

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

FIR No. 59/2020

PS : Crime Branch (being investigated by Special Cell)
U/s. 13/16/17/18 of Unlawful Activities (Prevention) Act, 1967
u/s.120B/124A/302/307/353/186/212/395/427/435/436/452/109/
114/147/148/124A/153A/34 IPC u/s. 25/27 Arms Act
State vs. Asif Iqbal Tanha

26.10.2020 (At 10.10 PM)

ORDER

1. Vide this order, I shall dispose off the second bail application under Section 439 Code of Criminal Procedure read with Section 43-D (5) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as UAPA) moved on behalf of the applicant/accused Asif Iqbal Tanha.
2. Arguments on bail application were heard at length on behalf of applicant/accused Asif Iqbal Tanha by Sh. Siddharth Aggarwal, Ld. Counsel for accused and for prosecution by Sh. Amit Prasad, Ld. Special Public Prosecutor.
3. I have perused the record including the charge-sheet. I have also gone through the bail order of accused Mohd. Faizan dated 23.10.2020 of Hon'ble High Court of Delhi in Bail Appl. No. 2725/20.

CONTENTIONS ON BEHALF OF THE ACCUSED

4. (a) It was submitted by Sh. Siddharth Aggarwal, Ld. Counsel for

accused Asif Iqbal Tanha that this is the second bail application, first having been dismissed by this court on 02.09.2020.

(b) It was stated that the chargesheet was filed in this case on 16.09.2020, naming applicant as an accused No. 8. Vide order dated 17.09.2020, this court was pleased to take cognizance of the offences mentioned in the Chargesheet, barring Sections 124A/153A/109/120B for which State Government sanction was awaited and issued summons to all named accused, including applicant. Further, vide Orders dated 21.09.2020 and 03.10.2020, the Applicant's judicial custody remand has been extended until 15.10.2020.

(c) It was submitted that a bare perusal of the chargesheet and relied upon documents will show that the applicant has not indulged in any conduct amounting to any offence, let alone offences punishable under the UAPA. The applicant was not even present in North-East Delhi during the unfortunate events of February 2020 and never visited any of the protest sites where incidents of rioting and violence occurred.

(d) It was stated that the case of the Investigating Agency in the entire material, it seeks to rely on, qua the applicant to allege contraventions of various UAPA, IPC, and other offences, is baseless, wholly concocted and demonstrably false. The allegations against the applicant are that he was a member of the Student Islamic Organization (SIO); On 12.12.2019, in furtherance of a criminal conspiracy Applicant sent a message on the SIO JMI Unit WhatsApp group calling for a march

to the Parliament from Jamia Millia Islamia University to protest against the CAA/NRC; On 12.12.2019, applicant in furtherance of conspiracy, was Admn. of a WhatsApp group called Parliament March, where students from Muslim Students of JNU (MSJ) were also participating, to achieve common conspiracy; On 13.12.2019, co-accused Umar Khalid and co-accused Sharjeel Imam (both accused not chargesheeted at present) met applicant, directed him to start Chakka Jam at Gate No. 7, JMU which would be done “in Muslim majority areas to overthrow the Government as this government is a Hindu Govt. and is against Muslims”; The applicant was instrumental in setting up and running Jamia Coordination Committee (JCC) from its inception on 17.12.2019, which was set up and run at behest and directions of co-accused Umar Khalid; The applicant purchased a SIM Card from a shop ‘Golden Communications’ in December 2019, on forged and fabricated documents, on the pretext that the same was to be used for riots; The Applicant subsequently provided said SIM Card to co-accused Safoora Zargar in mid-January 2020, and such SIM Card was used by her for organizing protests and was part of all four WhatsApp groups created by JCC; The applicant used to attend “secret” JCC meetings in pursuance of common conspiracy and used to implement direction conveyed to him by one Nadeem Khan and co-accused Umar Khalid; On 22.02.2020, after blockade at Jaffrabad metro station, at around 10:10 PM a JCC meeting was held at JMI of around 60-65 members where Applicant (as a protégé of Umar Khalid) told other members that preparation for riots is ready and they should evacuate from the riot sites since bombs and bullets were certain to be fired.

