

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

I.A. No.104-2022 (Saleem Malik @ Munna)

FIR No. 59/2020

PS : Crime Branch (being investigated by Special Cell)

U/S. 13/16/17/18 UA (P)Act, 120B read with Section 109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/353/395/419/420/427/435/436/452/454/468/471/34 IPC & Section 3 & 4 Prevention of Damage to Public Property Act,1984 and Section 25/27 Arms Act

State vs. Tahir Hussain & Ors.

Dated : 06.10.2022

ORDER ON BAIL APPLICATION

1. This order will dispose off the bail application moved on behalf of applicant/accused Saleem Malik @ Munna under Section 437 Code of Criminal Procedure (Cr.P.C) (in short, Cr.P.C).

The bail application took time to conclude for a variety of reasons as change of counsel, lengthy arguments and adjournments due to arguments made by co-accused persons in their respective bail applications in the present case.

2. Arguments on bail application were heard at length on behalf of accused Saleem Malik @ Munna by Sh. Bilal Anwar Khan, Ld. Counsel for accused and for prosecution by Sh. Amit Prasad, Ld. Special Public Prosecutor for State. A brief note on the sequence of events for conspiracy of North-East Delhi riots were filed by the prosecution alongwith judgments.

3. I have perused the record including the charge-sheet, its annexures along-with written submissions and judgments relied upon.

4. **ARGUMENTS PUT FORTH FOR APPLICANT/ACCUSED SALIM MALIK @ MUNNA**

In the bail application Ld. Counsel for the accused/applicant contended that :-

i. The applicant was arrested in FIR No. 60, PS Dayal Pur on 11.03.2020 under Section 186/353/332/323/147/148/149/336/427/302 IPC and 3/4 of PDPP Act and in FIR 136/2020, P.S Dayal Pur under Section 147/148/149/427/423/436/120-B IPC. Subsequently, accused was implicated in the present FIR and was formally arrested at Mandoli Jail on 25.06.2020 after delay of three months and nineteen days since the lodging of FIR. The allegations in the present case is similar to the offence in FIR No. 60/2020.

ii. Accused is not the co-conspirator or the abettor as alleged. The allegations and material against the present accused are not as serious as compared to the other co-accused persons.

iii. The accused is not a member of any Whatsapp group or any meetings, as detailed in the charge-sheet.

iv. The threshold of the Section Section 13, 16, 17 & 18 is the '*terrorist act*' and in the light of the role ascribed to the present accused, the said threshold is not met.

v. He has relied upon the order in *Thwaha Faisal vs Union of India Crl Appeal No. 1302 of 2021 & Union of India vs Allan Shuaib Crl Appeal No. 1303 of 2021*.

vi. The present accused is stated to be one of the main organizers of the Protest and it is not an offence.

vii. The accused is in Judicial custody since 25.06.2020. Since the custody of the accused is not required any longer for the purpose of investigation and the charge sheet had already been filed, therefore, the accused should be released on Regular Bail in the light of judgment of Hon'ble Supreme Court of India passed in *Sanjay Chandra v CBI (2012) 1 SCC 40*.

viii. The accused was not named in the instant FIR. Moreover, there is delay of more than ten days in lodging of present FIR.

ix. The accused belongs to respectable family and has deep roots in the society.

x. The essential ingredient of Criminal Conspiracy is 'an agreement' and in pursuance of that agreement there has to be a desired and specific objective as agreed upon. If something beyond the target objective of that 'agreement' happens, then the threshold of Criminal Conspiracy will not be satisfied. Therefore, in the instant case, since accused does not know any of the accused persons nor was he a part of any banned group or organization nor is he averse to the 'idea of India' therefore, the alleged case of conspiracy falls on its face.

xi. Disclosure statement has no value in the eyes of law. There is no recovery of weapon from applicant/accused.

xii. There is no video available to connect with the ingredients of the offences qua charges invoked in the FIR to the present accused.

xiii. There is no independent witness or public witness to link or to testify anything related to the accused's role in the alleged offences.

xiv. The accused is a person of clean antecedents. He satisfies the triple test criteria.

xv. The investigation has not been proper and no adverse inference can be drawn from said investigation. Accused has not done any physical violence. Seizure memos are photocopies and unacceptable. The statement of witnesses being delayed or contradictory or could be concocted or coerced are not believable.

It was, thus, prayed that regular bail may be granted to the accused herein in the present case.

5. ARGUMENTS PUT FORTH ON BEHALF OF PROSECUTION

5.1 Ld. Special Public Prosecutor had vehemently argued that Delhi Riots 2020 was a large-scale and deep-rooted conspiracy hatched after the passing of the resolution by Cabinet Committee to present CAB in both Houses of Parliament on 04.12.2019. He then referred to the contents of the charge-sheet to allege that prima facie allegations are correct. It was further contended that in this entire

conspiracy, there were various organizations like Pinjra Tod, AAZMI, SIO, SFI, etc., through individuals which participated. There was a centrality of JCC in the eco-system. As part of the conspiracy, 23 (24x7) protest sites (against CAB) were created in Muslim majority areas close to mosques/majaar and close to main roads. Before the major riots of February 2020, a replica of the riots took place in December 2019 on a lower scale but with similar characters and modus-operandi. With the lessons learnt, February riots was planned and executed. The idea was to escalate protest to chakka-jam, once critical mass is generated and at an appropriate time to eventually lead to violence against police and then others. In order to give a secular look, secular names/Hindu names were given to protest sites to give secular color. The conspiracy involved moving from the protest sites to designated location on main roads/highways and blockade causing disruptive chakka-jam, creating confrontational situation, attacking police and paramilitary, spreading communal violence/attacking non-Muslims and damaging public and private property by use of petrol bombs, firearms, deadly weapon, acid bombs, stones, lathi and chilly powder. Finances were also arranged and diverted to protest sites and were utilized in organizing violence.

