

IN THE COURT OF THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

BAIL APPLN. No.1318 of 2020

IN THE MATTER OF:

SAFOORA ZARGAR APPLICANT/ACCUSED

VERSUS

STATE OF NCT OF DELHI STATE RESPONDENT

(Case FIR No. 59/2020 U/s 120 B IPC r/w
109/114/124A/147/148/149/153A/186/212/302/307/341/3
53/395/427/ 435/436/452/454/34 IPC IPC; 25/27 Arms Act;
3/4 PDPP Act & 13/16/17/18 UA(P) Act; PS Crime Branch,
Delhi (Investigation with PS Special Cell, New Delhi)

Date of hearing: 22/06/2020

INDEX

<u>Sl.No.</u>	<u>Particulars</u>	<u>Pages</u>
1.	Status Report	1-27
2.	Annexure-A: Copy of FIR No. 59/2020 PS Crime Branch(Investigation with PS Special Cell, New Delhi)	28-30
3.	Annexure-B: Copy of copy of the dismissal order dated 21.04.2020 by the Court of Ms. VasundharaChhaunkar Ld. MM, Patiala House Courts, New Delhi.	31-32
4.	Annexure-C: Copy of short reply dated 18.04.2020 filed before the Ld. Duty MM (ACMM-01), Patiala House Court, New Delhi	33-34
5.	Annexure-D: Copy of reply dated 20.04.2020 describing her role and the material evidence collected against the accused	35-38
6.	Annexure-E: Copy of detailed reply dated 28.04.2020bail application under Section 439 CrPC before the Ld. ASJ, Patiala House Courts, New Delhi.	39-42
7.	Annexure-F: Copy of order dated 02.05.2020 by Ld. Court of ShriParveen Singh Ld. ASJ-03, Patiala House Courts, New Delhi.	43
8.	Annexure-G: Copy of order dated 04.06.2020,	44-52

ShriDharmenderRana Roster Judge,
LD. ASJ-02, New Delhi District, Patiala
House Courts, New Delhi

9. **Annexure-H:** Copy of the Delhi Prison Rules **53-55**
2018, providing for due care and treatment
for pregnant accused/inmates

Filed by:

**AmitMahajan and
Rajat Nair,
Advocates**

Dated this 21th Day of June, 2020

**IN THE COURT OF THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI**

BAIL APPLN. No.1318 of 2020

IN THE MATTER OF:

SAFOORA ZARGAR

..... APPLICANT/ACCUSED

VERSUS

STATE OF NCT OF DELHI STATE

..... RESPONDENT

STATUS REPORT ON BEHALF OF RESPONDENT DELHI POLICE

MOST RESPECTFULLY SHOWETH

1. The present status report is being filed by the respondent Delhi Police in respectful compliance of this Hon'ble Court's order dated 18.06.2020.
2. At the outset, it is respectfully submitted that since the present case is under investigation, which is at a crucial juncture, therefore, as advised, the Applicant/Accused is not giving the details of investigation undertaken so far in the present status report. The said details from part of the case diary of the present investigation and as such the particulars thereof cannot be disclosed to the Applicant/Accused in the present stage. The respondent undertakes to produce before this Hon'ble Court all the incriminating material collected by it during the investigation which has occurred so far in a sealed cover, for the kind perusal of this Hon'ble Court, which clearly establishes that more than prima facie case has been made out against in accused applicant under the provisions of UAPA.
3. I state and submit that contrary to what has been asserted by the accused/applicant in the present bail application, what has emerged from the investigation undertaken so far, is that drawing upon the perceived reasons, the Applicant/Accused was part of the conspiratorial

design not only to cause disaffection but, the use of any means to cause death and injury to persons and death and loss to persons. The case against the Applicant/Accused is clearly made out from the statements recorded which are corroborated not only by her own admissions but extensive documentary evidence which has been collected by the investigating agency so far pointing towards potential serious leads which is also under investigation. The Applicant/Accused combined with the other accused weaved a web of actions animated by unlawful object of creating terror and disaffection. And notwithstanding her maintaining stealth and secrecy about her real designs the available circumstantial evidence clearly demonstrates that a protestation of innocence are phony; her actions are neither licit nor legitimate and she is clearly culpable of criminal wrongs of grave magnitude deserving no indulgence from this Hon'ble Court.

4. It is submitted that the record reveals a sinister stratagem while nominally invoking the law to actually veritably undermine it. The Applicant/Accused was not only disposed towards creating turmoil to severely undermine public order and imperil national security but erode and frustrate the civil compact which holds our polity together. There is good and substantial cause for the arrest of the Applicant/Accused and there are grave and compelling reasons that she remains in custody.

5. It is respectfully submitted that there is more than enough material for any determiner of fact to accept the case as it stands against the Applicant/Accused and the same counter balances any presumptions of innocence which the Applicant/Accused claims. Unless evidence in rebuttal is presented (which can only be at trial) she cannot claim to be innocent of the acquisition made against her, as alleged or otherwise, in her petition. It is also extremely crucial to note here that

direct evidence is not always available of a conspiratorial design and mere absence of a contemporaneous record (which can only be available in a surveillance state) does not even remotely suggests the absence of case against the Applicant/Accused because she stands clearly implicated by the evidence which stands unearth by the investigation which is continuing even now and further trails of criminality is being unearth. The respondent investigating agency, therefore, most respectfully submits that there is a clear Prima facie case made about against the Applicant/Accused and hence she is not entitled to bail.

It is submitted that the whatsapp chats which have been found by the investigating agency is clearly incriminating and which would be referred during the case in explaining the actions of the Applicant/Accused and the violence and disorder which took place. Furthermore, *Brandunberg* cannot be invoked by the applicant/accused to assert her case for bail as imminent lawless action is not the test as has been suggested by the Applicant/Accused. Also, the reading of the Applicant/Accused of both of *Kedarnath* and *Shreya Singhal* is clearly wrong. It is emphatically stated that this is a case of coordinated actions across several areas with criminal acts clearly intertwined to create lawlessness and turmoil in the society. It is stated that the judgements relied upon by the applicants/accused do the advance her case and the submission which are made are predicated on a complete misunderstanding of the legal principals.

6. Moreover, it is respectfully stated that the very extension of the period of the investigation in the same FIR itself suggests that it needs further enquiry. In other words, the principle of bail not jail will not apply. The only requirement which has to be seen in the present case is existence of prima facie case. Police has submitted sufficient evidence on

4

record which demonstrates the certainty of the acquisition made and the same clearly stands for want of contrary proof. The fact at issue can clearly be inferred in favour of prosecution on the evidence to reach an opinion in its favour. This is also re-enforced by the extension of period of investigation granted by the co-accused which suggests not only that there is a case to be met but, there are further trails available by which they can confirmed still further.

7. Further it is respectfully submitted that the record suggests that even by her conduct she is not entitled to bail. Admittedly, there are other cases of her involvement which are pending.

8. It is further respectfully submitted that the applicant/accused is also not entitled to bail on the ground of pregnancy. The law does not make any distinction in this regard. It is stated that the law unambiguously contemplates provisions to deal with pregnant criminals which itself indicates that the law permits use of sanction against this class of offenders. The severity of offence is in no manner mitigated by the factum of pregnancy, the Applicant/Accused is not the only pregnant accused to be entitled to any preferential treatment and there are enough precedent available in law not only of the arrest of pregnant accused and their detention but even of delivery in prison for which detailed guidelines, in terms of directions issued by the Hon'ble Supreme Court of India, are statutorily enacted. Also, it is extremely crucial to note here that it is not even the case of the applicant/accused that the requisite medical attention has been denied to her. It is submitted that the very fact of rearing of life ought to have been a check on activities which had a potential to cause and which did in-fact cause large scale destruction of life and property.

9. In view of the aforesaid submissions, it is respectfully submitted that a clear and cogent case has been made out against the applicant/accused and as such she is not entitled for bail for the grave and serious offences which has been meticulously and surreptitiously, planned and executed by the accused/applicant. The statements of the witnesses (some of which protected witnesses and have given their 164 statements) and other co-accused clearly implicates the Applicant/Accused as being a leading co-conspirator in commissioning of the serious offence of causing large-scale disruption and riots, not only in the area of national capital territory of New Delhi but also in other parts of the country. It is stated that as would be pointed out to this Hon'ble Court from the case diary, the present case pertains to grave offence against the society and nation. The investigation is at a very crucial juncture, and therefore, considering the sensitivity and the broad nefarious conspectus of the present case it would not be in the interest of justice as well as in public interest to grant bail to the applicant/accused at the present stage.

BRIEF FACTS OF THE CASE

10. That an FIR No. 59/2020 dated 06.03.2020 was registered under Section 147/148/149/120-B IPC at Police Station Crime Branch. The investigation of the aforementioned case was transferred to Special Cell, New Delhi Range, Lodhi Colony, New Delhi. The copy of FIR No. 59/2020 dated 06.03.2020 is annexed herewith as **Annexure-A**.

11. That as per the contents of FIR, on 06/03/2020, source information was received in the Crime Branch that the communal riot incidents of February 23-25, 2020 in Delhi were pre-planned and the same were hatched by one Umar Khalid, a student of Jawahar Lal University (JNU) and his associates, all linked with different-2 groups. As

per this pre-planned conspiracy, Umar Khalid gave provoking speeches at different places and appealed to the people to come out on public roads and block roads so that during the visit of Mr. Donald Trump, Hon'ble President of USA, propaganda of Minorities in India are being persecuted may publicized at international level. One part of the conspiracy was to use women and elderlies as human shield behind persons, mobilised by said conspirators, who would perpetrate violence, if required, in name of carrying out civil protest. In accordance to this conspiracy Umar Khalid and his associates brought women and children on roads in order to instigate riots. In furtherance of this conspiracy Firearms, petrol bombs, acid bottles, stones, sling shots and other dangerous materials were stockpiled in houses at various places in Delhi which are Maujpur, Jafarabad, Chand Bagh, Gokalpuri, Shiv Vihar and surrounding areas. To participate in riots Danish s/o Khalid r/o Bhajanpura was given charge to bring people from different-different areas. As per conspiracy on February 22, 2020, the road was blocked by the children and women at Jafarabad metro station so that inconvenience is caused to people residing nearby causing tension and then riots. On this day schools in these areas where children of minority community were studying were vacated in accordance to the conspiracy.

12. In the aforesaid backdrop, since this conspiracy did not remained in the realm of advocacy and was actually implemented on ground which resulted in riots happening in parts of Delhi claiming more than 50 innocent lives and destruction of public property worth crores, the present case was registered to unearth the larger conspiracy behind these riots which took place at several places during 23/02/2020 to 26/02/2020 in North East District, Delhi was registered.