(e) It was submitted by the counsel for accused that there is no physical evidence connecting him to any of the violence in North-East Delhi and no recoveries have been made pursuant to any alleged statements made by him. There is absolutely no incriminating material on any search, no weapons, arms, ammunition etc., no reading material propagating violence, and no prior record/disposition demonstrated by the Investigating Agency attributable to the applicant. There are no allegations qua the applicant's membership in any banned terrorist groups or unlawful associations under the UAPA and there are no allegations with respect to any funds procured/received by the applicant, let alone for raising funds for terrorist act, for which he has been arraigned under Section 17 of the UAPA.

(f) It was submitted by counsel for accused that the allegations qua applicant are based on statements of only a handful of witnesses (out of over 700 recorded statements) and there is no admissible or reliable material in the form of electronic data or recoveries, to support the case of the Investigating Agency. The Investigating Agency cannot seek to rely on Applicant's alleged "disclosure" statements which are (a product of coercion, or that of co-accused persons, which are entirely inadmissible in law. Further, even taken at their best, these allegations (including those which are wholly contrary to the record and demonstrably false) do not fall within the definitions of offences punished under Chapter IV (Punishment for Terrorist Activities) or Chapter VI (Terrorist Organisations) of the UAPA. Therefore, it was

submitted that the legal standard to determine whether or not the Applicant is entitled to bail is under Section 439, Cr.P.C. alone, since Section 43D(5), UAPA applies only to Chapter IV and Chapter VI offences. In any event, the case of the Investigating Agency does not meet the legal threshold for refusal of bail under Section 43D(5), UAPA. It was argued that allegations against applicant are *prima facie* false. It was pointed out that in the Reply to the First Bail Application dated 24.07.2020, the Investigating Agency had stated that the Applicant was part of a meeting at Jaffrabad Metro Station on 22.02.2020 wherein he stated that preparation for riots was ready and a Chakka Jam therefore mobilized on the evening on 22.02.2020 at such location. The applicant had submitted that he had never been to North East Delhi. Upon such submission, the Agency changed its stand to claim that such meeting was held at JMI, as a clear false afterthought. The applicant rebutted the same stating that it was the case of the Delhi Police in all other charge-sheets that the Blockade at Jaffrabad Metro Station was as a response to the calls of the Bhim Army. The case in chargesheet now, however states that the said meeting was held at 10:10pm at JMI Gate No. 18 (AAJMI Office) after the Chakka Jam at Jaffrabad had already materialized. The repeatedly changing stands of the Investigating Agency only go to show their inherent falsity. Further, the witness statements sought to be relied upon to establish this alleged fact are inherently contradictory and in any event do support the police case, which is neither supported by any independent, scientific evidence whatsoever. The allegation of Applicant's involvement in JCC WhatsApp Group chats is also demonstrably false. It is the case of the police that JCC maintained four

WhatsApp Groups, out of which one group was created on 17.12.2019 and disbanded around 24.01.2020 (where also Applicant was not an administrator. Of the other three groups operational at the time of the riots, Applicant was admittedly part of only one namely JCC JMI Official, where also he was not an Administrator. Further, in the Investigating Agency's own analysis of JCC Chats, the applicant's name does not even appear in the list of members of the groups. Therefore, the Investigating Agency's case attempting to attribute membership in a criminal conspiracy based on messages in the JCC WhatsApp group is to be strictly rejected. It was further submitted that the Investigating Agency has deliberately not made the entire content of the chats as part of the Chargesheet since it would demonstrate that Applicant was not even a member of the JCC WhatsApp group at the time of the North East Delhi violence but was only added on 24.02.2020 at around 7pm. Therefore, messages relating to urgent mobilization which were allegedly posted on JCC WhatsApp Group on 23.02.2020 bear no correlation whatsoever to the Applicant. Further, the applicant left for Kerala around 5.00 am on 25.02.2020. The Respondent is fully aware of the same and has made false allegations of involvement of the Applicant in riots from 23-25 February, 2020.

