

I.A. No. : 299/26
SC No. : 163/2020
State vs. Tahir Hussain (**Umar Khalid**)
FIR No. : 59/20
PS : Crime Branch

I.A. No. : 300/26
SC No. : 163/2020
State vs. Tahir Hussain (**Sharjeel Imam**)
FIR No. : 59/20
PS : Crime Branch

04.07.2026

Present : Sh. Madhukar Pandey and Sh. Anirudh Mishra, Special Public Prosecutor for the State alongwith Sh. Ayodhya Prasad, Adv. and Legal Assistant to SPP, Sh. Sulabh Gupta, Sh. Saravjet Singh, Ms. Ishika Singh Advocates (in Court) and Ms. Ananya Bose, Adv. (through VC).

Assisted by SIT (Riots) Addl. C.P. Sh. Pramod Singh Kushwah (through Webex) Inspector Sushil Kumar and SI Raj Bahadur Gill, Pairvi Officer from Special Cell.

Sh. Trideep Pais, Sr. Adv. alongwith Sh. Sahil Ghai, Ms. Sanya Kumar, Ms. Sakshi Jain, Ms. Saloni Ambastha and Ms. Loveleen Kukreja, counsel for the applicant/accused Umar Khalid.

(in I. A. No. 299/2026).

11.04.2022
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Sh. Talib Mustafa, Sh. Ahmad Ibrahim, Ms. Ayesha Zaidi and Sh. Shariq Ahmad counsel for the applicant/accused Sharjeel Imam.

(in I. A. No. : 300/26).

1. By this common order the Court shall dispose of two bail applications filed by the applicant Umar Khalid and applicant Sharjeel Imam as filed u/s 437 of the Code of Criminal Procedure, 1973/ 483 BNSS, 2023 read with Section 43D (5) of the Unlawful Activities Prevention Act, 1967 seeking grant of regular bail.
2. The brief submissions on behalf of the applicant Umar Khalid are that his first bail application was dismissed by this Court on 24.03.2022, and thereafter, he challenged the said order but vide order dated 18.10.2022, the Hon'ble High Court of Delhi dismissed his appeal. Further, the applicant approached the Hon'ble Supreme Court but he withdrew his petition there. It is further submitted on behalf of applicant Umar Khalid that thereafter, he moved the second bail application before this Court but the same was dismissed on 28.05.2024 and the appeal as filed in pursuant to that order was dismissed by the Hon'ble High Court of Delhi on 02.09.2025 and thereafter, the petition of the applicant was dismissed by the Hon'ble Supreme Court on 05.01.2026 and finally the review petition of the applicant was then dismissed by the Hon'ble Supreme Court vide judgment dated 16.04.2026.
3. Similarly, the submissions on behalf of the applicant Sharjeel Imam are that his first bail application was dismissed by this Court on



11.04.2022, and thereafter, he challenged the said order but the Hon'ble High Court of Delhi dismissed his appeal. It is further submitted that finally his petition was dismissed vide judgment dated 05.01.2026, which was reported as '**Gulfisha Fatima v. State (Govt. of NCT of Delhi)**'.

4. The arguments on behalf of both the applicants as addressed by their Ld. Counsel are almost common. Ld. Counsel for the applicants submit that vide judgment dated 05.01.2026 in the petition titled as '**Gulfisha Fatima v. State (Govt. of NCT of Delhi)**', five co-accused persons were granted bail by the Hon'ble Supreme Court but the present applicants were declined the relief.

5. It is further submitted that in the said order Hon'ble Supreme Court put a condition that the applicants will not move any application seeking bail until the period of one year expires, or in the meantime, the protected witnesses are examined.

6. Ld. Counsel further submit that after the said order of the Hon'ble Supreme Court, about five months have passed and even if the charge is framed in near future, in any condition the protected witnesses cannot be examined by the time as granted by the Hon'ble Supreme Court.