13. That it is relevant to note that in respect of individual instances of riots which occurred on the aforesaid dates, about 751 FIRs have been registered at different Police Stations in North East District, Delhi against the rioters. In these riots about 53 persons were killed and more than hundreds of persons were injured. A large number of houses and shops were gutted and private and government properties were damaged and stolen. About 53 cases of riots with murder are pending investigation with the different branches of the Crime Branch and rest of the riots cases are pending investigation with the North East District Police. In some of the cases, Crime Branch has filed Charge-sheets before the concerned Courts. District Police have also filed Charge-sheets before the concerned Courts.

14. That as the investigation progressed and more and more evidence came on record the investigating agency, in compliance with the mandate of law added Sections 302/307/124A/153A/186/252/395/427/435/436/452/454/109/114 IPC on 15.03.2020 in the present FIR.

15. Thereafter, in view of the evidence gathered, on 19.04.2020 Sections 13/16/17/18 of the Unlawful Activities (Prevention) Act, 1967 were added during the investigation of the instant case.

16. That during the investigation statements of 14 witnesses have been recorded under Section 164 of the Code of Criminal Procedure, 1973 before the concerned Magistrates and the testimony of 28 witnesses have been recorded under Section 161 of the Code of Criminal Procedure. Some of the witnesses whose testimony have been recorded under Section 161 & 164 Cr. P.C are *protected witness* as contemplated under Section 44 of the Unlawful Activities (Prevention) Act, 1967.

17. That, 14 accused persons have been arrested in the instant case including the applicant/accused in the present bail matter and are lodged in the judicial custody at Delhi Jails. The applicant/accused arrest was the ninth arrest in the case when clear evidence against her was available with the investigating agency. All due precautions and safeguards were followed in the instant case while arresting her.

18. That it is pertinent to mention here that the first bail application of the applicant/accused in the instant case was rejected on 21.04.2020 by the Court of Ms. Vasundhara Chhaunkar Ld. MM, Patiala House Courts, New Delhi. The copy of the dismissal order dated 21.04.2020 is annexed herewith as **Annexure-B**.

The relevant portion of the aforesaid order is as follows:-

"Heard, perused and considered.

The nature and gravity of the offence alleged against the accused are of grave and serious nature. Further, offences triable by Ld. Sessions Court i.e. u/s 302 has also been invoked against the accused in addition to other severe allegations. Therefore, in the present circumstances, this Court is not inclined to grant bail to the accused. Accordingly, application is disposed off as dismissed".

19. That it is relevant to note that in response to the aforesaid bail application, the IO had filed a short reply dated 18.04.2020. The Ld. Duty MM (ACMM-01), Patiala House Court, New Delhi directed the IO to file a detailed reply. The copy of the reply dated 18.04.2020 is annexed herewith as **Annexure-C**.

20. That in compliance of the aforesaid order, the IO had filed a detailed reply dated 20.04.2020 describing her role and the material evidence collected against the accused. The copy of the reply is annexed herewith as **Annexure-D**.

21. That being aggrieved by the said dismissal order, the applicant/accused preferred the bail application under Section 439 CrPC before the Ld. ASJ, Patiala House Courts, New Delhi. The IO filed a detailed reply dated 28.04.2020 to the said application. The copy of the reply dated 28.04.2020 is annexed herewith as **Annexure-E**.

22. That vide order dated 02.05.2020 Shri Parveen Singh Ld. ASJ-03, Patiala House Courts, New Delhi dismissed the bail application as withdrawn. The copy of the order dated 02.05.2020 is annexed herewith as **Annexure-F**. It is submitted that after making submissions for some time, Ld. Counsels for the applicant/accused sought permission to withdraw the present bail application. For the sake of convenience to this Hon'ble Court, the relevant portion of the order dated 02.05.2020 is as follows:

"Heard. In view of the submissions of the Ld. Counsels for the applicant, the bail application is dismissed as withdrawn".

23. That it is pertinent to mention here that the applicant/accused again preferred the bail application under Section 439 CrPC before the Ld. Sessions Court, Patiala House Courts, New Delhi.

24. That vide order dated 04.06.2020, Shri Dharmender Rana Roster Judge, LD. ASJ-02, New Delhi District, Patiala House Courts, New Delhi dismissed the Bail Application No. 1119/2020. The relevant portion of the aforesaid order reads as follows:-

"I concur with the Ld. Addl. PP that at this stage, the court is not required to test the merits of the prosecution case. I am not discussing in details the particulars of the prosecution witnesses so as not to unnecessarily prejudice the on-going investigation and the safety and security of the witnesses is also one of my primary concerns. However from the statement recorded u/s 161 and 164 Cr. P.C coupled with the whatsapp chat available on record, it can be safely inferred that there is prima facie evidence to show that there was a conspiracy to at least blockade the roads (Chakka Jaam). As per the provisions of sections 339 of Indian Penal Code,

causing wrongful restraint to even a single individual is penal offence. Section 141 Clause 3 provides that any assembly of five or more persons is designated as 'unlawful', if its common object is to commit any offence.

From the material available on record, one cannot ignore the case of the prosecution that the accused persons have conspired to cause disruption of such an extent and such a magnitude that it would lead to disorderliness and disturbance of Law and order at an unprecedented scale. Therefore, I cannot but disagree with the Ld. Defence counsel that the provisions of UAPA could not have been validly invoked in the case at hand.

Further, I cannot also agree with Ld. Defence counsel that applicant/accused is only liable for her individual acts and the speeches delivered or the acts of the other members of the group cannot be read against her. In considered opinion, if there is prima facie evidence of existence of a conspiracy, the evidence of acts and statements made by any one of the conspirators in furtherance of the common object is admissible against all. (Reliance is placed upon Jayendra Saraswati Swamigal V. State of Tamil Nadu AIR 2005 SC 716). Therefore, **mere absence at the spot of absence of the any overt act would not help the cause of the applicant/accused.**

The acts and inflammatory speeches of the co-conspirators are admissible u/s 10 of the Indian Evidence Act even against the applicant/accused.

I concur with the Ld. Addl. PP that at this stage, the court is not concerned with the sanctity of the material available on record, however, considering the material available on record, it cannot be said that there is no prima facie case made out against the applicant/accused. Thus, the statutory embargo under provisions of Section 43(D)(5) is attracted in the instant case.

As a cumulative effect of the aforesaid discussion, I do not find any merits in the bail application, The same is accordingly dismissed".

A copy of order dated 04.06.2020 is annexed herewith as **Annexure-G.**

25. That there are strong, cogent, reliable and sufficient material available on record which proves direct involvement of the applicant/accused in the commission of the offence.

26. It is worth mentioning here that it has come on record that during the riots that occurred on 23-25 February 2020 in North-East district, Delhi, about 53 persons were killed and more than hundreds of persons got injured in a ghastly, horrendous and horrifying crime. The houses and shops were gutted. A petrol pump was exploded and huge

11

government and private properties were burnt, destroyed and damaged. During the investigation, acid bombs, iron rods, swords, nailed sticks, knives, sling-shots, stones were used in the riots which were pre-planned in a systematic and organised manner. It has also come on record that secret offices were set up at most of the protest sites, where, mobilisation of people, preparation, strategy, schemes, stock of aforesaid materials, speeches, slogans were decided in a confidential and secret manner. It has also come on record that funds were used and supplied to organise the protest sites and fake vouchers were manufactured/forged. Paramilitary forces were deployed to maintain and control the law and order situation. Fire Brigades were called on the spots.

27. It is stated that the accused has played an extremely crucial and active role in the commission of the aforesaid offence. There are direct, specific and definite allegations against the accused which are corroborated with cogent evidence both documentary and oral.

28. The motive and the idea behind this conspiracy was 'to go to any extent possible', be it a small scuffle with the police during blockade or instigation of riots between two communities or to advocate and execute a secessionist movement in the country by propagating an armed rebellion against the lawfully constituted government of the day.

29. This sinister and nefarious conspiracy was designed in various levels/layers according to which the façade of a civil disobedience/protest was to be maintained to buckle the government to agree to the illegitimate demands of the applicant/accused. And behind this façade of civil unrest/protest, there was a plot to perpetrate this sinister design of riots and/or armed rebellion throughout the country.

Further the motive the applicants/accused was not only to plot such a conspiracy but also to plan its execution and ensure its implementation.

30. It is stated that the plan objective of this conspiracy was to give it the legitimacy of civil disobedience/protest and to maintain the said façade; though the real intention behind this façade was to perpetrate any kind of violent action, going to any extent, for the purpose of overthrowing the lawfully constituted government of the day. To execute the same the accused/applicant along with the other co-conspirators decided to keep women and children in the front as human shields or face of protest for the media and behind that said façade and extremely violent action was being planned. This sinister design was initially planned to be executed in the specified areas of National Capital Territory of New Delhi and depending upon the results of the said plan the same was planned to be replicated in every other city of the country so that the entire country is paralysed and the government of the day is destabilised.

31. It is stated that after the passing of the Citizenship Amendment Act (in short CAA), some organisations/groups came together and a conspiracy in this regard was hatched. It was decided to create pressure on the present government, so that the Government take back the CAA and shed the intention to implement the National Register for Citizen (In short NRC). This conspiracy was sought to be executed by keeping a façade of civil protest in the front and behind the façade of civil protest all sorts of violent activities were being planned. The other co-conspirators with active participation and connivance of the applicant/accused decided that they would flare up the sentiments of the Muslim community by propagating amongst the Muslims that these laws were anti-Muslims. It was further decided that the anti-government feeling of Muslims, will be used at an appropriate time to

destabilise the Government. It was further decided to create a large number of protest sites in Delhi to implement their design/scheme.

32. In furtherance of this conspiracy, some groups were formed (details thereof are in the case diary). These groups organised 24X7 sit-in protest in Delhi at 19 different protest sites other than Saheen Bagh and Jamia gate no. 7. Saheen Bagh Chakka-Jaam being the model. Different groups were given the responsibilities to run these protest sites in coordination with each other.

33. One such group was formed in the name of Jamia Coordination Committee (In short JCC). JCC was formed on 17th December 2019. The formation and purpose of this group was to execute the above mentioned conspiracy under the garb of secular protest. This group also collected funds from India and abroad and was in touch with other groups tasked with execution of same conspiracy. Present applicant/accused is one of the founder members of this group. She also created a whatsapp group for JCC; she was the admin of this group. JCC was monitoring multiple protest sites in Delhi. JCC organised created some protest sites, funded these protest sites and monitored the sites.