(g) It was further submitted that test of Section 43D(5), UAPA is not met. The Investigating Agency's case in relation to Applicant's alleged creation of and control over JCC is based entirely on the statements of few witnesses, which are wholly unreliable, contradictory, self-serving and marked improvements over the previous statements

recorded by the Investigating Agency. In any event, it is well within the knowledge of the Investigating Agency and clear from a perusal of the CDRs of applicant and messages on various alleged JCC groups that Applicant was not present in Delhi for large parts of January and February 2020 and was not an active participant in JCC. Further, it is the Agency's own case that applicant did not form the JCC group as an administrator in December 2019. The Agency has purposely withheld the entire JCC WhatsApp group chat which would show applicant's negligible involvement with the group. Reliance on the JCC Press Release of 18.12.2019 does not in any manner implicate Applicant as the creator of this group. It was further submitted that the remaining allegations are wholly false and denied, but even if taken at their face value, do not constitute any offence under UAPA, let alone Chapter IV or Chapter VI offences. First, the Agency's case appears to revolve around Applicant's membership in SIO and an alleged conspiracy due to a message for a Parliament March sent on 12.12.2019. At the outset, it is submitted that that SIO is a 40-year old pan-India student organization which undertakes *inter alia*, organization of various student activities including lectures/events on contemporary issues, career counseling etc., and there is not an iota of an allegation against the organization itself. Further, the Agency is well aware that the Applicant did not hold any leadership position in the organization and mere membership in a lawful, student-led organization is not a criminal offence punishable under any extant law, especially the UAPA. The Investigating Agency has willfully not placed the entire WhatsApp Chat of the SIO JMI group which would show that its case of Applicant's alleged conspiracy in sending a message

about a Parliament March is wholly unsubstantiated and absurd. The Applicant was one of several people on SIO's JMI group, not an Administrator and in any event the call for a Parliament March to oppose the CAA does not constitute an unlawful act by any stretch of imagination. The applicant was admittedly not an Administrator of the group Parliament March and in any event, such group (created on 12.12.2019 and disbanded on 17.12.2019 for the admitted purpose of a march to Parliament to protest CAA/NRC) does not provide any evidence at all of a conspiracy to cause riots in February 2020. The Agency's case that Applicant was involved in a conspiracy with co-accused Umar Khalid and Sharjeel Imam is also wholly untrue and lacks any evidentiary basis. Finally, the allegations around applicant providing a SIM card to co-accused Safoora Zargar for the "purpose of riots" are totally absurd and without merit. First, this allegation is based on the improved, contradictory and unreliable statements of witnesses, none of whom has disclosed facts that link the Applicant and Safoora Zargar to the SIM Card, let alone fit the concocted prosecution narrative. The falsity of this narrative is belied by independent evidence which shows that this phone number was in operation much before the alleged prosecution case. Further, the Investigating Agency has not seized the handset in which this SIM card was used and further, the IMEI number belongs to a handset which is not traceable to the Applicant in any manner. Even considering the Investigating Agency's case at the highest that the applicant did purchase a SIM Card for co-accused Safoora Zargar by way of which she sent messages for mobilization, this allegation does not in any manner show that the Applicant was involved even remotely in

causing riots or conspiring to cause riots. It is humbly submitted that the Investigating Agency has miserably failed to raise even a *prima facie* suspicion of commission of a terrorist act under Section 16 of the UAPA or conspiracy under Section 18 of the UAPA. There is no basis to allege any terrorist act against the Applicant or act which could threaten the unity, integrity, security or sovereignty of India. The bald allegation that the accused persons in this case were involved in attempting to overawe the Government of India/advocating a secessionist movement or armed rebellion against the Government of India, is wholly baseless rhetoric which has not been backed by an iota of evidence, let alone *qua* the Applicant.

