain & Ms. Saloni Anubastha, Advs

Versus



2025:DHC:7632-DB



STATE (GOVT OF NCT OF DELHI)

.....Respondent

Through: Mr. Tushar Mehta, Solicitor General,
Mr. Chetan Sharma, ASG, Mr. Amit Prasad, SPP for State, Mr. Madhukar Pandey, SPP for State with Mr. Dhruv Pande, Mr. Aarush Bhatia, Mr. Ayodhya Prasad, Ms. Ruchika Prasad, Mr. Umesh Kumar Singh, Mr. Sulabh Gupta, Mr. Harshil Jain, Mr. Saravjeet Singh, Mr. Daksh Sachdeva, Mr. Amit Gupta, Mr. Shubham Sharma, Mr. Vikramaditya Singh, Advocates.
Mr. P.S. Kushwaha, Addl. CP (Special Cell), Insp. Anil Kumar, Insp. Suhaib Ahmad, ASI Sanjay Kumar, HC Dheeraj Goswami (Special Cell)

+ **CRL.A. 677/2022**
ATHAR KHAN

.....Appellant

Through: Mr. Arjun Dewan, Ms. Varisha Sharma and Mr. Aryan Deol, Advs.

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tushar Mehta, Solicitor General, Mr. Chetan Sharma, ASG, Mr. Amit Prasad, SPP for State, Mr. Madhukar Pandey, SPP for State with Mr. Dhruv Pande, Mr. Aarush Bhatia, Mr. Ayodhya Prasad, Ms. Ruchika Prasad, Mr. Umesh Kumar Singh, Mr. Sulabh Gupta, Mr. Harshil Jain, Mr. Saravjeet Singh, Mr. Daksh Sachdeva, Mr. Amit Gupta, Mr.



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Shubham Sharma, Mr. Vikramaditya Singh, Advocates.

Mr. P.S. Kushwaha, Addl. CP (Special Cell), Insp. Anil Kumar, Insp. Suhaib Ahmad, ASI Sanjay Kumar, HC Dheeraj Goswami (Special Cell)

+ **CRL.A. 210/2022 & CRL.M.A.12338/2023,
CRL.M.A.13472/2023**

ABDUL KHALID SAIFI @KHALID SAIFIAppellant

Through: Ms.Rebecca M. John, Sr. Adv. with.
Mr. Rajat Kumar, Ms. Praavita Kashyap and Ms. Anushka Baruah, Advs

versus

STATE

.....Respondent

Through: Mr. Tushar Mehta, Solicitor General, Mr. Chetan Sharma, ASG, Mr. Amit Prasad, SPP for State, with Mr. Dhruv Pande, Mr. Aarush Bhatia, Mr. Ayodhya Prasad, Ms. Ruchika Prasad, Mr. Harshil Jain, Mr. Saravjeet Singh, Mr. Amit Gupta, Mr. Shubham Sharma, Mr. Vikramaditya Singh, Advocates. Mr. P.S. Kushwaha, Addl. CP (Special Cell), Insp. Anil Kumar, Insp. Suhaib Ahmad, ASI Sanjay Kumar, HC Dheeraj Goswami (Special Cell)

+ **CRL.A. 233/2022 & CRL.M.A. 29808/2023, CRL.M.(BAIL)
620/2022**

MOHD SALEEM KHAN

.....Appellant



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Through: Mr.Gautam Khazanchi, Mr.Vaibhav
Dubey, Ms.Anshala Verma,
Mr.Ayush Sachan, Mr.Vinayak
Chawla and Ms.Pooja Deepak, Advs
Versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Tushar Mehta, Solicitor General,
Mr. Chetan Sharma, ASG, Mr. Amit
Prasad, SPP for State, Mr. Madhukar
Pandey, SPP for State with Mr.
Dhruv Pande, Mr. Aarush Bhatia,
Mr. Ayodhya Prasad, Ms. Ruchika
Prasad, Mr. Umesh Kumar Singh,
Mr. Sulabh Gupta, Mr. Harshil Jain,
Mr. Saravjeet Singh, Mr. Daksh
Sachdeva, Mr. Amit Gupta, Mr.
Shubham Sharma, Mr. Vikramaditya
Singh, Advocates.
Mr. P.S. Kushwaha, Addl. CP
(Special Cell), Insp. Anil Kumar,
Insp. Suhaib Ahmad, ASI Sanjay
Kumar, HC Dheeraj Goswami
(Special Cell)

+ **CRL.A. 271/2022**
SHIFA UR REHMAN

.....Appellant

Through: Mr.Salman Khurshid, Sr. Adv. with
Mr.Bilal Anwar Khan, Ms.Anshu
Kapoor and Ms.Sidra Khan, Advs
Versus

STATE OF NATIONAL CAPITAL TERRITORY PS CRIME
BRANCH BEING INVESTIGATED BY SPECIAL CELL



2025:DHC:7632-DB



.....Respondent

Through: Mr. Tushar Mehta, Solicitor General,
Mr. Chetan Sharma, ASG, Mr. Amit
Prasad, SPP for State, with Mr.
Dhruv Pande, Mr. Aarush Bhatia,
Mr. Ayodhya Prasad, Ms. Ruchika
Prasad, Mr. Harshil Jain, Mr.
Saravjeet Singh, Mr. Amit Gupta,
Mr. Shubham Sharma, Mr.
Vikramaditya Singh, Advocates. Mr.
P.S. Kushwaha, Addl. CP (Special
Cell), Insp. Anil Kumar, Insp.
Suhaib Ahmad, ASI Sanjay Kumar,
HC Dheeraj Goswami (Special Cell)

+ **CRL.A. 1149/2024**

MEERAN HAIDER (THROUGH PAIROKAR)Appellant

Through: Mr. Shri Singh, Mr. Faraz Maqbool,
Ms.Sana Juneja, Ms. A. Sahitya
Veena, Ms.Chinmayi Chatterjee,
Ms.Vismita Diwan, Ms.Deepshikha,
Ms.Arunima Nair & Ms.Swati
Khanna, Advs.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Tushar Mehta, Solicitor General,
Mr. Chetan Sharma, ASG, Mr. Amit
Prasad, SPP for State, with Mr.
Dhruv Pande, Mr. Aarush Bhatia,
Mr. Ayodhya Prasad, Ms. Ruchika
Prasad, Mr. Harshil Jain, Mr.
Saravjeet Singh, Mr. Amit Gupta,
Mr. Shubham Sharma, Mr.



2025:DHC:7632-DB



Vikramaditya Singh, Advocates. Mr.
P.S. Kushwaha, Addl. CP (Special
Cell), Insp. Anil Kumar, Insp.
Suhaib Ahmad, ASI Sanjay Kumar,
HC Dheeraj Goswami (Special Cell)

+ **CRL.A. 211/2022 & CRL.M.A. 13479/2023**

GULFISHA FATIMA

.....Appellant

Through: Mr. Sushil Bajaj, Mr. Sarim Naved,
Mr. Harsh Bora, Ms. Maulshree
Pathak & Mr. Mohammad Shahrukh,
Adv.

Versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Tushar Mehta, Solicitor General,
Mr. Chetan Sharma, ASG, Mr. Amit
Prasad, SPP for State, Mr. Madhukar
Pandey, SPP for State with Mr.
Dhruv Pande, Mr. Aarush Bhatia,
Mr. Ayodhya Prasad, Ms. Ruchika
Prasad, Mr. Umesh Kumar Singh,
Mr. Sulabh Gupta, Mr. Harshil Jain,
Mr. Saravjeet Singh, Mr. Daksh
Sachdeva, Mr. Amit Gupta, Mr.
Shubham Sharma, Mr. Vikramaditya
Singh, Advocates.

Mr. P.S. Kushwaha, Addl. CP
(Special Cell), Insp. Anil Kumar,
Insp. Suhaib Ahmad, ASI Sanjay
Kumar, HC Dheeraj Goswami
(Special Cell)



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Reserved on: 10.07.2025
Pronounced on: 02.09.2025

+ **CRL.A. 600/2022**
SHADAB AHMED

.....Appellant

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Kathik M. Mr. Rahul Dev, Ms. Punya Rekha Angara, Mr. Aman Akhtra, Ms. Vaundhara N, Ms. Sana Singh, Mr. Vinayak Gautam, Mr. Shivam Sharma, Ms. Diksha & Ms. Vasundhara Raj Tyagi, Advs.

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Chetan Sharma, ASG (through VC), Mr. Amit Prasad, SPP for State, Mr. Madhukar Pandey, SPP (through VC) for State with Mr. Dhruv Pande, Mr. Aarush Bhatia, Mr. Ayodhya Prasad, Ms. Ruchika Prasad, Mr. Umesh Kumar Singh, Mr. Sulabh Gupta, Mr. Harshil Jain, Mr. Saravjeet Singh, Mr. Daksh Sachdeva, Mr. Amit Gupta, Mr. Shubham Sharma, Mr. Vikramaditya Singh, Advocates.
Mr. P.S. Kushwaha, Addl. CP (Special Cell), Mr. L.M. Negi, (Consultant, Special Cell), Insp. Anil Kumar, Insp. Suhaib Ahmad, ASI Sanjay Kumar, HC Dheeraj Goswami (Special Cell)



CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

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SHALINDER KAUR, J.

1. These Criminal Appeals have been filed by the Appellants under Section 21 (4) of the National Investigation Agency Act, 2008, challenging the respective Orders passed by the learned Additional Sessions Judge (ASJ-03), Shahdara District, Karkadooma Courts, (Delhi) (hereinafter referred to as the ‘Trial Court’), whereby the learned Trial Court dismissed the Bail Applications filed by the Appellants seeking grant of Regular Bail in connection with FIR No. 59/2020 dated 06.03.2020, originally registered under Sections 147, 148, 149, and 120B of the Indian Penal Code, 1860 (in short, ‘IPC’), at the Police Station Crime Branch, Delhi. Thereafter, offences under Sections 109, 114, 124A, 153A, 186, 201, 212, 295, 302, 307, 341, 353, 395, 419, 420, 427, 435, 436, 452, 454, 468, 471, and 34 of the IPC; Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 (in short, ‘PDPP’); Sections 25 and 26 of the Arms Act, 1959 (in short, ‘Arms Act’); and Sections 13, 16, 17, and 18 of the Unlawful Activities (Prevention) Act 1967 (in short, ‘UA(P) Act’) were added to the subject FIR.

2. As the present batch of Appeals arise out of similar set of facts, though outlining different alleged roles of the Appellants in the purported larger conspiracy, and involve an interwoven set of legal propositions, we deem it appropriate to adjudicate these appeals by way of this common Judgement.



THE BRIEF FACTUAL MATRIX: DELHI RIOTS: -

3. The factual narrative in the present matter emanates from the case of the prosecution, being one of a deep-rooted criminal conspiracy allegedly hatched by several accused persons and individuals, including the present Appellants, to commit large-scale riots in the National Capital Territory of Delhi, in protest against the enactment of the Citizenship Amendment Act, 2019 ('CAA') and the National Register of Citizens ('NRC'). These riots were allegedly carried out by inciting widespread communal violence on and around the 22nd, 23rd, and 24th of February, 2020, which resulted in the loss of 54 lives, including the death of a Senior Police Officer and an Intelligence Bureau Official, grievous injuries to several Police officers and members of the public, damage to more than 1,500 public and private properties, etc, apart from the other intangible harm caused to the Nation as a consequence.

4. As per the prosecution, the entire conspiracy of which the Appellants as well as other co-accused persons are alleged to be a part of, that ultimately led to the violent riots, can be categorized into the following phases, which also overlap with one another:

- **First Phase (December 2019):** Initiation, formation, and inclusion of WhatsApp Groups such as Muslim Student of JNU (**MSJ**), Delhi Protest Support Group (**DPSG**), JMI Coordination Committee (**JCC**), Jamia Awareness Campaign Team (**JACT**), and Student of Jamia (**SOJ**); with an intent to create multiple 24x7 sit-in protests across Delhi.



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- **Second Phase (December 2019-February 2020):** Early meetings and strategic mobilization by indulging participation from Student bodies and individuals, who also coordinated amongst themselves; development of the protest sites; circulation of inciteful pamphlets in Muslim-dominated areas; delivery of inflammatory speeches in various parts in India; and instilling the misleading propaganda to the masses from the Muslim Community against the CAA and NRC. This phase is also alleged to have included riots in JMI, Shaheen Bagh, and North-East Delhi, resulting in injuries to Police Officers and numerous members of the public.
- **Third Phase (January 2020-February 2020):** Escalation: This phase allegedly included holding of conspiratorial meetings, stockpiling of firearms, acid and petrol bombs, rods, stones, chilli powder, sticks, and other such items to be used in escalating the protest into riots, along with preparations for carrying out violence in the riots in a coordinated manner.
- **Fourth Phase (February 2020):** Implementation: This phase involved holding of disruptive Chakka-Jaams aiming at *disruption* of essential supplies in Delhi, using aforementioned items for weapons and dislocation of the public CCTVs in the adjoining areas for further escalation of confrontations and physical altercations with law enforcement agencies. This phase is alleged to have culminated in the February 2020 riots.



5. The Prosecution has claimed that these four phases indicate that the incidents were no ordinary protests, but were rather premeditated and well-orchestrated riots, planned out by the masterminds on a mass scale, intended to have nationwide implications, and to undermine the secular fabric of the nation. The motive of the key conspirators was allegedly to propagate their ulterior agenda of inciting communal tensions under the facade of opposition to the CAA/NRC.

6. The aforementioned four phases shall be discussed in detail, while analyzing the role of each of the Appellants in the alleged large-scale / deep-rooted Conspiracy, in their respective Appeals.

7. Relevantly, the investigation in the present case ensued on 06.03.2020, when the Subject FIR was registered at the P.S. Crime Branch on the basis of a complaint lodged by a Sub-Inspector (S.I.) Arvind Kumar, who had received information through a secret informer that the Delhi Riots, which took place in February 2020, were the result of a pre-planned conspiracy. Further investigation in the matter led to include other offences under the IPC as well as UA(P) Act, as noted hereinbefore.

8. The Prosecution filed the First Chargesheet on 16.09.2020, arraying 15 accused persons. On 17.09.2020, the learned Trial Court took cognizance of the matter and issued process against those 15 charge-sheeted accused persons.

9. As the investigation was still underway, the prosecution later filed the first Supplementary Chargesheet on 22.11.2020, arraying three additional accused persons.



10. The Tabular Chart below outlines the persons arrayed as accused in the Chargesheets filed by the Investigating Agency so far:

CHARGESHEET	NAME OF THE ACCUSED
Main Chargesheet filed on 16.09.2020	Abdul Khalid Saifi (A-1)
	Ishrat Jahan @ Pinki (A-2)
	Meeran Haider (A-3)
	Tahir Hussain (A-4)
	Gulfisha Khatoon @ Gul (A-5)
	Safoora Zargar (A-6)
	Shafa-Ur-Rehman (A-7)
	Asif Iqbal Tanha (A-8)
	Shadab Ahmad (A-9)
	Natasha Narwal (A-10)
	Devangana Kalita (A-11)
	Taslim Ahmad (A-12)
	Salim Malik @ Munna (A-13)
	Mohd. Salim Khan (A-14)
	Athar Khan (A-15)
First Supplementary Chargesheet filed on 22.11.2020	Faizan Khan (A-16)
	Sharjeel Imam (A-17)
	Umar Khalid (A-18)

(Emphasis supplied on the present Appellants)

11. On 24.11.2020, the learned Trial Court took Cognizance of the Supplementary Chargesheets for the offences mentioned hereinbefore, except for those under Sections 124A, 153A, 109, and 120B of the IPC, on account of pending Sanction in respect of these offences.

12. The Second and Third Supplementary Chargesheets were filed on 23.02.2021 and 02.03.2022, respectively, to bring on record further evidence collected by the Investigation Agency and invoking further



offences. Notably, the Prosecution also filed a Fourth Supplementary Chargesheet on 07.06.2023.

13. The Appellants had moved separate Bail Applications before the learned Trial Court, at different points in time, and some had also moved second Bail Applications, which were dismissed *vide* the respective Impugned Orders, leading to the filing of the present Appeals.

DELAY AND LONG PERIOD OF INCARCERATION: -

14. Having noted the brief factual matrix, and before we delve into the aspect of Conspiracy for setting the stage for adjudication of the present appeals, we may, at this stage itself, note that the common argument raised and emphasized throughout these Criminal Appeals seeking Regular Bail, is on the point of delay in trial and the period of incarceration already undergone by the Appellants as undertrials.

15. Relevantly, it merits mention that the grant of bail is not a mechanical exercise, nor can it rest upon a superficial appraisal of prosecution's material or evidence. The criminal jurisprudence is firmly rooted on many pillars, inclusive of which is the fair investigation and a fair trial, more so, the constitutional values underlying personal liberty cannot be set at naught by keeping an accused incarcerated. The Courts have to remain alive to both the ends of spectrum, on one hand, safeguarding the liberty of an accused, while on the other, ensuring the right of the prosecution to establish its case. The assessment of grant or refusal of bail, therefore, is also guided by a judicious balance between



these two considerations, so that the enforcement of criminal law is neither diluted nor diminished. Needless to say, it is an arduous task that rests upon the shoulders of the Court, to strike a balance between the two in the facts and circumstances of each of the case.

16. The learned counsels for the Appellants submitted that the undertrials have a right to a speedy trial, and any delay caused therein would violate the fundamental right to liberty of the accused persons as enshrined under Article 21 of the Constitution of India. It is contended that the Appellants have been languishing in custody for a long period since the date of their respective arrests. Moreso, it was submitted that, looking at the present pace of the proceedings before the learned Trial Court and the Prosecution's intention to examine 800-900 witnesses, there is no likelihood of the conclusion of the trial in the foreseeable future. Thus, continued detention of the Appellants in the judicial custody, merely on the ground that the offences for which the accused persons have been booked under are serious in nature, would not be justified.

17. The learned Senior Counsel and other learned counsels for the Appellants had collectively also placed reliance on the following decisions in support of their contentions:

- *Union of India v. K.A. Najeer*, (2021) 3 SCC 713
- *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh*, (2024) 8 SCC 293
- *Ashim Alias Asim Kumar Haranath Bhattacharya Alias Asim Bhattacharya Alias Aseem Kumar Bhattacharya v. National Investigation Agency*, (2022) 1 SCC 695.
- *Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr.*, (2024) 9 SCC 813.



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- **Mukesh Salam v. State of Chattisgarh & Anr.**, SLP (Crl.) No. 3655/2024, Date of Decision 30.08.2024.
- **Manish Sisodia v. Directorate of Enforcement**, (2024) SCC OnLine SC 1920.
- **Vijay Nair v. Directorate of Enforcement**, SLP(Criminal) Diary No. 22317/2024, dated 02.09.2024.
- **Javed Ali @ Javed v. National Investigation Agency**, 2024:DHC:8797-DB.
- **In re: Manirul Islam @ Doctor C.R.M.** (DB) No. 667/2023, Order dated 20.03.2023 (Calcutta High Court).
- **Padam Singhee v. Directorate of Enforcement**, Criminal Misc. Bail Application No. 32236/2024, dated 14.11.2024.
- **Jalauddin Khan v. Union of India**, Crl.A. 2787/2024 dated 03.07.2024.
- **Prem Prakash v. Union of India**, SLP (Crl.) No.5416/2024 decided on 28.08.2024.
- **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement** 2024 INSC 739.
- **SaumyaChaurasia v. Directorate of Enforcement**, SLP(Crl.) No. 12492/2024 dated 25.09.2024.
- **Padam Chand Jain v. Enforcement Directorate**, SLP(Crl.) No. 17476/2024, dated 16.01.2025.
- **Niranjan Singh Karam Singh Punjabi, Advocate v. Jitendra BhimrajBijjaya**, (1990) 4 SCC 76.
- **Mohd. Hakim v. State (NCT of Delhi)**, 2021 SCC OnLine Del 4623.
- **A. Ramachandran @ Raman v. CBI & Anr.**, 2015 SCC OnLine Ker 17832.
- **Tapas Kumar Palit v. State of Chhatisgarh**, Crl.A. No. 738/2025; Supreme Court.
- **NIA vs. Areeb Ejaz Majeed**, 2021 SCC OnLine Bom 239.
- **Thwaha Fasal v. Union of India** (2021) SCC OnLine SC 1000
- **Sidhique Kappan v. State of U.P.** (2022) SCC OnLine SC 1195
- **NIA vs Zahoor Ahmad Shah Watali**, 2019 5 SCC 1
- **Gurwinder Singh vs State of Punjab and Another** (2024) 5 SCC 403
- **Shaheen Welfare Assn.v.Union of India**, (1996) 2 SCC 616
- **Rona Jacob Wilson vs the State of Maharashtra**, Crl.A. No. 848 of 2024; High Court of Judicature at Bombay.

18. The learned Solicitor General, Mr. Tushar Mehta, the learned Additional Solicitor General, Mr. Chetan Sharma, and Mr. Amit Prasad, learned Special Public Prosecutor ('SPP'), vehemently contended that



although a long period of incarceration may, in certain circumstances, be a ground entitling an accused to the grant of bail, it is by no means a universally applicable rule. They submitted that the grant of bail must necessarily depend on the facts and circumstances of each case.

19. In this regard, we may note the position of law as laid in ***Nikesh Tarachand Shah v. Union of India***, (2018) 11 SCC 1, wherein the Supreme Court held that the power to grant bail to an accused is a discretionary relief available to the Courts, and that no hard and fast rule could be prescribed governing the exercise of the such discretion under Section 437 and 439 of the Code of Criminal Procedure, 1973 (in short, ‘Cr.PC’). It was observed as under:

“19. In Gurbaksh Singh Sibbia v.State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465], the purpose of granting bail is set out with great felicity as follows: (SCC pp. 586-88, paras 27-30)

“27..... it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperorv. H.L. Hutchinson [Emperorv.H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356 : 1931 Cri LJ 1271] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any



particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. **It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception.** An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in *Gudikanti Narasimhuluv. State* [*Gudikanti Narasimhuluv. State*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

'1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right.'