5.2 Ld. Special Public Prosecutor took the Court to the entire chain of events of the conspiracy as reflected in charge-sheet and referred to various statements of witnesses recorded under Section 161 Cr.P.C and 164 Cr.P.C and other documents and chats of Whatsapp groups like DPSG, JCC to buttress his point of conspiracy.

5.3 It was also argued that the individual role of conspirators is not to be seen rather a holistic view is to be taken while looking at a prima facie involvement of conspirators in the chain of conspiracy.

5.4 It was also contended that at the stage of bail, material/evidence collected by the investigating agency in reference to the accusation against the accused, must prevail unless contradicted and overcome or disproved by other evidence and on the face of it, shows the complicity of the such accused in the commission of the offence. Elaborate dissection of evidence is not required to be done at this stage and the Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the offence.

5.5 Ld. Special Public Prosecutor also vehemently argued as to how Unlawful Activities (Prevention) Act has been rightly invoked and taken cognizance of and the actions of the conspiracy by accused persons come within the ambit of Terrorist Act. He also highlighted various aspects of how the first phase of riots in December 2019 did not give desired results due to inadequate local mobilization, communal tag, lack of experience and local backlash, absence of synergy between sites and effective police action.

5.6 Ld. Special Public Prosecutor then stressed that the protest was not organic but were created under a planned conspiracy and given facade of organic protest. He also delved on the initiation of the conspiracy with Sharjeel Imam and Umar Khalid, formation of JACT, DPSG, JCC and other aspects delineated in the charge-sheet.

5.7 Ld. Special Public Prosecutor then strongly argued that not only was the protest shown to be secular and organic but also women driven. It was also argued that the sequence of events clearly show how everything was planned, organized and well thought of. The clandestine transportation of people majorly women and

children from Jahangir Puri to Jafrabad via Shaheen Bagh for participation in the rioting activity and subsequent prompt call from Janvi to Parvez when alarming messages were posted on DPSG group, indicating cover-up action. The date was intentionally chosen when Mr. Donald Trump, President of United States of America was to come to Delhi.

5.8 He also cited the DPSG Whatsapp chat to highlight the conduct of the accused persons during and after the riots including the flurry of calls and deletion of the group. Statements of various witnesses including protected witnesses were read along with the major aspects of the charge-sheet including the conspiratorial meetings to highlight how the riots were engineered by completely blocking the entry and exist point for the North-East Delhi. The video showing how the CCTV cameras installed at Chand Bagh area were systematically dislocated so that the footage of riots could not be found.

5.9 Thereafter, the individual role of the applicant/accused **Saleem Malik @ Munna** was highlighted regarding his participation in the meeting of 16/17 February and his links with Suleman Siddiqui, Athar, Mohd. Saleem Khan and Shadab. Statements of various other witnesses like Pluto, Silver, Gold, Venus, Johny, HC Sunil and Ct. Gyan, etc. were also highlighted to substantiate the allegations.

5.10 Ld. Special Public Prosecutor, thereafter, argued that in the present case, the bar of Section 43D (5) UAPA for grant of bail would apply as prima facie allegations against the accused are true and the further embargo is created due to Section 437 (1) Cr.P.C.

Thus, it was argued that there are sufficient material on record to establish that the accusation against the accused **Saleem Malik @ Munna** is prima facie true and hence the bail application of the accused may be dismissed.

Ld. Special Public Prosecutor for the State has relied upon the following judgments :-

1. *Usmanbhai Dawoodbhai Memon v. State of Gujarat* (1988) 2 SCC 271;
2. *State of Assam, In re.* 2006 SCC OnLine Gau 104 (Full Bench);
3. *National Investigating Agency v. Redaul Hussain Khan*, 2010 SCC OnLine Gau 606 [Cited in *NIA v Zahoor Ahmad Watali Shah* 2019 5 SCC 1];
4. *Jayanta Kumar Ghosh v. State of Assam*, 2010 SCC OnLine Gau 586 [Cited in *NIA v Zahoor Ahmad Watali Shah* 2019 5 SCC 1]
5. *Jibangshu Paul v. National Investigation Agency*, 2011 SCC OnLine Gau 107;
6. *Golan Daulagupu v. National Investigation Agency*, 2012 SCC OnLine Gau 558;
7. *Malsawmkimi v. National Investigation Agency*, 2012 SCC OnLine Gau 897;
8. *Bharat Mohan Rateshwar v. National Investigation Agency* 2012 SCC OnLine Raj 3506;
9. *Fasih Mahmood versus State (NCT of Delhi)*, 2016 SCC OnLine Del 1073;
10. *National Investigation Agency (NIA) v. Victo Swu* 2017 SCC OnLine au 1333;
11. *Nazir Ahmad, Appellant v. King-Emperor* AIR 1936 Privy Council 253 (2);

6. 6.1 The present bail application by accused **Saleem Malik @ Munna** was filed under Section 437 Cr.P.C.

The relevant portion of Section 437 Cr.P.C reads as under :-

437. When bail may be taken in case of non-bailable offence.

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.....

Thus, Section 437 Cr.P.C places an additional condition before releasing a person on bail if there are reasonable grounds for believing that accused has been guilty of offence punishable with death or imprisonment for life.

6.2 The present case also involves the applicability of Unlawful Activities (Prevention) Act. Section 43D of UAPA deals with the bail provision and it is set out below :

“ Section 43D. Modified application of certain provisions of the Code. – (1)-(4) :-

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

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

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.

6.3 In *National Investigating Agency vs. Zahoor Ahmad Shah Watalli*, (2019) 5 SCC 1, in a case under Unlawful Activities (Prevention) Act, 1967, the Hon'ble Supreme Court of India held that :-

“ 23. By virtue of the proviso to sub–section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise.....

.....By its very nature, the expression prima facie true would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is prima facie true, as compared to the opinion of accused not guilty of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act..... ”

24. A priori, 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. 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.

