

FIR No. 242/19

U/s 143/147/148/149/186/353/332/333/307/308/435/427/323/341/120B/34 IPC,  
u/s 3/4 Prevention of Damage to Public Property Act & u/s 25/27 Arms Act  
PS Crime Branch (NFC)

**Sharjeel Imam vs. State (Application for grant of regular bail)**

**22.10.2021**

ORDER ON APPLICATION UNDER SECTION 439(1) CrPC

*“We are what our thoughts have made us;  
so take care about what you think;  
Words are secondary;  
Thoughts live; they travel far”*

(Swami Vivekanand)

1. Shorn of verbiage the relevant facts as discernible from record, may be taken note of: On 15.12.2019 at about 11.15 am, an information regarding demonstration against the Citizenship Amendment Bill (CAB) by the students and residents of Jamia Nagar was received at concerned police station. It was reported that they will march towards Parliament. At around 2.20 pm, a large gathering of about 2,500 persons armed with lathis assembled near Escort Hospital, Sarai Julena Chowk. At about 3.22 pm, despite warning, the mob consisting of around 3,000 to 3,500 started advancing towards Sarai Julena Village and Sujan Mahindra Road. When the mob tried to cross the barricades placed by police at Surya Hotel for marching towards Parliament, they were stopped from marching ahead.

2. As per prosecution, instead of going back, the mob started moving towards Mata Mandir Road to reach Mathura Road/Ashram Chowk via Sujan Mahindra Road and CV Raman Marg. It is alleged that the said mob blocked traffic movement on the road and started damaging public/private vehicles and properties with sticks, stones and bricks. It is further alleged that some of the miscreants were having inflammable material. They also targeted the police

personnel and started pelting stone upon them. On these allegations, FIR in the instant case was registered at PS New Friends Colony. One of the accused was identified as Furkan, who was arrested and his disclosure statement was recorded on 23.01.2020.

3. The material part of said disclosure statement is being reproduced for the sake of convenience:-

*“Usi din dinank 13.12.19 ko JNU se aaye ek bade baal wa daadi wale ladke ne apne aap ko Sharjeel Imam batate hue Jamia University gate No.7 ke bahar metro line ke pillar No.54 ke paas bhasan diya tha jisme mein maujood tha, Sharjeel Imam ne apne bhasan mein CAA & NRC kanoon ko virodhi batate hue bhasan diya tha ki government ko hum sabhi (accused refers to a particular community) ne milkar jhukana hai aur iska purjor virodh kara kar ke sabhi ilake mein chakka jaam karna hai yadi hum aisa nahin karenge toh hum sabhi (accused refers to a particular community) ko Detention Camp mein daal diya jayega aur humein desh se bahar jabardasti bhaga diya jayega, jo Sharjeel Imam ka bhasan sunkar mere wa anya logon ke andar sarkar wa CAA & NRC ke prati gussa bhar gaya tha. 15.12.19 ko bhi Sharjeel Imam ne dubara CAA NRC ke chalte Jamia Nagar ilake mein bhasan diya tha aur logon ko sarkar ke khilaaf uksaya tha jo mere andar aur kaafi gussa bhar gaya. Mujhe pata chala ki CAA & NRC ka Jamia Nagar, Jamia University wai Batla House ke log virodh kar rahe hain, jo mein us dinank 15.12.2019 apne ek sathi Nohman wai kuch anya logo ke saath julus mein shamil ho gaya.”*

4. Rest of the said disclosure was to the effect that co-accused Furkan alongwith other assailants committed arson, rioting, stone pelting. After investigation, chargesheet under section 143/147/148/149/186/353/332/333/307/308/427/435/323/341/120B/34 IPC & 3/4 Prevention of Damage to Public Property Act & under section 25/27 Arms Act was filed against 09 accused including accused Mohd. Furkan and matter was stated to be pending investigation qua applicant/accused Sharjeel Imam.