29. In *Gurcharan Singh v. State (UT of Delhi)* [*Gurcharan Singh v. State (UT of Delhi)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

'29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the



exercise of judicial discretion in granting or cancelling bail.

30. In *AMERICAN JURISPRUDENCE* (2nd, Vol. 8, p. 806, para 39), it is stated:

‘Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.’

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

(Emphasis supplied)

20. It is trite law that ‘grant of bail is the rule and refusal is the exception’, however, the exercise of such discretion will depend on the facts and circumstances of each case, and no single circumstance alone can serve as a universal yardstick to grant or refuse bail to an individual.

21. When it comes to the Special Statutes, such as the UA(P) Act, the Prevention of Money Laundering Act, 2002 (in short, ‘PMLA’), and the Maharashtra Control of Organised Crime Act, 1999 (in short, ‘MCOCA’), etc., the Courts, while adjudicating the bail applications for offences under such Special Statutes, are required to take into consideration the specific provisions governing bail thereunder. Relevantly, we may note from the decision in ***Union of India v. Rattan Mallik***, (2009) 2 SCC 624, as under:



“9. The broad principles which should weigh with the court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail, these provisions cannot be ignored while dealing with such an application.”

22. Further, the Supreme Court in ***Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act)***, (2015) 16 SCC 1, observed as below:

“28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure.....PMLA is a special statute enacted by Parliament for dealing with money-laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.”

(Emphasis supplied)

BAR UNDER SECTION 43D OF THE UA(P) ACT: -

23. Before we discuss this contention further, it would be appropriate to also note the statutory embargo placed upon the Courts under Section 43D of the UA(P) Act. The relevant provisions thereof are reproduced below:

“43D. Modified application of certain provisions of



the Code

XXXXXXXXXXXX

(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 subsection (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.”

24. From a reading of the above, it is clear that the Courts’ discretion to grant bail is circumscribed by virtue of Section 43D(5) of the UA (P) Act. The *proviso* itself states that the accused person shall “not” be released on bail if the Court, upon perusal of the case diary or the final report submitted by the Investigation Agency, is of the opinion that there are reasonable grounds to believe the accusations against the accused are *prima facie* true.

25. Relevantly, the Supreme Court in the case of **Gurwinder Singh** (supra), had encapsulated the guidelines for adjudicating bail applications under the UA(P) Act, as laid down by it in **Zahoor Ahmad Shah Watali**, (supra), in the following words:

“Test for Rejection of Bail : Guidelines as laid down by Supreme Court in Watali’s Case

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section



43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

- **Meaning of 'Prima facie true'** [para 23] : On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

- **Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges Compared** [para 23] : Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

- **Reasoning, necessary but no detailed evaluation of evidence** [para 24] : 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.

- **Record a finding on broad probabilities, not based on proof beyond doubt** [para 24]: “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.”

- **Duration of the limitation under Section 43D(5)** [para 26] : The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

- **Material on record must be analysed as a ‘whole’; no piecemeal analysis** [para 27] : 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.

- **Contents of documents to be presumed as true** [para 27] : The Court must look at the contents of the document and take such document into account as it is.

- **Admissibility of documents relied upon by Prosecution cannot be questioned** [para 27]. The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.....In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.”



26. A review petition was also filed against **Gurwinder** (supra), being Review Petition (CRL.) NO.299/2024, and the Supreme Court, while dismissing the same *vide* its Order dated 16.07.2024, observed as under:

“1) This Review Petition has been filed seeking to review Judgment dated 07.02.2024 both on facts and law. As facts have been duly taken note of, we do not find any reason to interfere with the Judgment passed. On the question of law, reliance has been placed on the decisions of this Court in KA Najeer v. Union of India, (2021) 3 SCC 713 and Vernon v. State of Maharashtra, (2023) SCC OnLine SC 885 and our decision is based on the facts and circumstances unfolded.
2) Accordingly, the Review Petition stands dismissed.”

(Emphasis Supplied)

27. Thus, the position of law is no longer *res integra* as to the guidelines that the Courts should generally adhere to while deciding the grant or refusal of bail to an accused booked for offences under the UA (P) Act. The Court has to examine whether there are reasonable grounds to believe the allegations against an accused to be *prima facie* true, considering the material collected by the investigating agency presented alongwith the final report. The admissibility and credibility of the evidence cannot be examined at the stage of bail, and such material must be presumed to be true.

28. However, we may also remind ourselves that the Courts are expected to make a ‘*surface analysis*’ of the evidence by analyzing the same as a whole and record a finding on broad probabilities, without there being a piecemeal analysis or dissection of evidence or circumstance in isolation as



well as satisfy itself of the probative value of the evidence, not being weak. However, in the present appeals, both the sides have gone into scrutinizing the evidence in minute detail, by adverting to it piece by piece. Further, the ‘*twin-prong test*’ is also required to be satisfied by the accused, demonstrating that he does not pose a flight risk and has no intention of tampering with evidence or influencing any of the witnesses connected to the case.

29. Proceeding further, we would like to note that there has been much deliberation on the point of delay in trial and the period of custody suffered by an accused awaiting trial, even in offences under the Special Statutes. It has been held by the Supreme Court that though the rigorous provisions laid down by such Special Statutes place an embargo on the Courts, ordinarily leading to the rejection of bail to an accused, the same does not denude the “discretion” of the Constitutional Courts to grant bail. It would be apposite to refer to the various decisions of the Supreme Court, as well as this Court in this regard.

30. The Supreme Court, in the case of ***Union of India v. K.A. Najeeb*** (supra), while referring to the provision under Section 43-D of the UA(P) Act, observed as under:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of



proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

31. The Supreme Court in ***Sheikh Javed Iqbal*** (supra), while referring to ***Javed Gulam Nabi Shaikh*** (supra), ***Shaheen Welfare Assn.*** (supra) and several of its other decisions, observed as under:

“24. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

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28. Similarly, in *Shaheen Welfare Assn.v.Union of India*[*Shaheen Welfare Assn.v.Union of India*, (1996) 2 SCC 616 : 1996 SCC (Cri) 366] , this Court was considering a public interest litigation wherein certain reliefs were sought for undertrial prisoners charged with offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (“the TADA Act”) languishing in jail for considerable periods of time. This Court observed



that while liberty of a citizen must be zealously safeguarded by the courts but, at the same time, in the context of stringent laws like the TADA Act, the interest of the victims and the collective interest of the community should also not be lost sight of. While balancing the competing interest, this Court observed that the ultimate justification for deprivation of liberty of an undertrial can only be on account of the accused-undertrial being found guilty of the offences for which he is charged and is being tried. If such a finding is not likely to be arrived at within a reasonable time, some relief(s) becomes necessary. Therefore, a pragmatic approach is required.”

32. This Court also had an occasion to examine the issue of striking a balance between a long period of incarceration and the delay in trial *vis-à-vis* the right of an accused to a speedy trial and liberty. This Court had scrutinized several judgments of the Supreme Court as well as this Court, and after analyzing the same, held in ***Naval Kishore Kapoor v. NIA***, 2025 SCC OnLine Del 1561, as under:

“71. In this background, the position of law stands re-affirmed that an accused is entitled to the speedy trial as he has a Fundamental Right to the same as well as right to life and personal liberty enshrined in Article 21 of the Constitution of India and the Court is not deprived of the power to grant bail even in special enactments. If the alleged offence is a serious one, it is all the more necessary that the Prosecution should ensure that the trial is expedited and concluded at the earliest. Also, when a trial is prolonged, it is not open to the Prosecution to oppose the bail application. However, in particular facts of a given case, the Constitutional Court may also decline to grant bail.

72. The position is also settled that the person accused of offences under UA(P) Act shall not be



released on bail if it appears that there are reasonable grounds to believe that the allegations against an accused are prima facie true. Specifically, in cases where the Charges have already been framed, the rigours are stricter. As far as the twin prong test is concerned, the first prong pertains to whether the test for rejection of bail are sufficient and satisfied. The other prong being the satisfaction of the triple test, on the factors such as flight risk, influencing of witness and tampering of evidence.”

33. From a perusal of the aforementioned extracts, it emerges that the Constitutional Courts are well within their powers to grant bail to an undertrial who has suffered a long period of incarceration pending trial, thereby, setting him at liberty. The Courts are also to secure the right to a speedy trial of an accused, flowing from Article 21 of the Constitution of India. However, the grant of bail on the sole ground of long incarceration and delay in trial is not a universally applicable rule in all the cases. The discretion to grant or deny bail vests with the Constitutional Court, depending upon the peculiar facts and circumstances of each of the case. The Supreme Court in ***Sheikh Javed Iqbal*** (supra), also noted that “*in the given facts of a particular case, a constitutional court may decline to grant bail*”. Further, the interest and safety of the society at large, apart from the victims and their families, is also a factor to be taken into consideration by the Courts while adjudicating bail applications.

CONSPIRACY- THE LEGAL POSITION: -

34. The crux of the arguments raised on behalf of the learned Senior counsels and counsels for the Appellants is that none of the Appellants



were part of the conspiracy as alleged by the prosecution, and their role was limited to only being a part of a peaceful protest to voice their resentment against the CAA/NRC, to carry out the protests, to involve members of the public, and that for the same, they may have participated in meetings and delivered speeches. It was contended that since a large number of the public had gathered, perhaps out of curiosity, to be a part of the protests, it could not be concluded that the appellants had conspired to carry out unlawful or illegal activities.

35. It was further submitted that due to the large public gathering and subsequent police action to control the crowd, spontaneous riots erupted in which the appellants had no role to play. They have jointly submitted that the prosecution has no evidence to establish that the Appellants had conspired to incite riots so as to cause violence, damage public property, or create fear amongst the masses. It was submitted that the peaceful protests, unfortunately, turned violent, which was never the intent of the Appellants.

36. Mr. Tushar Mehta, the learned Solicitor General raised strong objection to the aforesaid submissions, by contending that these were not ordinary riots, rather, they were well-orchestrated, and strategically planned and devised to coincide with the State visit of the President of the USA. He further submitted that it was the intention of the Appellants- Sharjeel Imam and Umar Khalid, to globally defame the Nation and to divide the Country at its heart on religious lines. He vociferously contended that a movement of students does not start with the creation of a communal group, which was part of the larger conspiracy. Therefore, this matter could



not be treated on the same parameters as a normal riot that may have suddenly erupted from a peaceful protest and turned ugly.

37. It was also contended by Mr. Tushar Mehta that each of the conspirators had played a vital role in the planning, strategizing, and execution of the criminal conspiracy, all under the guise of protest against the CAA/NRC. The masterminds/top conspirators, he submitted, disseminated their messages through various speeches, pamphlets, WhatsApp Groups, etc., and their instructions were carried out by the foot soldiers. He contended that keeping in view the large-scale violence that was sought to be undertaken, and which eventually took place in late February of 2020, resulting in the loss of 53 lives, causing injuries to numerous members of the public, Police Officers and causing damage to the public properties, the Appellants are not entitled to bail.

38. The learned Senior Counsels and Counsels for the parties have collectively relied upon the following decisions:

- ***Kehar Singh & Others v. State (Delhi Administration)***, (1988) 3 SCC 609
- ***Firozuddin Basheeruddin v. State of Kerala***, (2001) 7 SCC 596
- ***Param Hans Yadav and Sadanand Tripathi v. State of Bihar***, (1987) 2 SCC 197.
- ***State v. Nalini***, (1999) 5 SCC 253.
- ***State (NCT of Delhi) v. Navjot Sandhu***, (2005) 11 SCC 600.
- ***Devender Gupta v. NIA***, (2014) SCC Online AP 192.
- ***State of M.P. v. Sheetla Sahai***, (2009) 8 SCC 617.
- ***Pandurang v. State of Hyderabad***, (1954) 2 SCC 826.

39. To address the underlying narrative, it would be relevant to note that one of the important facts of the case of the Prosecution against the Appellants and other accused persons, is the allegation of Conspiracy.



Therefore, we may refer to some of the decisions of the Supreme Court as well as this Court in this regard.

40. In **Yash Pal Mittal v. State of Punjab**, (1977) 4 SCC 540, the Supreme Court discussed the offence of Criminal Conspiracy under Sections 120A and 120B of the IPC by holding as under:

“8. Besides, the other charges levelled against the alleged co-conspirators also throw sufficient light on the object of the conspiracy and it is not necessary that the appellant should figure or for the matter of that all accused should figure in all the charges.

9. The offence of criminal conspiracy under Section 120-A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when



they are associated with the object of the conspiracy. The significance of criminal conspiracy, under Section 120-A is brought out pithily by this Court in *Major E.G. Barsay v. State of Bombay* [AIR 1961 SC 1762 : (1962) 2 SCR 195, 228 : (1962) 2 Cri LJ 828] thus:

“The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Penal Code, 1860, an act would be illegal if it is an offence or if it is prohibited by law.”

41. The Supreme Court in ***Kehar Singh & Others v. State (Delhi Administration)*** (supra), has held as under:

“275. Generally, a Conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The Prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The Prosecution will also more often rely upon circumstantial evidence. The Conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of Conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the



limited nature of this proposition: [1974 Criminal Law Review 297, 299]

“Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties ‘actually came together and agreed in terms’ to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was ‘a tacit understanding between conspirators as to what should be done’.”

(Emphasis Supplied)

42. Further, the Supreme Court has elaborated on the concept of Conspiracy in the case of ***Firozuddin Basheeruddin v. State of Kerala*** (supra), by holding as under:

“23. Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state.....Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity.....Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of



cooperation between the accused.....

24. Another major problem which arises in connection with the requirement of an agreement is that of determining the scope of a conspiracy — who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed several different models with which to approach the question of scope. One such model is that of a chain, where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. No matter how diverse the goals of a large criminal organisation, there is but one objective: to promote the furtherance of the enterprise. So far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast.

25.Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. ...”

(Emphasis Supplied)

43. What emerges from the reading of the aforesaid decisions is that there may not be direct evidence to establish a conspiracy, and the Courts may have to rely on circumstantial evidence. There is also no necessity of a formal or verbal agreement; the proof of shared intention would suffice, which can be inferred from the conduct of the accused persons. Such an inference may be drawn from their act or expression, indicating a mutual agreement or intention. Conspiracy often involves a chain of actions or a division of roles, with liability extending to all participants. The offence



lies in the agreement to commit an illegal act, or a legal act by illegal means, not necessarily in its execution. It is also not necessary for each of the conspirators to know the ultimate plan or the precise role of the other conspirators.

44. Other decisions relied upon by the parties, re-affirm the said position of law as noted by us hereinabove.

RIGHT TO PROTEST VIS-À-VIS RIGHT TO FREEDOM OF SPEECH & EXPRESSION:-

45. At this juncture, we may hasten to note that much emphasis has been laid in the submissions by the Appellants that the Appellants were acting well within the constitutional parameters, while exercising their right to protest against a piece of legislation, namely, the CAA/NRC. It was contended on behalf of the Appellants that, especially in a democratic Country like ours, the right of the people to show dissent towards the Legislative Actions is enshrined in Article 19 of the Constitution of India, which provides for the Freedom of Speech, Expression, and Association, etc., which is inclusive of the right to hold such protests.

46. On the other hand, it was contended by the learned SPP, that the protests, in the guise of *Chakka-Jaams*, were well planned in advance and were violent in nature, injuring many and causing huge financial losses by damaging public and private properties, thus, the Appellants cannot now claim a right as their acts fall outside the confines of the fundamental right to Freedom of Speech and Expression.



47. We are conscious that the right to participate in peaceful protests and to make speeches in public meetings is protected under Article 19(1)(a), and the same cannot be blatantly curtailed. Nonetheless, this right is not absolute, as it is subject to the reasonable restrictions imposed by the Constitution. If the exercise of an unfettered right to protest were permitted, it would damage the constitutional framework and impinge upon the law-and-order situation in the country. Any conspiratorial violence under the garb of protests or demonstrations by the citizens cannot be permitted. Such actions must be regulated and checked by the State Machinery, as they do not fall within the ambit of the Freedom of Speech, Expression, and Association.

48. To build up on this context, we may refer to the decision of the Supreme Court in ***Mazdoor Kisan Shakti Sangathan v. Union of India***, (2018) 17 SCC 324, wherein it has been observed as thus:

“48. ...Undoubtedly, holding peaceful demonstrations by the citizenry in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. Article 19(1)(a) confers a very valuable right on the citizens, namely, right of free speech. Likewise, Article 19(1)(b) gives the right to assemble peacefully and without arms. Together, both these rights ensure that the people of this country have the right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking. Legitimate dissent is a distinguishable feature of any democracy. Question is not as to whether the issue raised by the



protestors is right or wrong or it is justified or unjustified. The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They have a right to express their views. A particular cause which, in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. That is the reason that this Court has always protected the valuable right of peaceful and orderly demonstrations and protests.

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50. In *Kameshwar Prasad v. State of Bihar* [*Kameshwar Prasad v. State of Bihar*, 1962 Supp (3) SCR 369 : AIR 1962 SC 1166] the Court was mainly dealing with the question whether the right to make a demonstration is protected under Articles 19(1)(a) and (b) and whether a government servant is entitled to this right. This Court held: (AIR p. 1171, para 13)

*“13.... A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Articles 19(1)(a) and 19(1)(b). **It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances.**”*

51. The Supreme Court has also gone beyond upholding the right to protest as a fundamental right and has held that the State must aid the right to assembly of the citizens. In the Constitution Bench



judgment, *Himat Lal K. Shah v. Commr. of Police* [*Himat Lal K. Shah v. Commr. of Police*, (1973) 1 SCC 227 : 1973 SCC (Cri) 280] , while dealing with the challenge to the Rules framed under the Bombay Police Act regulating public meetings on streets, held that the **Government has power to regulate which includes prohibition of public meetings on streets or highways to avoid nuisance or disruption to traffic and thus, it can provide a public meeting on roads, but it does not mean that the Government can close all the streets or open areas for public meetings, thus denying the fundamental right which flows from Articles 19(1)(a) and (b).** The Court held: (SCC pp. 239 & 248, paras 33 & 70)

“33. This is true but nevertheless the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order.”

(Emphasis supplied)

49. Recently, the Supreme Court, in ***Imran Pratapgadhi v. State of Gujarat & Ors.***, 2025 SCC OnLine SC 678, observed as under:

“14. The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(a). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. **But the protest or dissent must be within four corners of the modes permissible in a democratic set up.** It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19. In the



present case, the appellant has not at all crossed the line.”

(Emphasis Supplied)

50. From the conjoint reading of the extracted observations, it emerges that certainly, the Constitution affords citizens the right to protest and carry out demonstrations or agitations, provided that they are orderly, peaceful and without arms. Moreso, the citizens have a fundamental right to voice their concerns against the legislative actions, which only fortifies the Democratic setup by indicating the participation of the citizens in governance. This right is crucial, as it enables the citizens to express their dissent, expose flaws in governance, and demand accountability from the State Authorities. However, such actions must be within the bounds of law.

51. Learned counsels for the Appellants placed reliance on the following decisions which recapitulate this aspect, as noted above:

- ***Manohar Damodar Patil v. Govt. of Bombay***, (1950) SCC Online Bom 8.
- ***S. Rangarajan v. P. Jagjivan Ram***, (1989) 2 SCC 574.

52. Drawing upon the above discussion, we shall, in view of Section 43D(5) of the UA (P) Act, be subsequently examining the role of each of the Appellants in the Conspiracy as alleged by the prosecution in the facts and circumstances of the present Appeals to formulate a *prima facie* opinion.

CRL.A. 184/2022 AND CRL.A. 631/2024: SHARJEEL IMAM AND UMAR KHALID: -

53. At the outset, we would like to note that based on the prosecution's narrative, the Appellants-Sharjeel Imam and Umar Khalid have been



ascribed the role of having played a central and key part in the alleged criminal conspiracy by organizing, coordinating and inciting masses to protests, which escalated into violence and communal unrest in various places in Delhi, leading upto the large-scale February, 2020 – Delhi Riots. Therefore, for the sake of convenience and given their attributed role, which appears to stand on the same footing, we deem it appropriate to decide their appeals together.

54. As per the prosecution, the Appellant-Sharjeel Imam is a holder of an M.Phil and Master's degree from Jawaharlal Nehru University (JNU), and during his time as a student in JNU, he had a first registered criminal case related to seditious activities, with the Appellant-Umar Khalid as his mentor and the prime accused in the said criminal case. It is also alleged by the Prosecution that Appellant-Sharjeel Imam had also published his views on ***“The Hindu Republic:- Seven decades of Muslim Exclusion in India”, “It's Time we Absolve Jinnah”, “Remembering 1980:- Moradabad Muslim Massacre: A harsh indictment of ‘secular’ and Left politics”, and “Islamophobia in JNU is also rampant among left-wing student organisations claiming to be secular.”***

55. It is alleged that, apart from the above, the following four events also led to his emergence as a religious extremist:

- Declaration of Triple Talaq as illegal;
- Judgment of the Supreme Court in the Babri Masjid case at Ayodhya;
- Abrogation of Article 370 of the Constitution of India; and
- Introduction of the Citizenship Amendment Bill (CAB).