34. When visit of Mr. Donald Trump, President of USA was announced, conspirators took the decision of enhancing the protest to another level. In furtherance to this conspiracy, they decided to escalate the 24X7 sit-in protest by blocking the strategic roads in mix population areas/non-Muslim areas in a coordinated manner with the objective of heightened tension and creating riots. They had accordingly planned for these riots much in advance by accumulating firearms, sharp edged weapons, petrol bombs, acid bottles, empty bottles, stones, catapults, chilli powder etc.

35. Accordingly, on 22/02/2020, they mobilised the local Muslims and created Chakka-Jaam at main road below Jafarabad Metro station. Again on 23/02/2020, in the garb of march from Chand Bagh To Rajghat, they mobilised large Muslims population, who along with the protest site persons marched and blocked main roads in non-Muslims areas. Protesters from protest site Madina Masjid Seelampur blocked Jafarabad Metro Station, 66 foota road. Protesters from protest site Kardampuri Pulia, Ashrafi Masjid moved and blocked 66 foota road Seelampur near Maujpur Chowk. Protesters from protest site Farukiya Masjid, Brijpuri pulia blocked Brijpuri T-point, Wazirabad road. Protesters from protest site Noor-E-Elahai Masjid blocked the nearby main Bhajanpura road. Protesters from protest site Chand Bagh Mazar blocked Wazirabad highway connecting Delhi-Ghaziabad. Protesters from protest site Khureji also moved and blocked Patpargunj road. Protesters from protest site Jamila Masjid-Ahle-Hadis, Haujrani moved and blocked Press Enclave road, Saket, Delhi. These blockade resulted in complete blocking of 66 foota road Seelampur and Delhi (Wazirabad)-Ghaziabad highway and complete chocking of North-East district of Delhi, and shut down of essential services like Metro and other necessary services.

36. These blockade points were so chosen that non-Muslims population got trapped on roads and in colonies. It is worthwhile to mention here that on 15th December, large scale riots also took place on the very same locations in North-East district of Delhi and on the very same issue of CAA/NRC, but they were successfully quelled in the absence of large scale participation. However, this time large scale mobilisation was done for the very same purpose.

37. The idea in the motive behind these blockade, during the time when the US President was visiting India, was to attract the attention of

international media for propagating a narrative that the government of the day was anti-Muslim and by the use of the state machinery/force was executing a pogrom against the Muslims of the country and there was a large scale persecution of Muslims in India.

38. In pursuance of the aforesaid design, stone pelting and large scale arsoning started on 23/02/2020, in some areas of North-East, Delhi, which resulted in burning of restaurant, Cars, TSRs, motor-cycles and damage to public and private properties in the area of Chand Bagh, PS Dayalpur and other areas of North-East. This rioting and arsoning converted into large scale communal violence. This communal violence resulted in 53 deaths of innocent peoples including Delhi Police and IB official and injuries to hundreds of peoples including several police personnel and loss of properties worth crores.

39. For the Chakka-Jaam at Jafrabad Metro Station started on 22 February, a case FIR No. 48/2020 u/s 186/188/353/283/341/109/147/34 IPC was registered at PS Jafrabad, Delhi. For the large scale arsoning and violence in the area of Chand Bagh, on 23 February, 2020, a case vide FIR No. 57/2020 u/s 147/148/149/427 IPC was registered at PS Dayalpur, Delhi. A case vide FIR No. 92/2020 u/s 143/145/147/148/149 IPC was registered at PS Welcome for the incident which occurred at 66 foota road Seelampur, Delhi on 23/02/2020. A case vide FIR No. 70/2020 u/s 143/147/148/149/186/353/332/120B/34 IPC was registered at PS Saket for the rioting in Hauzrani on 23/02/2020.

40. In the aforesaid conspiracy the accused/applicant played an important part and was a key link of this conspiracy since beginning. She was the founder member of JCC, which was formed in accordance

with the conspiracy as explained above. She also created a whatsapp group for JCC to carrying out this conspiracy. She was working in tandem with the other arrested co-accused and members of the JCC namely Amanulla, Shifa Ur Rehman, Meeran Haider, Asif Iqbal Tanha beside other suspects. She was also in touch with organisers of various others protest sites including arrested co-accused Devengana Kalita of Seelampur Jafarabad protest site.

41. She visited Khureji protest site and gave provocative speeches to incite the feelings of other caste and communities.

42. As part of conspiracy, she mobilised the sit-ins protesters and others for the Chakka-Jaam, occurred on 22/02/2020 at main road, below Jafarabad Metro Station. Again on 23/02/2020, she mobilised the people for Chakka-Jaam at main Wazirabad Highway, which was carried out in garb of march. She visited this Chakka-Jaam and addressed the gathering. She was also monitoring the Chand Bagh protest site on behalf of JCC. She specifically forbade to carry out Chakka-Jaam at Jamia on 23/02/2020 and suggested peoples to block Mathura road. The context of such suggestion being that protest at Jamia, will only hurt our people. She had carried out these Chakka-Jaam with the sole intention and objective of escalating them into riots as borne out from the statements of witnesses.

43. Evidence in the form of statements recorded under section 161 & 164 Cr. P.C. are on record. CDR and location of her mobile phone indicating her connectivity with co-accused persons/suspects and her locations are also on record. Incriminating whatsapp chats recovered from the mobile of co-accused persons, showing that she was the member of some whatsapp groups which were created for execution of

this conspiracy. However she has deleted these whatsapp groups from the mobile recovered from her.

44. It is stated that the accused is a member of Jamia Co-ordination Committee and it was formed 16.12.2019. A whatsapp group by the name of JCC was created and applicant/accused was the Admin of this Whatsapp group. This is starting point from where the conspiracy started.

45. That it has come on record that different groups and organisations were involved with the applicant/accused and were privy to each other and thus, they were having a specific purpose, object and mandate is to cause disaffection and revolt against the Government of India. In furtherance of criminal conspiracy, their further scheme and aim was to destroy, destabilise and disintegrate the Government of India in order to compel to withdraw the Citizenship Amendment Act (CAA) and alleged National Register of Citizens (NRC).

46. That it has also come on record that in furtherance of criminal conspiracy and in order to achieve their illegal design and object, they had given hate and provocative speeches among different class of society, people, groups, castes and communities to incite the people to cause disorder and disharmony against the Government of India.

47. That it has also come on record that in furtherance of criminal conspiracy, they had promoted the feelings of enmity, hatred and ill-will among different castes and communities against the Government of India. Their main target was to uproot the Government of India through violent means by instigating riots and unrest throughout the country.

48. That the role of the accused has been described in great detail by the statement of witnesses recorded under section 161 & 164 Cr.P.C.

49. One of the witnesses examined under section 161 & 164 Cr.P.C. has deposed that the present applicant/accused had gone to Khureji protest site, whereby, she had given a hate and provocative speech against the Government of India and also to uproot it. Further, the witness has also deposed that the applicant/accused along with other co-accused had a conversation about the Chakka-Jaam and it was also decided that other sites in Delhi, they would hold Chakka-Jaam, which would further escalate to violence and riots.

50. Another witness examined under section 161 & 164 Cr.P.C. has deposed that applicant/accused told him that the mandate of JCC was to look after all the protest sites and manage them.

51. Another witness examined under section 161 & 164 Cr.P.C. has deposed that the motive of the JCC was to create riots in Delhi.

52. Another witness examined under section 161 & 164 Cr.P.C. has deposed that applicant/accused along with other co-accused persons/suspects had formed Jamia Co-ordination Committee. These people used to give speeches and raise slogans. The members of the JCC were in direct touch with the other groups and organisations, which have played a direct role in the commission of the offence. Further, the witness has also deposed that in the meetings it was decided that JCC along with other groups would organise and hold Chakka-Jaam in North-East, Delhi.

53. During investigation following facts have been revealed:

- i) As a part of conspiracy protests at 21 sites were organised and large scale mobilization was done at these protest sites in garb of peaceful march.
 - ii) As a part of conspiracy, these protest sites were converted into 'ChakkaJaam by public so mobilized.
 - iii) As a part of conspiracy preparations were made for rioting when ChakkaJaam' resulted in heightened tension.
 - iv) As a part of conspiracy 'ChakkaJaam' resulted in large scale riots at multiple spots in North East, Shahdara & South Districts.
 - v) During these incidents of riots, 53 innocent people lost their lives including a Delhi Police and IB official.
 - vi) Two senior IPS officers were grievously injured and scores of polices officials were injured as well.
 - vii) Hundreds of public persons were also injured.
 - viii) Public & private properties worth Crores were damaged.
 - ix) More than 750 FIRs have been registered in these riot incidents.
 - x) There is a strong nexus, a deep rooted & larger conspiracy between rioters, instigators, conspirators and fund raisers behind the said Delhi riots.
 - xi) Role & evidence against accused: Evidence in form of oral, documentary, technical & substantial is on record about her role.
54. Statements of witnesses recorded u/s 161 & 164 Cr.PC. reveal that:

- i) Accused Safoora Zargar is one of the main conspirators as well as instigators behind the riots. She played an active role in this whole conspiracy and is one of the masterminds.
- ii) In a meeting called at Chand Bagh protest site before the riots it was decided that as government is not giving heed to their protests so they have to mobilize people and go for 'Chakka Jam'. They also have to revolt against the government then only government will take back the black law of CAA/NRC.
- iii) In this continuation first road was blocked on 22/02/2020 at Jafarabad metro station.
- iv) Then on 23/02/2020 main highway Wazirabad road near Chand Bagh was blocked. Accused Safoora visited Chand Bagh road block site and gave inflammatory speech.
- v) Her work was to look after and manage all the protests going on in Delhi against the government.
- vi) On February 22, 2020, as per pre-planned conspiracy, the children and ladies were sent to block Jafarabad metro station to create chaos. She mobilized people to reach this site.
- vii) On February 23, 2020, as per pre-planned conspiracy, main highway Wazirabad road near Chand Bagh was blocked and chaos was created in the area. She mobilized people to reach this site.
- viii) She was working in tandem with the other arrested co-accused and members of the JCC namely Amanulla, Shifa Ur Rehman, Meeran Haider, Asif Iqbal Tanha beside other suspects. She was also in touch with organisers of various others protest sites

including arrested co-accused DevenganaKalita of SeelampurJafarabad protest site.

- ix) She had also been arrested in case FIR No. 48/2020 u/s 186/188/353/283/341/109/147/34 IPC PS Zafrabad, New Delhi. This case was registered on the incident of February 22, 2020, at Jafarabad metro station where the road was blocked & chaos was created despite repeated directions of police to maintain peace & tranquillity, not to indulge in any type of violence, disperse and clear the blockade.

55. Thus from the evidence which has been collected so far, there remains not even an iota of doubt that the appellant/accused clearly played a key part in the aforesaid conspiracy whereby she organised mobilisation of the mob of a particular community, flaring up their communal passion and to instigate them for committing violence, whereas, simultaneously the other co-conspirators were actually collecting and organising the means and material through which the said mob was to indulge in rioting and violence.