(h) It was further submitted that the Investigating Agency has failed to level any other allegations of substantive offences against the Applicant, let alone offences under Section 13 of the UAPA, Sections 302, 307, 436, 124A etc. of the IPC, the PDPP Act or Arms Act. The attempt of the Investigating Agency to make some connection between alleged acts of violence in and around JMI in December 2019 and the North East Delhi riots of February 2020, *qua* the Applicant, must be rejected. The Investigating Agency is fully aware that the Applicant is on bail in Case No. FIR 298/2019 since 28.05.2020 and any attempt to conflate the two cases *qua* Applicant and allege common conspiracy has no basis in any material relied on by the Investigating Agency. To the knowledge of the applicant, the Respondent has not even searched his premises and no physical evidence has been retrieved from him and no recoveries have been made pursuant to his statements.

(i) It was submitted that the Applicant has continuously cooperated with the investigation prior to his arrest and there was show the high-handed conduct of the Respondent. The applicant was forcefully made to sign on several blank sheets of paper as well during interrogation. He was then arrested on 17.05.2020 in FIR 298/2019, PS: Crime Branch which shows that the Investigating Agency had no material to arrest him in the Subject FIR. applicant's arrest in the Subject FIR on 19.05.2020 was a blatant attempt to cause him prejudice and create further pressure for coerced testimony, and likely because police custody in Case No. FIR 298/2019 was refused. After having been forced to once again sign, under great duress, on several sheets of paper including blank pages, during his police custody remand, the Respondent did not seek further police custody remand for the Applicant, nor has it once sought him for investigation purposes during his subsequent judicial custody in Subject FIR. The Respondent procured Applicant's email and social media account passwords, and sought coerced disclosures/statements from him.

(j) It was further submitted that this Hon'ble Court has, vide two separate orders dated 27.05.2020 & 24.07.2020, remarked on the poor, unfair, inadequate and biased conduct of the Respondent which goes to the root of its prosecution of various accused persons, including applicant. Perusal of the Chargesheet will show that it was only after such order that the Investigating Agency sought video footage of Jaffrabad Metro Station, which has now allegedly already been deleted by DMRC. It is humbly submitted that the conduct of the Investigating

Agency qua the Applicant, continues to be lacking, and there is no material or allegations to justify the continued incarceration of the Applicant. It has never been the Respondent Agency's case that the arrest and detention of the Applicant was required due to his being a flight risk or due to his propensity to tamper with evidence. The Applicant is a 24-year old student of Jamia Millia University, Delhi in his final year in the B.A. (Hons.) Persian programme. He has been a student since 2017 and was slated to graduate in July 2020. Being the primary bread-winner of his family, he was working part-time by running a restaurant called 'Chai Khaana' to send money back home to Jharkhand, to his aged parents and his 25-year-old sister. The Applicant has clean antecedents and is a law-abiding citizen who has never taken part in violence nor has ever abetted or instigated any acts of violence. The applicant undertakes to fully cooperate with the Respondent Agency during the course of further investigation into the FIR, and furthermore to abide by any other condition(s) that may be imposed on him by this Hon'ble Court whilst enlarging him on bail.

(k) It was vehemently argued by the Ld. Counsel for accused that accused was not a part of JCC Whatsapp group from 24.01.2020 till 24.02.2020. There is no terrorist organization or any unlawful association under UAPA with which the accused is alleged to be involved or part of. Student Islamic Organization or Jamia Coordination Committee are not terrorist organizations or unlawful association.

Ld. Counsel had also stressed that the charge-sheet is a fictional

account of the police, which does not even know when this alleged conspiracy began. From the chronology of the conspiracy as alleged, there appears to be only protest and all activities prior to February 2020 are not relevant to the UAPA.