56. As per the prosecution, the Conspiracy was set into motion by the Appellant Sharjeel Imam, who, after the passing of the Resolution by the Cabinet Committee to present the CAB in both Houses of Parliament on 04.12.2019, on the instructions of the Appellant-Umar Khalid, created a Whatsapp group called “**Muslim Students of Jamia**” (**MSJ**) on the night of 5th – 6th December 2019, with the Appellant-Umar Khalid added as a member a few days later. The prosecution has alleged that both of them played a major role in orchestrating the different phases of the conspiracy, being the masterminds behind the entire sequence of events.

57. On 06.12.2019, the Appellant-Sharjeel Imam created and printed alleged inciteful pamphlets to incite communal tensions, calling the Muslim Students to join the protest by United Against Hate (UAH) on 07.12.2019 at Jantar Mantar. It is further alleged that the Appellant-Sharjeel Imam, in a Chat with Arshad Warsi of the Student of Jamia (SOJ), stated that he was planning for a mass mobilization.

58. On the said date, both these Appellants delivered speeches at Jantar Mantar, and the Appellant-Umar Khalid instructed the Appellant-Sharjeel Imam to mobilize students of JNU, Jamia Milia Islamia (JMI), Aligarh Muslim University (AMU), and the Delhi University (DU). It was also agreed by them to utilize social media for large-scale outreach and mobilization with the aim of organize campaigns in Muslim dominated areas.

59. A meeting was held on 08.12.2019 at 6/6 Jangpura B, Delhi-14, allegedly attended by both these appellants, wherein it was decided that the



Appellant-Sharjeel Imam would mobilize and lead the students from various Universities and colleges across Delhi. Subsequently, another group, namely the CAB Team, was formed, allegedly opposing the CAA and for further mobilization.

60. On 09.12.2019, the CAB bill was passed by the Lok Sabha. On 10.12.2019, the members of MSJ burnt a copy of the CAA on the JNU campus. Thereafter, a protest was called on the said date by the CAB Team at Jantar Mantar, allegedly attended by the Appellant-Umar Khalid and others. The Appellant-Sharjeel Imam visited Aligarh on 11.12.2019 to further propagate the idea of *Chakka-Jaam*.

61. It is also alleged by the Prosecution that the conspirators had every intention to give protests a secular look by involving non-muslims, however, they also ensured that there is no over-secularisation of their movement.

62. In the intervening night of 12th-13th December 2020, a new WhatsApp group, namely, “***Muslim students of JNU_1***”, was created at the behest of the Appellant-Sharjeel Imam.

63. Later, in the evening of 13.12.2019, the Appellants-Sharjeel Imam and Umar Khalid visited JMI University, where the Appellant-Umar Khalid introduced the Appellant-Sharjeel Imam and others to the crowd as his team member and explained to them the difference between *Chakka-Jaam* and a *Dharna*. Further, the Appellant-Umar Khalid had allegedly instructed the Appellant-Sharjeel Imam to start *Chakka-Jaam* at Shaheen Bagh and at Gate No. 7 of JMI University. It is alleged that the Appellant-



Sharjeel Imam gave a provocative speech on the said date to instigate the crowd to protests and hold *chakka-jaams* by inculcating the idea of disruption of essential services as a means to achieve their goals.

64. On 13.12.2019, riots took place at Jamia gate no. 7, where civilians and 20 police personnel sustained injuries, private and public property was damaged and essential services were disrupted. It is alleged that the presence of Appellant-Sharjeel Imam in Jamia Millia Islamia is reflected by CDR location of his mobile number.

65. It is alleged that, in the morning of 15.12.2019, the Appellant-Sharjeel Imam held a meeting with the MSJ Core Committee at Teflas, an eatery at JNU, and decided the further course of the plan, including roping in the Popular Front of India (PFI), and Jamaat-e-Islami Hind (JEIH), and others, for protests against the CAA/NRC.

66. It is further alleged that the Appellants-Sharjeel Imam and Umar Khalid, and others visited JMI University again later that day and gathered a number of protestors. The Appellant-Umar Khalid and others instigated the protestors, which resulted into violent riots taking place in the area of police station Jamia Nagar and New Friends Colony. In these riots, 45 Police personnel and 95 civilians were injured; two Police booths were burned; 3 Police motorcycles, QRT Gypsy were damaged; and three DTC and 8 private buses were also damaged.

67. Thereafter, the Appellant-Sharjeel Imam, as earlier instructed to him, moved to Shaheen Bagh and blocked Road no. 13 (Kalindi Kunj road) at Shaheen Bagh. Thus, two protest sites, JMI University and Shaheen Bagh,



were created by these Appellants. It is alleged by the prosecution that the 24x7 sit in protest at Shaheen Bagh was not organic, and in fact, locals were against the same.

68. It is claimed by the prosecution that pursuant to a direction from the Appellant-Umar Khalid and others, on 16.12.2019, at the JMI University, a coordination committee, that is, ***“Jamia Co-ordinate Committee” (JCC)***, was constituted by the co-accused persons for an organized anti-CAA/NRC protest at JMI University. It is alleged that, resultantly, Gate No. 7 of the said University became a protest site. The purpose of this group, claimed to be the brainchild of the Appellant-Umar Khalid and one other, was to rope in different student organizations of the JMI University, which included SIO, AAJMI, SFI, JSF, and other student organizations and activists.

69. It is also alleged that the Appellant-Umar Khalid, had a role to play in the first phase of the riots that took place in December 2019 in Delhi.

70. The prosecution has, thus, attributed to them the role of being mobilizers, ideologues, and active participants in several violent protests, including the riots of 13th-16th December 2019 at Jamia Nagar and New Friends Colony, which involved destruction of public property and injuries to police personnel. For these incidents, two FIRs bearing No. 296/2019 and 242/2019 were registered at the respective Police Stations.

71. On 19.12.2019, ***“Hum Bharat ke Log (Swaraj Abhiyan & UAH)”*** organized a protest march from Red Fort to Shaheed Park, ITO; similarly, a protest march was organized at Mandi House. It is alleged that the permission to hold the protest was rejected and Section 144 of the Cr.P.C.



was imposed in the area, however, the protestors continued, and as a consequence, the Appellant-Umar Khalid and others were detained. The prosecution has alleged that these events were celebrated as a success, and it gave the Appellants wide publicity.

72. It is alleged that, on 23.12.2019, at the directions of the Appellant-Umar Khalid, another WhatsApp group, namely the “**Jamia Awareness Campaign Team**” (JACT), was constituted. Later, a protest site at Khureji was also created for anti-CAA protests. On 24.12.2019, another protest was held at Jantar Mantar, and the Appellant-Umar Khalid also delivered a speech. It was decided between the co-conspirators that the Indian Social Institute, Lodhi Road, would be the venue for the first meeting between the organizations and individuals opposing the CAA, for the purpose of creating further protest sites.

73. Another meeting on 26.12.2019 was held, and the Appellant-Umar Khalid and other co-accused persons and individuals attended, wherein, creation of protest sites by being women-centric near Muslim majority areas, collection of funds to sustain the sites, etc, were discussed. Thus, the WhatsApp group “**Delhi Protest Support Group**” (DPSG) came to be created on 28.12.2019, and the members who attended the said meeting were added to the same.

74. It is alleged that, on 08.01.2020, the Appellant-Umar Khalid met with other co-accused persons at the office of the PFI at Shaheen Bagh, to discuss about funds for procuring acid, firearms, etc. Further meeting was held by the Appellant-Sharjeel Imam at Teflas, JNU, on 10–11th.01.2020.



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75. On 12.01.2020, the Appellant-Sharjeel Imam suggested the idea of raising slogans “Nara-e-Takbeer” and “La ilahailallah”, which were subsequently raised during the visit of Former Minister Shashi Tharoor in JMI University.

76. The Appellant-Sharjeel Imam is also alleged to have visited the Khureji and the Seelampur Protest sites on 15.01.2020, and to Aligarh Muslim University on 16.01.2020, for mobilization of Muslim Students against the CAA/NRC, for which an FIR No. 55/2020 was registered at Aligarh, Uttar Pradesh.

77. It is alleged that two more inflammatory speeches were delivered by the Appellant-Sharjeel Imam; one at Asanol, West Bengal, on 22.01.2020, and another at Chakand, Gaya, Bihar, on 23.01.2020, for further mobilization of the Muslim population against the CAA/NRC.

78. On 23rd-24th.01.2020, the Appellant-Umar Khalid visited the Seelampur protest site and allegedly held a secret meeting, directing the attendees to escalate protests into riots and stating that spilling of blood of the policemen is the only means to bring the government to its knees and secure withdrawal of the CAA/NRC. In the said meeting, he directed the co-accused persons to induce women of Seelampur to gather knives, bottles, acids, stones, chilli powder, and other dangerous materials to be used in the riots.

79. On 11.02.2020, the official news broke regarding the State visit of the President of the United States of America on 24th and 25th February 2020. Later, on 17.02.2020, the Appellant-Umar Khalid gave a provocative



speech at Amravati, Maharashtra, making reference to the visit of the said dignitary and encouraging listeners and protesters to come out for protests on those dates.

80. It is alleged that in furtherance of the conspiracy, on 22.02.2020, at the directions of the Appellant-Umar Khalid and other co-accused persons, protesters were moved from one protest site to another to undertake *Chakka-Jaams*, thereby, completely blocking the public roads and highways. A similar course of action allegedly occurred on 23.02.2020 at other protest sites, with protestors being moved in coordination to create mass chaos. These *Chakka-Jaams* escalated into violence, damaging properties, public and private, and attacks on police and Non-Muslims.

81. It is further alleged that, on 24.02.2020, a few members of the DPSG threatened to expose those responsible for the riots, and there was a flurry of calls between the Appellant-Umar Khalid and other co-accused persons around 5 P.M. It is also alleged that the Appellant-Umar Khalid was provided with Personal Security Officers (PSOs) by the Delhi Police after there was an attempted firing incident near the Constitution Club in New Delhi, where he had gone to attend a meeting called by UAH. However, the investigations allegedly revealed that the Appellant did not take the PSOs with him to the conspiratorial meetings.

82. Further, it is alleged that the conduct of both the Appellants shows premeditation and orchestration of the entire plan. Collectively, as per prosecution, these acts, communications, speeches, etc., fortify the allegation that these Appellants were not mere participants in the entire



chain of events, but rather were the top conspirators and the masterminds of the larger conspiracy to cause communal violence and riots in the Capital of the Country, thereby threatening the unity, security, and sovereignty of India.

83. In the course of trial proceedings, the Appellant-Sharjeel Imam had filed an application, bearing I.A. No. 81/2021 in S.C. No. 163/2020 titled ***State v. Tahir Hussain & Ors.***, before the learned Trial Court seeking Regular Bail in the subject FIR, which came to be dismissed *vide* Order dated 11.04.2022.

84. The Appellant-Umar Khalid, on the other hand, had moved a second bail application, being Bail Application No. 441/2024, before the learned Trial Court, which was dismissed *vide* Impugned Order dated 28.05.2024.

85. Aggrieved thereby, the Appellants have moved the present Appeals before this Court, challenging their respective Orders and praying for the grant of regular bail.

SUBMISSIONS OF THE APPELLANTS:-

86. The learned Senior Counsels and counsels for the Appellants submitted that the case of the prosecution against the Appellants is weak, inasmuch as, the evidence included in the Charge-sheet and the supporting material do not, as such, implicate the Appellants in any of the offences for which they have been Charge-sheeted.

87. It was submitted that the prosecution has no evidence of their presence in any meeting where violence was conspired. They have been arrayed as accused in the present case only on account of their call for



chakka-jaam, and on the basis of the statements of witnesses, most of whom have been shown as protected witnesses. However, the statements of such witnesses are merely reproduction of each other, and when taken at face value, do not disclose the commission of the alleged offences by the Appellants, rather they appear to be concocted, and the witnesses have been coerced into giving such statements out of fear of arrest.

88. It was contended that the statements of these witnesses were also recorded belatedly, many of which were obtained after the arrest of the Appellants, and therefore, they lack reliability to support the case of conspiracy against them, also being riddled with serious lacunae and material misrepresentations and thus, no *prima facie* case is made out to refuse Bail to the Appellants.

89. Moreover, it was submitted that there has been no recovery of arms or ammunition from, or at the instance of, either of the Appellants. They contended that the Call Detail Records (CDRs) that are being relied upon by the prosecution only loosely connect the Appellants to certain places of meetings or presence near protest sites, however, they do not, in absolute terms, establish their presence, as the CDRs only indicate physical presence within the zone of a particular tower, which cannot be taken as proof of the person being at the same place or of having met. Even otherwise, it was urged, that the presence of the Appellants at a particular place is not proof of the commission of an offence by them at the said site or otherwise.

90. The learned counsels contended that merely being a part of WhatsApp group(s), cannot be deemed to be a criminal offence in itself.



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The Appellants have not sent a single incriminating message to attract any criminal liability, and there is no basis to show that the discussions in WhatsApp groups, to which the Appellants were added, amount to offences under the UA(P) Act.

91. The learned counsels submitted that the prosecution has selectively relied on messages to portray the group as homogenous, however, people from different sections of society, with varying political opinions and ideologies, were members of the group.

92. It was submitted that as far as the Appellant Sharjeel Imam is concerned, at no point of time he was engaged in a discussion that the alleged turning point of the protests would be the State visit of the President of the United States.

93. It was contended that, though, the Appellant Umar Khalid made a mere mention of the said dignitary's visit in his speech on 17.02.2020 at Amravati, however, that it is not a circumstance to be read against him and cannot be said to have any nexus with riots that ensued a week later, since this Appellant made no utterances with respect to any protests taking place in Delhi during the said dignitary's visit.

94. The learned counsels for the Appellants further submitted that the Appellants were not even in Delhi or near the site of riots at the relevant time, as the Appellant Sharjeel Imam had been in judicial custody for nearly a month since 28.01.2020 in another FIR registered against him, whereas the Appellant Umar Khalid was not present in North-East, Delhi, between 22.02.2020-25.02.2020. It was contended that neither of them is



visible in any of the CCTV footage, nor have any witnesses deposed to their presence at the scene of the purported incidents of violence. Moreover, it was submitted, the prosecution witnesses have rather supported the Appellant's stand by stating that the Appellant Sharjeel Imam was neither in Shaheen Bagh nor at any other site of protest after the first week of January, 2020.

95. The learned counsels submitted that the prosecution has roped in the Appellants in the present case solely on account of the speeches at four places made by the Appellant Sharjeel Imam; in Jamia on 13.12.2019, in Aligarh on 16.01.2020, in Asansol on 22.01.2020, and in Gaya on 23.01.2020. The learned counsel emphasized that the Appellant Sharjeel Imam was granted bail by the Allahabad High Court with respect to the speech made at Aligarh, holding that there was absolutely no instigation to violence in the same, findings of which remains unchallenged by the State. Even as far as the other speeches are concerned, the learned counsel submitted, those are not sufficient to constitute an offence under the UA(P) Act.

96. On behalf of the Appellant Umar Khalid, it was submitted that he was implicated in the present case for his speech in Amravati on 17.02.2020, which was contended to be neither provocative nor inflammatory. Further, the prosecution did not even produce the video of the said speech along with the Chargesheet for proving its context, content, impact, and legality of the speech are concerned. However, it was submitted that a fair evaluation of the said speech would make it clear that



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the Appellant Umar Khalid rather made categorical calls for protests to remain peaceful and had emphasized the ‘Gandhian principles of unity and non-violence’, and urged the public to fight hatred with love, to protest using democratic methods, and to remain non-violent, making no call for violence or incitement to violence.

97. It was submitted that a total of 751 FIRs had been registered in relation to the said incidents, however, none of the witnesses, including protected witnesses, could connect the Appellants with any actual incident of violence.

98. He further submitted that the Appellant Umar Khalid was arrayed as an accused in FIR 101/2020, registered at PS Khajuri Khas, wherein he was earlier granted bail, and now stands discharged.

99. He submitted that the prosecution has relied upon the Appellant Sharjeel Imam’s Facebook posts, messages on the single WhatsApp Group of which the Appellant Sharjeel Imam is a member, the messages sent to other individuals who are not co-accused persons, statements under Section 161 and 164 of the Cr.P.C. of four witnesses, namely, Romeo, Bond, James (protected witnesses) and Tahira, and the pamphlets. All of these, when taken at face value, make out no offence at all, much less under a Special Statute such as the UA(P) Act.

100. The Protected Witnesses, he contended, speak nothing but the fact that the Appellants opposed the CAA. The learned counsel urged that the statement of the protected witness-Bond, which refers to the Appellant Umar Khalid’s speech on 13.12.2019, wherein he has allegedly stated that



he had explained the difference between a “*dharna*” and a “*chakka-jaam*”, and directed the Appellant Sharjeel Imam to organize a *Chakka Jaam* at Shaheen Bagh, where the said *chakka jaam* remained non-violent, does not fall within the ambit of Section 15 of the UA(P) Act.

101. As for the protected witness-James, it was contended that the statement made by this witness is purely hearsay and holds weak evidentiary value.

102. The learned counsels submitted that political action or strikes aimed at disrupting services are not, by themselves, offences under the UA(P) Act, and merely talking about violence is not the same as conspiring to commit an act covered by the UA(P) Act.

103. The learned counsel submitted that even calling for a ‘secession’ is, at best, an ‘unlawful act’ under the UA(P) Act, punishable up to 5/7 years, and falls under Section 13 of Chapter III of the UA(P) Act, and not under Chapter IV of the UA(P) Act, to which Section 43D (5) of the UA(P) Act applies. The rigours therein will, therefore, not be applicable in the present case. They submitted, even otherwise, this provision is only an additional condition to the existing considerations for the grant of bail. They placed reliance on the decision of the Supreme Court in **K.A. Najeeb** (supra), to submit that the provision in the UA(P) Act is not as onerous for an accused as the bail provisions in NDPS, MCOCA, etc.

104. They submitted that, in sum and substance, the prosecution has, other than the utterances in favor of *Chakka Jaam* and opposition to the CAA through public and non-violent protests and communications,



produced no cogent evidence to establish any ingredient of any offence under Chapters IV or VI of the UA(P) Act.

105. It was contended that the Appellant-Umar Khalid, pursuant to the dismissal of his Appeal *vide* Order dated 18.10.2022, had approached the Supreme Court by way of a Special Leave Petition, being SLP(Crl.) No. 6857/2023, on which notice was issued, however, the Appellant later withdrew the said SLP *vide* Order dated 14.02.2024, with liberty to approach the learned Trial Court on the ground of change in circumstance. The learned counsel submitted that therefore, the Order dated 18.10.2022 would not act as a bar to the Appellant seeking bail on basis of the changed circumstances.

106. Further, on the point of change in circumstances, it was submitted that the learned Trial Court erred in not appreciating that there had been a change in law, as neither the learned Trial Court nor this Court had the benefit of the Judgement passed by the Supreme Court in ***Vernon v. State of Maharashtra & Anr.***, (2023) 15 SCC 56, which was re-iterated in ***Shoma Kanti Sen v. State of Maharashtra***, (2024) 6 SCC 591, at the time when the Orders were passed rejecting the first bail application and the Appeal thereagainst by the Appellant Umar Khalid.

107. Further, it was submitted that there had also been another change in circumstance inasmuch as the learned Trial Court and this Court did not have the benefit of the Order dated 15.06.2021 passed by a Coordinate Bench of this Court granting bail to the co-accused Asif Iqbal Tanha, Natasha Narwal, and Devangana Kalita, on which the Appellants and other



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co-accused are entitled to rely upon pursuant to Order dated 02.05.2023 passed by the Supreme Court in S.L.P. (Crl.) Nos. 4287-4289/2021. He submitted that the learned Trial Court did not even return a finding on the plea of parity.

108. The learned counsels submitted that out of the total of 18 co-accused persons, six are out on bail, and five of them were granted bail on merits. He contended that a bail application of one of the co-accused persons, namely Faizan Khan, was rejected by this Court, whose case is entirely distinguishable on facts from the Appellant's case. It was submitted that three of the aforementioned co-accused persons who were granted bail, were also alleged to be present in the meetings where the actual use of violence was discussed and were also alleged to be present at the protest sites where the violence later occurred. Despite these allegations, this Court had granted bail to them. The learned counsel vehemently contended that the Appellant-Sharjeel Imam is not even named in the FIR pertaining to the violent riots that happened in North-East Delhi, as opposed to the aforementioned co-accused persons.

109. Based upon the above, they contended that the Appellants are entitled to grant of bail on the grounds of parity with the three co-accused, namely *Devangana Kalita*, *Natasha Narwal*, and *Asif Iqbal Tanha*, who were granted bail by this Court and the same being upheld by the Supreme Court *vide* the Order dated 02.05.2023 passed in S.L.P. (Crl.) Nos. 4287-4289, apart from the merits of the case of the Appellants. They submit that therefore, the Appellants ought to be enlarged on Regular Bail, pending



trial before the learned Trial Court, having suffered more than 5 years in custody since their arrest.

SUBMISSIONS ON BEHALF OF THE STATE:-

110. The learned SPP on behalf of the State reiterated the prosecution's case and the allegations leveled against the present Appellants to highlight the role played by them, and drew our attention to the Statement of several Witnesses under Section 161 and 164 of the Cr.P.C, including Protected Witnesses, WhatsApp Chats, Speeches (both in video and transcripts), photographs, Social Media Posts, distribution of pamphlets, formation of WhatsApp Groups, etc., the electronic data running into 30,000 pages, which further delineated the role of the Appellants in detail. Further, learned SPP also took us through various speeches made by the Appellant on different occasions, to establish that the Appellants were the key conspirators whose sole purpose was to incite riots so as to cause violence, damage to public property and to create fear amongst the masses by dividing them on religious basis.