27. For that, 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. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.

28. *The question is whether there are reasonable grounds for believing that the accusations made against the respondent (Accused 10) are prima facie true. That will have to be answered keeping in mind the totality of materials including the one presented along with the police report. Be it noted that the prosecution is relying on several documents forming part of the first charge-sheet (pending further investigation) filed against the respondent (Accused 10) allegedly showing his involvement in the commission of the stated offences.....”*

47. *The fact that there is a high burden on the accused in terms of the special provisions contained in Section 43-D (5) to demonstrate that the prosecution has not been able to show that there exist reasonable grounds to show that the accusation against him is prima facie true, does not alter the legal position expounded in K. Veeraswami, to the effect that the charge-sheet need not contain detailed analysis of the evidence. It is for the Court considering the application for bail to assess the material/evidence presented by the investigating agency along with the report under Section 173 CrPC in its entirety, to form its opinion as to whether there are reasonable grounds for believing that the accusation against the named accused is prima facie true or otherwise.....”*

6.4 Hon'ble Supreme Court of India in *Thwaha Fasal versus Union of*

India, 2021 SCC OnLine SC 1000, inter alia, held as follows :-

“ 22. *After considering the law laid down by this Court in various decisions including the decision in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra 7 , in paragraphs 24 and 25 it was held thus:—*

*“24. A priori, 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. 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.***

25. From the analysis of the impugned judgment, it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the

*evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded Under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. **That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.**” (emphasis added)*

23. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail.

*Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the Court while examining the issue of prima facie case as required by sub-section (5) of Section 43D is not expected to hold a mini trial. **The Court is not supposed to examine the merits and demerits of the evidence. If a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima***

facie true. While doing so, the Court has to take the material in the charge sheet as it is”.

7. 7.1 The present case pertains to a conspiracy, and hence, discussion on the subject is required. 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 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.

7.2 In *State (NCT of Delhi) v. Shiv Charan Bansal & Others, 2019 SCC OnLine SC 1554*, it was, inter alia, held that :

44. A criminal conspiracy is generally hatched in secrecy, and it is difficult, if not impossible, to obtain direct evidence. Reliance is placed on the judgment of this Court in R. Venkatkrishnan v. CBI. The manner and circumstances in which the offence has been committed, and the lever of involvement of the accused persons are relevant factors. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in the general conspiracy, to accomplish the common object.

45. Conspiracy is mostly proved by circumstantial evidence by taking into account the cumulative effect of the circumstances indicating the guilt of the accused, rather than adopting an approach by isolating the role played by each of the accused. The acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. Reliance is placed on the judgment of State (NCT of Delhi) v. Navjot Sandhu.

7.3 In *State of Kerala vs. P. Sugathan & Another*, (2000) 8 *Supreme*

Court Cases 203, Hon'ble Supreme Court of India held that :

Criminal conspiracy is defined under [Section 120\(A\)](#) of the Indian Penal Code as under: "Definition of criminal conspiracy. When two or more persons agreed to do, or cause to be done.

(1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

*Explanation--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object." [Section 120B](#) prescribes the punishment for criminal conspiracy which by itself is an independent offence, punishable separately from the main offence. The offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. [Section 10](#) of the Evidence Act introduces the doctrine of agency and will be attracted only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable ground, that is say, there should be a prima facie evidence that the person was a party to the conspiracy before his acts can be used against the co-conspirators. This Court in *Bhagwan Swarup Lal Bishan Lal vs. State of Maharashtra* [AIR 1965 SC 682] held that the expression "in reference to their common intention" in [Section 10](#) - is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything, said, done or written by a co- conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it". It was further held: In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he*

entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in V.C. Shukla v. State [1980(2) SCC 665] held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

7.4 Hon'ble High Court of Delhi in ***Gopal Ansal vs State***, CrI. Rev. P. 264/2016 decided on 12 May, 2017 after discussing entire law on conspiracy has summarized the legal position which is as follows :-

".....99. From a conspectus of the above decisions, the legal position that emerges, is collated as follows:

i. The offence of Conspiracy has two elements, viz. (1) an agreement between two or more persons by whom the agreement is effected; and (2) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. The gist of the offence of conspiracy is an agreement to break the law.

ii. Since it is the unlawful agreement which is the gravamen of the crime of conspiracy, the offence of criminal conspiracy is an

exception to the general law where intent alone does not constitute a crime.

iii. Conspiracy itself is a substantive offence and is distinct from the offence to be committed, for which the conspiracy was entered into. Therefore, the crime is complete as soon as the agreement is made.

iv. It thus, also follows that the offence of criminal conspiracy is complete even though there might be no agreement as to the means by which the purpose is to be accomplished.

v. However, the offence might not end with the making of the agreement in certain cases. It thus follows that conspiracy is a continuing offence and continues to subsist wherever one of the conspirators does an act or series of acts, in furtherance of the object of the conspiracy. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity.

vi. Therefore, it follows from the above propositions that the offence of conspiracy is punishable independent of its fruition. The parties to an agreement will be guilty of criminal conspiracy, even in the circumstance that the illegal act agreed to be done might not actually have been done. In other words, to prove the charge of conspiracy, it is not necessary that intended crime was committed. If the crime is committed, it may further help prosecution to prove the charge of conspiracy.

vii. Since a conspiracy is hatched in private or in secrecy, it is rarely possible to establish a conspiracy by direct evidence. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators.

viii. Usually, both the existence of the conspiracy and its objects, have to be inferred from the circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

ix. Conspiracy may comprise the commission of a number of

acts.

x. Further, there may be 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.

xi. There, however, must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators.

xii. Further, 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 misfire or overshooting by some of the conspirators. The means may even constitute different offences by themselves, but as long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts forming a part of the conspiracy.

xiii. All accused persons are guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable. In other words, a criminal conspiracy is a partnership in crime, and there is in each conspiracy, a joint or mutual agency for the prosecution of a common plan. Each conspirator can be attributed each other's actions in a conspiracy by virtue of the application of the theory of agency.

xiv. Conspirators may, be enrolled in a chain; or there may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. It may however be that both the theories overlap in a given case. But then there has to be present a mutual interest.

xv. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others

put the conspiracy into effect, is also guilty though he intends to take no active part in the crime.

xvi. Persons may be members of a single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

xvii. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.

xviii. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy.

xix. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

xx. To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary.

xxi. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is

admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions.