(1) The accused is a student, 27 years old who cannot be kept in Jail for advocating a view point. A person cannot be put in prison for his beliefs. Protest against the CAA is not a criminal conspiracy. There is no message of the accused which shows advocacy of violence. There was only a protest against the CAA. Doing road block does not attract UAPA and there is no reason why the JCC would have a press release or form a media team when as per the police they had other designs. At the most, provision of protest/unlawful assembly without permission could have been invoked but not UAPA.

It was, therefore, prayed that the present application be allowed and accused be enlarged on bail.

CONTENTIONS ON BEHALF OF THE PROSECUTION

5. (a) It was submitted by Sh. Amit Prasad, Ld. Special Public Prosecutor that the present case is one of multi-layered, multi-organizational and deep-rooted conspiracy which led to riots in Delhi.

(b) It was argued that the provisions of Unlawful Activities (Prevention) Act, 1967 are attracted in the present case and *prima facie* case is made out. Such being the situation, bar under Section 43 D of

UA(P)A will apply and the present bail application deserves to be dismissed.

(c) Ld. Special Public Prosecutor highlighted in detail Section 15,17,18, 13 of UAPA and argued that in the present case Terrorist act is made out alongwith conspiracy for the act and accompanied with funding for riots is established by evidence collected in the investigation.

(d) He also referred to FIR No. 242/19, P.S. New Friends Colony and other FIRs from December, 2019 till February, 2020. He also took through the role of Tahir Hussain, particularly, regarding the funding and preparation of the entire conspiracy.

(e) Ld. Special Public Prosecutor also stressed that in December, 2019 there was use of petrol bombs, firearm, etc., and in February, 2020 use of petrol bombs, acid, firearm, etc. 53 persons died in the riots while hundreds were injured and there was mass destruction of property. There was unprecedeted riots preceded by protest.

(f) Ld. Special Public Prosecutor also arrayed out the provocative speech of Sharjeel Imam on 13.12.2019 at Jamia in which he said that their goal is to chakka-jam and thus, stopped the delivery of essential commodities in the areas of Delhi.

Another speech delivered by Sharjeel Imam on 16.01.2020 at Aligarh Muslim University for Muslim students against CAA. Ld.

Special Public Prosecutor also highlighted that the aim of the speech is to disturb the unity, integrity and sovereignty of India.

He also took the court to speech of Sharjeel Imam delivered on 13.12.2019 & 24.02.2020. It was further submitted by Ld. Special PP that Sharjeel Imam, in his speeches and actions conceptualized the 'chakka-jam' and whatever was said was also actually implemented later on. There are statements of protected witnesses like James, Robot & others which clearly show the role of the applicant as also the other co-accused persons. It was submitted that in a case of conspiracy there are different roles attributed to different accused persons as spelt out in the charge-sheet and thus, every accused plays his or her respective role. He also referred to one judgment of ***NIA vs. Zahoor Shah Badali, 2019 V SCC 1.***

It was, thus, prayed that the application is devoid of merits and be dismissed.

6. Before I begin to discuss the merits of the application, I deem it fit to state in unequivocal terms that there is freedom to protest available to all the citizens of the country but that is subject to reasonable restrictions. There is also, no manner of doubt, that every citizen can hold an opinion about any legislation which they construe as unfair in their understanding. The freedom and right to protest against any law is available to all the citizens.

What actually has to be seen in the context of the present case is

whether there was a conspiracy which led to riots under the guise of protest against CAA or not, in terms of the contents of the charge-sheet.

7. (a) This is the second bail application of accused Asif Iqbal Tanha. However, it is the first bail application after the filing of the charge-sheet.

(b) For the purpose of deciding of the present application, the contents of the charge-sheet and annexures have to be looked into.