111. Learned SPP submitted that the evidence on record clearly establishes existence of a systematic pattern of planning, preparation, and execution of violent protests that culminated in the Delhi riots of February 2020. It was contended that the Appellants are the masterminds behind the entire conspiracy, drawing our attention to the WhatsApp Chat between the Appellant-Sharjeel Imam and his brother Muzammil, wherein the Appellant has claimed himself to be the mastermind behind the *chakka jaams*.



112. The learned SPP submitted that the Appellant Umar Khalid's characterization as a 'veteran of sedition' and 'topmost conspirator', is amply supported by the chronological sequence of events and the coordinated nature of activities spanning several months. As for the Appellant Sharjeel Imam, as on 23.01.2020, he was aware of the impending riots of February, 2020, which is evident from his speech at Chakand, Gaya, Bihar, where he stated that "*there are 4 weeks and a lot could be done in 4 weeks*". He submitted that the timing of the group formation, immediately following the enactment of the CAB, coupled with the Appellants' subsequent active role in protests, further establishes clear premeditation and planning.

113. It was argued that Appellant Sharjeel Imam was directed by Appellant Umar Khalid to mobilize students across universities like JNU, Jamia Millia Islamia, Aligarh Muslim University, and Delhi University, highlighting their central role in the conspiracy to incite nationwide unrest.

114. Our attention was invited to the Statements of the Protected Witnesses Bond, Romeo, Bravo, Saturn, and James, to contend that they have stated that the Appellant-Sharjeel Imam and others were persistently instigating the crowd by conveying that the Government is Anti-Muslim and the CAA is a law to be condemned as it targets only Muslims. Further, it was submitted that the Appellant-Umar Khalid, had instilled the idea among the masses that the Indian Government is a Hindu Government and is against the Muslims. Moreover, the Appellant-Umar Khalid stated that they would overthrow the Government at the right time. As a part of the



conspiracy, he submitted, the witnesses have stated that around 24 protest sites were created, and several meetings were held in this regard.

115. The learned SPP, *qua* the Appellant-Sharjeel Imam, also referred to a pamphlet, the contents whereof are alleged to be inciting communal feelings and calling for a disruptive *chakka-jaam* on 13.12.2019. The same reads as below:

“Citizenship Amendment Bill was passed with week. This base is unconstitutional and intends to disenfranchise Muslim’s and put them in detention camps. It has already started in Assam and will followelsewhere, Muslim’s across India must reject NRC and CAB in one voice. Kashmir, Babri and now CAB, there are more than enough grounds for a strong rejection from Muslims across India. Assam has already started burning and people are being killed. However, the rule played by our religious and political leadership has also been disappointing. Thousands of Mulim youths are ready to disrupt Delhi which will give international media attention to our issues. The students of Jamia Millia Islamia have given a protest call for 3 PM today, from Jamia Jama Masjid. we, Muslim students of JNU, request you to join the protest in large numbers and plan for a Disruptive Chakka Jam accordingly”

(Emphasis Supplied)

116. The learned SPP had contended that the pamphlets were misleading and communal in nature and were distributed in areas with a large population of Muslim persons, particularly near Mosques, with the clear intent and purpose of mass mobilization of Muslims. He submitted that these pamphlets also contained reference to sensitive issues like the Babri



Masjid and Kashmir (allegedly in reference to abrogation of Article 370 of the Constitution).

117. The learned SPP also brought our attention to the extracts from the Speech dated 13.12.2019 delivered by the Appellant-Sharjeel Imam, which reads as under:

“हमारी ख्वाहिश और हमारी आरजू यह है कि दिल्ली में चक्का जाम हो ““यह तो आज हुआ है, यह चिंगारी थी इसमें 4000 लोग-3000 लोग थे | अगर organised way में हो, और लोग आएंगे”

“हमारी ख्वाहिश और हमारी आरजू यह है कि दिल्ली में चक्का जाम हो | और सिर्फ दिल्ली में ही नहीं, बल्कि जिस जगह, जिस शहर में मुसलमान कर सकता है, मुसलमान हिंदुस्तान के 500 शहरों में चक्का जाम कर सकता है, ठीक है?”

“अरे भाई शर्म करो, 30 फीसदी के बाद भी शहर चल क्यों रहा है ?”

“(देश की राजधानी है) जो लोग गुमराह कर रहे हैं, अरे ये दिल्ली है भाई | ये flyover गिरे जरा, पूरी दुनिया को खबर होगी | समझ रहे हैं ना ?और तीसरी चीज, के भैया लाठी खाने से ना डरे |”

“यह चिंगारी कहां जाएगी ?आग कैसे लगेगी ? आग लगाने के लिए दो काम करना होगा |लाठी खाने के लिए तैयार रहना होगा अव्वल | नंबर दो organise होना होगा |अगर आपकी ख्वाहिश है कि हमें Disrupt करना है तो हम खुद organise होंगे | भले हम पांच लोगों से शुरुआत करें |”

“आप अपने हॉस्टल में बोलिए, के हमें चक्का जाम करना है, ठीक है ?हर हॉस्टल, हर मोहल्ला, जहां-जहां स्टूडेंट रहते हैं यार | मुझे जामिया का जोग्राफी ज्यादा पता नहीं, जहां जहां स्टूडेंट रहते हैं | आप एक तो नुमाइंदा सामने कर सकते हैं, जो इस बात पे मुत्तहिद है ये लोग, और इनका नुमाइंदा है कि हमें चक्का जाम करना है | (बिल्कुल) ||”

“लेकिन goal क्या है ?हमें चक्का जाम करना चाहते हैं | दिल्ली के मोहल्लों में दूध बंद करना चाहते हैं, पानी बंद करना चाहते हैं | खुलकर बोलिए यार (बिल्कुल) |”



118. He submitted that, from a bare perusal of the same, it would appear that the Appellant-Sharjeel Imam intended for a mass mobilization by referring to the contemporaneous *Chakka-Jaam* as only as a ‘*spark*’. He further referred to the mention of *Chakka-Jaam* aimed at disrupting essential services such as the supply of milk and water in Delhi.

119. The learned SPP contended that on 15.12.2019, Appellant-Sharjeel Imam made inciteful speeches against the government at Shaheen Bagh and had brought 200 non-locals to completely block the road at Shaheen Bagh and purportedly spoke about secession and the creation of a different nation for Muslims on the basis of terror and violence. He further submitted that the Appellant Umar Khalid also came to Shaheen Bagh, and gave provocative speeches, and, along with the other Appellants and their associates, told people that “*until blood is not spilled, the government will not bend*”.

120. The learned SPP submitted that on 16th and 17th December, 2019, the Appellant-Umar Khalid directed the formation of the JCC WhatsApp Group, and this fact has been supported by the protected witness Bond. He further submitted that another protected witness, James, also corroborated the fact that the appellant Umar Khalid exercised control over, and had influence on, the decisions of the JCC.

121. It is alleged that, as a result of delivering inflammatory and inciteful speeches at Jamia Nagar and calling for disruptive *Chakka-Jaam* through the circulation of pamphlets, violent riots took place on 13.12.2019 and 16.12.2019 at Jamia Nagar, and New Friends Colony, which involved



destruction of public property and injuries to a total of 45 police personnel and more than 100 civilians. For these incidents, two FIRs bearing no. 242/2019 and 298/2019 were registered at the aforesaid Police Stations.

122. Further, the learned SPP relied upon the transcripts from another Speech by the Appellant-Sharjeel Imam on 16.01.2020 at Aligarh Muslim University, extracts from the said speech are as under:

"Friday night को तो हल्का फुल्का violence हुआ था, मेरा भी चश्मा टूटा था"

"लेकिन हमे दिल्ली बंद इसलिए करना है कि अवाम को inconvenience हो,"

"ये मैं पहले भी शायद अर्ज कर चुका हूँ के 5 लाख लोग हमारे पास हों organised तो हम हिन्दोस्तान और नार्थ ईस्ट को permanently cut कर सकते हैं, permanently नहीं तो कम से कम एकाध महीने के लिए तो कटकर ही सकते हैं, मतलब इतना मवाद डालो पटरियों पर, रोडपर, के उनको हटाने में एक महिना लगे, है के नहीं. जायें एयरफोर्स से, असम को काटना हमारी जिम्मेदारी है असम और इंडिया कटकर अलग हो जायें, तभी ये हमारी बात सुनेंगे"

"अगर हमें असम की मदद करनी है, तो हमें असम का रास्ता बंद करना होगा, फ़ौज के लिए, समझ रहे हैं ? फ़ौज के लिए और जितने भी जो भी यहाँ से सप्लाई जा रहा है बंद करो और वो बंद कर सकते है क्योंकि chicken neck मुसलमानों का है, वो जो इलाका है वो मुस्लिम अकसरियत है"

123. The prosecution cited the other inflammatory speeches made by the Appellant Sharjeel Imam, one in Asanol, West Bengal, on 22.01.2020, where he had incited the public to call a nationwide *bandh*, and another in Chakand, Gaya, Bihar, on 23.01.2020, where he openly admitted to causing *Chakka Jaams* at Shaheen Bagh, forcing the closure of showrooms and petrol pumps, and causing deliberate public inconvenience, all of which he lauded as successful. Further, from the said Speech, reading thus:



“हमको सड़क जाम करनी है और हमको हर highway बंद करना है। केवल चार हफ्ते है, सोच लीजिये चार हफ्ते में आप क्या-क्या कर सकते है? चार हफ्ते है, लडको की कमी नहीं है ये बात समझिये।”

124. The learned SPP submitted that apart from these, references were also made to paralyzing the Government and teaching the Courts a lesson, those extracts are as under:

“अरे भाई बिहार मे डिटेन्शन कैम्प बनेगा तो क्या किजिएगा? जाके जलायेगा कि नहीं उसको ?”

“50-100 cases होंगे, हम पर भी FIR होगी। इसके लिए इत्मिनान से हूँ मे। लेकिन ये कामयाबी तभी मिलेगी, जब 100 शाहीन बाग बने”

“100 शाहीन बाग कैसे बनेंगे ? जब आप हिम्मत वाले 100 जवान लडके, पहली शप्त में बैठे होंगे, आओ हमको मारो, आओ मारो जितना मारना है मारो, हम यहाँ से हिलने वाले नहीं है.....हमको सड़क जाम करनी है और हमको हर highway बंद करना है। केवल चार हफ्ते है, सोच लीजिये चार हफ्ते में आप क्या-क्या कर सकते है ? चार हफ्ते है, लडको की कमी नहीं है ये बात समझिये।”

“घर से निकल जाइये काम करने और काम करने का एक ही तरीका है- वो है सड़क बंद। माल बंद करो, इनका सामान हम जाने नहीं देंगे। जो हम, जो सरकार हम पे जुल्म कर रही है उस सरकार को हम Paralyse कर देंगे। ”

“हमारे पास 4 हफ्ते है, 28 दिन है, अगला जो hearing है। अगले hearing तक सरकार तो छोड़ो Court को उसकी नानी याद आ जाये, ये आपकी जिम्मेदारी है। Court किसी का नहीं है।”

“दिल्ली में तो वैसे भी, दिल्ली को ये कश्मीर बना नहीं सकते आपको भी पता है। इन्हीं की जलालत होगी, हमारी नहीं होगी, अगर ये दिल्ली में गोली चलवाये, Army लगवाये तो ये जलालत किसकी है ? मुसलमानों की नहीं सरकार की जलालत है।”

125. The learned SPP sought to contend that the Appellant Umar Khalid's alleged visit to the *Seelampur* protest site, coupled with his purported involvement in a clandestine meeting at E-1/13, New *Seelampur*, constitutes some of the most incriminating material reflecting his role in escalating the protests into violent confrontations. During this meeting, the Appellant Umar Khalid allegedly made provocative remarks suggesting that “protests should ultimately escalate into riots leading to spilling of



blood, in order to bring the Government to its knees,” and further directed preparations involving the stockpiling of dangerous items such as “knives, bottles, acids, stones, and chilli powder.” According to the Prosecution, these assertions indicate a deliberate intent to incite violence.

126. Mr. Chetan Sharma, the learned ASG, argued on the point of parity, that the role of each conspirator cannot be seen in isolation but must be assessed in the context of the large conspiracy. He placed reliance on the decision of the Supreme Court in ***State (NCT of Delhi) v. Shiv Charan Bansal***, (2020) 2 SCC 290. It was further contended that the benefit of parity cannot be extended to the Appellants, as the Orders granting bail to the co-accused persons were specifically directed by the Supreme Court to not to be treated as precedent. Therefore, those orders were passed in the peculiar facts and circumstances of those cases, and not in accordance with law.

127. The Learned SPP contended that other Protected Witnesses, namely, Jupiter, Neon, Smith, Seira, Helium, Crypton, Beta, James, etc., have also stated as to the involvement of the Appellant-Umar Khalid in the present conspiracy. Therefore, the argument advanced on his behalf that none of the witnesses implicate him in any offences, was argued for the sake of it and holds no water.

128. Furthermore, he submitted that the learned Coordinate Bench of this Court has already examined the material against the appellant Umar Khalid and determined that there were reasonable grounds to believe the accusations against him to be *prima facie* true and had rejected his appeal



against dismissal of his Bail Application *vide* Order dated 18.10.2022 and the challenge to the said Order before the Supreme Court was also dismissed.

129. The learned ASG submitted that the material on record, in its entirety, reveals a clear and deliberate trajectory, from coordinated mobilization, to strategic escalation, to acts of violence, and finally, to attempts at suppression of evidence and cover-up. Further, he submitted, the gravity of the allegations against the Appellants and their active involvement in the conspiracy leading to communal riots and loss of lives, no case for grant of bail has been made out. Therefore, he submitted, their appeals ought to be dismissed.

ANALYSIS AND FINDINGS:-

130. We have considered the submissions made by the learned Senior Counsels on behalf of the Appellants-Sharjeel Imam and Umar Khalid, as well as by the learned Solicitor General, and the learned SPP on behalf of the State, and have perused the record. With their joint assistance, we have examined the WhatsApp Chats, extracts from the Speeches, Videos of the said Speeches, Statements of Witnesses (including Protected Witnesses) recorded under Section 161 as well as Section 164 of the Cr.P.C., Call Detail Records, and the other material that has been placed on the record.

131. We have already discussed herein above the principles applicable to the consideration of an application seeking bail under the UA(P) Act. Keeping the same in view, while reverting to the prosecution case, we may note that learned SPP has emphasized that *prima facie* there is sufficient



material on record to show that Appellants-Sharjeel Imam and Umar Khalid masterminded the conspiracy. The learned SPP submitted that the above is apparent from the very fact that the Appellant-Sharjeel Imam either himself formed or directed the others to form various WhatsApp groups to connect people from Jamia, DU and AMU, immediately after the CAB was passed on 04.12.2019, as well as attended and held several conspiratorial meetings. The learned SPP submitted that the said act and conduct of the Appellant-Sharjeel Imam had intended for mass mobilization. Additionally, it was urged that the Appellant-Sharjeel Imam got printed 5,000 communal pamphlets and circulated the same inviting and mobilizing the muslim students for a protest on 07.12.2019 and for boycott of NRC and CAB.

132. Apart from this, prosecution maintained that Appellant-Sharjeel Imam gave the alleged inflammatory speeches across India in Aligarh, Asanol, Chakand, contents whereof were adverted to by the learned SPP and have been reproduced hereinabove.

133. Similarly, Appellant Umar Khalid also delivered speeches in Amravati on 17.02.2020, urging protests on 24.02.2020, which coincided with the State visit of the President of the USA, which is alleged by the prosecution to have deliberately been timed to cause violent riots on 23/24.02.2020 to garner international attention.

134. The above role, as assigned by the prosecution to the Appellants, cannot be lightly brushed aside.



135. At this stage, considering the evidence on record and the events unfolding in the alleged conspiracy, *prima facie* it appears that the Appellants were the first ones to act after the CAB was passed in early December 2019, by creating WhatsApp groups and distributing pamphlets in the Muslim populated areas calling for protests and *Chakka-Jaams*, including the disruption of essential supplies. The prosecution case further alleges that the Appellants were constantly preaching to the masses by misleading them into believing that the CAA/NRC is an Anti-Muslim law.

136. It was contended by the learned Solicitor General that the Appellants-Sharjeel Imam and Umar Khalid, were the intellectual architects behind the entire conspiracy, working in tandem with the other co-conspirators, each of whom played their respective roles in furtherance of the said conspiracy. Suffice it is to say that the alleged inflammatory and provocative speeches delivered by the Appellants, when considered in totality, *prima facie* indicates towards their role in the alleged conspiracy.

137. In so far as the submission of the learned counsel for the Appellant-Sharjeel Imam, that the appellant was in custody since 28.01.2020 and remained in custody at the time of the riots and at the meetings where the State visit of the President of the USA was decided to be the turning point, is concerned, we find that this argument has no merit. It is irrelevant whether the appellant was physically present at the protest sites or in meetings post 28.01.2020. As it is alleged that all the initial planning, creation of groups, conceptualization, and incitement regarding the CAA/NRC had been completed by that point. Further, it is alleged that the



co-conspirators and the Appellants were working together and were aware of the ultimate goal, as is reflected from their speeches and the circulation of pamphlets. Thus, in our opinion, the mere absence of Appellant Sharjeel Imam a few weeks prior to the ultimate riots, and the Appellant Umar Khalid's absence a day or two before, at this stage, may not be sufficient to mitigate their role, as they have been alleged to be the key conspirators in planning and designing the scheme of events.

138. As far as the plea made on behalf of the Appellants that the alleged acts of the Appellants, would at best, fall under Section 13 of the UA(P) Act, that is, Chapter III of the UA(P) Act, but not under Chapter IV of the UA(P) Act, is concerned, we may note that this Court, while exercising its appellate jurisdiction in the present proceedings, arising from the refusal to grant bail, is not required nor is it empowered to hold a detailed analysis of the evidence for determining the validity of the accusations levelled against the Appellants.

139. The learned counsel for the Appellant-Umar Khalid, apart from the above submissions, also stressed on the plea of change in circumstances to secure Bail. It is pertinent to note that the first bail application of the Appellant-Umar Khalid was dismissed by the learned Trial Court, *vide* Order dated 24.03.2022, and an appeal thereagainst was dismissed by a Coordinate Bench of this Court, *vide* Order dated 18.10.2022. It would not be out of place to mention that the arguments addressed on behalf of the Appellant-Umar Khalid before this Court, have already been raised and considered by the Coordinate Bench of this Court, which, after going



through the material against this Appellant as well as the detailed Order of the learned Special Court, found that a *prima facie* case was made out, as is reflected in its observations in the Order dated 18.10.2022. The Appellant-Umar Khalid, thereafter, preferred a Special Leave Petition (SLP) before the Supreme Court against the Order dated 18.10.2022, which was ultimately '*dismissed as withdrawn*' upon a request made on his behalf on account of the alleged change in circumstances. Subsequently, a second Bail Application was moved before the learned Trial Court, which came to be dismissed *vide* Order dated 28.05.2024, and the present appeal has been filed assailing the said Order.

140. The learned counsel for the Appellant-Umar Khalid contended that there are three changes in circumstances, namely, *first*, the passing of the judgment of the Supreme Court in **Vernon** (supra), *second*, a plea for bail on the ground of parity with the co-accused who were granted bail by the Coordinate bench of this Court post-dismissal of his bail application, and *third*, the further period of incarceration undergone.

141. Proceeding with the said submissions, we may note that the Supreme Court in the case of **Vernon** (supra), on which the Appellant-Umar Khalid places reliance, had held, while examining the question of grant or refusal of bail and to satisfy the "*prima facie test*", there has to be atleast surface-analysis of probative value of the evidence and the quality or probative value to satisfy the Court of its worth. Notably, in **Vernon** (supra), the material against the appellant therein had weak probative value, being hearsay evidence, with the recovery having been made from the possession



of a co-accused and not from the Appellant himself. However, in the present case, the probative value of the evidence against the Appellants-Sharjeel Imam and Umar Khalid, as detailed out by us in the foregoing discussion, *prima facie* and at this stage, cannot be branded as weak. Therefore, there is no merit in this plea. It is also premature to evaluate the veracity of the material available on record at this stage, such assessment shall have to be made by the learned Trial Court at an appropriate stage of the trial, however, at this point, the evidence cannot be ignored by this Court to formulate a *prima facie* view to examine the present Appeals.

142. As far as the plea of parity is concerned, the learned SPP had contended that the Orders granting bail to the co-accused persons Devangana Kalita, Natasha Narwal, and Asif Iqbal Tanha, were challenged before the Supreme Court in a Special Leave Petition, being S.L.P. (Crl.) Nos. 4287-4289/2021. The Supreme Court, *vide* Order dated 18.06.2021, while issuing notice in the said SLP, had directed as under:

“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.”

143. The Supreme Court, *vide* Order dated 02.05.2023, while disposing of the said SLP, made the above-mentioned *interim* direction final/absolute, with a caveat that if a co-accused seeks parity, the same must be established and made out before the concerned Court. We may quote from the said Order of the Supreme Court as under:

“The applicant is a co-accused. If the coaccused is entitled to a plea on parity, that is for him to make and the Court to consider. We want to make it clear at a



cost of repetition that the purpose of the interim order dated 18.06.2021 was that the expounded legal position regarding statutory interpretations in a bail matter should not be utilized in proceedings either of co-accused or any other person or any other matter. With the aforesaid clarification the interim directions dated 18.06.2021 are made the final directions in the matter.”

144. A careful reading of the above extracts would reveal that, while disposing of the SLP, the Supreme Court not only made the said restraint absolute and final but also reiterated that the interpretation of law rendered in the Impugned Judgment therein, on which the Appellants herein are seeking parity, cannot be invoked either by co-accused or any other person in any matter. The only limited caveat preserved is that a co-accused may independently seek parity, which plea is required to be specifically made out and considered on its own merits by the concerned Court. Thus, the effect of the Supreme Court’s directions is that the co-accused may urge parity which shall be adjudged *dehors* the Judgment of this Court granting bail to Devangana Kalita, Natasha Narwal, and Asif Iqbal Tanha.