8. 8.1 At this stage, what the Court has to see is the charge-sheet alongwith accompanying documents. As per the charge-sheet, the present case pertains to a large-scale and deep-rooted conspiracy which began after the Citizenship Amendment Bill was passed by the Central Cabinet on 04.12.2019 and which became a law on 10.12.2019 after it was passed in the Lok Sabha.

Sharjeel Imam formed a group (Whatsapp) called Muslims Students of JNU (MSJ) and started distributing pamphlets in Masjids against CAA/NRC. There is a coordination between Sharjeel Imam of MSJ with Arshad of Students of Jamia (SOJ) for distribution of pamphlets on 06.12.2019 and thereafter.

There were meetings organized at JNU and at Jamia University. United Against Hate (UAH) organized a protest at Jantar Mantar on 07.12.2019 and Sharjeel joined the protest. Sharjeel wanted to rope in students of Jamia, DU, AMU, etc.

UAH conducted an agitation at Jantar Mantar on 07.12.2019 which was attended by Sharjeel Imam, Umar Khalid, Yogender Yadav and others. As per prosecution, idea of chakka-jam emerges here. A meeting took place at Jungpura office on 08.12.2019 which was attended among others by Yogender Yadav, Umar Khalid, Sharjeel. A Whatsapp group “CAB TEAM” was formed consequently on the same day. Its members included Sharjeel Imam, Umar Khalid, Yogender Yadav, Nadeem Khan, Khalid Saifi. The CAB TEAM organized a protest at Jantar Mantar on 10.12.2019.

Nadeem Khan and Sharjeel Imam were in continuous touch with each other. Sharjeel Imam visited Aligarh Muslim University on 11.12.2019 propounding chakka-jam and he created another Whatsapp group Muslim Students of JNU_1 on 12/13.12.2019. Sharjeel directed members of MSJ to reach Jamia University to support Parliament March (call given by Asif Iqbal Tanha) on 13.12.2019. Sharjeel Imam gave a seditious speech at Jamia and asked for a disruptive chakka-jam which included disruption and stoppage of supply of water and milk to Delhi. Consequently, violence/riots took place and FIR No. 296/2019, P.S. Jamia Nagar was also registered. In the said violence, there was an attack on police personnel and damage to public property and arsoning. Various other incidents of riots took place in the month of December 2019. This pattern of riots consequent to the initial speech of Sharjeel Imam took place in Delhi and various FIRs in South-East Delhi and even North-East Delhi were registered in December 2019.

Chakka-jam also began consequent to a meeting of Umar Khalid, Sharjeel Imam, Asif Iqbal Tanha and others on 13.12.2019 at Jamia Campus. The said chakka-jam was then to spread to the other parts of Delhi.

8.2 On 17.12.2019, Jamia Coordination Committee (JCC) was constituted. Gate No.7 of Jamia Milia was declared a protest site. Safoora Zargar created a Whatsapp group JMI Coordination Committee for communication with JCC members which included Safoora Zargar, Asif Iqbal Tanha, Shifa-ur-Rehman, Saiful Islam, Meeran Haider, Amanullah among others. A mobile card no. 9205448022 was activated on forged and fabricated documents for the ulterior purpose. Media team with Safoora Zargar as head and Facebook page for JCC was created on 18.12.2019. JCC, as per its own official release as Facebook post, showed AAJMI, AISA, CFI, MSF, Pinjra Tod, SIO, Khudai Khidmatgar, etc. as

part of it.

8.3 Shaheen Bagh protest site was also created and though it is shown to be led by women and an organic protest, yet in reality it was the brain child of and executed by Sharjeel Imam, who then at a later stage left it strategically.

8.4 JACT (Jamia Awareness Campaign Team) was formed 22.12.2019 with campaign for mass local mobilization. It later on covered all the places where the protest sites were later on mushroomed and developed. On 23.12.2019, meeting of Umar Khalid takes place with Khalid Saifi. Meeran Haider also is at Shaheen Bagh and a protest sites at Khureji is decided to be formed.

On 24.12.2019, protest takes place at Jantar Mantar attended by many organizations and Yogender Yadav and Umar Khalid gave speeches and it was decided then to call a meeting of all organizations for running and creating of protest sites in Delhi. Consequently, on 26.12.2019, meeting takes place at Indian Social Institute (ISI) Lodhi Colony, attended by Umar Khalid, Nadeem Khan, Khalid Saifi, Rahul Roy, Sabha Dewan and others. It was then decided to form Delhi Protest Support Group (DPSG) group and different protest sites in Delhi. In order to avoid police clash, protest sites is decided to be women centric. They were to be set-up in Muslim majority areas with collection of funds for its sustenance and regular meetings to take stock of the progress.

On 28.12.2019, DPSG Whatsapp group was formed by Rahul Roy and Sabha Dewan with key associates of top conspirators. Khalid Saifi (UAH) calls for a protest march at Jantar Mantar which is attended by Asif Iqbal and other members of MSJ and DPSG.

All groups i.e. DPSG, JCC, MSJ, Pinjra Tod, etc. were working in tandem. Members of one group were members in others and there was knowledge and coherence in strategy.

Overtime, different protest sites totaling to 23 were developed in different parts of Delhi. In January, Sharjeel continued to give seditious speeches and spreading his idea of disruptive chakka-jam.