56. From the aforesaid, it is clear that the present case pertains to a very deep rooted and a sinister conspiracy conceived, and in fact executed by the applicant/accused to create unrest in the society and to uproot a lawfully constituted government by employment of unconstitutional and violence means for which the accused/applicant is not entitled for bail on any grounds.

57. That it is matter of record that apart from this case, there are three more cases against the applicant/accused. Out of these three FIRs, applicant/accused was named in two FIRs. Details of cases are as follows.

- i) FIR No. 31/2020 dated 11/02/2020 under section 186/353/332/188/143/147/149/34 IPC PS New Friends Colony, Delhi. In this case applicant/accused has been named in FIR and the case is pending investigation.
- ii) FIR No. 32/2020 dated 11/02/2020 under section 342/354/323/506/509/34 IPC PS Jamia Nagar, Delhi. In this case also applicant/accused has been named in FIR and the case is pending investigation.
- iii) FIR No. 48/2020 dated 24/02/2020 under section 109/147/186/188/283/341/353/34 IPC PS Jafrabad, Delhi. In this case applicant/accused was arrested.

58. Insofar as ground of pregnancy raised by the applicants/accused to seek bail from this Hon'ble court, is concerned, it is respectfully submitted that it is not even the case of the petition that she is not being granted proper care during the custody. It is submitted that as stated above there is no exception carved out for pregnant inmate, who is accused of such heinous crime, to be released on bail merely because of their pregnancy. To the contrary the law provides for adequate safeguards and medical attention during their custody in jail. The jail manual in this regard is completely explicit insofar as treatment meted out to pregnant accused in jail are concerned and detail rules in this regard are already in existence. A copy of the Delhi Prison Rules 2018, providing for due care and treatment for pregnant accused/inmates is annexed hereto and marked as **Annexure H**.

59. It is respectfully submitted that till date 39 deliveries have taken place in Delhi prison in last 10 years.

60. It is stated that on 15/4/2020, during the First medical examination of the appellant/accused her Urinary Pregnancy Test (UPT) was found to be positive. She gave a history of urinary tract infection, however, during routine investigation her urine test was found to be normal.

61. Thereafter, on 16/4/2020, she was again examined by the doctor and was advised further relevant investigations and necessary medications. It is pertinent to mention here that all the routine investigations were within normal limits and her blood parameters were found to be normal.

62. Thereafter, she was again reviewed in CJ - 06 dispensary on 29.04.2020, and she complained of nausea, gas, body ache and the general itching was addressed and medicines in respect of the same were provided to her.

63. Thereafter on 1/5/2020, she was sent to the DeenDayalUpadhyay hospital, gynaecology department, for further detailed investigation. Her ultrasound for fetal well being was done at DeenDayalUpadhyay hospital radiology department and it was found to be normal by all parameters. She was comprehensively examined in DeenDayalUpadhyay Hospital, by a Gynecology Doctor and all prescribed medicines were provided to her.

64. Thereafter, she was admitted in MI Room of CJ-06 on same day for better care. During her stay in MI Room, she was kept 24 X 7 under supervision of dedicated medical paramedical staff of CJ-06. She was discharged from MI Room on 05/05/2020 on her request.

65. Thereafter, on 16/05/2020, she complained of bilateral ear ache and was thereafter examined by Jail visiting ENT senior Doctor, whereby,

she was given the prescribed medication for curing her ailment. She was also examined by the said ENT senior Doctor on 22/05/2020, 28/05/2020 and 01/06/2020.

66. On 29/05/2020, she was examined by the senior gynaecology Jail visiting Doctor, whereby, she was advised for her 'Level II Ultrasound' scan. Accordingly, her appointment for ultrasound was scheduled at DeenDayalUpadhyay Hospital, radiology Department and the same was planned on 05/06/2020. Her 'Level II Ultrasound' scan was done and it was found to be normal. The appellant/accused is presently under regular follow up of Jail visiting senior gynaecology doctors posted in CJ-06 Dispensary.

67. It is stated that she will be reviewed by the senior gynaecology Jail visiting Doctor on 19/06/2020.

68. Furthermore, she has been prescribed special medical diet for pregnant females as per the jail guidelines in addition to the normal diet for meeting her pregnancy requirement. It is stated that she is being given a special diet comprising of 500ML Milk, 2 eggs, 250 Gm. Fruits and 25 Gm. Butter on daily basis in addition to normal diet. The necessary medications/ all prescribed medicines are being provided to her by the Doctor on duty and from Central Jail No.-6, Dispensary. She is under regular follow up of Doctors posted in Central Jail No.-6, Dispensary.

69. It is stated that as per the Medical Report received from the SMO, CJ-6, Tihar, On 1.5.2020, her (USG) Ultrasound for foetal well-being was done in DDU hospital, Radiology Department and it was normal and level-II Ultrasound scan was done on 05.06.2020 and which was also found normal (Report enclosed). Moreover other tests of the applicant/appellant is also found to be normal.

70. It is further stated that as a matter of policy, the pregnant inmates are provided with regular follow ups and referred to a government hospital as stated above, from time to time, as per the rules, for complete check-ups and specialized treatment. Regular ante-natal check-up is also done by female doctors of the dispensary for pregnant prisoners at the women prison. It is further stated that in the instant case one gynaecologist from DeenDayal Upadhyay hospital also visits applicant/accused once in a week. It is stated that the facilities as per rule No. 1456 to 1460 of new Delhi Prisons Rules, 2018 are being provided to the accused/applicant.

71. Further to the above, the applicant is also being provided with a complete care to prevent any covid infection.

72. It is extremely crucial to note here that at present the applicant/accused has been lodged in a separate cell, all alone, and therefore, the chance of her contacting Covid from any other person does not arise. In fact more care and caution are being practiced in jail so far as social distancing norms are concerned than would be available to her outside the jail premises.

73. Further to the above, Covid warriors are appointed in every ward that checks the availability of water, soap and sanitizer and sanitization and cleanliness in the ward thrice a day. They also maintain a diary which is checked by the SCJ itself. Sanitizer dispenser and washbasins are also installed outside every ward so that before entering the ward, inmates may sanitize or wash their hands. Moreover, if the doctor has doubt that any prisoner has symptoms of flue, they are also kept in a separate ward.

74. It is further stated that the cell of appellant/accused is properly cleaned and sanitized twice a day. Soap and other essentials are also provided to her on regular basis. Outside every ward, including hers', there is sanitizer dispenser and washbasins, where inmate can wash and sanitized their hands before the entering the wards.

75. In addition to the above, the appellant/accused is also been provided daily phone call facility. Apart from this she also had conversation with her Advocate and family members on 25.04.2020, 28.04.2020, 13.05.2020, 19.05.2020, 27.05.2020, 03.06.2020 & 10.06.2020 from the Superintendent Office.

76. Furthermore, it is extremely crucial to point out here that during these regular check-ups the applicant/accused has never complained of any cyst in ovary either to the jail doctor or to the senior gynaecologist of the government hospitals. It is respectfully submitted that the said contention has been raised for the first time before this Hon'ble court and appears to be an afterthought. In any case the respondent undertakes to get a complete investigation in respect of the same and make a report to this Hon'ble court in so far as the said grievance is concerned.

77. Thus what is clear from the above that the present the health status of the appellant/accused (both mental and physical) is satisfactory and normal. Further all medical care and prescribed medication is being provided to her to ensure the well being of the applicant/accused and her foetus, as such on this ground also no case for bail has been made out by the applicant/accused.

PRAYER

78. It is, therefore, most respectfully prayed that keeping in view the facts and circumstances as mentioned above, this Hon'ble Court may graciously be pleased to dismiss the bail of the applicant/accused in the interest of justice.



(P.S. Kushwaha)
Deputy Commissioner of Police
Special Cell, Lodhi Colony, New Delhi
Dt. 21/06/2020

FIRST INFORMATION REPORT
(Under Section 154 Cr P C)

(धारा 154 दंड प्रक्रिया संहिता के तहत)

1 District (ज़िला): CRIME BRANCH P.S.(थाना): CRIME BRANCH Year(वर्ष): 2020 FIR No(प.गु.प्र.सं.): 0059 Date : 06/03/2020

2. Act(s)(अधिनियम): Section(s)(धारा(एँ)):
- IPC 1660 147/148/149/120B

3. Occurrence of Offence (अपराध की घटना):

(a) Day(दिन): Date From(दिनांक से): Date To(दिनांक तक):
Time Period (समय अवधि): Time From (समय से): Time To (समय तक):

(b) Information received at P.S (थाना जहाँ सूचना प्राप्त हुई): Date(दिनांक): 06/03/2020 Time (समय): 10:51 hrs

(c) General Diary Reference (रोजानामाचा संदर्भ): Entry No.(प्रविष्टि सं.): 002A Date/Time(दिनांक/समय): 06/03/2020 10:51

4. Type of Information (सूचना का प्रकार): Written

5. Place of Occurrence (घटनास्थल):

(a) Direction and Distance from P.S (थाना से दूरी और दिशा): Beat No(बीट सं.): 0

(b) Address(पता):

(c) In case, Outside the limit of the Police Station (यदि थाना सीमा के बाहर है):

Name of P.S.(थाना का नाम): District(ज़िला):

6. Complainant / Informant (शिकायतकर्ता/सूचनाकर्ता):

(a) Name(नाम): SI ARVIND KUMAR

(b) Date/Year of Birth (जन्म तिथि /वर्ष): Nationality (राष्ट्रीयता): INDIA

(c) Passport No.(पासपोर्ट सं.): Date of Issue (जारी करने की तिथि): Place of Issue (जारी करने का स्थान):

(d) Occupation (व्यवसाय):

(e) Address(पता): N CELL, CRIME BRANCH, CRIME BRANCH, DELHI, INDIA.