145. To consider the contention of the Appellants on the issue of parity, we may note that it is crucial for the Courts, while deciding such a plea, to examine the role attributed to the accused and their position in relation to the incident in juxtaposition to that of the co-accused who was afforded the benefit of bail.

146. Having noted the above, it is observed that the co-accused persons, namely, *Asif Iqbal Tanha, Devangana Kalita, and Natasha Narwal*, were enlarged on bail by a Coordinate Bench of this Court. In the conspectus of



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the allegations levelled, it emerges that the role of the Appellants-Sharjeel Imam and Umar Khalid is *prima facie* grave in the entire conspiracy, having delivered inflammatory speeches on communal lines to instigate a mass mobilization of members of the Muslim Community. In contrast, although the co-accused persons named above were present in the conspiratorial meetings and were members of the WhatsApp groups, however, their role was limited when juxtaposed with these Appellants. Therefore, in our careful consideration, the plea of parity is not made out.

147. As far as the third limb of submissions on delay in trial and prolonged incarceration is concerned, we have already discussed the position of law on this issue in detail hereinbefore in the preceeding paragraphs. Needless to say, the prosecution has strongly alleged about the magnitude, and involvement of numerous conspirators, individuals, and organisations, who are stated to have mobilised thousands of people in protest within the National Capital of India, resulting in 54 deaths, injuries caused to numerous persons and destruction of movable and immovable public and private properties. The investigating agency has made earnest efforts to unearth the alleged deep-rooted conspiracy, as is evident from the undisputed fact that the chargesheet runs into more than 3,000 pages, with an additional 30,000 pages of electronic evidence. The State carried out a detailed investigation, which led to the arrest of several individuals and the filing of four supplementary chargesheets, with multiple accused persons charge-sheeted, and as many as 58 witnesses, including protected witnesses, whose statements under Section 164 of the Cr.P.C. were also



recorded before the learned Magistrate. In such a background, the pace of the trial will progress naturally. A hurried trial would also be detrimental to the rights of both the Appellants and the State. The parties have informed this Court that the trial is currently at the stage of hearing arguments on the framing of charges, thus, it indicates that the case is progressing.

148. Keeping in view the nature of the allegations, and specifically the submission of the learned Solicitor General and the learned SPP that the present is not a case of regular protest/riot matter, but rather a pre-meditated, well-orchestrated conspiracy to commit unlawful activities threatening the unity, integrity, and sovereignty of India, it becomes the arduous task of the Court to strike a balance between individual rights and the interests of the nation, as well as the safety and security of the general public at large. Therefore, these appeals do not succeed.

149. We make it clear that any observations made hereinabove shall not be construed as an expression on the merits of the case or on the evidence, which will have to withstand the rigours of cross-examination and trial. It is further clarified that these observations shall not, in any manner, influence the trial before the learned Trial Court, as they have been made solely for the purpose of examining the bail to these Appellants.

150. Accordingly, in the peculiar facts and circumstances of the present case, and in view of the foregoing discussion and analysis, the present appeals, that is, CRL. A. 184/2022 and CRL. A. 631/2024, are dismissed. The pending applications, if any, also stand dismissed.



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CRL.A. 677/2022, 600/2022, 210/2022 AND 233/2022: ATHAR KHAN, SHADAB AHMED, ABDUL KHALID SAIFI AND MOHD. SALEEM KHAN: -

151. As per the prosecution's narration, we find that the role assigned to these Appellants in the alleged conspiracy are closely interwoven and intertwined. Therefore, for the sake of convenience and brevity, we deem it appropriate to deal with them together.

152. In the case of the prosecution that in the present conspiracy leading to the ultimate violent riots in Delhi, the Appellants- Athar Khan, Shadab Ahmed, Abdul Khalid Saifi, and Mohd. Saleem Khan, have played a vital and significant role in the hatching of the conspiracy and executing it. The Appellants, except Saleem Khan, are alleged to be members of at least one or more groups, such as DPSG, CAB Team, United Against Hate (UAH), etc., as well as their regular presence at the conspiratorial/secret meetings, held by key conspirators at undisclosed locations, has also been sought to be established. These acts were allegedly in furtherance of the objective of creating multiple protest sites, coordinating among members, circulating instructions and information related to protests, strategizing mass mobilization, and escalating protests/*chakka-jaams* into violence by stockpiling weapons, acid, petrol bombs, stones, etc.

153. It is further alleged that the DPSG WhatsApp group, of which, amongst other people, the Appellants-Abdul Khalid Saifi, Shadab Ahmad, and Athar Khan were a part of, functioned as the umbrella body for organizing mobilization, fundraising and legal aid for protests in secrecy, and were coordinating the efforts of the smaller WhatsApp groups such as



JCC, JACT, and the JMI Coordination Committee (JMICC), as well as organisations involved in protest sites and local mobilizations.

154. It is case of the prosecution that, in furtherance of the conspiracy, it was a part of the agreed strategy that 24x7 sit-in-protest sites created near mosques and lanes of Muslim-dominated areas would be shifted to high-traffic roads and converted into *chakka-jaam*, thereby obstructing movement of the main road. This escalation leading to *chakka-jaam* was allegedly intended to provoke police intervention, which would then be met with violent confrontations, including destruction of public property through arson and other violent methods. These ideas were propagated by the alleged masterminds of the conspiracy, that is, Sharjeel Imam and Umar Khalid. The Appellants are also accused of having participated in at least one or more protests called either by themselves or by the other co-conspirators.

155. The prosecution has alleged that, amongst other co-accused persons, the Appellants were also responsible for creating, organizing, and managing the protest sites. In pursuance of the same, the Appellants have been alleged to have attended one or the other conspiratorial meetings held on 08.12.2019 at 6/6 Jangpura, Bhogal, Delhi, on 23.12.2019 for the creation of the Khureji protest site, on 26.12.2019 at the Indian Social Institute, Lodhi Colony, on 02.01.2020 at the Gandhi Peace Foundation, where the creation of additional protest sites and making them women and childrencentric was discussed, and on 16/17.02.2020 where it was planned to carry out a *chakka -jaam* during the visit of the President of the USA.



156. Specifically, the Appellant-Abdul Khalid is alleged to have been the organizer and creator of the protest sites at Khureji, Karawal Nagar, Kardam Nagar, and Nizamuddin. He is also alleged to have delivered provocative speeches intended to incite people on communal lines. Further, he is accused of having sent a message on 03.02.2020 in the DPSG group, instructing people to cover CCTV cameras installed by the Police with black tape. It is further alleged that the Appellant-Abdul Khalid raised funds in furtherance of managing protest sites, and he also received money from co-accused Ishrat Jahan for the procurement of firearms.

157. The Appellants- Shadab Ahmed, Mohd. Saleem Khan, Athar Khan, and others, including co-accused Salim Malik @ Munna, are alleged to have been responsible for the mobilization, organization, initiation, and management of the protest site at Chand Bagh – Mustafabad.

158. As per the prosecution, on 11.02.2020, when the visit of the President of the United States of America was officially announced for the dates of 24/25.02.2020, the members of the DPSG allegedly encouraged people to protest on the streets so as to attract international attention and criticism towards the Indian Government. As part of this mobilization, on the same date, the Appellant-Athar Khan is accused of giving the date and time for the *Mahila Ekta Yatras* that were conducted at various protest sites on 14th, 15th, and 16th January 2020.

159. It is alleged that a meeting on 20/21.02.2020 at Chand Bagh was attended by the Appellants- Athar Khan, Shadab Ahmed, Saleem Khan, and other co-accused persons, wherein the arrangement of finances, arms,



and petrol bombs for killing people and committing arson was discussed. After the said meeting, people from the Madina Masjid, Seelampur protest site allegedly moved to the Jafrabad Metro Station and completely blocked the 66-foot road there on the evening of 22.02.2020. This is claimed to have been the first step in escalating protests into violent riots under the guise of a disruptive *Chakka-Jaam*.

160. The prosecution further alleged that during the course of investigations, it was found that on the night of 22.02.2020, the DPSG members, including the Appellants Athar Khan and Shadab Ahmed, held a meeting at Ayaz's basement in *Chand Bagh*, Delhi, attended by protest site organisers from North-East, Delhi. They were informed that the *Chakka-Jaam* at *Jafrabad* had been carried out as per the conspiracy and were directed to visit the protest sites in their respective areas to incite riots through similar *Chakka-Jaam*. It is further alleged that the students of Jamia were instructed to leave the rioting sites prior to start of firing and bombing.

161. It is also the case of the Prosecution that, on 23.02.2020, the protests escalated into coordinated attacks on police personnel and non-Muslims, along with widespread destruction of public and private property. While local women were not significantly involved in the violence, around 300 women from Jahangirpuri were allegedly transported first to the Shaheen Bagh protest site and then to the Jafrabad *Chakka-Jaam* site to take part in the riots. At the said locations, the DPSG members are said to have provided them with stones and red chilli powder to allegedly target the



police and non-Muslims, with the intent of sparking large-scale riots. The movement of protestors from various protest sites to other locations was allegedly initiated to cause disruptive *chakka jaam* leading to attacks on police personnel and non-Muslims.

162. It is further alleged that on the night of 23.02.2020, a meeting was held at one *Mukhtyar's* house in Chand Bagh, attended by DPSG members, including the Appellants-AtharKhan and Shadab Ahmed, along with absconding accused Suleman Siddiqui and Ayub. Since the riots had not reached the desired scale or met the satisfaction of the conspirators due to the presence of the CCTV cameras installed in the area, the Appellant-Athar Khan allegedly instructed the Appellant-Saleem Khan and co-accused Salim Munna to destroy / dislocate the CCTVs cameras. The Appellant-Shadab Ahmed concurred with this plan and confirmed that it would be carried out through his team members.

163. They are, thus, alleged to have participated in discussions regarding the sequential and coordinated destruction/disabling of almost 30 Government-installed CCTVs over a stretch of 4–5 km in Chand Bagh and adjoining areas, which, on 24.02.2020, took place between 12:05 P.M. and 12:45 P.M., Allegedly, another CCTV camera captured the Appellant-Saleem Khan actively dislocating one of the cameras, thereby confirming the execution of the plan.

164. It is alleged that once the CCTV cameras were dislocated/covered, by 12:50 P.M., large-scale mobilization and violent outbreaks allegedly took place as part of the conspiracy. Rioters are alleged to have launched



coordinated attacks using firearms, acid, swords, and other sharp weapons, causing injuries and deaths of law enforcement officers, which led to the registration of the present subject FIR. It is further alleged that a Slingshot (Gulel), fixed at roof parapet, was also used to throw acid bottles over the police personnel to get maximum casualties. It is alleged that the installation of Slingshot was not a spontaneous act and demonstrates pre-planned conspiracy.

165. The Appellant-Abdul Khalid is also alleged to be one of the principal conspirators, as he was reportedly invited to an alleged celebratory meeting on 25.02.2020 at the Indian Social Institute, after the riots had taken place on 24.02.2020. It is further alleged that in this meeting, a plan was discussed on finding a scapegoat to be blamed for the riots, and as a cover-up, relief and rehabilitation of the victims of the riots was used.

166. It is also alleged that the members of the DPSG, including the Appellants, did not anticipate that due to the severity of the conspiracy, some members would change track and would threaten to expose the conspirators. It is alleged that one Mr. Owais Sultan Khan had repeatedly sent messages on the DPSG WhatsApp group showing reluctance to be a part of the violence perpetuated in the events, before exiting from the Group. It is alleged that the conspirators added new members and asked the members of the group to delete the DPSG Chats from their phones, following which some of the Appellants and conspirators were also strategically removed from the group, some before and after their arrest.



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167. It is also alleged that on 26.02.2020, the Appellant-Abdul Khalid and other co-accused persons moved from the Khureji protest site to main Patparganj area, where they allegedly engaged in violence against the Police using firearms and other weapons. For this incident, FIR No. 44/2020 under Sections 147, 148, 149, 186, 188, 332, 353, 307, 109, 120B, 34 of the IPC, and Sections 25 and 27 of the Arms Act, came to be registered against the Appellant-Abdul Khalid and the co-accused persons, including Ishrat Jahan, leading to their arrest.

168. During the course of trial proceedings in the present FIR, the Appellants moved their respective applications seeking regular bail before the learned Trial Court. These applications came to be dismissed for the Appellants- Athar Khan, Shadab Ahmad, Abdul Khalid Saifi, and Mohd. Saleem Khan, *vide* Orders dated 12.10.2022, 13.10.2022, 08.04.2022, and 22.03.2022, respectively, leading to the filing of the present appeals.

SUBMISSIONS OF THE APPELLANTS:-

169. At the outset, the learned Senior Counsels appearing for the Appellants submitted that the Appellants have clean antecedents and have been falsely implicated in the present case, solely on account of their association with protests against the CAA and NRC. It was contended that the prosecution has relied upon the pieces of evidence collected by them in other similar FIRs, to build up a case in the present one.

170. They submitted that the Impugned Orders are entirely based on conjectures and surmises, and the allegations levelled against these



Appellants do not pass the *prima facie* test, which would demonstrate their involvement in the conspiracy of instigation, funding, or outbreak of violence in the North-East Delhi riots. It was further contended that the participation of the appellants was limited only to the extent of peaceful protests against the CAA and NRC, and they were not part of any conspiracy to instigate communal violence that eventually erupted into the riots, as alleged by the prosecution.

171. The learned counsels jointly submitted that there are deficiencies in the statements of the Protected witnesses, and most of them have been recorded after a considerable lapse of time from the date of the registration of the FIR, and mostly after the arrests of the Appellants, with an aim to fill up the gaps in the prosecution case, a fact which in itself casts doubt on the veracity and the credibility of the witnesses. It also indicates that these may be planted witnesses. Reliance was placed on the decision in ***Balak Ram vs State of U.P.***, (1975) 3 SCC 219

172. It was contended that the case of prosecution is built around omnibus statements made by these witnesses, containing sweeping allegations without attributing any specific overt acts to any of the Appellants. Moreover, he submitted that the Appellants were not even named in the first FIR which was registered in connection with the riots.

173. The Learned Counsels urged that the Police witnesses, including Constables and Head Constables from PS Dayalpur, have given almost identical statements across all three FIRs, suggesting that their testimonies were either templated or manufactured. Same is the nature of the



Statements of the Protected Witnesses, and they do not inspire confidence and it is very unlikely that the conspirators would have openly discussed their plans in the presence of strangers.

174. They further submitted that the prosecution has relied upon the fact that the Appellants were part of certain WhatsApp groups or were present in certain meetings. The mere presence in a WhatsApp group, not being banned organizations, or attending meetings without any overt act or instigation, cannot be construed as participation in a criminal conspiracy.

175. With respect to the Appellants Athar Khan and Shadab Ahmed, it was pointed out that they were added to the DPSG WhatsApp group only on 22.01.2020, and they have not posted a single message in that group demonstrating any intention of blocking roads or causing riots.

176. Further, it was contended that the statement of the Witness Owaisi against the Appellant-Athar Khan, was on account of a personal animosity and, therefore, cannot be used against him.

177. The learned counsel further submitted that the prosecution placed reliance on the footage recorded by one of the CCTV cameras, which shows the presence of Appellant-Athar Khan at the spot where the meetings of 22nd February, 2020 and 23rd February, 2020 allegedly took place. However, the said footage establishes nothing more than this and does not demonstrate that he was planning to do *chakka-jaam* or indulge in the alleged riots.

178. The learned counsels further submitted that the Investigating Agency has also failed in establishing that the management of any of the protest



sites was in any manner connected with the riots that took place on 24th February 2020. They contended that the protest sites had been sustained for many days before the commission of the alleged riots, and in the absence of any material to corroborate the prosecution's story; they cannot be implicated in the present case.

179. The learned counsel for the Appellant-Athar Khan, further asserted that none of the Protected Witnesses, namely, Golf, Bravo, Silver, and Parvez, have accorded any specific role to this Appellant. They merely stated in vague terms that the Appellant was responsible for organizing *chakka-jaam*. It was urged that neither the content of the speeches allegedly delivered by the Appellant–Athar Khan, nor any specific role played by him, has been elaborated upon or revealed by any of the witnesses whose statements were recorded up to the time of his arrest.

180. The learned counsel further submitted that the Statement of the Protected Witness-Venus under Section 161 of the Cr.P.C., dated 16.07.2020, simply mentions that he allegedly saw the Appellant-Athar Khan receiving money from the co-accused-Tahir Hussain. However, no details regarding the date, time, or manner of such alleged transaction have been specified. The learned counsel also pointed out similar defects and contradictions in the testimonies of the protected witnesses Radium, Silver, and Sodium regarding the location of the alleged conspiracy meetings on 22.02.2020 and 23.02.2020.

181. The learned counsel for the Appellant-Abdul Khalid Saifi, submitted that there has been no recovery of any incriminating material, such as



weapons or literature etc., from the Appellant. He further argued that in FIR No. 44/2020, the allegations under the provisions of the Arms Act have been dropped *qua* the Appellant in the Supplementary Charge-sheet filed therein, and that the Appellant has already been granted bail in the said FIR.

182. The learned counsel further contended *qua* the Appellant-Abdul Khalid Saifi, that the prosecution has relied on the statements of Protected Witness Saturn to allege that the Appellant met with co-accused Umar Khalid and Tahir Hussain on 08.01.2020, which allegation was also relied upon by the prosecution in FIR 101/2020. He submitted that the Appellant now stands discharged in the said case, thus, there is no relevant evidence as to what was discussed in the said meeting.

183. The learned counsel further urged that the message in the DPSG chat, wherein the Appellant-Abdul Khalid Saifi states that “*Khureji has a high potential of becoming the next Shaheen Bagh*”, is innocuous. Even assuming that the Appellant authored the said message, no adverse inference can be drawn therefrom, as it was sent at a time when the Shaheen Bagh protest site was widely regarded as a symbol of peaceful protest.

184. On the allegation of funding the riots, the learned counsel submitted that the prosecution’s claim is unsustainable, false, and does not *prima facie* reveal any culpability on the part of the Appellants. He further argued that no connection has been established between the Appellants and either the riots or any alleged terror funding.



185. The learned counsel urged that the CDR of the Appellant-Athar Khan, establishing his presence in the *Chand Bagh* and *Yamuna Vihar* area, cannot be taken as *prima facie* proof of his involvement in the riots. The Appellant-Athar Khan is a resident of the *Chand Bagh* area, the CDR is, therefore, naturally bound to reflect his location in the said area, which by itself does not indicate or suggest his involvement in the riots.

186. The learned counsel, *qua* the Appellant-Saleem Khan, submitted that despite the prosecution's assertion that CCTV footage was collected to identify attendees at alleged meetings on 16/17 February, 22/23 February and 23/24 February, 2020 at *Chand Bagh*, no footage has been produced showing the Appellant's presence at any of these locations. The Appellant is conspicuously absent from all such recordings. Therefore, the prosecution's assertions are not substantiated by any objective evidence, and this omission is fatal to the prosecution's narrative.

187. The learned Counsel further urged *qua* the Appellant-Saleem Khan, that no CDRs, message logs, WhatsApp chat logs, screenshots, or other electronic evidence have been placed on record to substantiate the allegations regarding his membership in WhatsApp groups ('*Khidmat*' and '*Save Constitution*') or his alleged connection with Appellant-Athar Khan. The prosecution has failed to establish any active participation by the Appellant in these groups or any inciting content attributable to him.

188. It was further submitted that the Appellant-Saleem Khan is being subjected to multiple proceedings based on substantially the same evidence under different FIRs with overlapping narratives. He submitted that such



parallel prosecutions amount to double jeopardy, which is impermissible in law.

189. The learned counsel for Appellant-Saleem Khan further submitted that the prosecution relies upon the supplementary statement of protected witness Silver, recorded under Section 161 of the Cr.P.C., to assert that a meeting relating to the protests was held at the Appellant's residence at *F-75, Gali No. 3, Chand Bagh*. However, it was contended that there are no specific allegations or factual details regarding what transpired in the said meeting.

190. The learned counsel argued that the only alleged overt act attributed to the Appellant-Saleem Khan is the turning away of a CCTV camera, and he has already been granted bail in the FIR No. 60/2020, registered *qua* the said offence.

191. The learned counsels submitted that no *prima facie* case has been made out against the Appellants as the accusations are inherently improbable and wholly unbelievable, moreover, the presumption of innocence is a fundamental human right. It was urged that liberty should not be ordinarily interfered with unless cogent reasons exist. He placed his reliance on ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra***, (2005) 5 SCC 294 in support of this argument.

192. Moreover, it was submitted that the Appellant-Shadab Ahmed is already on bail in connection with two FIRs No. 60/2020 and 136/2020 registered against him, *vide* Order dated 03.09.2021 and 31.12.2020, respectively.



193. Similarly, it was submitted that the Appellant-Saleem Khan, has been implicated in two other FIRs, however, he has already been granted regular bail in FIR Nos. 60/2020 and 136/2020 by competent courts after due consideration of facts and law, thereby negating any apprehension of flight risk or repeat offending.

194. The learned counsels for the Appellants submitted that the evidence relied upon by the prosecution is wholly insufficient to bring home the charges under Sections 13, 16, 17, and 18 of the UA(P) Act, and therefore, the statutory bar under Section 43D(5) of the said Act would not apply in the facts of the present case. It was contended that even *prima facie*, the essential ingredients of the alleged offences under the UA(P) Act have not been made out.