On 08.01.2020, Tahir Hussain entered into the picture for local leadership and local connectivity. A meeting took place between Umar Khalid, Khalid Saifi and Tahir Hussain at PFI Office in Shaheen Bagh area.

On 14.01.2020, the news of the visit of US President Mr. Donald Trump was announced on television media.

On 15.01.2020, Sharjeel Imam went to Khureji site for mobilization on request of Amanullah (JACT & JCC).

Meeran Haider of JCC was supervising 08 protest sites. AAJMI was funding the protest.

8.5 A conspiratorial meeting took place in the intervening night of 23/24.01.2020 at Seelampur, Jafrabad Protest site between Umar Khalid with Pinjra Tod members and others. It was decided to induce local women of Seelampur to start stock piling knives, bottles, acids, stones, chilly-powder and other dangerous articles to be used in rioting as part of a conspiracy. The plan was to escalate the protest to the next level of chakka-jam and then riots.

8.6 On 24.01.2020, Sharjeel Imam through his Facebook post continued to propagate the idea of disruptive chakka-jam. The first Whatsapp group of JMI Coordination Committee created by Safoora was left dormant. Safoora removed Asif Iqbal Tanha and Chandan from the group after they were summoned by the police.

Three Whatsapp group of JCC were created by Fatima instead of Safoora and Asif was not made a part of this group. The three groups were, JCC JMI Officials, JMI and JCC_JMI.

8.7 On 06.02.2020, a protest site was developed at Jahangir Puri. On 10.02.2020, Umar Khalid met with Jahangir Puri folk at a protest called by Welfare Party of India. Umar Khalid asked that since Bangladeshi live there, they must be made aware of the CAA and asked to fight against the said law.

8.8 On 11.02.2020, a formal declaration of visit of US President Donald Trump is announced with specific dates. There is then a flurry of activities by Anjali Bhardwaj and then by Rahul Roy. Athar gave date and time for Mahila Ekta Yatra for Chand Bagh.

8.9 On 13.02.2020, Rahul Roy and Apoorananand decide to change the course of protest as a speaker and artists based protest site (which was becoming unsustainable) and for taking a new turn and new direction. The Mahila Ekta Yatra starts doing everyday visit to protest sites with reporting in DPSG.

8.10 On **16/17.02.2020**, a midnight secret meeting takes place at Chand Bagh for chakka-jam. Athar, Suleman Siddiqui, Natasha, Devangana, Gulfisha,

Shadab, **Salim Malik**, Saleem Khan, Tasleem, Ayyaz and others attend the meeting. Planning for chakka-jam during the visit of President of USA and adoption of violent measures to escalate the protest was taken in this meeting. DPSG chat revealed that the meeting failed as a result of uninviting and disturbing elements which became aware of time and venue of the said meeting. **There was a clear message on DPSG Whatsapp chat where one member clearly said that “danga nahin karne denge tumhe aur tumhare doston ko”.**

8.11 On 17.02.2020, Umar Khalid delivered a speech at Amrawati, Maharashtra referring to the visit of Mr. Donald Trump, President of the United States of America.

8.12 Owais Sultan Khan, member of DPSG was repeatedly messaging about the violence planning discussed at Chand Bagh secret meeting of 16/17.02.2020. He specifically says that the locals are not willing to block the road but outsiders are planning to do it. They want non-violent protest. It was specifically and repeatedly pointed out that they don't want violence in their areas.

He specifically says that accused Athar was saying in that secret meeting about the plans of road blockade and the proposal to incite violence (this is an electronic and contemporaneous document).

The DPSG Whatsapp group, thereafter, suddenly became unusually silent between 18th to 21st of February 2020 and no rebuttal takes place regarding the accusation of 16/17 February 2020.

8.13 On the night of 22.02.2020, protesters from Madina Masjid, Seelampur

moved and occupied 66 Foota Road at Jafrabad Metro Station completely blocking the traffic i.e., Chakkajam.

Immediately after chakkajam at Jafrabad, a meeting of JCC is called at Jamia to escalate protests in Muslim Majority Areas to higher level by engineering riots by inciting violence. The protesters from other protest sites of North East Delhi visited the site of Chakkajaam at Jafrabad Metro Station so as to support and learn the modus operandi of Chakkajaam from a live Chakkajam spot and to assess the response and response mechanism of police. Bhim Army call of Bharat Band for CAA/NRC and purportedly march to Rajghat is done.

Owais Sultan Khan categorically mentions on 22.02.2022 that if something wrong happens, Athar you will be responsible. You are putting the lives of locals in danger. Your wild entertainment for easy publicity will cause them heavily. He again reminds in a post that the locals of Seelampur and Trans-Yamuna are in great trouble because of fantasies. He cites what the Pinjra Tod is saying that **“Kafan Baandh ke aaye hain; aur joh humare saath nahin, woh desh ka gaddar hai”** in response to the local women protesters requesting them not to block the road.

8.14 On 23.02.2020, Janhavi, Rahul Roy and Tabrej are involved in clandestine transportation of large number of people, mainly women and children from Jahangir Puri to Jafrabad via Shaheen Bagh. These women are received by Natasha, Devangana and Gulfisha at Jafrabad and they are the ones who initially do the stone pelting at police and others.

Again on 23.02.2020, Owais Sultan Khan asks why the comment about the

road block plan was deleted. He further asked why the packets of red-mirchi powder have been distributed to women for attacking the police and paramilitary. Their families are protesting and their lives are now being put in danger.

On 23.02.2020, the conspirators from various protest sites had completely blocked the traffic at predesignated spots on main roads. Message on JCC JMI from JCC Number at 6:16 PM to say – “we need members to reach at protest sites rather giving an ITO call and making it a normalization.