7. Details of Known/Suspect/Unknown accused with full particulars(attach separate sheet if necessary)(जात/ संदिग्ध/अजात अभियुक्त का का पुरे विवरण सहित वर्णन): (2)

- UMAR KHALID

(R/O) DELHI, NEW DELHI, DELHI, INDIA

- DANISH

(R/O) BHAJANPURA, NORTH EAST, DELHI, INDIA

8. Reason for delay in reporting by the complainant/informant (शिकायतकर्ता / सूचनाकर्ता द्वारा रिपोर्ट देरी से दर्ज कराने के कारण):

NO DELAY

9. Particulars of the properties stolen/involved (attach separate sheet if necessary):

Sl.No. (क्र.सं.) Property Type(Description) Est. Value(Rs.)(मूल्य (रु में))

10. Total value of property stolen (बोरी हुई सम्पत्ति का कुल मूल्य):

11. Inquest Report / U.D. Case No., if any (मृत्यु समीक्षा रिपोर्ट / यू.डी. प्रकरण नं., यदि कोई हो):

12. F.I.R. Contents (attach separate sheet, if required)(प्रथम सूचना रिपोर्ट तथ्य):

श्रीमान जी, निवेदन इस प्रकार है कि मैं अरविंद कुमार No D-5708 Crime Branch में तैनात हूँ। मुझे मेरे एक मुखबिर खास ने जानकारी दी है कि दिनांक 23, 24, 25 फरवरी 2020 को दिल्ली में जो दंगा फसाद हुआ है वह पूर्व सुनियोजित पडवत्र था। इन दंगों के फैलाने की साजिश JNU के एक छात्र उमर खालिद और उसके सहयोगियों, जो कि अलग-2 संगठनों से जुड़े हैं, ने मिलकर रची है। इस पडवत्र के तहत उमर खालिद ने अलग-2 जगहों पर भडकाऊ भाषण दिये और अमेरिका के राष्ट्रपति डोनाल्ड ट्रंप की 24/25 फरवरी 2020 की प्रस्तावित भारत यात्रा के दौरान लोगों को सार्वजनिक सड़कों पर उतरने व सड़कें अवरुद्ध करने की अपील की थी ताकि ट्रंप की यात्रा के समय अन्तराष्ट्रीय स्तर पर ये प्रोपेगण्डा फैलाया जा सके कि भारत में minorities पर अत्याचार हो रहा है। इसी पडवत्र के तहत उमर खालिद और उसके सहयोगियों ने औरतो और बच्चों को दिल्ली में कई जगह सड़कों पर उतार कर दंगा भडकाने की साजिश रची थी। इसी साजिश के तहत दिल्ली के कई इलाकों मोजपुर, कर्टमपुरी, जाफराबाद, चंदबाग, गोकुलपुरी, शिवचिहार व इसके आस पास के इलाकों में कई जगह पर घरों में firearms, पेट्रोल बम, एसिड बोतल, पत्थर तथा इन्हें फेंकने के लिए गुलेल व अन्य घातक सामान इकट्ठे किए गए। दंगों में हिस्सा लेने के लिए वाहर की अलग-2 जगहों से भीड़ एकत्र करने की जिम्मेदारी दानिश s/o खालिद r/o भजनपुरा दिल्ली को सौंपी गयी थी। इसी योजना के तहत 23 फरवरी 2020 को जफराबाद metro station के नीचे रोड को औरतो और बच्चों के द्वारा अवरुद्ध किया गया ताकि आसपास के लोगों की परेशानी बढ़े और तनाव बढ़ने से दंगों को अजाम दिया जा सके। इसी दिन उपरोक्त इलाकों के कुछ स्कूलों जहां पर अल्पसंख्यक समुदाय के बच्चे पढ़ते हैं, से बच्चों को पूर्व नियोजित तरीके से खाली करा लिया था। अगर इस पडवत्र की गहनता से जांच की जाये तो दंगा करने व फैलाने के सभी अपराधियों का पता लगाया जा सकेगा। जो मैंने उपरोक्त सूचना को vide DD no 03 दर्ज रोजनामचा किया तथा DD entry की copy सीनियर ऑफिसर को दिखाकर हालात सूचना बतलाये। सीनियर ऑफिसर ने तमाम हालात अफसरानवाला की जानकारी में लाये। जो मुखबिरी से U/S 147/148/149/120B IPC का जुर्म होना पाया जाता है। लिहाजा तहरीर उपरोक्त तैयार करके मुकदमा दर्ज रजिस्टर करने के लिए पेश है। मुकदमा दर्ज रजिस्टर करके copy FIR सीनियर ऑफिसर के आदेशानुसार जांच के लिए Police Station Special Cell, Lodhi Colony की भिजवाई जाए। Signature IO Sd- English with date & time SI Arvind Kumar Narcotics Cell/Crime Branch Dt 06.03.2020 at 09:15AM कार्यवाही पुलिस थाना में लेख की प्राप्ति पर उपरोक्त FIR CCTNS computer project पर लिखने के बाद असल लेख व कोपी FIR SI ARVIND KUMAR NO D-5708 के हवाले करके खाना SPL. CELL LODHI COLONY का किया गया व बतलाया कि असल लेख व कोपी FIR BY ORDER SENIOR OFFICERS SPL. CELL के हवाले करेंगे जो मुकदमे की INVESTIGATION करेंगे। जो नकल प्रतियां (FIR COPIES) डाक के द्वारा उच्च अधिकारी की सेवा में प्रस्तुत होंगे। Written by DO.

13. Action Taken Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2:

(को गयी कार्यवाही: वृत्ति उपरोक्त जानकारी से पता चलता है कि किया गया अपराध मद स.2. में उल्लेख धारा के तहत है):

(i) Registered the case and took up the investigation:

OR (या)

(प्रकरण दर्ज किया गया और जांच के लिए लिया गया):

(ii) Directed (Name of the I.O.)(जांच अधिकारी का नाम): RAMOTAR

Rank (पद):

SI (SUB-INSPECTOR)

No.(सं.): 28810389

to take up the investigation (को जांच आपने पास में लेने के लिए निर्देश दिया गया) OR(या)

(iii) Refused investigation due to (जांच के लिए): INVESTIGATION IS BEING TRANSFER TO SPL OR (के कारण इकार किया या)

(iv) Transferred to P.S.(नाम)(थाना):

District(जिला):

on point of jurisdiction (को क्षेत्राधिकार के कारण हस्तांतरित)

F.I.R. read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant/informant, free of cost : (शिकायतकर्ता / सूचनाकर्ता को प्राथमिकी पढ़ कर सुनाई गयी, सही दर्ज हुई माना और एक कॉपी निशुल्क शिकायतकर्ता को दी गयी) :

R.O.A.C.(आर.ओ.ए.सी.):


✓ 30

SPANCH P.S. CRIME BRANCH

Year 2020 FIR No. 0639

Date 06/04/2020

14. Signature / Thumb Impression
of the Complainant / Informant:
(शिकायतकर्ता / सूचनाकर्ता के हस्ताक्षर / अंगूठे का निशान):

Signature of Officer

Name (नाम): FORMOTAR
Rank (पद): SI (SUB-INSPECTOR)
No. (नं.): 28810389



15. Date and Time of despatch to the court:
(अदालत में प्रेषण की तिनांक और समय):

In the Court of Ms Vasundra Akhankar
Ld. Juty. M.M. PhC
21.4.20
VASLE

(1) 31
ANNEXURE
- B

State v Saffora Zargae
FIR No. 59/20
Special Cell

21.4.20

Pr Counsel for the applicant

Through application, bail of the above named accused
has been prayed on grounds that accused is
B weakly fringed and has various health issues,
Further that she is on bail in another
FIR No. 45/20 pertaining to similar offences.
It is argued that incidentally she was arrested
in bailable offences and later more serious
offences were added by the Special Cell
The allegations are baseless and material collected
by IO do not link her to the commission
of alleged offences. It is granted bail, it is
undertaken that all conditions shall be
observed and there are no chances of any
tampering of evidence, influencing of witnesses etc.

P. To
Pr Counsel
21/4/20
M.M. PhC

Reply filed by IO and ACP concerned

32


IO has filed detailed reply pertaining to the role of the applicant accused and in the reply of ACP it is stated that sections 13, 16, 17 & 18 of the Unlawful Activities (Prevention) Act, 1967 have also been invoked.

Heard. Perused and considered

The nature and gravity of the offences alleged against the accused are of grave and serious nature. Further offences triable by Ld. Session Court is u/s 302 has also been invoked against the accused in addition to other severe allegations.

Therefore, in the present circumstances, this Court is not inclined to grant bail to the accused. Accordingly,

application is disposed of as dismissed.
Copy by supplied.


Duty PM/PNC
21.4.20
M. K. ...
- ...

In the Court Duty MM, Patiala House Court, Delhi.

Case FIR No. 59/2020 u/s 120B read with 124A/153A/302/307/
109/114/147/148/149/186/353/212/295/427/436/452/454/
34 IPC 3/4 PDPP Act 25/27 Arms Act PS Crime Branch, Delhi
(Investigating by Special Cell, Delhi).

State

Vs

Safoora Zargar
DOA: 13/04/2020

**Subject: Reply of bail application filed under section 437 Cr. P.C.
on behalf of accused Safoora Zargar.**

Sir,

Most respectfully submits as under:

1. That above referred case was registered at PS Crime Branch under section 120B read with 147/148/149 IPC at PS Crime Branch, Delhi. Later on, investigation of the case was transferred to the Special Cell and presently being investigated by the New Delhi Range of Special Cell, Delhi.
2. During investigation and as per evidence on record Sections 124A/153A/302/307/109/114/186/353/212/295/427/436/452/454/34 IPC 3/4 PDPP Act 25/27 Arms Act were added in this case.
3. During investigation accused Safoora Zargar was arrested on 13/04/2020 and Ld. Duty MM was pleased to grant 2 days police custody remand of accused.
4. On 15/04/2020, accused Safoora was remanded in judicial custody by the Ld. Duty MM and accused is presently lodged in Tihar Jail.
5. During the course of investigation enough evidence came on record to establish the involvement of accused Safoora in the conspiracy of riot leading to death of more than 50 persons, injury to more than 500 persons and damage of public & private property to the tune of hundreds of crores.

6. It is pertinent to mention here that the offences for which accused is arrested, is triable by the Session Court and are punishable with life imprisonment or death penalty.
7. In view of above present bail application under section 437 Cr. P.C. is not maintainable.

It is therefore requested to dismiss the present bail application in the interest of justice.

Submitted Please.

(Sanjay Gupta)
Inspector/NDR
Special Cell,
Delhi

ANNEXURE-D
In the Court of Duty MM, Patiala House Court, Delhi.

35

Case FIR No. 59/2020 u/s 120B read with 124A/153A/302/307/109/114/
147/148/149/186/353/212/295/427/436/452/454/34 IPC, 13/16/17/18
UAPA, 3/4 PDPP Act, 25/27 Arms Act PS Crime Branch, Delhi (Investigating by
Special Cell, Delhi).

State Vs **Safoora Zargar**
DOA: 13/04/2020
ND6H: 21/4/2020

**Subject: Reply of bail application filed under section 437 Cr. P.C. on
behalf of accused Safoora Zargar.**

Sir,

It is submitted that the above mentioned case was registered by the
Crime Branch, Delhi and its further investigation was transferred to the
Special Cell.