195. The learned counsel also drew our attention to the allegations against the co-Accused(s), *Devangana Kalita and Natasha Narwal*, and submitted that there is similarity in the allegations made against the Appellants with these co-accused persons. He submitted that, as per the Prosecution's own case, Devangana and Natasha were involved in managing protest sites at *Seelampur and Jafrabad* and had also visited other protest locations. Thus, it was submitted that as the alleged role of the Appellants is not greater than, and may be even lesser than that of co-accused *Natasha Narwal and Devangana Kalita*, who have been enlarged on bail by this Court, and especially in view the fact that the Appellants have been languishing behind bars for more than 5 years, and there is no likelihood of the trial concluding in the near future, the Appellants deserve to be enlarged on bail.



SUBMISSIONS ON BEHALF OF THE STATE:-

196. The learned SPP submitted that the conduct of the Appellants clearly demonstrates their involvement in the present case, as they were engaged in creating protest sites and delivering inflammatory speeches not only in the Capital but also in different parts of the country. He argued that the Appellants actively played their role in the larger conspiracy and facilitated its execution. The investigating agency, he asserted, has collected sufficient material to implicate them in the offences for which they have been charge-sheeted.

197. The learned SPP further referred to the Statement of various witnesses in order to highlight the Appellants' involvement in the conspiracy and the ensuing violence. Protected Witness-Venus, he submitted, in his statement under Section 164 of the Cr.P.C., stated that the Appellants were part of the main umbrella body, that is, DPSG, and further stated that the Appellants-Shadab Ahmed, Athar Khan, and Saleem Khan, alongwith others, started the anti-CAA/NRC protests near his residence and were present amongst those who engaged in violence against the police and the public, leading to the attack on DCP (Shahdara), ACP Gokulpuri, and HC Rattan Lal, who was killed in the incident that took place on the Wazirabad main road.

198. The learned SPP further argued that the Appellant-Abdul Khalid, alongside co-conspirator Umar Khalid, both being members of UAH, attended the Jantar Mantar protest on 07.12.2019, with other co-accused



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persons, which is evident from his CDR location. He submitted that this Appellant was also a part of the CAB TEAM and the CAB WhatsApp group. He submitted that the CDR location corroborates the fact that he had attended the agitation organized against the CAA at Jantar Mantar on 07.12.2019.

199. The learned SPP further argued that Protected witness-Johny and Bravo have stated about the presence of the Appellants-Athar Khan, Shadab Ahmad, Saleem Khan, in the meeting on 16/17.02.2020 at 2:00 A.M., scheduled at *Chand Bagh*, pertaining to causing disruptive *chakka jaams* to confront and to use violence.

200. Relying on the statement of Pluto, he further submitted that the Appellants attended a secret meeting on the night of 20/21.02.2020, and their conversations, along with other co-accused, were heard by this witness when he had gone to deliver biryani to one *Ayyaz's* basement office at *Chand Bagh*. According to Pluto, plans were being discussed to “burn Delhi” using firearms, petrol, and other means, and funds had already been arranged for the said purpose.

201. He further submitted that the Protected Witnesses- Radium and Sodium have also stated that during these meetings, there were open discussions regarding escalation of violence and setting parts of Delhi on fire. It was also discussed that arrangements were being made for funds, firearms, and petrol bombs to be used for killing people and committing acts of arson.



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202. The learned SPP submitted that the Appellant-Abdul Khalid, on 23.02.2020, along with the co-accused Ishrat Jahan, shifted from the Khureji protest site to the main Patparganj Road and blocked this arterial road in a mixed population area. He submitted that another protected witness- Peter, has also deposed to this effect. He further submitted that, later on the same day, that is, on 23.02.2020, they converted this disruptive *Chakka-Jaam* into a violent attack on police personnel and non-Muslims by using firearms and other deadly weapons. An FIR No. 44/2020 was registered at P.S. Jagat Puri in this regard.

203. The learned SPP contended that on 23rd February, 2020, the Appellants- Shadab Ahmed, Saleem Khan, and Salim Malik @ Munna moved from the Chand Bagh Mazzar protest site and occupied the main road near the Mazar. They initiated a disruptive *Chakka-jaam* on the Wazirabad-Ghaziabad Road, which subsequently escalated into attacks on Police personnel and non-Muslims, as well as damage to and destruction of Government and Private Properties by engineering violent riots. Witness Bravo, in his statement under Section 161 of the Cr.P.C., has described the sequence of events leading up to this incident.

204. The learned SPP further contended that on 24.02.2020, the Appellants-Shadab Ahmed, Saleem Khan, Athar Khan and co-accused Salim Malik, gathered a large crowd armed with stones, rods, swords, firearms, petrol bombs, acid, knives, and slingshots. These Appellants provoked the crowd, which resulted in large-scale violence. He submitted that the Appellant-Saleem Khan is also seen in the CCTV footage



dislocating one of the Cameras. This is also corroborated by a protected witness-Gold, who has stated that the Appellants-Athar Khan, Shadab Ahmed, Saleem Khan, and others were responsible for the riots. Additionally, HC Sunil, in his Statement, deposed that the Appellant Shadab Ahmed, delivered inflammatory speeches at protest sites, provoking the people on religious grounds.

205. The learned SPP also submitted that the Appellant Abdul Khalid, in furtherance of the conspiracy, was also involved in raising funds from the NRIs through his NGO, “*New Education Welfare Organisation*”, by utilizing its bank account for the *Khureji* Protest site. This is supported by the statement of witness Abdul Majeed. Another witness- Peter, stated that the Appellant also received funds from co-accused- Ishrat Jahan for the purpose of purchasing firearms.

206. The learned SPP further urged that the Appellant-Abdul Khalid was one of the top conspirators, as is evident from the WhatsApp chats revealing that he was invited for the conspiratorial meeting at the Indian Social Institute on 25.02.2020, to celebrate their success and find a scapegoat to blame for riots as a cover up. He submitted that the Appellant-Abdul Khalid was also allegedly communicating and sharing information regarding the riots with the Appellant-Athar Khan on his personal number, instead of the DPSG WhatsApp group. He submitted that this has also been supported by protected witness-Kilo.

207. The learned SPP further submitted that the Appellant-Abdul Khalid was removed from the DPSG WhatsApp group after he was arrested on



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26.02.2020 in FIR No. 44/2020. He further contended that Charges were framed against the Appellant and others by the learned Trial Court *vide* Order dated 19.01.2024. The Appellant filed a revision petition against the said order, which was dismissed by this Court *vide* Order dated 05.11.2024 in Crl. Rev. Pet. No. 988 of 2024.

208. The learned SPP submitted that though FIRs have been registered against the Appellants for overlapping sequence of events relating to the riots, however, the present case concerns a larger conspiracy invoking the UA(P) Act along with other serious offences under the IPC. It was only later, upon receipt of specific information, that the Investigation Agency come to know that the present matter pertained to a larger conspiracy, which led to the registration of the subject FIR on 06.03.2020. Therefore, he submitted, the grant of bail to some of the Appellants in previous FIRs, where they had been arrayed as an accused, will have no bearing on the present case and will not automatically entitle the appellants to bail.

209. The learned SPP submitted that the Appellants are attempting to conduct a mini-trial and argue their bail application as though they were seeking discharge. He further submitted that 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 alleged offence. Reliance was placed on ***Zahoor Ahmad Shah Watali*** (supra); and ***Thwaha Fasal v. Union of India***, 2021 SCC OnLine SC 1000, in support of this contention.



210. The learned SPP contended that under Sections 18 and 20 of the UA(P) Act, the maximum punishment prescribed is life imprisonment, and therefore, merely citing prolonged incarceration cannot be the sole metric to grant them bail in UA(P) Act cases, looking at the facts and circumstances of the present case, particularly when there is no evidence of any *mala fide* intent on the part of the prosecution to delay the trial, the grant of bail is not made out. The reliance was placed to support this contention on the decision of this Court in ***Jamsheed Zahoor Paul v. State of NCT of Delhi***, 2024 SCC OnLine Del 2926.

211. Additionally, the learned SPP submitted that while liberty and the right to a speedy trial of an accused is important, it should be balanced against the interest of national security and public order, more so in cases involving allegations of terrorism and anti-national conduct. In instances where there exists a clear possibility of continued involvement and recurrence of offences, bail must not be granted casually. The learned SPP placed reliance on the decision of this Court in ***Joginder Singh v. NIA***, (2025) 1 HCC (Del) 125.

212. He reiterated the submissions on the claim of parity, and submitted that the role of the Appellants is graver than that of the other co-accused who have been granted bail.

ANALYSIS AND FINDINGS:-

213. We have considered the submissions advanced by the learned Senior Counsel and Counsels appearing on behalf of the Appellants, as well as by the learned ASG and the learned SPP appearing for the State, and have



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carefully perused the Statement of Witnesses, including Protected Witnesses such as Golf, Bravo, Silver, Venus, Pluto, Radium, Sodium, Gold, Peter, Kilo, Jupiter, John, Lamda, Helium, HC Sunil, etc., along with the WhatsApp Chats and other electronic evidence, including the relevant CCTV Footage.

214. We have also perused the Impugned Orders dated 12.10.2022, 13.10.2022, 08.04.2022, and 22.03.2022, and find that the learned Trial Court has enumerated the statements of all the above-mentioned protected witnesses and other witnesses in detail, while also noting the alleged role of the Appellants in the conspiracy and the other alleged evidence against them; from paragraph 10 onwards in relation to the Appellants-Athar Khan, Shadab Ahmad and Saleem Khan, and from Paragraph 12 onwards in relation to the Appellant-Abdul Khalid Saifi, in their respective bail Orders.

215. The case of the prosecution against these Appellants is that they have actively participated in the conspiracy to execute the North-East Delhi riots by playing different role at different stages, from its conception to its culmination in late February 2020. The Appellants are alleged to have attended multiple key meetings organized by the members of the DPSG and by the other co-conspirators. Some of the meetings, heavily relied upon by the prosecution, include **(1)** the meeting held on 08.12.2019 at the Indian Social Institute, Lodhi Road, 6/6 Jangpura, Bhogal, Delhi, where the Khureji Protest Site was created; **(2)** the meeting held on 02.01.2020 at the Gandhi Peace Foundation, where further Protest Sites were created and the focus was shifted to making them women and children centric; **(3)** the



meeting held on 16/17.02.2020 in Chand Bagh, where a plan was made to stage a *chakka-jaam* during the visit of the President of the USA; (4) the meeting held on 20/21.02.2020 at Chand Bagh, where the discussion allegedly turned to the escalation of violence by “burning Delhi” and “killing people”, (5) the meeting held on 22.02.2020 between members of the DPSG and JCC at Jamia University; (6) the meeting held on 23.02.2020 at House of Mukhtyar in Chand Bagh; and (7) the meeting held on 25.02.2020 at the Indian Social Institute post-riots, amongst other meetings attended by the Appellants.

216. The Prosecution has alleged that these meetings were vital for the Appellants and their co-conspirators, where strategies were devised to escalate the scale of protests and the magnitude of violence to be adopted for mass-infliction of injuries and damages. Apart from this, the Appellants were members of various WhatsApp groups, which facilitated organized coordination of protests and the creation of protest sites. These protest sites were managed, organized, and looked after by the Appellants in one way or the other. The Appellants are also alleged to have attended various protests, with some of them delivering provocative speeches on religious lines. At this stage, we may only adumbrate the evidence without undertaking an extensive analysis thereof.

217. It *prima facie* appears that the Appellants have played their respective active role in the conspiracy and were involved in the creation of protest sites such as Khureji, Chand Bagh, Karawal Nagar, Kardam Nagar, and Nizamuddin, among others. As per the prosecution, these sites were



planned to be escalated by introducing violence through the use of materials such as sticks, broken glasses, acid, rods, etc., which allegedly resulted in the ultimate riots on 23.02.2020. Further, the evidence on record, *prima facie*, suggests their presence in various meetings and especially on the intervening night of 23/24.02.2020, where there were alleged discussions to effect further violence against the Policemen and non-Muslims. *Prima facie*, it emerges that the Appellants-Athar Khan and Shadab Khan were in agreement to destroy or cover Government-installed-CCTV cameras so that they could operate fearlessly. These instructions were given to the Appellant-Saleem Khan, and co-accused Salim Malik @ Munna. Moreover, the Appellant-Saleem Khan, can be seen in the CCTV Footage dislocating one of the Cameras with a stick-like object.

218. We may also note that the bail application of the co-conspirator Salim Malik @ Munna was rejected by the learned Trial Court. An appeal was thereafter preferred before this Court, being CRL.A. 552/2022, which was dismissed by a Coordinate Bench *vide* Order dated 22.04.2024. Upon perusal of the said Order, we are of the view that a similar role was attributed to the present Appellant-Saleem Khan, who, along with co-accused Salim Malik, was allegedly tasked with destroying CCTV cameras at the behest of Appellant-Athar Khan, with further assistance from Appellant-Shadab Ahmed through his team members.

219. We find that the facts pertaining to the role of this co-accused have already been examined by this Court, and the evidence implicating the Appellants-Athar Khan, Shadab Ahmad and Saleem Khan, has been



discussed in detail by the learned Coordinate Bench vide its Order dated 22.04.2024, wherein it is observed as under:

“29. The riots, which took place in the capital city of Delhi in the year 2020, were result of deep-rooted conspiracy, wherein the appellant was a co-conspirator. The preparators and conspirators of such riots had learnt a lesson from the riots which had earlier taken place in December, 2019 which were having similar characteristics and modus operandi, albeit on a lower scale. The objective of the conspirators was to escalate protests to chakka jam and once crowd in large number was mobilized, lead and incite them against the police and others. In order to give a secular look, secular names/Hindu names were given to protest sites to give secular color. The conspiracy involved from moving from protest site to designated locations and to block the main road and highways and thereby, create confrontal situations, communal violence, attacking police and paramilitary forces, damage public and private property by using petrol bombs, fire arms, deadly weapons, acid bombs, stones, chilli powder etc. Finances were also arranged and were utilized in organizing such violence. According to prosecution, the entire chain of events, clearly reflects conspiracy and from the testimony of witnesses recorded under Section 161 Cr.P.C. and Section 164 Cr.P.C. as well as from electronic evidence, i.e. chats of whatsapp groups, it was clear that appellant was a co-conspirator.

30. The learned Special Public Prosecutor, during the course of hearing, had taken this Court to the contents of Supplementary Charge Sheet to show the manner in which the rioter, within ten minutes of dislocating/disconnecting the last CCTV camera installed in the areas of Chand Bagh and New Mustafabad area, committed atrocities, which resulted in death of Head Constable Rattan Lal and caused grievous injuries to various police personnel, including DCP Shahdara, Delhi. The



footage collected by the prosecution goes on to indicate the premeditated conspiracy for mobilization of rioters to not only cause the riots but also to attack police personnel.

xxx

34. In view of the afore-noted factual matrix of the case and statements of the witnesses recorded during investigation, we find that the accusation made against the appellant make out a prima facie true" case against him. Consequently, embargo created under Section 43-D(5) of UAPA, automatically gets attracted. Moreover, at the stage of consideration of bail in UAPA, the Court is not required to do extensive or comprehensive evaluation of the evidence and is required to form opinion on the basis of broad probabilities. The evaluation is essentially based on surface-analysis of the probative value of the material so collected. The Court is, thus, required to assess whether there are reasonable grounds to believe that the accusation made against any such accused are "prima facie true" or not."

220. Notably, a Special Leave Petition, being SLP (Crl.) 6425/2024, was preferred against the said Order before the Supreme Court, which was dismissed as withdrawn, vide Order dated 10.05.2024, with the following observations:

*"1. After arguing for some time and on our expressing reservation in entertaining the present petition, the learned senior counsel, Mr. Salman Khurshid for the petitioner seeks permission to withdraw the present petition.
2. Permission as sought for is granted.
3. The Special leave Petition is dismissed as withdrawn."*

221. We may also note that the Appellant-Abdul Khalid Saifi, apart from being alleged to be a part of the WhatsApp Groups, Conspiratorial



Meetings, and the creation of and attendance at the protest sites, is also alleged to have been involved in raising and receiving funds for procuring firearms and managing the protest sites. The Statement of Protected Witness Peter and Abdul Majeed support this allegation. Moreso, we may note that the Charges had been framed against this Appellant and the co-accused persons in FIR No. 44/2020. Though the Appellant is stated to be on bail in the said FIR, however, a challenge was laid to the said Order on Charge before the learned Single Judge of this Court in a Revision Petition, being CRL.REV.P. 988/2024, which was dismissed *vide* Order dated 05.11.2024, wherein it was observed as under:

“11. In the present facts, this Court on a prima facie reading of the material on record finds that the presence and role of the Revisionist has been stated by the public persons and the police official. The protests led to one Ct. Vinod sustaining injuries. A gunshot was fired and the said firearm was even recovered from a CCL who disclosed that the same was provided to him by the Revisionist, who had instructed him to fire upon the police. The identity of the Revisionist is not in dispute. In light of the above-noted facts, this Court finds no ground to interfere with the impugned orders of the Trial Court..”

(Emphasis Supplied)

222. Insofar as the argument of Appellant-Abdul Khalid Saifi that there is no evidence with respect to the allegation of receipt of money by the Appellant for the procurement of firearms, the same is a matter for trial and cannot be adjudicated upon by this Court while examining the aspect of bail.



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223. Having noted the above, we are of the view each member of the conspiracy, particularly the present Appellants, were *prima facie* assigned a specific role in furtherance of the conspiracy, till its execution. We may note that, at the stage of consideration of a bail application, it would be impermissible in law to enter into the merits or demerits of the evidence produced by the prosecution on record, which can only be tested at the trial. Therefore, this Court cannot, at this stage, form an opinion that the statements of some of the protected witnesses, though recorded belatedly, cannot be looked into. Nonetheless, such statements shall be tested through cross-examination during trial.

224. It may further be noted that a comprehensive examination of evidence at this stage may adversely affect the trial. The explanations advanced by the learned counsels for the Appellants in respect of the various statements of the protected witness, cannot be considered in isolation, and such statements must be assessed collectively, especially in cases involving conspiracy. A mini trial at the stage of consideration of bail is impermissible.

225. With respect to the submission of the learned counsel for the Appellant-Saleem Khan that the Appellant is being subjected to multiple proceedings based on substantially the same evidence under different FIRs with overlapping narratives, we do not find any merit in the same. We may note that the other FIRs against the said Appellant are at a different footing, as the present case pertains to a larger conspiracy, which led to the registration of the subject FIR.



226. On the claim of parity as raised by the present Appellants, while reiterating our above finding on the effect of the judgment of this Court in the case of Devangana Kalita, Natasha Narwal, and Asif Iqbal Tanha, and after perusing the record, noting the evidence as recorded herein above, and comparing the roles of the Appellants with Devangana Kalita, Natasha Narwal, and Asif Iqbal Tanha, we are of the view that the role played by the present Appellants is distinct from the aforementioned co-accused persons who were enlarged on bail. Therefore, no case for parity is made out.

227. We have already dealt with the aspect of delay and prolonged incarceration in the earlier part of the present judgement, the case of the present Appellants is covered under the same analysis of facts and law, and we may not reiterate the same for the sake of brevity.

228. In our careful consideration, having regards to the totality of facts and circumstances as noted hereinabove, these appeals fail. Accordingly, the present Appeals, being Crl.A. No. 677/2022, 600/2022, 210/2022 and 233/2022, are dismissed. The pending applications, if any, also stand dismissed.

229. Needless to say, we have not expressed any opinion on the merits of the case of these Appellants. The observations made hereinabove are confined solely to the consideration of bail.

CRL. A. 271/2022 AND 1149/2024: SHIFA-UR- REHMAN AND MEERAN HAIDER

230. As the factual matrix in the present conspiracy has already been discussed in the foregoing appeals, which are part and parcel of this



common judgement, the same is not being reiterated for the sake of brevity. We may, thus, proceed to note that the role ascribed by the Prosecution to the present Appellants-Shifa-Ur-Rehman and Meeran Haider, which are intrinsically connected, therefore, it would be appropriate to deal these two appeals together.

231. The Prosecution has alleged that the Appellants played an active part in the executing the Conspiracy as they are alleged to be amongst the key fundraisers for the protest sites and the ensuing riots in the North-East Delhi, bearing responsibility of managing, sustaining and orchestrating *Chakka Jaams* at multiple locations. Their actions were in furtherance of the larger conspiracy by the alleged masterminds and co-accused persons Sharjeel Imam and Umar Khalid. The Prosecution has imputed significant roles to the Appellants in the entire chain of conspiracy, which we may note hereinunder.

232. For mass mobilization of Muslim population to protest against the CAA/NRC, the JCC was constituted on 17.12.2019, to bring together various student and civil society bodies, including the AAJMI. It is alleged that the main constituents of forming the JCC were Pinjra Tod, AAJMI, SFI, and other student organizations and activities and the Appellants were amongst the core members of the JCC.

233. It is alleged that the Appellant-Meeran Haider was a member of United Against Hate (UAH). Apart from the said group, the Appellant-Meeran is also alleged to be a part of other WhatsApp groups, such as,



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‘MSG’, ‘JCC JMI Officials’, ‘JMI’, ‘JCC_JMI’, which took directions from DPSG.

234. Prosecution has alleged that in the initial days, the meetings of JCC were being held in the campus of the JMI University, later a room was allotted to AAJMI by the Jamia administration, which was handed over to JCC. The Office of JCC, near the AAJMI Office was utilized by the conspirators for holding secret meetings and for devising plans, schemes, etc. for holding protests against CAA/NRC. It is further alleged that in the entire duration of protests at Gate No. 7 of the JMI University, the JCC members used the AAJMI Office for computer-related work and for creating posters, banners and social media communications, the investigation agency has allegedly made recovery of Posters in this regard and attendance sheet of JCC from the AAJMI Office. On 26.01.2020, the Jamia Protest site was turned into a 24x7 protest site.