7. Ld. Counsel further submit that subsequent to the judgment of Gulfisha Fatima as passed by a Division Bench of the Hon'ble Supreme Court on 05.01.2026, whereby both the present applicants were declined bail, another Division Bench of the Hon'ble Supreme Court has passed a judgment titled as '**Syed Iftikhar Andrabi v. National Investigation Agency**', Jammu 2026 INSC

503', according to which the dictum in '**Union of India v. K A Najeeb (2021) 3 SCC 713**' was supposed to be followed. Ld. Counsel further points out that in the said decision of Syed Iftikhar Andrabi, the Hon'ble Supreme Court has expressed serious reservations on the manner in which K A Najeeb was applied in the case of Gulfisha Fatima and expressed to the extent that the reasoning given in Gulfisha Fatima amounts to a hollowing out of the Constitutional Bench of Three Judge Bench decision in K A Najeeb.

8. Ld. Counsel further submit that thereafter, while dealing with the petition of accused Tasleem, who is a co-accused in the present case, a Division Bench of the Hon'ble Supreme Court has not only noticed the diversions of opinion between Gulfisha and Syed Iftikhar Andrabi, but also released the co-accused Tasleem and another co-accused Khalid Saifi on interim bail for a period of six months. Ld. Counsel further submit that the Bench however, referred the question of law to a larger bench in the light of the diversions of opinion in Gulfisha Fatima and Syed Iftikhar Andrabi.

9. Ld. Counsel for accused Umar Khalid has also referred a recent judgment of Hon'ble High Court of Delhi passed in '**Khuram Parvez v. National Investigation Agency 2026 SCC Online Del 4624**', submitting that in the referred case, the Hon'ble High Court granted bail to the petitioner on the aspect of long incarceration i.e. about four and a half years only, after considering all the judgments as referred by him in the present case and as in the present case the period of custody of the applicant is more than six years,

the applicant must be granted bail.

10. Ld. Counsel submit that in view of the facts as given by them, circumstances have changed positively in favour of the applicants and this Court now can consider the regular bail of the applicants. Ld. Counsel pray that although under the given circumstances the applicants deserve regular bail but in any case, if the Court is not inclined to grant it, the applicants may at least be granted an interim bail for six months, as granted by the Hon'ble Supreme Court in Tasleem's case.

11. Short arguments on behalf of the prosecution are that vide order dated 05.01.2026, the Hon'ble Supreme Court has dismissed the SLPs of both the applicants and thereafter, even a review petition of the applicant Umar Khalid has been dismissed vide order dated 16.04.2026 and under these circumstances, this Court cannot grant bail to the applicants. Further, since then, there are no substantial change of circumstances as pleaded by the applicants and there arises no question to re-consider the bail of the applicants.

12. The Court has heard arguments and gone through the record.

13. Although Ld. Counsel for both the applicants have argued that since the judgment of the Hon'ble Supreme Court in Gulfisha Fatima v. State as passed on 05.01.2026 against both the applicants, there are change in circumstances in view of the judgment of another Division Bench in Syed Iftikhar Andrabi, the Court is of the simple view that it cannot even analyse if the circumstances have changed. Further, as pointed out by the Ld. Counsel,

the issue i.e. the diversions of opinion between the judgments i.e. the judgment of Gulfisha Fatima and Syed Iftikhar Andrabi has already been referred to a larger bench and as such unless the issue is settled, the Court cannot consider the present applications on any ground. Further, importantly, this Court has no option but to follow the judgment dated 05.01.2026, as passed by the Hon'ble Supreme Court, whereby the petitions of both the applicants were dismissed. In the said judgment, the Hon'ble Supreme Court, while dismissing the pleas of the applicants opined that only on the completion of the examination of the protected witnesses as relied upon by the prosecution, or upon the expiry of a period of one year from the date of said order, whichever is earlier, the applicants would be at liberty to renew their prayer for grant of bail before the jurisdictional Court. Thus, following the said order of the Hon'ble Supreme Court, this Court cannot entertain the applications and grant bail to the applicants. Infact the applications are not maintainable and they are hereby dismissed.

Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

Order dasti

(Sameer Bajpai)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts
Delhi : 04.07.2026