8.15 One meeting took place on 20/21.02.2020 at Chand Bagh as narrated by witness Pluto. This was attended by five persons namely Athar, Shahdab, **Salim Munna**, Saleem Khan and Rizwan Siddiqui. There were meetings held on 22nd & 23rd February 2020 at Chand Bagh attended by many accused persons including Athar, Shahdab, **Salim Malik**, Suleman Siddiqui. Violence was openly discussed in the said meeting. There were meeting held, as stated by witnesses Pluto, Radium and Sodium where talks of violence and burning of Delhi were openly discussed. There were talks about finances, arranging arms, petrol bombs to be procured, and for killing of people and arsoning of property. The issue of destruction of CCTV camera was also laid out.

8.16 In the supplementary charge-sheet, the analysis of CCTV cameras in the streets on 25 Foota Road, Chand Bagh and Mustafabad area based upon the footage was filed and it showed mobilization of rioters prior to dislocation and disconnection of all the 26 functional (out of 33) CCTV cameras on 24.02.2020. The said large-scale mobilization of rioters was purposely done and it was to carry out the riots in the Chand Bagh area and which actually happened. Within 10 minutes of the final camera being dislocated/disconnected, one of the major

casualty of the riots i.e. death of Rattan Lal and injuries to various police personnel including DCP (Shahdara) took place on the road on which the rioters has descended. This was also captured in a video footage.

As per the charge-sheet, on the analysis of 33 CCTV cameras of Chand Bagh and Mustafabad and 43 CCTV cameras of predominantly non-Muslims areas of Khajuri Khas, Karawal Nagar, Sonia Vihar and Jyoti Nagar, shows that not only the riots were premeditated and preplanned but also began when the Muslims living in Chand Bagh, Mustafabad area mobilized and came out of lanes and byelanes passing through Chand Bagh and descended on Main Wazirabad road having Yamuna Vihar and Bhajanpura localities having mixed population to put in to effect a violent chakka-jam and brutalized attack on police personnel and non-Muslims community while at the same time, the footages from the PWDs cameras at the places inhabited by non-Muslims communities showed the life to be tranquil.

The footages filed by the prosecution does show a concerted and premeditated effort of mobilization of rioters who are armed and who ultimately blocked the Main Wazirabad road and attacked police personnel in the most brutal manner.

8.17 When the violence had erupted, Anas Tanvir (member of DPSG and a lawyer) posted the message “ *I’m very disturbed with the development that has taken place since yesterday and to me it seems like a concerted plan. So I really need to know whether this group is ready to identify and condemn organization and individuals who instigated this violence. As far as I am concerned I have identified all those who shared the call for action and protest posters. I will not be leaving anyone who’s behind all this. We need to deescalate*”.

8.18 When certain messages which reflected the intentional incitement to violence followed by actual violence by certain members were flagged in the DPSG group, Rahul Roy specifically asked that messages written here, are being shared on other Whatsapp group and it should not be done and those who have done it, should delete them. Moreover, anyone who forwards messages of this group to any other group will be removed from the group.

8.19 As a post conduct of accused persons subsequent to the riots which began, the DPSG group started adding people and showing its concern for humanitarian which was again only a way of deflection and covering of their designs and again a facade.

8.20 After the riots began on 24th of February 2020 and few members of DPSG group raised alarms with threat of exposure, there was a flurry of calls exchanged between various persons. Umar Khalid, who was in Bihar, called Natasha who was at Seelampur. Janhavi at Vasant Kunj called Tabrej at Jahangirpuri. Nadeem Khan called Khalid Saifi who was at Seelampur metro Station. Then Nadeem Khan called Umar Khalid who called back again by which time Nadeem Khan had reached Sanchar Bhavan, New Delhi. Rahul Roy was at Sanchar Bhavan New Delhi and called Umar Khalid and who called Meeran Haider who was at Jamia Nagar. Nadeem Khan then called Khalid Saifi who was at Khureji. Natasha Narwal who had now reached Sanchar Bhavan, New Delhi called Sabha Dewan who was at near Sansad Marg. Nadeem Khan called Khalid Saifi who had reached Sanchar Bhavan. This shows that while these persons were coordinating with each other; Khalid Saifi, Nadeem Khan, Sabha Dewan, Rahul Roy, Natasha Narwal ultimately reached a common place.

8.21 The first arrest made in this case came in public domain on 11.03.2020 and thereafter, message saying for the deletion of the group and all chats and moving to SIGNAL was also recorded. It asked every member of the group to individually delete all the messages. Settings were changed to allow Admns. to send messages. It is also relevant that many of the accused persons' mobile seized did not contain the data regarding the groups.

8.22 It is also a fact that the riots had occurred in Delhi in February 2020 and it entailed loss of lives of 53 victims including police officials and a huge scale destruction of public property and disruption of essential services. The cases of riots have also shown that firearms, acid, petrol bombs, rods, etc. were used. Huge sling shots were used at large scale. Accused Tahir Hussain had also taken part in financing and execution of riots. From the riots that ultimately ensued, it can easily be said that it was not a sudden act but a thought out premeditated act.

8.23 Different roles were ascribed to different people (accused) in carrying out the said conspiracy. The violence in February 2020 in North-East Delhi began 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 and was a result of the said conspiracy. There were meetings on 23.01.2020, 16/17.02.2020, 20/21.02.2020 and 22/23.02.2020 which took place in continuation of a conspiracy. Different protected witnesses have stated the role of accused persons and about open discussion on violence, riots, finance and weapons.

8.24 i. Delhi Protest Support Group (DPSG) Whatsapp Group comprised of many persons including accused persons namely Khalid Saifi (UAH), Shadab Ahmed, Natasha (Pinjra Tod), Devangana Kalita (Pinjra Tod), Athar Khan and

Umar Khalid (UAH).

ii. Muslims Students of JNU (MSJ) comprised of many persons including accused persons namely Sharjeel Imam, Meeran Haider, Safoora, Shafa Ur Rehman and Asif Iqbal Tanha.

iii. Jamia Coordination Committee (JCC) comprised of many persons including accused persons namely Safoora, Shifa-ur-Rehman, Sharjeel Imam and Umar Khalid.

iv. Pinja Tod comprised of many persons included accused persons namely Devangana Kalita, Natasha Narwal and Gulfisha.