235. Relevantly, in furtherance of establishing more protest sites, the Appellants and other co-accused persons are alleged to be responsible for setting up and managing the protest sites at Jamia, Khureji, Shaheen Bagh, Hauzrani, Seelampur-Jafrabad, Turkman Gate, Kardampuri, Mustafabad, Rehman Chowk-Shri Ram Colony, Inderlok-Metro Gate No. 4, etc. The prosecution has maintained that to aid in sustaining and managing these sites and other protest sites, the Appellants were actively engaged in raising and collecting funds from various sources. It is alleged that during the period of 01.12.2019 to 26.02.2020, a total of Rs. 1.60 Crores were



received by the co-accused persons, including the Appellants-Shifa-Ur-Rehman and Meeran Haider, either through bank accounts or cash.

236. The Appellant-Shifa-Ur-Rehman, being the President of AAJMI, misused his position and had financed the riots to the tune of Rs. 8.90 lakhs. He used fake bills of expenses in the name of AAJMI to adjust the money by concealing the real expenditure on riots. The fake bills were recovered from the office of AAJMI on 28.04.2020 at the instance of the Appellant-Shifa-Ur-Rehman, revealing that AAJMI had received around Rs. 7-8 lakhs in cash. It is alleged that the Appellant-Shifa-Ur-Rehman had collected and distributed money to engage women and children to be a part of the protest so that the Police refrains from using any force against them.

237. As for the Appellant-Meeran Haider, the prosecution has alleged that he had received money from several persons, including the Protected Witnesses, either in cash or bank transfers. During the investigation, it was allegedly found that Appellant-Meeran Haider has a Bank Account in Indian Bank, Jamia Nagar, Delhi. During the investigation, the Bank Statements of the Appellant's account were analyzed and it was learnt that he had allegedly received Rs. 80,644/- through online transfers and had withdrawn Rs. 36,500/- through ATM.

238. It is the case of the prosecution that a register was also seized from the Room of the Appellant-Meeran Haider, revealing that Appellant had received Rs. 4.82 Lakhs. Prosecution has alleged that out of the total recovered cash amount of Rs. 2.33 lakhs from his room, Appellant had received Rs. 50,000 in cash from one Tanveer Ali, and it was repaid back



through bank transfer. Further, he had received Rs. 1,05,000/- in cash from one Ali Imam and his son Akib Aman. Likewise, a sum of Rs. 50,000/- was received in cash from one Gulam Haider through Nematullah. In *toto*, Appellant-Meeran Haider is alleged to have spent Rs. 2.86 Lakhs in connection with the riots and its sustenance.

239. It is further alleged that to further increase the number of protest sites and its scale, a group namely, Jamia Awareness Team was created and led by one Amanullah, and it is alleged that the Appellant-Shifa-Ur-Rehman would bear all the expenses incurred by this team in furtherance of the protests.

240. The prosecution has alleged that both the Appellants were in constant touch with each other, as there are as many as 50 phone calls between the Appellants, and they were working closely with the co-accused and alleged mastermind behind the entire conspiracy, Umar Khalid. Further, the Appellant-Shifa-Ur-Rehman had attended a conspiratorial meeting on 22.02.2020 at Jamia University, in the presence of co-accused Umar Khalid as well as members of the JCC and others, wherein it was planned to send Jamia Students to carry out *chakka-jaams* in Seelampur and other parts of North-East Delhi by inciting violence and turning it into riots.

241. Allegedly, the Appellant-Meeran Haider, on 22/23.02.2020, had exhorted the protesters at the protest sites to cause *Chakka Jaam* and to escalate it into violent riots by attacking police personnel and non-Muslims. It is alleged that the Appellant asked them to collect stones, sticks and other weapons if they are stopped by the Police from protesting. It is



alleged that the Appellant-Meeran Haider made regular appeals on the WhatsApp groups for mobilization and *Chakka Jaam* on 23.02.2020, particularly on JMI, asking who all from Jamia joined the Chand Bagh protest. The Appellants are alleged to have visited various protest sites in Delhi and instigated the Muslim population to cause *Chakka Jaam* under the guise of protests.

242. It is further alleged that the Appellant-Meeran Haider was privy to the fundamental strategies, planning, and schemes of the key conspirators. He is also alleged to be receiving timely reports about the execution of the riots and updates on the *Chakka Jaams* turning violent, from the co-accused Tasleem Khan, who also sent the same to co-accused Umar Khalid.

243. On 24.02.2020, after the key conspirators feared the exposure by their own group members, there was a flurry of calls between them, which includes the Appellant-Meeran Haider receiving a call from Umar Khalid, and a strategy was planned out to shift the blame on Delhi Police instead. It is alleged that the Appellant-Meeran Haider was a part of the persons who were assigned to go to Police Headquarters and to force the Delhi Government into holding a press conference in this regard. The Prosecution has alleged that the Appellants had played their assigned roles in the entire chain of conspiracy.

244. The Appellant-Shifa-Ur-Rehman and Meeran Haider had moved their first and second bail applications before the learned Trial Court, respectively, in connection with the subject FIR No. 59/2020, and the learned Trial Court had dismissed the said applications *vide* the Impugned



Orders dated 07.04.2022 and 04.12.2024. Aggrieved thereby, the present appeals came to be filed.

SUBMISSIONS OF THE APPELLANTS:-

245. At the outset, the learned counsel for the Appellants submitted that even a *prima facie* case under Sections 13, 16, 17, or 18 of the UA(P) Act is not made out against the Appellants. The allegations against the Appellants are vague, uncorroborated, and rely heavily on their passive presence in various meetings, WhatsApp groups or mere association with lawful student and alumni organisations, without any concrete evidence indicating intention, preparation, or participation in any terrorist act or conspiracy. It was submitted that the Appellant Shifa-Ur-Rehman was added to the JCC group after its formation on 17.12.2019, along with other student groups. It was submitted that none of the WhatsApp groups are banned organization, thus, no criminality can be attributed towards the Appellants.

246. It was contended that the Appellant-Shifa-Ur-Rehman, a well-regarded social worker, is associated with the AAJMI, a duly registered organisation engaged in charitable and educational activities. He submitted that there are no allegations of AAJMI itself having engaged in any unlawful activities, whatsoever. The Appellant's role as President of AAJMI, he submitted, has been misused against him, despite the fact that two similarly placed signatories in AAJMI, who were also members of the JCC, were equally responsible for managing bank accounts, namely *Badre*



Alam and Areeb Hassan, and have not been charge-sheeted, indicating prosecution's pick and choose policy.

247. The learned counsel urged that there is no material to suggest that the appellants proposed or promoted violence. No speech or message, he submitted, has been attributed to the Appellants, wherein they can be seen inciting or participating in violence. It was submitted that, in fact, several documents on record, including correspondence and public statements, show that the Appellants consistently discouraged the unlawful and disruptive activity. Therefore, it was contended that the threshold requirement of a "terrorist act" or "conspiracy" under UA(P)Act has not been met by the prosecution against the Appellants.

248. The learned counsel further submitted that the allegations of unaccounted fund collection are unsubstantiated and based solely on vague and uncorroborated testimony of protected witnesses and there is no direct evidence that has been brought on record to show that the appellants collected or diverted funds for any unlawful purpose. As per the charge-sheet, the investigation into the use of funds was incomplete at the time the prosecution sought Sanction under Section 45 of the UA(P)Act. Further, it was submitted that the allegations of creating fake bills by the Appellant Shifa-Ur-Rehman to cover up transactions are not supported by any forensic or direct material evidence linking the appellant to any unlawful financial diversion.

249. The learned counsel argued that the Appellant Shifa-Ur-Rehman had spent Rs. 5,000-10,000 per day for sustaining protest sites, in terms of



food, water, etc, and had received additional contributions from individuals based in Middle Eastern countries. He submitted that thus, the money was not used by the Appellant for the any illegal purpose.

250. The learned counsel also submitted that the Appellant Meeran Haider had no role in financing and raising funds/resources for execution of riots. The allegation that he cumulatively received Rs.5.63 lacs approximately from various sources, out of which Rs.2.33 lacs were recovered from his house along with a register/diary mentioning details of receipt of money, are false and no material has been placed on record to show that money was received or used by the Appellant for financing the riots.

251. He further urged that the Appellant-Meeran Haider's register filed with the main Charge-sheet, and further material obtained under Section 207 of Cr.P.C., has all monetary entries that are received from various friends/relatives, and they were for the Appellant's political campaign for the upcoming elections to be held in February 2020. Further, it was contended that the Appellant had spent money on personal expenses and for her mother's treatment, who unfortunately passed away in December 2019. He submitted that the money was also utilized for providing supplies such as water, food etc. in the protests at Jamia Milia Islamia University. He submitted that even the statements under Sections 161/164 of the Cr.P.C., dealing with this allegation, do not disclose the commission of any offence under UA(P)Act.

252. He submitted that there is no evidence to show that the Government had prohibited protests at the relevant time or that the Appellants were



involved in any illegal protest, and that any protest or establishment of corresponding protest sites from December, 2019 onwards had any connection to the unfortunate events that took place in Delhi from 22nd to 26th February 2020.

253. The learned counsel also contended that the Appellant-Meeran Haider was not present at the two meetings on which the Investigating Agency has placed its reliance, that is, the meeting held on the intervening night of 16.02.2020 and 17.02.2020 at *Chandbagh* and the meeting held on the intervening night of 23.01.2020 and 24.01.2020 at *Seelampur*. He submitted that no witness has testified *qua* the Appellant's presence/participation therein.

254. The learned Counsel for the Appellant-Meeran Haider submitted that after the dismissal of the first bail application, the Appellant preferred a criminal Appeal, bearing No. 223/2024, titled '*Meeran Haider vs. State*', before this Court, which was dismissed as withdrawn, with liberty to move before the learned Trial Court and consequently, a second bail application was moved before the learned Trial Court on change in circumstances which was rejected by a simpliciter and mechanical Order, by merely relying on the Order passed in the first bail application, without any independent application of mind as to those changes. He submitted that this appeal has been filed pursuant to the dismissal of the second bail application.

255. The first change, he pointed out, is that the Investigating agency has admitted to the fact that the investigation *qua* the Appellant-Meeran Haider



is over. The second change, he submitted, is the filing of 4th supplementary charge-sheet on 07.06.2023 *qua* the appellant-Meeran Haider and a co-accused *Asif Iqbal Tanha*, which has introduced nothing new to incriminate this Appellant. The third change, he submitted, is that the law on bail under the UA (P) Act has evolved, and the Supreme Court has reiterated that even in such cases '*Bail is the rule, Jail is the exception*'.

256. Coming to fourth change, he submitted, is the availability of parity with the other co-accused persons, who have already been granted bail by this Court.

257. Lastly, he submitted that the fifth and the last circumstance is that the Appellant Meeran Haider, while being in custody, has completed more than 50% of the maximum sentence prescribed for more than half of the offences alleged against him.

258. The learned counsels further argued that the addition of serious non-bailable offences under the IPC and the UA(P) Act was done belatedly and strategically. This delay of several months, they submitted, after the subject FIR was initially registered on 06.03.2020 under only bailable offences, reflects the *mala fide* intent of the prosecution to prolong the incarceration and deprive the Appellants of their right to bail. In fact, multiple co-accused persons arrested under the same initial bailable sections were granted bail by the learned Magistrate.

259. The learned counsel further asserted that the Impugned Orders passed by the learned Trial Court are liable to be set aside for being erroneous in law and fact, as the Court failed to consider that there is no



material suggesting any meeting of minds, preparation, or overt acts by the Appellants, which are necessary to constitute conspiracy under Section 120B of the IPC or under Sections 18 and 20 of the UA(P)Act.

260. The learned counsels submitted that nonetheless, the veracity of the prosecution witnesses can only be tested at the time of trial, and their statements cannot be accepted as gospel truth at this stage.

261. The learned counsels reiterated the ground of delay and period of incarceration since their respective dates of arrest and in addition thereto, submitted that the Charges have not yet been framed against any of the co-accused including the Appellants in the present case, and neither has there been any recovery of any weapons from the Appellants, factors which weigh in the favour of the Appellants.

262. Further, it was submitted on behalf of the Appellant Shifa-Ur-Rehman, that he is the sole earning member of a family comprising an elderly mother, a disabled brother, two unmarried sisters (one of whom is handicapped), a wife, and two young children. The indefinite custody of the Appellant, it was urged, is causing irreparable harm to his family.

263. Lastly, it was submitted that the Appellants are also entitled to be enlarged on bail, both on their own merits and on the ground of parity with the co-accused *Asif Iqbal Tanha, Devangana Kalita, and Natasha Narwal*.

SUBMISSIONS ON BEHALF OF THE STATE: -

264. The learned SPP vehemently opposed the appeals and submitted that the Appellants were amongst those who were actively funding the various protest sites, and the money raised by them was with the knowledge that it



would be used in the upcoming riots in furtherance of the conspiracy. He submitted that funding is an important element that plays a vital role in the execution of the plan. It was contended that the entire conspiracy shows that there was procurement of arms, weapons, acid bottles, sticks, knives, etc. which were used in terrorizing the people and for attempting to overawe the Government during the Delhi Riots in February, 2020.

265. Drawing our attention to the Statement of Bond and Hector, the learned SPP urged that Appellant Shifa-Ur-Rehman was one of the key members of JCC. Further, as per statement of witness Beeta, Secret meetings were held at the AAJMI office for collecting funds and making strategies for protests, *Chakka Jaams*, and riots.

266. The learned SPP also submitted that the Appellants, along with other co-accused persons, were responsible for starting the 24x7 sit-in protest sites at several places in Delhi and the Appellant Shifa-Ur-Rehman collected funds for riots from the members of AAJMI, whereas, the Appellant Meeran Haider raised funds from several individuals and also contributed them to the AAJMI in furtherance of the Conspiracy. He submitted that a protected witness-James has testified that he saw the Appellant Shifa-Ur-Rehman giving cash to one *Amanullah* for covering the expenses incurred in the riots, and that the AAJMI covered the expenses of all the protest sites in Delhi.

267. The learned SPP further contended that the statement of the witnesses recorded during the investigation and from the Facebook Posts of Appellant, it is evident that the Appellant visited various protest sites in



Delhi to exhort the Muslims to do *Chakka-Jaam*. At Hauz Rani protest site, he urged the protestors to *drag the protest to the streets*.

268. It was vehemently contended that both the Appellants worked in tandem and in furtherance of the conspiracy, which is apparent from the fact that a recovery of Rs. 48,000/- was made from the residence of the Appellant-Meeran Haider, hidden under the washbasin inside the bathroom. The learned SPP submitted that the witness Akib had heard the Appellant Shifa-Ur-Rehman along with *Faizal Khan* (Secretary of AAJMI) stating that the money would be used in the fight against the Government in respect of the CAA.

269. Further, he submitted that from the statement of the Witness Akib Aman, it also emerges that he had paid the Appellant- Meeran Haider, various sums of Rs. 10,000/-, Rs. 25,000/-, Rs. 50,000/-, and Rs. 20,000/- respectively, during the period from December 2019 to February 2020 for organizing the protests.

270. He submitted that another protected witness-Bond, in its Section 161 Cr.P.C. statement, testified that the Appellant- Shifa-Ur-Rehman collected money in cash and gave it to the protesting women on a daily basis. Certain extracts from the Statement of Bond read as under:

“The money needed for running protest sites was spent by AAJMI office, contributed by Shifa-Ur-Rehman, Arib Hassan, Danish Hamid. Shifa-Ur-Rehman and Arib Hassan had also given money to some girls who had attended meetings and told those girls to distribute the money to women on sites. AAJMI used to spend money only in cash, which was collected in cash by Shifa-Ur-Rehman, Arib Hassan,



Badre Alam and Danish Hamid. Money was given to women on sites as daily wages”

271. The learned SPP further relied upon the statement of Protected Witness James and Hector to reiterate his arguments to the same effect. He also relied upon the statement of witness Robert and submitted that the said witness had seen Appellant-Meeran Haider handing over his part of contribution to one Areeb and in turn, Areeb was heard saying that so much amount has been spent on riots.

272. He submitted that the Protected Witness Hector further deposed that the Appellant-Meeran Haider gave anti-national speeches at protest sites on the instructions of co-accused and mastermind Umar Khalid.

273. The statement of William was adverted to, by the learned SPP, to submit that this witness has categorically stated that on 22-23.02.2020, at one of the Dharnas, the Appellant- Meeran Haider went on the stage and instigated the protesters against the CAA/NRC. The statement of this witness, extract from the said Statement reads as under:

“दिनांक 22-23/02/2020 की रात को मीरान हैदर का नाम का एक शक्स, जो जामिया मिलिया का था, धरने पर आया और स्टेज पर आया और स्टेज पर लोगो को मीरान CAA/NRC के खिलाफ भड़काने लगा। और कहने लगा की हमने इन काफिरो को 900 साल तक गुलाम बना कर रखा था और अब हम इन के गुलाम बन गये है। यह सरकार हिन्दू प्रेमी है और CAA/NRC को लागु करके मुसलमानों को देश से भगाना चाहती है जिससे यह लोग हिन्दू राष्ट्र बना सके उसके बाद मीरां हैदर ने अलग से हम रोज मीटिंग में मौजूद रहने वाले फैजान खान @ आरिश, गुलाम जिलान्नी, उमेर और अन्य साथियों को कहा की कल 23.02 को दिन में जगह-जगह चक्का जाम करने का प्लान है और पुलिस व काफिरो पर हमला करना है मीरान हैदर ने हमको लोकल लोगो के साथ मिलकर डंडे, पत्थर और हथियार इकट्ठे करने को कहा और जब पुलिस चक्का जाम करने से रोकेगी तो पुलिसवालों को ठूल्ला और काफिर बोलते हुए ,उन पर हमला करने को कहा । मीरान ने यह भी कहा कि जब चक्का जाम होगा तब ओर ज्यादा भीड़ के लिए लोग भी भिजवा दिए जायेंगे ।”



274. The learned SPP submitted that to the same effect is the Statement of Protected Witness Hector.

275. The learned SPP also asserted that, to cover-up his tracks, the Appellant Shifa-Ur-Rehman used fake bills of expenses in the name of AAJMI to adjust the money which was spent for the creation and mobilization of Jamia and other protest sites in Delhi, which has been supported by witnesses Musab and Mohd. Saim Khan in their deposition. The fake bills were recovered from the office of AAJMI at the Appellant's instance.

276. The learned SPP further argued that the Appellant Shifa-Ur-Rehman was also present at the conspiratorial meeting on the night of 22.02.2020 at JMI University, wherein, it was decided to send JMI students to various protest sites to execute the final stage of the conspiracy. This fact, he submitted, has been supported by the Statement of protected witness Bond.

277. He submitted that the Appellant Meeran Haider was receiving updates regarding the execution of riots from the foot-soldiers. Moreover, he submitted that the Appellant Meeran Haider was constantly monitoring the execution of the conspiracy, as is evident from his WhatsApp chat in the JMI group stating '*who from Jamia has joined the Chand Bagh March*' on 22/23.02.2020. It was further contended that the CDR Analysis shows that the Appellants were connected with the co-accused Umar Khalid and each other, their connectivity is also reflected from the WhatsApp chats collected by the investigation agency.



278. He submitted that there has been no change in circumstance as contended on behalf of the Appellant Meeran Haider. The learned Trial had rejected his first bail application *vide* a detailed order, discussing the evidence against him in support of the allegations of the prosecution. He submitted that the Appellant preferred a criminal appeal before this Court but withdrew it to file a bail application afresh. It was contended that long incarceration by itself does not entitle grant of bail, especially in a case of conspiracy like the present. Moreover, he submitted that the Appellants have failed to point out any deficiencies or infirmities in the Impugned Orders, therefore, the appeals must fail.

279. The learned SPP further submitted that the role of the Appellants must not be seen in isolation, but in the broader context of the conspiracy. He strenuously contended that the funds so procured were used in culmination of the ultimate riots. Therefore, this aspect of the fundraising must be viewed seriously, as it constitutes the preparatory stage of the plan.

280. He contended that in view of the totality of facts and circumstances, the Appellants have not made a case for grant of bail, and their appeals, being devoid of merit, are liable to be dismissed.

ANALYSIS AND FINDINGS: -

281. We have considered the submissions made by the learned Counsels for the Appellants as well as the submissions of the learned SPP appearing for the State.

282. As noted above, during the course of hearings, the learned counsels for the parties had taken us through the statement of various witnesses and



Protected Witnesses, such as, Bond, Hector, Beeta, James, Alpha, William, Robert, Akib Aman, Irshad, Shahjahan Khatoon, Musab, etc., as well as the CDR Analysis, the recoveries made, and the WhatsApp Chats of the Groups of which the Appellants are alleged to be a part of.

283. We have perused the aforesaid statements, and the material placed on record. It is the case of the prosecution that the Appellants played the role assigned to them in furtherance of the alleged larger conspiracy, who were managing various protest sites across Delhi and had allegedly attended various meetings of the JCC at the AAJMI Office and other venues. The Appellants were allegedly part of WhatsApp groups which were created to have organized protests and are alleged to be also responsible in turning them into disruptive *chakka-jaams*. The Appellants have also been alleged to have raised and collected funds, to be used in the riots through various sources and for sustenance of the protest sites and the protesters.

284. As per the learned SPP, the money so received was to be used to aid riots and to support their fight against CAA/NRC, so much so that as per prosecution, Appellant Shifa-Ur-Rehman had also generated fake bills of expenses to adjust money used in furtherance of the alleged conspiracy. In addition, Appellant Meeran Haider allegedly delivered inflammatory speeches at the behest of alleged mastermind Umar Khalid and both the Appellants were in constant touch with the alleged masterminds of the said larger conspiracy.