5. It is claimed by the prosecution that the name/identity of applicant/accused Sharjeel Imam was disclosed for the first time in the

disclosure statement of co-accused Furkan. It was found by investigating officer that applicant/accused Sharjeel Imam was already arrested on 28.01.2020 in FIR No. 22/20, PS Crime Branch and after conclusion of investigation, chargesheet in the said FIR has already been filed against the applicant/accused for offence under section 124A/153A/153B/153C/505 IPC & 13 UAPA. As per prosecution, applicant/accused Sharjeel Imam had delivered provocative speeches on 13.12.2019, 15.12.2019 and 16.01.2020, which resulted into riots at several places. The speech dated 13.12.2019 is the subject matter of present FIR i.e. 242/19, PS New Friends Colony. It is alleged that in the said speech, applicant/accused was seen instigating a particular religious community against the government by creating unfounded fears in their minds regarding CAB and NRC. As per prosecution, speeches delivered by the applicant/accused were seditious, communal/divisive in nature and were aimed at promoting enmity between different religions. After conclusion of investigation, the applicant/accused was chargesheeted for offence under section 124A/153A for the speech dated 13.12.2019. The accused was also chargesheeted for offences under section 143/147/148/149/186/353/332/333/307/308/427/435/323/341/120B/34 IPC & 3/4 Prevention of Damage to Public Property Act & under section 25/27 Arms Act with aid of section 109 IPC for instigating co-accused in committing the said offences.

6. It was forcefully submitted by Ld. defence counsel that applicant has been falsely implicated in the present case and there is not even an *iota* of evidence against him. It was argued that applicant/accused never participated in violence during the course of any protest or demonstration as he is a peace loving and law-abiding citizen. It was further argued that no speech much less the speech dated 13.12.2019, delivered by applicant/accused aimed at spreading any disaffection against the government established by law or inciting violence or ill-will against any community. It was urged that the speech dated 13.12.2019

which is the only speech which is the subject matter of present prosecution, if taken true on its face value, does not amount to sedition.

6.1 Ld. Counsel further argued that there was no common object between the applicant/accused and other co-accused who had indulged in alleged act of rioting/violence. Defence went on to submit that there is no evidence to show that alleged incidents of violence/riots got erupted as a consequence of the alleged speech (dated 13.12.2019) attributed upon the applicant/accused. It was further argued that there is no evidence to show that the applicant had abetted any of the co-accused in commission of any offences as alleged in the chargesheet.

6.2 Ld defence counsel went on to argue that the speech dated 13.12.2019 allegedly delivered by applicant/accused is already subject matter of other FIRs bearing No.22/2020 and FIR No.59/2020 registered by ISC Crime Branch/Special Cell. It was argued that material additionally collected by way of supplementary chargesheet is from the other FIR and same is infact mere duplication of proceedings against the applicant/accused and has no relevance to the present FIR. It was further argued that there is not an iota of admissible independent evidence against the applicant/accused linking him to the incident.

6.3 Ld. Counsel submitted that the accused is in custody since 28.01.2020. It was argued that as many as 160 witnesses have been cited by prosecution in the instant case and therefore, conclusion of trial shall definitely consume a lot of time considering the fact that trial is yet to begin. It was further argued that applicant/accused is pursuing his 3<sup>rd</sup> year of Ph.D in Modern History from Jawahar Lal Nehru University and has no criminal antecedents prior to the alleged speech and with each passing days, his studies are getting affected which would cause irreversible loss to him and his career. It was argued that eight co-

accused persons have already been granted bail and present applicant/accused also deserves to be granted bail on the ground of parity.

6.4 Ld. defence counsels placed reliance upon judgments of **Union of India vs. Bal Mukund (2009) 12 SCC 161, Dataram Singh Vs State of UP, (2018) 3 SCC 22** and **Sanjay Chandra vs. CBI, (2012) 1 SCC 40** in support of their contentions.