The brief facts of the case are that:

1. On 06/03/2020, specific information was received in the Crime
Branch that the communal riot incidents of February 23-25, 2020 in
Delhi were pre-planned and the same were hatched by one Umar
Khalid, a student of Jawahar Lal University (JNU) and his associates,
all linked with different-2 groups. As per this pre-planned conspiracy,
Umar Khalid gave provoking speeches at different places and appealed
to the people to come out on public roads and block roads so that
during the visit of Mr. Donald Trump, Hon'ble President of USA,
propaganda of Minorities in India are being persecuted may publicized
at international level. In accordance to this conspiracy Umar Khalid
and his associates brought women and children on roads in order to
instigate riots. In furtherance of this conspiracy Firearms, petrol
bombs, acid bottles, stones, sling shots and other dangerous
materials were stockpiled in houses at various places in Delhi which
are Maujpur, Jafarabad, Chand Bagh, Gokalpuri, Shiv Vihar and
surrounding areas. To participate in riots Danish s/o Khalid r/o
Bhajanpura was given charge to bring people from different-different
areas. As per conspiracy on February 22, 2020, the road was blocked
by the children and women at Jafarabad metro station so that

Scanned with CamScanner

- 36
- inconvenience is caused to people residing nearby causing tension and then riots. On this day schools in these areas where children of minority community were studying were got vacated in accordance to the conspiracy.
2. The present case is registered to unearth the larger conspiracy behind these riots which took place at several places during 24/02/2020 to 26/02/2020 in North East Delhi.

During investigation following facts have been revealed:

1. As a part of conspiracy protests at 21 sites were organised and large scale mobilization was done at these protest sites in garb of peaceful march.
2. As a part of conspiracy these protest sites were converted into 'Chakka Jam' by public so mobilized.
3. As a part of conspiracy preparations were made for rioting when 'Chakka Jam' resulted in heightened tension.---
4. As a part of conspiracy 'Chakka Jam' resulted in large scale riots at multiple spots in North East, Shahdara & South Districts.
5. During these incidents of riots, 53 innocent people lost their lives including a Delhi Police and IB official.
6. Two senior IPS officers were grievously injured and scores of police officials were injured as well.
7. Hundreds of public persons were also injured.
8. Public & private properties worth Crores were damaged.
9. More than 750 FIRs have been registered in these riot incidents.
10. There is a strong nexus, a deep rooted & larger conspiracy between rioters, instigators, conspirators and fund raisers behind the said Delhi riots.
11. Sections 13, 16, 17 & 18 Unlawful Activities (Prevention) Act have also been added in this case on 19.04.2020.

Role & evidence against accused:

Evidence in form of oral, documentary, technical & substantial is on record about her role.

1. Statements of witnesses recorded u/s 161 & 164 Cr.PC. reveal that:
 - a. Accused Safoora Zargar is one of the main conspirator as well as instigator behind the riots. She is played an active role in this whole conspiracy and is one of the masterminds.

- b. In a meeting called at Chand Bagh protest site before the riots it was decided that as government is not giving heed to their protest so they have to mobilize people and go for 'Chakka Jam'. They also have to revolt against the government then only government will take back the black law of CAA/NRC.
 - c. In this continuation first on 22/02/2020 road was blocked at Jafarabad metro station.
 - d. Then on 23/02/2020 main highway Wazirabad road near Chand Bagh was blocked. Accused Safoora visited Chand Bagh road block site and gave inflammatory speech.
 - e. Her work was to look after and manage all the protests going on in Delhi against the government.
2. Technical & documentary evidence revealed that:
 - a. On February 22, 2020, as per pre-planned conspiracy, the children and ladies were sent to block Jafarabad metro station to create chaos. She mobilized people to reach this site.
 - b. On February 23, 2020, as per pre-planned conspiracy, main highway Wazirabad road near Chand Bagh was blocked and chaos was created in the area. She mobilized people to reach this site.
 3. She was connected directly with accused Meeran Haider and a number of suspects.
 4. From the investigation conducted so far, it has been clearly establishes that accused Safoora Zargar has been involved in Unlawful activity and terrorist act as defined in UA(P) Act. The role of accused Safoora is directly covers under ambit of UA(P) Act.
 5. She had also been arrested in case FIR No. 48/2020 u/s 186/188/353/283/341/109/147/34 IPC PS Zafrabad, New Delhi. This case was registered on the incident of February 22, 2020, at Jafarabad metro station where the road was blocked & chaos was created despite repeated directions of police to maintain peace & tranquillity, not to indulge in any type of violence, disperse and clear the blockade.

Besides above:

1. Conspiracy in total is a substantive, distinct, independent & separate offence.
2. The investigation of this case is at initial & crucial stage.
3. There is possibility of tempering of evidence.
4. There is possibility that witnesses may be threatened.


Scanned with CamScanner

- 5. The accused is involved in grave & heinous offences.
- 6. The bail of co-accused Ishrat Jahan has been rejected vide order dated 17.04.2020.

Prayer:

Therefore in view of the above the bail of above cited accused is strongly opposed.

Submitted Please


10/04/20
(D.D. Negi)
ACP/Special Cell
Special Cell,
Delhi

In the Court of Ld. Session Judge, Patiala House Court, Delhi.

Case FIR No. 59/2020 u/s 120B read with 124A/153A/302/307/109/114/147/148/149/186/353/212/295/427/436/452/454/34 IPC, 13/16/17/18 UAPA, 3/4 PDPP Act, 25/27 Arms Act PS Crime Branch, Delhi (Investigating by Special Cell, Delhi).

State

Vs

Safoora Zargar

DOA: 13/04/2020

Subject: **Reply of bail application filed under section 439 Cr. P.C. on behalf of accused Safoora Zargar.**

Sir,

It is submitted that the above mentioned case was registered by the Crime Branch, Delhi and its further investigation was transferred to the Special Cell.

The brief facts of the case are that:

1. On 06/03/2020, specific information was received in the Crime Branch that the communal riot incidents of February 23-25, 2020 in Delhi were pre-planned and the same were hatched by one Umar Khalid, a student of Jawahar Lal University (JNU) and his associates, all linked with different-2 groups. As per this pre-planned conspiracy, Umar Khalid gave provoking speeches at different places and appealed to the people to come out on public roads and block roads so that during the visit of Mr. Donald Trump, Hon'ble President of USA, propaganda of Minorities in India are being persecuted may publicized at international level. In accordance to this conspiracy Umar Khalid and his associates brought women and children on roads in order to instigate riots. In furtherance of this conspiracy Firearms, petrol bombs, acid bottles, stones, sling shots and other dangerous materials were stockpiled in houses at various places in Delhi which are Maujpur, Jafarabad, Chand Bagh, Gokalpuri, Shiv Vihar and surrounding areas. To participate in riots Danish s/o Khalid r/o Bhajanpura was given charge to bring people from different-different areas. As per conspiracy on February 22, 2020, the road was blocked by the children and women at Jafarabad metro station so that

inconvenience is caused to people residing nearby causing tension and then riots. On this day schools in these areas where children of minority community were studying were got vacated in accordance to the conspiracy.

2. The present case is registered to unearth the larger conspiracy behind these riots which took place at several places during 24/02/2020 to 26/02/2020 in North East Delhi.

During investigation following facts have been revealed:

1. As a part of conspiracy protests at 21 sites were organised and large scale mobilization was done at these protest sites in garb of peaceful march.
2. As a part of conspiracy these protest sites were converted into 'Chakka Jam' by public so mobilized.
3. As a part of conspiracy preparations were made for rioting when 'Chakka Jam' resulted in heightened tension.
4. As a part of conspiracy 'Chakka Jam' resulted in large scale riots at multiple spots in North East, Shahdara & South Districts.
5. During these incidents of riots, 53 innocent people lost their lives including a Delhi Police and IB official.
6. Two senior IPS officers were grievously injured and scores of police officials were injured as well.
7. Hundreds of public persons were also injured.
8. Public & private properties worth Crores were damaged.
9. More than 750 FIRs have been registered in these riot incidents.
10. There is a strong nexus, a deep rooted & larger conspiracy between rioters, instigators, conspirators and fund raisers behind the said Delhi riots.
11. Sections 13, 16, 17 & 18 Unlawful Activities (Prevention) Act have also been added in this case on 19.04.2020.

Role & evidence against accused:

Evidence in form of oral, documentary, technical & substantial is on record about her role.

1. Statements of witnesses recorded u/s 161 & 164 Cr.PC. reveal that:
 - a. Accused Safoora Zargar is one of the main conspirator as well as instigator behind the riots. She is played an active role in this whole conspiracy and is one of the masterminds.

- b. In a meeting called at Chand Bagh protest site before the riots it was decided that as government is not giving heed to their protest so they have to mobilize people and go for 'Chakka Jam'. They also have to revolt against the government then only government will take back the black law of CAA/NRC.
 - c. In this continuation first on 22/02/2020 road was blocked at Jafarabad metro station.
 - d. Then on 23/02/2020 main highway Wazirabad road near Chand Bagh was blocked. Accused Sufoora visited Chand Bagh road block site and gave inflammatory speech.
 - e. Her work was to look after and manage all the protests going on in Delhi against the government.
2. Technical & documentary evidence revealed that:
 - a. On February 22, 2020, as per pre-planned conspiracy, the children and ladies were sent to block Jafarabad metro station to create chaos. She mobilized people to reach this site.
 - b. On February 23, 2020, as per pre-planned conspiracy, main highway Wazirabad road near Chand Bagh was blocked and chaos was created in the area. She mobilized people to reach this site.
 3. She was connected directly with accused Meeran Haider and a number of suspects.
 4. She had also been arrested in case FIR No. 48/2020 u/s 186/188/353/283/341/109/147/34 IPC PS Zafrabad, New Delhi. This case was registered on the incident of February 22, 2020, at Jafarabad metro station where the road was blocked & chaos was created despite repeated directions of police to maintain peace & tranquillity, not to indulge in any type of violence, disperse and clear the blockade.


Besides above:

1. Conspiracy in total is a substantive, distinct, independent & separate offence.
2. The investigation of this case is at initial & crucial stage.
3. There is possibility of tempering of evidence.
4. There is possibility that witnesses may be threatened.
5. The accused is involved in grave & heinous offences.
6. The bail of co-accused Ishrat Jahan has been rejected vide order dated 17.04.2020.

Prayer:

Therefore in view of the above the bail of above cited accused is strongly opposed.

Submitted Please


28/04/20
(D.D. Negi)
ACP/Special Cell
Special Cell,
Delhi
28/04/2020

**Bail Application No. R-585/2020
State vs. Safoorza Zargar
FIR No.59/2020
PS : Special Cell**


02.05.2020

Present : Sh. Dharam Chand, Addl. PP for State.
Sh. Trideep Pais, Sh. Ritesh Dhar Dubey, Sh. Sanya
Kumar and Sh. Burjis Shabir, Counsel for applicant/
accused.
ACP D.D. Negi and Inspector Sanjay Gupta.