9. 9.1 For the limited purpose of bail application, the applicability of the Unlawful Activities (Prevention) Act, 1967 is touched upon.

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

[(iiia) 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 organization 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, organizing 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 organization 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) As per Section 15 of UAPA, 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.

Moreover, Section 13 under Chapter III 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.

In the present case, as per the charge-sheet as discussed above, taken at face value, there was a premeditated conspiracy of the disruptive chakka-jam and a preplanned protest at 23 different planned sites in Delhi which was to escalate to confrontational chakka-jam and incitement to violence and resulting in riots. There was intentional blocking of roads to cause inconvenience and to cause disruption of the essential services to the life of community residing in North-East Delhi, causing violence with various means and then leading to February riots. The target was to block roads at mixed population areas and encircle the entire area completely stopping the entry and exit of citizens living there and then creating panic to attack on police personnel by women protesters in front only followed by other ordinary people and engulfing the area into a riots and the same would be covered by the definition of terrorist act. The weapons used, manner of attack and

the destruction caused shows it to be preplanned. Acts which threaten the unity and integrity of India and causes friction in communal harmony and creates terror in any section of the people, by making them feel surrounded resulting in violence, is also a terrorist act.

10. Role of Saleem Malik @ Munna in the entire case set-up by the prosecution & submissions of the counsel for accused.

10.1 Accused Saleem Malik @ Munna was one of the organizer of the Chand Bagh protest site where inflammatory speeches were given. This is supported by the statements of various witnesses like Venus in statement under Section 164 Cr.P.C and statement of Gold, HC Sunil, Ct. Sunil and Ct. Gyan recorded under Section 161 Cr.P.C.

Protected witness **Venus** in his statement under Section 164 Cr.P.C stated that he lives at Chand Bagh and around 15.01.2020, protest against CAA/NRC started near his house. It was started among others by **Salim Malik**, Saleem Khan, Suleman Siddiqui, Athar, Shadab and others. He used to go around and therefore, came to know about their names. There he saw, the Councilor Tahir Hussain visiting the place. Tahir Hussain, in his presence, gave money to Suleman Siddiqui and Athar for running the protest(dharna). **Tahir Hussain used to say that this money will come to the help of our Kaum (Community).**

Witness **HC Sunil** in his statement under Section 161 Cr.P.C stated that he was the Beat Officer of the Chand Bagh area, there was a protest going on against the CAA which was started by Suleman Siddiqui, **Salim Malik @ Munna**, Saleem Khan and others. They used to provoke people on the basis of religion

against the government. On stage, they used to say that government will have to be compelled to withdraw CAA/NRC and for this, violence and chakka-jam has to be used. In the instance, DCP (Shahdara), ACP, Gokul Puri and HC Rattan were attacked on Main Wazirabad Road. HC Rattan Lal was killed and others were seriously injured. The witness identified Salim Malik, Saleem Khan and Suleman Siddiqui among those present there for violence and where violence were used on policemen and common people.

Witness Ct. Gyan & Ct. Sunil in their statement under Section 161 Cr.P.C stated that they were Beat Officer at Chand Bagh Police Station, Dayal Pur and have stated similarly to HC Sunil.

Witness **Gold** in his statement under Section 161 Cr.P.C stated that there was a protest going on near Majar and 25 Foota Road on Main Wazirabad Road at Chand Bagh since January 2020 against CAA & NRC. In this site, Salman Siddiqui, **Salim Malik**, Saleem Khan, Athar, Shadab and others were persons of responsibility. They all used to say in their speeches that Central Government is a government of Hindus and against Muslims. Till the time, Government Officers and Kaafirs are not killed, this government will not take back CAA/NRC. They used to say that Muslims would be sent to detention camps and atrocities committed on them. On 23.02.2020, Bhim Army had called for Bharat-Bandh. Organizers of the protest sites, like Saleem Khan, **Salim Malik** and others, announced for a yaatra on 23.02.2020 from Chand Bagh to Raj Ghat. This yaatra was stopped as there was no police permission. People got angry and blocked the road. Police was able to convince them and got the road open. **Salim Malik**, Saleem Khan, Athar, Shadab announced to the crowd that they will have to show to the world tomorrow and the government on 24.02.2020 that they will continue

to protest and whosoever will come in between will be destroyed. They asked everyone to come tomorrow and bring with them stones, danda and rod. On 24.02.2020, there was a lot of crowd which had stones, danda, sword and rods with them. Saleem Khan, **Salim Malik**, Athar, Shadab was among them. Police tried to convince them but these people were provoking the crowd. On this provocation, burqua clad women attacked the police and thereafter, the rioters attacked with stones and dandas. Petrol bomb, acid were being thrown from the roof of the house and firing was being done. A lot of property were destroyed.

Witness **Silver** in his statement under Section 161 Cr.P.C stated that the protest against CAA/NRC at Chand Bagh was started in January where he used to see Salman Siddiqui, Saleem Khan, **Salim Malik**, Athar and others who used to do a secret meeting at Gali No. 4 at Basement. They used to say that the government is against Muslims and would send them to detention camps. The protest will have to be turned violent and without riots, government will not feel the pressure. Safoora came at the site and said that till the time, we do not indulge in battles on the road, government would not feel anything. A secret meeting was organized on 23.02.2020 and it was announced the President Donald Trump is on India tour and on 24.02.2020, people should turn up in large numbers with sword, arms, petrol bombs, acid and deadly weapons. The said message went viral on Whatsapp groups and on 24.02.2020 at around 11.00 AM when he was at his house, there was lot of noise in the gali and people armed with deadly weapons were going towards the protest site. There were announcements through loudspeakers to people to carry weapons with them. It was also said that police might use teargas and thus, people should apply salt or oil on their body. He then referred to the attack by people including burqua clad women at policemen at main Wazirabad Road.