7. Per contra, Ld. Special Public Prosecutor for State vehemently opposed the bail application on the ground that allegations against accused are grave and serious. It was argued that the provocative speech delivered by the applicant/accused on 13.12.2019 resulted into riots and incident dated 15.12.2019. It was further argued that as per CDR location of mobile number of applicant/accused, he was present on the day when the speech dated 13.12.2019 was delivered by applicant/accused at Jamia Millia University. It was vehemently argued that vide said speech, applicant/accused was seen instigating a particular religious community against the government by creating unfounded fears in their minds regarding CAA and NRC. He further argued that speech delivered by the applicant/accused was seditious, aimed at promoting enmity between different groups of society on religious grounds and could have devastating effects on people's life and their safety. It was urged that the speech was evidently on divisive lines and has tendency to hamper the social harmony.

7.1 It was further argued that applicant/accused was arrested on the disclosure statement of co-accused Furkan who was very much present at the spot on the date of rioting (15.12.2019) and presence of latter was duly proved by eye witness Ct. Dharmender. It was further submitted that the following evidence got emerged against the applicant/accused during investigation which proves his complicity in the present incident:-

*(i) Disclosure statement of accused Mohd. Furkan;*

*(ii) CDR location of mobile number xxxxxxxx526 of accused Sharjeel Imam on the day of alleged speeches dated 13.12.2019 and 15.12.2019 i.e. at Jamia Millia University and Shaheen Bagh;*

*(iii) Pointing out memos of the places where Sharjeel Imam gave provocative speeches on 13.12.2019 and 15.12.2019;*

*(iv) Video and transcript of provocative speech dated 13.12.2019 at Jamia Millia University;*

*(v) Disclosure statement of accused Sharjeel Imam;*

*(vi) Copies of pamphlets seized in case FIR No. 22/20, PS Crime Branch;*

*(vii) Transcript of speech dated 16.01.2020 delivered by applicant at Aligarh Muslim University, thereby admitting his participation in the incident of rioting on 15.12.2019.*

8. On the strength of said arguments, state opposes the instant application.

9. I have heard rival contentions and perused the record including the written submissions filed by Ld. Special Public Prosecutor on behalf of state. It is informed by office that despite opportunity, defence did not file written submissions within stipulated time.

10. As far as allegations against applicant/accused for offences under section 143/147/148/149/186/353/332/333/307/308/427/435/323/341/120B/34 IPC & 3/4 Prevention of Damage to Public Property Act & under section 25/27 Arms Act with aid of section 109 IPC are concerned, after going through the record, I am of the prima facie view that the evidence in support of the allegations (rioteers got instigated by the speech dated 13.12.2019 of applicant/accused and thereafter they indulged in the acts of rioting, mischief, attacking the police party etc), is scanty and sketchy. Neither any eye witness has been cited by prosecution nor there is any other evidence on record to suggest that co-accused got instigated and committed the alleged act of rioting etc upon hearing the speech of applicant/accused Sharjeel Imam. Further, there

is no evidence corroborating the version of prosecution that alleged rioters/co-accused were a part of the audience addressed by applicant/accused Sharjeel Imam on 13.12.2019. Upon specific inquiry by this court, Ld. Special Public Prosecutor fairly conceded that at this stage, there is no material available with prosecution to the effect that applicant/accused and other co-accused persons were members of any common social platform viz whatsapp etc so as to fasten the liability of acts of co-accused upon present applicant with aid of section 109 IPC. The essential link between the speech dated 13.12.2019 and the subsequent acts of co-accused is conspicuously missing in the instant case.

11. The theory as propounded by investigating agency leaves gaping holes which leaves an incomplete picture unless the gaps are filled by resorting to surmises and conjectures or by essentially replying upon the disclosure statement of applicant/accused Sharjeel Imam and co-accused. In either case, it is not legally permissible to build the edifice of prosecution version upon the foundation of imagination or upon inadmissible confession before a police officer. Once the legally impermissible foundation of imaginative thinking and disclosure statement of accused/co-accused is removed, the prosecution version on this count appears to be crumbling like a house of cards. Though Ld. Special Public Prosecutor argued that said disclosure statements are relevant under section 8 of Indian Evidence Act, however the said argument appears to be nothing but a desperate attempt on his part to save the day for prosecution.