Vide order no. 4518- 4608/D&SJ/NDD/2020 dated
15.04.2020 of Ld. District & Sessions Judge, Patiala House
Court, New Delhi District, New Delhi, the undersigned has
been deputed for duty today in pursuance to the directions of
Hon'ble High Court of Delhi vide order no. R-77/RG/DHC/2020
dated 15.04.2020 and in continuation of the previous office
order nos. 4243-4333/D&SJ/NDD/2020 dated 01.04.2020,
4407-4426/D&SJ/NDD/2020 dated 10.04.2020 to combat the
pandemic of COVID 19.

After making submission for some time, Ld.
counsels for the applicant/accused seek permission to
withdraw the present bail application.

Heard. In view of the submission of the Ld.
counsels for the applicant, the bail application is dismissed as
withdrawn.


(Paryeen Singh)
ASJ-03/NDD/PHC/New Delhi
02.05.2020

Bail Application no. 1119/2020
 FIR No.59/2020
 P.S Crime Branch (Special Cell)
 State Vs Safoora Zargar
 U/s147/148/149/120B IPC &
 302/307/124A/153A/186/253/395/427/435/436/454/109/114 IPC
 & 3/4PDPP Act and 13/16/17/18 UAPA

श्री धर्मेश राणा
 SH DHARMENDER RANA
 अतिरिक्त सत्र न्यायाधीश-02
 Additional Sessions Judge-02
 38, एमडीए 1 नंवाली, 2nd Floor,
 Court No 38, MD 1 Nwali, 2nd Floor,
 Patiala House Court
 नई दिल्ली
 New Delhi

04.06.2020

Vide order nos.5837-5927/D&SJ/NDD/2020 dt. 30.05.2020 & 5931-6021/D&SJ/NDD/2020 dated 01.06.2020 of Ld. District & Sessions Judge, Patiala House Court, New Delhi District, New Delhi, the undersigned has been deputed for duty today in pursuance to the directions of Hon'ble High Court of Delhi vide order no.R-1347/DHC/2020 dated 29.05.2020 and in continuation of the previous office order nos.4243-4333/D&SJ/NDD/2020 dated 01.04.2020, 4407-4426/D&SJ/NDD/2020 dated 10.04.2020, 4518-4608/D&SJ/NDD/2020 dated 15.04.2020, 5111-5200/D&SJ/NDD/2020 dated 03.05.2020 and 6364-6454/D&SJ/NDD/2020 dated 16.05.2020 to combat the pandemic of COVID 19.

Present: Sh. Irfan Ahmed, Addl. PP for the State.
 Sh. Trideep Pais, Sh. Ritesh Dhar Dubey and
 Ms. Sanya Kumar, Ld. counsel for applicant/accused Safoora
 Zargar.
 DCP Sh. D. D. Negi with IO/ACP Lalit Mohan Negi.

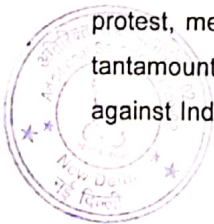
An application U/s 439 Cr.P.C for grant of bail has been moved on behalf of the applicant/accused Safoora Zargar.

It is forcefully submitted by Ld. Counsel for the applicant/accused that the investigating agency is infact creating a false narrative to implicate innocent students, who do not approve of the government's policy or government legislation. It is submitted that free flow of ideas and dissent through peaceful protest constitutes the foundation of a vibrant and strong democracy. It is submitted that dissent cannot be stifled by resorting to state's coercive machinery. It is submitted that it is the basic and fundamental right of a citizen to protest and demonstrate, firmly entrenched in Chapter III of the Constitution of India.

It is submitted that the applicant/accused is an absolutely innocent lady who simply holds a divergent view on the citizenship amendment act. It is submitted that merely holding a divergent view is no offence and by no stretch of imagination, she can be brandished as a terrorist or targeted an anti-national.



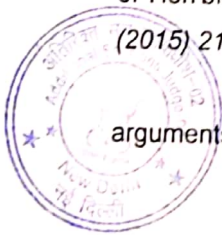
It is submitted that the prosecution is alleging that the applicant/accused delivered inflammatory speech on 23.02.2020 at Chand Bagh which led to violence and rioting in North East Delhi. It is forcefully argued that on 23.02.2020 the applicant/accused has infact not delivered any speech at all, at Chand Bagh. It is pointed out that from the perusal of case FIR No. 60/2020 P.S Dayal Pur dated 24.02.2020, relied upon by the prosecution itself, it is evident that the violence at Chand Bagh started only at about 1.00 p.m on 24.02.2020. It is further pointed out that from the call detail records of the applicant/accused available on record, relied upon by the prosecution itself, it is evident that on 24.02.2020, she was not even present at Chand Bagh. It is forcefully argued that in her absence, the alleged violence, if any, cannot be attributed to the applicant/accused. It is submitted that although on 23.02.2020 the applicant/accused had visited the Chand Bagh site for a short period of time but on 23.02.2020, as per the prosecution case itself, no violence took place. It is submitted that the applicant/accused delivered a speech at Khureji on 23.02.2020 at about 4.00 p.m but that in itself was not at all provocative or inflammatory. Moreover, it even did not incited anybody to resort to violence. It is submitted that the applicant/accused was merely involved in peaceful protest against CAA, which is her fundamental right under Article 19 of the Constitution of India. It is submitted that stringent provisions of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as UAPA) are not attracted simply because the applicant/accused holds a divergent view on a piece of legislation and she disagrees with the opinion of the Government and decides to peacefully protest against the Government measures. To get her protest registered/notice, it is further argued that, even if the applicant/accused intended to protest in presence of a foreign dignitary, by peaceful demonstration and protest, irrespective of the scale and magnitude of the protest, mere dissent or disapproval of the Government policy would not tantamount to inciting violence or intending to cause any 'disaffection against India'. It is forcefully argued that the provisions of UAPA are not at



all attracted in the case at hand.

It is submitted that the Hon'ble Apex Court in the matter of *Kedar Nath v. State of Bihar*, AIR 1962 SC 955 has elaborately dealt with the term 'disaffection' and has categorically observed that in order to bring any act within the mischief of 'Sedition', there must be material to show that the act is of such a nature that it would or have a tendency to create disorder or disturbance of public peace by resort to violence. It is submitted that 'violence' constitutes the gravamen of charge for unlawful activity. It is forcefully argued that from the material available on record, no act of whatsoever nature, is attributable to the applicant/accused which fomented or incited any violence. It is submitted that in the absence of any material available on record to show that applicant/accused is liable for any violence, the provisions of UAPA cannot be invoked as no unlawful activity, as defined u/s 2 (o), is attributable to the applicant/accused. It is further submitted that even there is no material available on record to show that the applicant/accused was involved in any kind of conspiracy to incite any violence or bring about any disaffection against this great nation. It is forcefully argued that in the absence of any clear, direct and proximate link between the alleged violence and the conduct of the applicant/accused, she is not liable for any penal action. In order to buttress the argument, Ld. counsel has placed heavy reliance upon the judgment of *Clarence Brandenburg v. State of Ohio*, 395 US 444 (1969), which has also been cited with approval by the Hon'ble Apex Court in the matter of *Shreya Singhal v. Union of India*. It is further argued that even if it is admitted for the sake of arguments that the applicant/accused intended to be heard at an international level or in presence of a foreign leader, that by itself would not tantamount to 'disaffection' for the purpose of Section 2(o) of UAPA. Ld. defence counsel has placed reliance upon the judgment of Hon'ble Delhi High Court in the matter of *Priya Pillai v. Union of India* (2015) 218 DLT 621.

It is further argued that even if it is accepted for the sake of arguments that she was present during the protest, then mere presence is



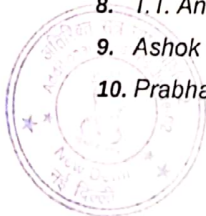
not sufficient to invoke the stringent provisions of UAPA. Ld. defence counsel has placed reliance upon *Muthu Naikar & Ors v. State of Tamil Nadu* (1978) 4 SCC 385; and *Musa Khan & Ors v. State of Maharashtra* (1977) 1 SCC 733.

It is further submitted that the applicant/accused has been mischievously arrested in the present case by the Special Cell to illegally curtail her liberty upon her release on bail in case FIR No. 48/2020, P.S Jaffrabad. It is submitted that the subject matter of case FIR No. 48/2020, PS Jaffrabad is identical with the instant case. It is submitted that registration of second FIR upon the very same facts is impermissible in law in light of the clear mandate of the Hon'ble Apex Court in the matter of *T. T. Anthony v. State of Kerala* (2001) 6 SCC 181.

Further, it is submitted that leaving aside all the legal arguments, the applicant/accused deserves bail on humanitarian grounds. It is submitted that the applicant/accused is 21 weeks pregnant. She is also reported to be suffering from Poly Cystic Ovarian Disorder and has a reported history of urinary tract infection. It is submitted that her condition becomes all the more vulnerable due to the pandemic Covid-19 situation. It is pointed out that Covid-19 cases have now been reported in all three jails of Delhi.

In order to support his arguments, Ld. defence counsel has placed reliance upon the following judgments :

1. *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* (2005) 5 SCC 294.
2. *Kedar Nath v. State of Bihar* AIR 1962 SC 955.
3. *Shreya Singhal v. Union of India* (2015) 5 SCC 1
4. *Clarence Brandenburg v. State of Ohio* 395 US 444 (1969)
5. *Priya Pillai v. Union of India* 2015 SCC OnLine Del 7987.
6. *Muthu Naicker and Ors v. State of Tamil Nadu* (1978) 4 SCC 385.
7. *Musa Khan and Ors v. State of Maharashtra* (1977) 1 SCC 733.
8. *T.T. Antony v. State of Kerala* (2001) 6 SCC 181.
9. *Ashok Sagar v. State (NCT) of Delhi* 2018 SCC OnLine Del 9548.
10. *Prabhakar Tiwari v. State of Uttar Pradesh* 2020 SCC OnLine SC



75.