285. In our view, the possibility of misuse of position by the Appellant Shifa-Ur-Rehman, being the President of AAJMI, cannot be ruled out at



this stage. More so, when certain bills were allegedly recovered by the prosecution from the AAJMI's office. It is further alleged that the said organization had received a total amount of Rs. 7–8 lakhs in cash. The Appellants are stated to have been in charge of more than eight protest sites in Delhi NCR. Appellant Meeran Haider is also alleged to have spent Rs. 2.33 lakhs on riots and protest sites.

286. The quantum of money, its source, and its ultimate use in the riots are all matters for trial and the arguments of the learned counsel for the Appellants discrediting the witnesses on this count cannot be accepted at this stage. It is well settled that all such aspects cannot be adjudicated upon in a bail application, as a mini-trial is impermissible at this stage. This Court is conscious of that position of law.

287. The Appellants are alleged to be a part of the JCC, and their meetings are stated to have taken place at the AAJMI Office. The CDR analysis indicates the connectivity of the Appellants with each other and with other co-accused, including Umar Khalid. The Appellant Meeran Haider is also alleged to have been part of the UAH, and there was also a recovery of money from his residence. *Prima facie*, it appears that the Appellants were working closely together, and the allegation of funding is a serious factor which cannot be brushed aside at this stage.

288. The Appellant Meeran Haider is also stated to have given money to AAJMI, where the meetings of JCC were held, while the Appellant Shifa-Ur-Rehman, being the President of the AAJMI, played a pivotal role. They appear to have raised money in furtherance of the conspiracy.



289. Further, we may note that a Criminal Appeal filed before this Court against the Order dated 05.04.2022 passed by the learned Trial Court, rejecting the first bail application, was dismissed as withdrawn *vide* Order dated 06.09.2024 of this Court.

290. We have already elaborated on the dictum of law laid down by the Supreme Court in cases pertaining to bail in offences under the Special Statutes, including the UA (P) Act. Therefore, the argument on this count has already been dealt with and, in our view, does not amount to a material change of circumstance.

291. As far as the change in circumstance contended on behalf of the Appellant that the investigation *qua* the Appellant-Meeran Haider has been completed, the learned SPP had urged that the Protected Witnesses are yet to be examined and the possibility of tampering with evidence or influencing witnesses cannot be plainly ignored, given the gravity, severity, and the magnitude of the conspiracy as well as its result and the number of conspirators and individuals involved. Thus, the mere completion of investigation would not be a material change in the circumstance to grant bail as the allegations leveled against the Appellant cannot be discounted.

292. On the plea of parity as raised by the Appellants, we are of the view that the position and role of the present Appellants in the alleged conspiracy is placed differently than the co-accused persons in the entire sequence of events, allegedly being one of the fund raisers in the conspiracy, that would warrant the benefit of parity to be extended to them. Further, we have dilated on the plea of parity with the co-accused granted



bail by this Court, in foregoing paragraphs of this Judgement in extenso and the same may not be reiterated. Viewing thus, the plea of parity is not made out in our considered opinion.

293. Keeping in view the above analysis as well as the facts and circumstances of the present case, these Appeals are dismissed. The pending applications, if any, also stands dismissed.

294. It is clarified that nothing stated hereinabove shall be construed as an expression on the merits of the case. The observations have been made solely for the purpose of examining the aspect of bail *vis-a-vis* the Appellants.

CRL.A. 211/2022: GULFISHA FATIMA

295. We have already discussed the Conspiracy involved in the present case at the necessitated length in the foregoing Criminal Appeals and, for the sake of brevity, we shall only narrate the broad allegations levelled by the Prosecution against the Appellant-Gulfisha Fatima @ Gul, and in the Chargesheet as Gulfisha Khatoon, in the purported Conspiracy.

296. The prosecution has alleged that the Appellant played an active role in execution of the Conspiracy, inasmuch as she was responsible for managing and actively guiding the protest sites at Seelampur-Jafrabad in North East Delhi areas, which are in the vicinity of her residence in Chauhan Bangar, New Seelampur. It is further alleged that she had created a 24x7 sit-in protest site at Madina Masjid, Seelampur, on 15.01.2020, along with co-accused persons *Natasha Narwal & Devangna Kalita*, who



were the members of the DPSG. It is further alleged that the aforesaid co-accused persons communicated the instructions of the DPSG to the Appellant for its implementation. Additionally, the Appellant is also accused of initiating other sit-in protest sites at various places in Seelampur and Jafrabad, Delhi, such as the Fruit Market, Gali Akhade Wali, etc..

297. As per the prosecution, in furtherance of the conspiracy, these sit-in protest sites were to be escalated into disruptive *Chakka-Jaam* with the object of spreading large-scale violence. The Appellant is also alleged to be a member of the Pinjra Tod Group, and is stated to have engaged in mass mobilization at the local level. The Appellant and the other co-accused persons had allegedly established the Pinjra Tod office at E-1/13, Seelampur, Delhi, where regular meetings were held. Further, Pinjra Tod was also duly represented in the DPSG, which functioned as the umbrella group for coordinating all protest-related activities and strategies. It is also alleged that the Appellant was behind the creation of WhatsApp groups, such as, *Warrior*, on 26.12.2019, and *Aurton Ka Inquilab*.

298. She is also alleged to be a part of the conspiratorial meeting held on 23.01.2020 at their Pinjra Tod Office, New Seelampur, Delhi, along with other co-accused *Devangana Kalita*, *Natasha Narwal*, *Umar Khalid*, and others, wherein co-accused Umar Khalid allegedly gave directions for stockpiling red chilli powder, acid, bottles, and sticks, and the Appellant is stated to have begun gathering the same.

299. As per the prosecution, the Appellant was a part of other key meetings, including one on 16/17.02.2020 at Chand Bagh, wherein it was



allegedly planned to organize *Chakka Jaam* at additional sites and to adopt measures to escalate violence in North-East Delhi, during the visit of the President of the USA. The Prosecution further contended that Appellant used code words while passing the directions to the protesters, such as, '*Kal Eid Hai*', and '*Kal Nainital Jana hai*', meaning instructions to undertake road-blockades/*Chakka Jaam*, and '*Aaj Chand Raat hai*' signifying the day of road-blockade. She is also alleged to have delivered provocative speeches and selected other speakers for *Dharnas*.

300. It is further alleged that the Appellant, along with co-accused persons, organized violent protests against the CAA/NRC and, on 22.02.2020 blocked the road under the Jafrabad Metro Station after instigated women to attack the Police. In this regard, FIR No. 48/2020 was registered on 22.02.2020 under Sections 109/147/186/188/283/341/353/34 of the IPC at the Police Station Jafrabad, Delhi, in which the Appellant was arrested on 09.04.2020. It is also the prosecution's case that the Appellant was involved in receiving funds from the co-accused Tahir Hussain for utilizing them in the riots.

301. In furtherance of the conspiracy, it is alleged that on 23.02.2020, the Appellant, along with the other co-accused, had gathered around 300 women at Seelampur, Jafrabad and they mobilized these women to block the road at Jafrabad Metro Station and incited them to attack the Police using chilli powder, stones, sticks, and other dangerous articles, which were allegedly provided by the Appellant and the co-accused persons.



302. The Appellant is stated to have been arrested in the present case on 11.04.2020. A bail application on her behalf was moved before the learned Trial Court, which was dismissed *vide* Impugned Order dated 16.03.2022. Aggrieved thereby, the Appellant has preferred the present Appeal before this Court.

SUBMISSIONS OF THE APPELLANT:-

303. The learned Counsel on behalf of the Appellant submitted that the Appellant is a young woman with clean antecedents, who was 26 years of age at the time of her arrest and was pursuing her studies. On account of false implication by the prosecution, without there being any concrete evidence of her involvement in any of the alleged offences. He further urged that the chats of the *Auraton ka Inqalab* group are not a part of the case record, and the chat of the *Warriors* group pertain only to participation in legitimate peaceful protests. The said chats, he submitted, pertain to the 2nd, 7th, and 9th January, 2020, dates which are much prior to the riots that took place on 23.02.2020 onwards, and as such do not corroborate any specific allegation with respect to the Appellant.

304. He submitted that the Statement of the Protected witness Saturn, alleging that the co-accused *Tahir Hussain* went to the *Seelampur* protest site and handed over a bundle of notes to the appellant for some illegal purpose, stands uncorroborated. No Test Identification Parade was conducted, nor has the prosecution explained the amount allegedly given or the date on which such money was handed over.



305. He also submitted that the appellant was present at *Chand Bagh* on the intervening night of 16th and 17th February 2020, yet no incriminating act or statement has been attributed to her. He contended that even the protected witness Jhonny, in his statement under Section 164 of the Cr.P.C., stated that there were 50-100 people present, none of whom have been arraigned as accused. The Appellant, he contended, stands on the same footing. He further submitted that the meeting was not a 'secret' one, as it included participants from the other protest sites, and that the Protected Witnesses themselves were present at the meeting.

306. The learned counsel further submitted that although the appellant was present at the *Seelampur* meeting on 22/23.02.2020, no incriminating words or actions have been attributed to her. She is, therefore, similarly placed as other participants, many of whom have not been arraigned as accused and some of whom have even been cited as witnesses. He contended that the Prosecution's allegation regarding the protest under the *Jafrabad* metro station on 22.02.2020 is false. He submitted that there was, in fact, no *chakka-jaam* or road blockage that disrupted essential services; rather, the protest was peaceful and non-violent.

307. The learned counsel submitted that there is no evidence to suggest that the Appellant instigated the protestors to use red chilli powder, acid bottles, or other objects. He contended that no such item has been recovered from her possession, nor has any seizure of these alleged weapons been made. Further, there is no MLC of any injury caused by these objects, nor any photograph or video showing their use.



308. The learned counsel further urged that the Appellant is also facing trial in FIR Nos. 48/2020 and 50/2020 registered at P.S. Jafrabad, and has already been enlarged on bail in both cases. It was further contended that the Appellant did not abscond after the riots, as a nationwide Covid-19 lockdown was imposed on 21.03.2020 prohibiting all non-essential travel.

309. He further submitted that the appellant was not a member of any WhatsApp groups such as DPSG, JCC, etc., nor did she participate in any meetings at *Jantar Mantar*, *Jangpura*, the Indian Statistical Institute, or the Gandhi Peace Foundation etc, unlike the several co-accused persons who have already been granted bail. It was submitted that there is no allegation regarding the Appellant's connection with any of the alleged main conspirators, who were the members of the DPSG WhatsApp group, except Natasha Narwal and Devangana Kalita. Moreso, he submitted that the Appellant did not deliver any incriminating or inflammatory speech.

310. He further argued that the statements of the witnesses are hearsay on material particulars and lack credibility. He contended that the statements of Protected Witness Beta are vague and generic in nature, and do not attribute any specific role or overt act to the appellant.

311. The learned counsel submitted that the offence under Section 15 of the UA(P) Act is not made out against the Appellant and that the allegations of the Prosecution, at best, fall within the ambit of the I.P.C, in respect of which FIRs are already in existence. Reliance was placed on ***National Investigation Agency v. Akhil Gogoi***, 2021 SCC OnLine Gau 2626.



312. The learned counsel further submitted that there is no evidence on record to show that the Appellant was a member of the Pinjratod group, nor is there any allegation of her association with the said group in December 2019. It was also pointed out that her name does not appear in F.I.R. No. 250 of 2019 registered at P.S. *Daryaganj*.

313. The learned counsel, while urging the ground on parity, submitted that the three other co-accused, namely *Devangana Kalita*, *Natasha Narwal*, and *Asif Iqbal Tanha*, have already been granted bail by a Coordinate Bench of this High Court, which Orders were subsequently upheld by Supreme Court *vide* Order dated 02.05.2023 in S.L.P. (Crl.) No. 4287-4289/2021. On the strength of the aforesaid, it was submitted that the appellant is better placed than the aforementioned co-accused persons, since the allegations against the appellant are of a lesser magnitude as compared to the greater role attributed to them by the prosecution. Therefore, the ground of parity squarely operates in favor of the Appellant, and ought to be taken into consideration by this Court.

314. He further emphasized on the point of long period of incarceration since the date of her arrest and submitted that in light of the facts and prevailing circumstances of the present case, the Appellant deserves to be enlarged on bail.

SUBMISSIONS ON BEHALF OF THE STATE:-

315. The learned SPP, while vehemently seeking dismissal of the appeal, submitted that the Appellant has attempted to conduct a mini-trial before this Court by seeking an elaborate examination and dissection of the



evidence, which is impermissible in law, whereas only a *prima facie* is required to be formed by the Court on broad probabilities.

316. The learned SPP submitted that the appellant, along with co-accused persons Athar Khan, Shadab Ahmed, Natasha Narwal, Devengana and others, was part of a secret meeting held on 16th and 17th February 2020 at Chand Bagh. He submitted that the protected witness Bravo had deposed to this effect and stated that the Appellant attended the said secret meeting, wherein there were discussions on ways to incite violence, aspect which had material bearing in the impending riots that occurred in February 2020.

317. It was further submitted that the appellant created a WhatsApp group named “*Warriors*”, on 26.12.2019, which she used to mobilize and instigate local women to attack the police and non-Muslims and relied upon the statement of another Protected Witness Argon under Section 164 of the Cr.P.C., who supported this fact.

318. The learned SPP further submitted that, in furtherance of the conspiracy, on the intervening night of 23rd and 24th January 2020, co-accused Umar Khalid visited the Seelampur protest site and held a secret meeting, which was also attended by the Appellant along with others. This meeting played a vital role in escalating the situation into violent riots to overawe the Government by pressurizing it to withdraw the CAA/NRC and hold its exercise, being Anti-Muslim.

319. It was further submitted that Umar Khalid directed the Appellant and others to induce the local women of Seelampur to stockpile knives, bottles, acid, stones, chili powder, and other dangerous articles for use in the riots.



The learned SPP pointed out that this factum is supported by the statements of various other protected witnesses, including Delta, Gama, Echo, Yankee, Smith, and Sierra. He further referred to the statement of Echo, who deposed that the Appellant ensured that children also participated in the protests, fully aware that the police would refrain from using force against them.

320. The learned SPP further submitted that the Appellant was financial aided by the co-accused *Tahir Hussain* for the riots, as supported by the Statement of the protected witness Saturn.

321. The learned SPP further submitted that the protected witness Sierra under Section 161 of the Cr.P.C., states as under: -

- XX देखा 20-21/02/20 को गुल सबको समझा रही थी कि भारत में अमेरिकी राष्ट्रपति डोनाल्ड ट्रम्प भी भारत यात्रा पर आने वाले हैं इस समय पूरे संसार का ध्यान भारत के ऊपर है तो ऐसे में अगर Hindu-Muslim दंगे भड़केंगे तो हमारी मांग मान ली जाएगी। गुल के साथ Tasleem और सुहेल भी लोगों को समझा रहे थे कि दंगों में बहुत से लोग घायल होंगे और मारे जायेंगे जिससे सरकार झुक जाएगी और CAA/NRC वापस ले लिया जायेगा।
- इसके चलते वो योजना के मुताबिक 22/02/20 को जाफराबाद मेट्रो station के नीचे चक्का जाम करेंगे। 22/23-02/20 की रात को एक JNU का लड़का भी वहां पर आया था जिसके साथ कई लड़के और ये जिसका नाम गुल्फिशा ने XX दानिश उज्बेक बताया था जिसने गुल्फिशा को कहा था कि हम हर protest site पर लाशें बिछा देंगे।
- 23/02/20 को दिन में XX जाफराबाद मेट्रो station के पास गया तो देखा कि Gulfisha की टीम के अन्य सदस्य Devangana, Nilofar, Suhail, Tasleem, Proma Roy, Natasha, Adnan, Shavej, बहुत औरतो के साथ Zafrabaad Metro Station के नीचे इकट्ठा हैं और उन्होंने मिलकर main road को जाम कर दिया है, जिससे दिल्ली में कई जगहों पर हिन्दू मुस्लिम दंगे भड़क गए।

322. He submitted that the entire chain of circumstances clearly establishes that the Appellant and other co-accused persons acted pursuant to a conspiracy. In support of this submission, reliance was placed on *Mehbooba Ali & Anr. v. State of Rajasthan*, (2016) 14 SCC 640.



323. The learned SPP contended that the ground of parity is not available to the appellant, as her role is graver than the other co-accused, who are on bail. He submitted that the Supreme Court, *vide* its Order dated 02.05.2023 in S.L.P. (Crl.) Nos. 4287–4289/2021, clarified that the Orders granting bail to the co-accused persons shall not be treated as a precedent. Accordingly, he urged that the present appeal, being devoid of merit, is liable to be dismissed.

ANALYSIS AND FINDINGS: -

324. We have considered the submissions made by the learned counsel for the Appellant as well as the learned SPP for the State. We have also been taken through the various Statements of Protected Witnesses, namely, Beeta, Gama, Argon, Jupiter, Echo, Smith, Bravo, Johny, Helium, Saturn, Delta, Smith, Seirra, Etc., which have been relied upon in support of their respective submissions and to substantiate the allegations levelled against the Appellant Gulfisha Fatima. We have also perused the Impugned Order dated 16.03.2022 passed by the learned Trial Court. From paragraph 12 onwards, the learned Trial Court has recorded the entire case of the prosecution against the Appellant, as well as the submissions on behalf of the Appellant; thereafter, the learned Trial Court proceeded to extract the relevant portions of the statements of the aforesaid witnesses, who have referred to Gulfisha and her alleged role in the overall conspiracy. We also find that the sum and substance of the arguments advanced on behalf of the Appellant before this Court are substantially similar to those raised before the learned Trial Court.



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325. From the record, we may note that as per the prosecution, the allegations against the Appellant are that she was a local resident of Seelampur, residing about 1 km away from the protest site at Jafrabad Metro Station, and she was a member of Pinjra Tod group. It is also alleged that the Appellant had created WhatsApp groups, namely, *Warriors* and *Auraton ka Inqalab*, in December, 2019, wherein the information regarding protests and for mobilizing the women to join at various protests sites, was disseminated.

326. It is alleged that the Appellant played her role in the execution of the conspiracy, being one of the persons responsible for managing the protest sites in Seelampur and to have attended alleged conspiratorial meetings on 23/24.01.2020 and 16/17.02.2020, wherein co-accused Umar Khalid allegedly instructed them to escalate the protests into riots by resorting to violence and by using chilli powder, sticks, stones, etc., and to coordinate *chakka-jams* during the visit of the President of the USA. It is further alleged that the Appellant had blocked the road near Jafrabad Metro Station and instigated women to resort to violence against policemen, for which FIR No. 44/2020 was registered at P.S. Jafrabad. There is also an allegation against her of having received funds from the co-accused Tahir Hussain to support the riots.

327. The learned Counsel for the Appellant raised main focus on the ground of parity with co-accused Devangana Kalita and Natasha Narwal. He submitted that the Appellant's involvement in the alleged conspiracy is to the same extent as of the above two named co-accused persons, who



have already been granted bail by a Coordinate Bench of this Court, which Orders, he contended, were further upheld by the Supreme Court. Moreover, he submitted, she was not a part of DPSG like the other accused. It was also submitted that said co-accused persons were also members of Pinjra Tod, who represented Pinjra Tod in the DPSG group. On the other hand, the learned SPP, objecting to the plea of parity, submitted that the role of the Appellant is largely different from that of the other two co-accused persons on bail. The Appellant had created the additional two WhatsApp groups to manage protests and ensure participation of women in them. Moreover, she had actively participated in enticing women to escalate the level of violence. She had collected money from co-accused Tahir Hussain to manage the protest sites.

328. We may note that in a case of conspiracy, it is not necessary that all the accused persons must be involved in all facets of the criminality. Participation in one group or the other, and the connectivity of the Appellant with the co-accused persons, including Shadab Ahmad, Umar Khalid etc, are factors to be considered. The WhatsApp groups that the Appellant allegedly created, of which one noticeably, revolve around coordination in protests and ensuring that as many women participate in the protests. This factum of creation of these two groups cannot be seen in isolation, the consideration should weigh in on broad probabilities as per the settled law.

329. Apart from this, the prosecution has alleged that the Appellant had used Code Words to pass on instructions to the protestors to undertake acts



in furtherance of the alleged conspiracy and had received funds for the same. The learned SPP had also submitted that her role as a conspirator in the riots can be ascertained from the statement of Protected Witness Sierra.

330. We have already discussed regarding the plea of parity in the foregoing paragraphs of this Judgement and may not reiterate them again. We may also note that it is trite in law that merely because co-accused persons have been granted bail, would not, by itself, entitle the other accused to bail; there are other considerations and factors which weigh in for considering parity. In our *prima facie* view, the role ascribed to the present Appellant, as reflected from the material on record, is distinct than that of the co-accused Devangana Kalita and Natasha Narwal in the alleged conspiracy.

331. Keeping in view the allegations against the Appellant, discussed herein above, the ground of parity is not made out in favour of the Appellant.

332. With respect to the argument of delay and prolonged incarceration, as noted hereinabove, the present case involves complex issues, and the trial is progressing at a natural pace. After giving our careful and thoughtful consideration to the facts and circumstances of the present case as well as reasons outlined above, the Appeal does not succeed.

333. Accordingly, the Criminal Appeal No. 211/2022, along with pending applications, if any, stands dismissed.



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334. Needless to say, we have not made any observations on the merits of the Appellant's case, the discussion herein has been confined solely to the consideration of the bail to the Appellant.

SHALINDER KAUR, J

NAVIN CHAWLA, J

SEPTEMBER 02, 2025
KM