12. As far as allegations against applicant/accused for offences under section 124A/153A IPC are concerned, the relevant part of the speech is being reproduced as under for the sake of convenience except that the name of the particular community is not being mentioned:-

*“Theek hai, 1955 se lekar 1995 tak aapko dikhega (accused refers to a particular community) wapas bheje gaye, property japt ki gayi, lakhon bhai ek do case nahi hai, lakhon ko wapas bheja gaya hai, ki tumhara chehra bhai wahan jayo. Bhale hi*

*chachera bhai ho tumhara, theek hai? Tripura se (accused refers to a particular community) ki aabadi khali karayi gayi. Yeh sab census ka data hai.....*

*.....Kya (accused refers to a particular community) mein itni haisiyat bhi nahi ki Uttar Bharat ke sehron ko band kiya ja sake? Bataiye aap.....(hai hai bilkul hai). UP mein sehri aabadi (accused refers to a particular community) ki tees fisdi se upar hai. **Arey bhai sharm karo, tees fisdi ke baad bhi sehar chal kyun raha hai.....?***

*.....Ab ek aur cheez mei add kardun. Yeh jo aajkal fascisim-fascisim ke naare lag rahe hain, Yeh yaad rakhiyega, yeh dastoor shuru se fascisim ki izazat deta hai. (Bilkul) cow protection ho, president rule ho, chunav ka tarika ho, (accused refers to a other community) ka definition ho, yeh constitution fascist hai. (Bilkul).*

*.....Hamein chakka jaam karna chahte hain. Dilli ke mohallon mein doodh band karna chahte hain, paani band karna chahte hain, khulkar boliye yaar (bilkul). Aur aapko pata hai kitne log? 55 hajarto detention camp mein hain, mujha pata nahin (accused refers to a particular community) kitna hain, 55 hajar, jamia 28 hajar, jo jaye arrest 28 hajar.....*

*.....**Assam jal raha hai, yahan kuch kijiye.....***

13. The fundamental right of ‘freedom of speech and expression’ as enshrined under Article 19 has been placed upon a very high pedestal in constitution of this country and its essence is well captured in statement of John Milton, the Famous British Poet and Intellect who says “*give me the liberty to know, to argue freely, and to utter according to conscience, above all liberties*”. However, the very same constitution places, reasonable restriction upon exercise of said right *inter alia* on the grounds of public order and incitement to offence. That apart, article 51A(e) of the Constitution also casts a fundamental duty upon citizens of this country to promote harmony and spread common brotherhood amongst all the people of India, transcending religious, linguistic and regional or sectional diversities. Therefore, it is no gainsaying that fundamental right of ‘freedom of speech and expression’ cannot be exercised at the cost of communal peace and harmony of the society.

14. Further, it is a settled proposition of law that at this stage, the court is not required to enter into a meticulous examination of the material placed on record by prosecution so as not to unnecessarily prejudice the case of either side. Reliance is placed upon judgments of ***Vaman Narain Ghiya v. State of Rajasthan (2009) 2 SCC 281***, wherein the Hon'ble Supreme Court observed as follows:

*"While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required."*

15. Thus in view of settled position of law, the issue whether the said speech would fall within ambit of section 124A IPC or not, requires a deeper analysis at an appropriate stage. However, suffice it would be to observe that a cursory and plain reading of the speech dated 13.12.2019 reveals that same is clearly on communal/divisive lines. In my view, the tone and tenor of the incendiary speech tend to have a debilitating effect upon public tranquility, peace and harmony of the society.

16. Therefore, in the facts and circumstances of the present case and considering the contents of speech dated 13.12.2019 which tend to have a debilitating effect on the communal peace and harmony, I am not inclined to grant bail to applicant/accused Sharjeel Imam at this stage. The accused cannot claim any parity with co-accused as his role is entirely different from other co-accused. **Accordingly, the instant application moved on behalf of applicant/accused Sharjeel Imam for grant of regular bail stands dismissed.**

17. Application stands disposed of accordingly. Dasti to all concerned either physically or through electronic mode. Order be uploaded on official

website.

18. I may clarify that nothing expressed herein shall tantamount to an expression on the merit of present case.

**(ANUJ AGRAWAL)**  
**ASJ-05, South-East District**  
**Saket Courts, New Delhi:22.10.2021**