(c) In the present case, apart from various provisions of other legislations, provisions of Unlawful Activities (Prevention) Act, 1967 (UAPA) have been invoked and taken cognizance of.

(d) At the outset, I must also, in brief, touch upon the issue of applicability of the Unlawful Activities (Prevention) Act, 1967 for the limited purpose of bail application since it was raised by the Ld. Counsel for accused.

Chapter IV of the said Act deal with Punishment for Terrorist Activities..

Section 15. Terrorist act.-- *[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,--*

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause--

- (i) death of, or injuries to, any person or persons; or
- (ii) loss of, or damage to, or destruction of, property; or
- (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
- [(iiiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]
- (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organization or any other person to do or abstain from doing any act; or] commits a terrorist act.

Section 16 provides punishment for commission of terrorist act.

Section 17. Punishment for raising funds for terrorist act.--
Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Explanation.--For the purpose of this section,

(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;

(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and

(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 shall also be construed as an offence.

Section 18. Punishment for conspiracy, etc.--*Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.*

(i) One contention of the Ld. Counsel for accused is that any organization whether it is JCC or Student of Islamic Organization (SIO) is not a terrorist organization under the UAPA. The said contention is correct to the extent that these groups are not proscribed organization under the said Act.

(ii) But we have to understand terrorist activity, with reference to the definition provided under Section 15 of the said Act. As per the said provision, any act the intention of which is to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or done with an intent to strike terror in the people of India or any section of people in India by using bombs or other explosives substance or..... or any substance of hazardous nature or by any other means

of whatever nature to cause death of or injury to persons or loss or damage or destruction of property or disruption of any supplies or services essential to the life of community in India is a terrorist act.

(iii) Moreover, Section 13 of the said Act states that whoever, commits, advocates, abets, advises or incites the commission of, any unlawful activity, shall be punished. Section 2 of the Unlawful Activities (Prevention) Act, 1967 states that any action taken by an individual or association which causes or is intended to cause disaffection against India is an unlawful activity. Thus, vociferous agitation in the guise of Citizen Amendment Bill coupled with other activities of violence would show it was meant to cause or intended to cause disaffection against India.

(iv) In the present case, as per the investigation, there was a premeditated conspiracy of the disruptive chakka-jam and a preplanned protest at different planned sites in Delhi resulting in riots killing scores of people, injuring hundreds and causing destruction to the property. The entire conspiracy beginning from December 2019 of intentionally blocking roads to cause inconvenience and causing disrupting of the supplies of services, essential to the life of community of India resulting in violence with various means and then leading to February incident with the focus being targeted blocking of roads at mixed population areas and creating panic and attack on police personnel with facade of women protesters in front and leading to riots would be covered by the definition of terrorist act. Acts which threaten the unity and integrity of India, in as much as causing social disharmony and creating terror in any section of

the people, by making them feel surrounded resulting in violence, is also a terrorist act.

(v) In brief, as per the charge-sheet, after the passing of Citizen Amendment Bill by the Cabinet on 04.12.2019, on 06.12.2019, pamphlets were distributed in the area of Jama Masjid and Okhla. On 07.12.2019, protest were carried out at Jantam Mantar by United Against Hate and by Students of JNU. On 11/12/13 December, 2019, Sharjeel Imam gave speeches. Protest started at Jamia Millia University on 13.12.2019. On the pretext of the opposition to CAA, riots started in the month of December 2019 and FIR No. 242/2019 dated 16.12.2019 under Section 186/308/332/353/143/147/149/148/341/427/435/120B/323/34 IPC and Section 3, 4 of Prevention of Damage to Public Property Act at P.S. New Friends Colony was registered. Other FIRs No. 250/19, P.S. Darya Ganj, 296/2019, P.S. Jamia Nagar, 298/2019, P.S. Jamia Nagar, 510/19, 512/19, P.S. Dayalpur, 535/19, P.S. Seelampur, 699/19, P.S. Jafrabad, 760/19, Nand Nagri, 816/19, P.S. Seelampur were registered. In January 2020, protest sites were created for opposition to CAA/NRC. In January, 2020 as well, various cases were registered for the violence perpetrated by the protesters.