10.2 Accused **Saleem Malik @ Munna** was present in the conspiratorial meeting held on 16/17.02.2020 at Chand Bagh. Protected witness **Johny** in his statement under Section 161 Cr.P.C stated that on 15.01.2020, there was protest against CAA/NRC at Seelampur, Old Bus Stand. He also reached there and met with Gulfisha who introduced her with Devangana, Natasha, Proma, Subhashini, Tasleem, Sohail and Adnan as the member of Pinjra Tod and are running this protest. On 26.01.2020, he came to know that they were asking the people to collect acid, mirch, dande, pathar. On 15.02.2020, he came to know that a meeting is likely to be scheduled at Chand Bagh at night at 2-3 am (on 16/17 February) regarding blocking of road. He also joined the meeting and Gulfisha, Devangana, Natasha, Shivangi, Shadab, Athar, **Salim Malik**, Saleem Khan, Suleman Siddiqui, Rashid, etc were present. Athar Khan told in the meeting that they will do riots after chakka-jam. Everyone said yes to the proposal. When somebody opposed it, then they were asked why they have come to the meeting if they do not want to do anything for their community.

I am conscious of the fact that though the incident is narrated by the said witness in his statement under Section 164 Cr.P.C on similar lines as Section 161 Cr.P.C, yet, the witness has stated the name of Gulfisha, Devangana, Natasha, Shahdab, Athar and others in the meeting of 16/17.02.2020 without specifically mentioning Saleem Malik. Both have to be read together. Moreover, there is a reference to this meeting in the DPSG chat.

10.3 Accused Saleem Malik also attended the meeting on 20/21.02.2020 where discussion on riots took place.

Protected witness **Pluto** in his statement under Section 164 Cr.P.C stated that he does the work of Biryani. Before riots on 20/21.02.2020, five persons

namely Athar, Shahdab, **Salim Munna**, Saleem Khan and Rizwan Siddiqui came and gave him Rs. 10,000/- for biryani order and told him that biryani has to be sent to Ayyaz's office at basement at Chand Bagh. He gave some money in advance and rest was to be paid by Ayyaz. Same day, he reached the office at about 8.30 PM with biryani. Athar told him that Ayyaz would pay the money when he comes. They started eating biryani. **Athar was telling to others that time has come to burn Delhi. Rahul Roy had called him and all preparations have been done. Arms, petrol, etc., has been filled. There is no shortage of money and Delhi will be destroyed. Their issues will not be settled till 100-200 people are killed and 100-200 places are arsoned.** He asked them to be ready and they all said that they were with him. In the meantime, Ayyaz came and gave him money and he left.

10.4 Witness **Radium** in his statement under Section 164 Cr.P.C stated that on 23.02.2020 at around 7.00 in the evening when he was standing outside in his gali, he met an acquaintance. He asked him for some work at Mukhtiyar's house at Gali No.3, Chand Bagh, Delhi. Athar, Suleman Siddiqui, Shadab and Ayyub were present. Athar was saying that Nadeem Bhai was angry as the scale of riots which he wants, is not getting done because of CCTV cameras. Either the cameras should be destroyed or covered. Athar, thereafter, said that he has talked to Saleem Khan and **Salim Munna** who will get it done. Shadab also said that he will also use his team to get this done. Everyone was in agreement. He felt very troubled.

On next day, on 24.02.2020 at around 11/11.30 PM, when he was sitting outside his house, someone came and asked him to put a stairs at someone's house. After some time, many people came and started CCTV cameras and some were

covered.

Thus, the said witness makes a mention about accused Saleem Malik being discussed in the said meeting of 23.02.2020 in relation to the proposed destruction of the CCTV cameras on 24.02.2020. This has to be read with the actual destruction and covering of CCTV cameras on 24.02.2020 by many which was also recorded.

10.5 At the time of riots, accused Saleem Malik was present in North-East Delhi. Accused Saleem Malik was connected with accused persons namely Saleem Khan, Athar, Shadab and Suleman (Proclaimed Offender). The role of these accused persons and others also has to be considered while understanding role of present applicant/accused. Statement of protected witness Sodium is also relevant in this regard.

10.6 It is correct that accused Saleem Malik was not part of the Whatsapp group like DPSG, MSJ, JCC or Pinjra Tod, yet the fact remains that as per the charge-sheet, he took part in the conspiracy. It is not necessary that in a case of a conspiracy, every accused should play part in every aspect of the conspiracy.

10.7 Ld. Counsel for accused had made submissions regarding general denial of any conspiracy. It is a case of UAPA and like any criminal case requires submissions and analysis based upon the contents of the charge-sheet and the accompanying documents.

10.8 Ld. Counsel for accused had submitted that the statements of witnesses are either false being delayed or contradictory or could be concocted or

coerced and should not be relied upon. However, at this stage of bail, the statements of all the witnesses have to be taken at face value and their veracity will be tested at the time of cross-examination. The statements of the witnesses, as discussed above, show sufficient incriminating material against the present accused Saleem Malik.

11. Thus, on the perusal of the charge-sheet and accompanying documents, for the limited purpose of the bail, I am of the opinion that allegations against the accused Saleem Malik @ Munna are prima facie true.

12. In view of the above discussion, since there are reasonable grounds for believing that the accusation against the accused **Saleem Malik @ Munna** are prima facie true, hence, embargo created by Section 43D of UAPA applies for grant of bail to the accused and also, the embargo contained in Section 437 Cr.P.C.

Hence, the present application for bail of accused Saleem Malik @ Munna stands dismissed. Application is disposed off accordingly.

Copy of digitally signed order be e-mailed to the Ld. Counsel for applicant/accused, Ld. Special Public Prosecutor for the State as also to the worthy Commissioner of Police, Delhi.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 06.10.2022