(vi) The speech dated 13.12.2019 at Jamia Millia University delivered by accused Sharjeel Imam also is very provocative. He calls the Constitution fascist. He calls for organization/mobilization and for disruption and communal disharmony. He proposes chakka-jam and states that supply of water and milk should be disrupted and closed to the

people of Delhi. His speech on 16.01.2020 also calls for chakka-jam of the roads and for total closure in respect of the country. He specifically states that Delhi has to be closed so that people are inconvenienced. He even gives a call for permanently cutting the link to North-East of India.

(vii) Sharjeel Imam was connected to Muslims Students of Jamia. The students of Jamia pamphlets are also provocative. There were various Whatsapp group created of MSJ, Cab Team. On 12.12.2019, Asif Iqbal Tanha gave a call for protest to Parliament from Jamia Millia University against CAA on 13.12.2019. A group called Muslim Students of JNU was created and there was coordination between them. Then there was a call for disruptive chakka-jam. Later, on 16.12.2019, Umar Khalid and Nadeem Khan visited JMU and met with student leader and directed Asif Iqbal Tanha to set-up a student body for organization of protest in organized and planned way. Later on 17.12.2019, a Coordination Committee was constituted with the name of JCC on the direction of Umar Khalid and Nadeem Khan through Asif Iqbal Tanha and Saif-ul-Islam. Gate No.7 of Jamia Millia was declared as protest site. The said committee consisted of members of SIO, Pinjra Tod, SFI, JSF, etc. Later a Whatsapp group was created by the name of JMI Coordination Committee.

(viii) The first phase of chakka-jam and riots took place in December 2019. In these riots, there were attack on police personnel and public and damage to public/private property with the help of firearms, petrol bombs, etc.

(ix) Asif was part of one Whatsapp group JMI Coordination Committee from 17.12.2019 and Safoora removed him since they were summoned by the police on 24.01.2020.

(x) Other accused persons were in touch and coordination with each other through other Whatsapp groups. Different roles were ascribed to different people in carrying out the said conspiracy. The violence in February 2020 in North-East Delhi beginning with by firstly choking public roads, attacking policemen and then public and where firearms, acid bottles and instruments were used, resulting in loss of lives and property was a result of the said conspiracy.

(xi) At this stage, it must be noted that for constituting a conspiracy, meeting of minds of two or more persons for doing an illegal act or any act by illegal means is the condition and it is not at all necessary that all the conspirators must know each and every detail of the conspiracy. It is also not necessary that every one of the conspirators must take active part in commission of each and every conspiratorial acts. The agreement among the conspirators can be inferred by necessary implications. Mostly, the conspiracy are proved by circumstantial evidence as the conspiracy is seldom and an open affair. The existence of conspiracy and its object are normally deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy.

(xii) The contention that accused has no role in raising funds for

riots is misplaced as other accused persons in this case are alleged to have done this part in the conspiracy. Conspiracy has to be read as a whole and not piecemeal.

Moreover, the question of presence of accused at the site in North-East, Delhi at the time of riots is not a sine-qua-non for a conspiracy case.

Hence, the provisions of UAPA have been rightly invoked in the present case.

8. Section 43D. Modified application of certain provisions of the Code.--

(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*.

Thus, if the court is of the opinion on the perusal of the charge-sheet that there are reasonable grounds for believing that the accusation against such person is *prima facie true*, than, as per this provision, accused shall not be released on bail.

9. (i) In terms of the investigation in the charge-sheet, the accused

was arrested on 19.05.2020 and is a student of Jamia Millia Islamia University.

(ii) The accused is a member of Student of Islamic Organization and one of the founder member of Jamia Coordination Committee and its active member. He has delivered speeches in various part of India.

(iii) On the issue of disclosure statement of accused, the legal contention that disclosure statement by itself has no meaning, is also correct. There has to be material beyond the disclosure statement.

(iv) Moreover, if we look at the statement of protected witnesses under Section 164 Cr.P.C, we find sufficient incriminating material against the present accused.

As per the statement of witness "BETA", he saw in T.V on 16.12.2019 that students had burnt buses in opposition to CAA/NRC. He, after seeing footage of Jamia Library, joined the protest site on 17.12.2019. He started going there daily and saw that some students, alumni and some local leaders including accused Meeran Haider, Shafa-ur-Rehman, applicant / accused Asif Iqbal Tanha, etc., used to give speeches and slogans. He narrated that what he saw and on 13.01.2020, it was decided to have sitting at Khureji Khas. Various persons including Ishrat Jahan, Khalid Saifi were present. Later, local sitting/campaigning at 17-18 sites in Delhi started happening. They used to have meeting at Jamia Gate No.18, Jamia Coordination Wing. There used to have

representatives at all the protest sites. Provocative speeches are given and mobilization of people used to take place and then one day Umar Khalid gave a statement in Maharashtra where he referred to the visit of Trump to India. After this speech, meeting started happening continuously. He was told that JCC members alongwith Pinjra Tod representatives will do chakka-jam in North-East Delhi. On 22.02.2020, Pinjra Tod girls had done the chakka-jam at Jafrabad. Provocative speeches were given like that they will destroy the government. After chakka-jam, stone pelting started to happen at Kardampuri protest site and Maujpur. On 24.02.2020, stone pelting happened at Jafrabad. The witness clearly stated that the entire protest plan was done by Pinja Tod, JCC members, United Against Hate was done in planned manner.

There are statement of other witnesses like "JAMES", "BOND", "ROBOT" which ascribes the role of the accused Asif Iqbal Tanha.

Witness "JAMES" clearly stated that accused Asif Iqbal Tanha planned for creating of JCC which was created on 17.12.2019. There was a JCC Whatsapp group created by accused Safoora and Asif Iqbal Tanha had given one SIM Mobile No. 9205448022 for the said group. All the decisions of the JCC were taken by Umar Khalid and Nadeem Khan and the same were ratified by accused Asif Iqbal Tanha and Saiful Islam. He specifically mentioned the accused telling in the meeting that Umar Khalid and Nadeem Khan had told that all the preparation for riots have been done and everyone should be ready and they will go to any extent possible and will make the government turn back even if it means

causing the riots. Saiful Islam specifically told that what Asif is saying has to be done and there would be firing and bombs in the riots and thus in time, they should leave the protest sites.

He further said that Safoora stated that chakka-jam has to be done as was explained by brother Sharjeel Imam.

Another protected witness “ROBOT” stated that Asif Iqbal Tanha also procured a SIM card on fake ID deliberately and Asif had told, in the presence of said witness, that he was doing work for the community by opposing CAA that they will do the protest and after protest, riots and thus, they would require a SIM on fake ID.

The said SIM was later given to Safoora and was used in JCC Whatsapp group.

Thus, the accused Asif Iqbal Tanha was closely connected with Sharjeel Imam, Nadeem Khan, Safoora, etc. The accused played a very active role in the entire conspiracy of organizing the so called protest at the protest sites which resulted in riots, killing numerous people besides injuries and destruction of property.

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

10. In view of the above discussion, since there are reasonable grounds for believing that the accusation against the accused Asif Iqbal Tanha are *prima facie* true, hence, embargo created by Section 43D of UAPA applies for grant of bail to the accused.

Hence, the present application for bail of accused Asif Iqbal Tanha is dismissed.

Application is disposed off accordingly.

Copy of this order be mailed to Ld. Counsel for accused, Ld. Prosecutor and the I.O.

(AMITABH RAWAT)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 26.10.2020