11. *P Chidambaram v. Directorate of Enforcement 2019 SCC OnLine SC 1549.*
12. *Binayak Sen v. State of Chhattisgarh SLP (Crl) 3378/2009.*
13. *Mohd. Yasin Patel v. State Crl. M No 2299/2003 in Crl. A 585/2003.*
14. *Sheetal Sathe v. State of Maharashtra Crl. Bail. A. 853/2013.*
15. *Oma @ Omprakash and Anr v. State of Tamil Nadu (2013) 3 SCC 440.*

On the contrary, Ld. Addl. PP for the State has vehemently opposed the bail application arguing that there is enough material available on record to show that the applicant/accused was involved in Delhi riots and the prosecution has rightfully invoked the provisions of UAPA. It is forcefully argued that at this stage, the court is not required to dwell deep into the merits of the case. It is submitted that as per the provisions of Section 43(D) clause 5, there is a statutory embargo upon the power of the court to release the applicant/accused on bail. Ld. Addl. PP has drawn my attention to the copy of the whatsapp chat, collected during the course of investigation and statement of the witnesses recorded u/s 161 and 164 CrPC to justify the invocation of the provisions of UAPA in the instant case. It is forcefully argued that at this stage, it is not legally permissible for this court to ignore the incriminating material available on record. Ld. Addl. PP has placed reliance upon the judgment of the Hon'ble Apex Court in the matter of *National Investigating Agency v. Zahoor Ahmad Shah Wadali 2019 5 SCC 1*. Ld. Addl. PP has further drawn my attention to a copy of the seizure memo dated 26.02.2020 in case FIR No. 101/2020 P.S Khajoori Khas wherein the police has seized the following articles :

1. Two plastic crates red colour containing glass bottles, some filled with liquid and some are empty and their neck stuffed with cloth.
2. One plastic crate red colour containing bricks and stones.
3. Stones and bricks spread all over the roof of H. No. E-7, Khajoori Khas, Main Road Karawal Nagar, Delhi.
4. Eight empty plastic crates.



5. Three sling shot.

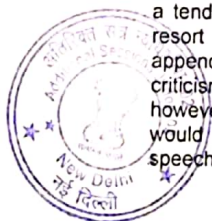
It is argued that viewed against the inflammatory speeches, the abovesaid recovery and the statement of the witnesses recorded u/s 161 and 164 CrPC, it is evident that Delhi riots were the result of a larger conspiracy to disrupt the normal functioning of the city and to overawe the government machinery by resorting to force and violence. It is forcefully argued that under these circumstances, the applicant/accused is not entitled for bail.

I concur with the Ld. defence counsel that free flow of ideas and dissent through peaceful protest constitutes the foundation of a strong and vibrant democracy. Exchange of ideas is infact the stepping stone for human evolution. However, the right of speech and expression and for that matter, protest or demonstration is not an absolute right and is infact subject to reasonable restrictions under Article 19 (2) of the Constitution of India.

In order to deal with the issue whether provisions of UAPA have been rightfully invoked in the instant matter or not, we would necessarily have to deal with the word 'disaffection against India' as prescribed in sub-clause 3 of Section 2 (o) of UAPA. The word 'disaffection' has not been statutorily defined in any statutory provisions.

Dealing with the interpretation of the word 'Sedition', as prescribed u/s 124 A of the Indian Penal Code, Hon'ble Apex Court has dealt with the acts which are proscribed and have a tendency to cause 'disaffection against India' and has observed herein as under in the matter of Kedar Nath v. State of Bihar AIR 1962 SC 955:

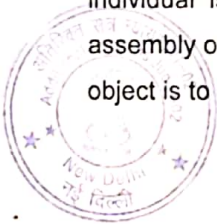
"The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or



spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) Bengal Immunity Company Limited v. State of Bihar and (2) R.M.D. Chamarbaugwala v. Union of India. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to **create disorder**, or **disturbance of law and order**, or **incitement to violence**".

Therefore, evidently, law frowns upon any act which has a tendency to create disorder or disturbance of law and order or incitement to violence. Therefore, mere violence is not the gravamen of charge u/s 2 (o) of UAPA. Any activity which has a tendency to create a disorder or disturbance of law and order to such an extent that the entire city is brought to its knees and the entire government machinery is brought to a grinding halt, such an activity would obviously be treated as an unlawful activity within meaning of Section 2 (o) of UAPA.

I concur with the Ld. Addl. PP that at this stage, the court is not required to test the merits of the prosecution case. I am not discussing in detail the particulars of the prosecution witnesses so as not to unnecessarily prejudice the ongoing investigation and the safety and security of the witnesses is also one of my primary concerns. However from the statement recorded u/s 161 and 164 CrPC coupled with the whatsapp chat available on record, it can be safely inferred that there is prima facie evidence to show that there was a conspiracy to atleast blockade the roads (chakka jaam). As per the provisions of section 339 of The Indian Penal Code, causing wrongful restraint to even a single individual is a penal offence. Section 141 clause 3 provides that any assembly of five or more persons is designated as 'unlawful', if its common object is to commit any offence.



From the material available on record, one cannot ignore the case of the prosecution that the accused persons have conspired to cause disruption of such an extent and such a magnitude that it would lead to disorderliness and disturbance of law and order at an unprecedented scale. Therefore, I cannot but disagree with the Ld. defence counsel that the provisions of UAPA could not have been validly invoked in the case at hand.

Further, I cannot also agree with the Ld. defence counsel that applicant/accused is only liable for her individual acts and the speeches delivered or the acts of the other members of the group cannot be read against her. In my considered opinion, if there is prima facie evidence of existence of a conspiracy, the evidence of acts and statements made by any one of the conspirators in furtherance of the common object is admissible against all. (Reliance is placed upon *Jayendra Saraswati Swamigal v. State of Tamil Nadu AIR 2005 SC 716*). Therefore, mere absence at the spot or absence of any overt act would not help the cause of the applicant/accused.

Further, even if no direct violence is attributable to the applicant/accused, she cannot shy away from her liability under the provisions of the said Act. When you choose to play with embers, you cannot blame the wind to have carried the spark a bit too far and spread the fire. The acts and inflammatory speeches of the co-conspirators are admissible u/s 10 of the Indian Evidence Act even against the applicant/accused.

I concur with the Ld. Addl. PP that at this stage, the court is not concerned with the sanctity of the material available on record, however, considering the material available on record, it cannot be said that there is no prima facie case made out against the applicant/accused. Thus, the statutory embargo under provisions of Section 43(D)(5) is attracted in the instant case.

I am afraid that the contention regarding the impermissibility of registration of the second FIR would also not help the cause of the



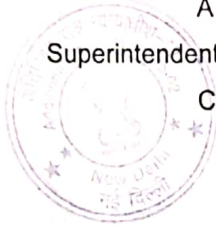
applicant/accused. In the case at hand, during the course of investigation, a larger conspiracy is discernible and a second investigation by way of a separate FIR to unravel the entire conspiracy sounds not only logical but is perfectly legal. (Reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of *Ram Lal Narang v. State (Delhi Administration)* 1979 (2) SCC 322. The judgment in the matter of T. T. Anthony can be distinguished on facts).

As a cumulative effect of the aforesaid discussion, I do not find any merits in the bail application, the same is accordingly dismissed.

However, keeping in view the precarious medical condition of the applicant/accused, the concerned Jail Superintendent is requested to provide adequate medial aid and assistance to the applicant/accused.

A copy of the order be accordingly sent to the concerned Jail Superintendent for compliance.

Copy of the order be given dasti to the concerned parties.



(Dharmender Rana)
Roster Judge

ASJ-02/NDD/PHC/ND

04.06.2020
Additional Sessions Judge-02

नई दिल्ली
New Delhi

DELHI PRISON RULES 2018

INDEX

Chapter No.	Particulars	Page No.
1.	PRELIMINARY	1-6
2.	INSTITUTIONAL FRAMEWORK	6-19
3.	HEADQUARTERS ORGANIZATION	19-27
4.	PRISON PERSONNEL	27-99
5.	CUSTODIAL MANAGEMENT	99-130
6.	MAINTENANCE OF PRISONERS	131-150
7.	MEDICAL CARE	150-184
8.	CONTACT WITH OUTSIDE WORLD	184-204
9.	TRANSFER OF PRISONERS	204-218
10.	REPATRIATION OF PRISONERS	219-220
11.	EXECUTION OF PRISONERS	220-237
12.	PRISONERS SENTENCED TO DEATH	237-258
13.	EMERGENCIES	258-284
14.	EDUCATION OF PRISONERS	285-292
15.	VOCATIONAL TRAINING & SKILL DEVELOPMENT PROGRAMS	292-303
16.	LEGAL AID	303-307
17.	WELFARE OF PRISONERS	308-318
18.	REMISSION	318-329
19.	PAROLE & FURLOUGH	329-345
20.	PREMATURE RELEASE	345-353
21.	PRISON DISCIPLINE	353-366
22.	AFTER-CARE & REHABILITATION	366-372
23.	SEMI OPEN & OPEN PRISONS	372-380
24.	UNDERTRIAL PRISONERS	380-394
25.	HIGH RISK PRISONERS & DETENUES	395-402
26.	WOMEN PRISONERS	402-424
27.	YOUNG OFFENDERS	424-431
28.	INSPECTION OF PRISONS	431-434
29.	BOARD OF VISITORS	434-440
30.	STAFF DEVELOPMENT	440-457
31.	PRISON RECORDS & COMPUTERIZATION	457-463
32.	RELEASE OF PRISONERS	463-470
33.	CIVIL PRISONERS	470-472
34.	DIFFERENTLY ABLED PRISONERS	473-475
35.	MENTAL HEALTH & INFECTIOUS DISEASES	475-481
36.	MISCELLANEOUS	481-487

APPENDIX – 1 to 15 (488-515)
(Prison Hand Book, Useful Proformas, Registers and other useful Indices)

due regards to consideration of privacy and decency. Such search shall not be conducted in the presence of any male.

Quarantine on Admission to Prison and Medical Aid

1452. Women prisoners on admission to prison shall be medically examined and, if the examining lady Medical Officer deems it necessary, kept separately in the female enclosure on medical grounds for the period prescribed by the medical officer.
1453. After admission to prison, all women prisoners shall be required to wash themselves and their clothing thoroughly as soon as possible. Their personal clothing shall be disinfected before being stored.
1454. Lady medical officer of the prison hospitals shall conduct medical examination of female prisoners on admission. Only lady doctor shall look after the medical care of women prisoners during their stay in the prison.
1455. Every woman prisoner shall be examined by a lady Medical Officer. Such examinations shall also be conducted on readmission after bail, parole and furlough. In case a woman officer/matron suspects a prisoner to be pregnant, the woman prisoner shall be sent to the Prison Hospital/Medical Inspection Room for detailed examination and report.

Pregnancy

1456. When a woman prisoner is admitted to the prison, the lady medical officer for her better health care shall conduct a pregnancy test one at the time of her admission in the prison and the other, one month thereafter and shall report the fact to the Superintendent. Arrangements shall be made at the earliest to get her medically examined at the female wing of the Prison Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy and the probable date of delivery. After ascertaining all necessary particulars, a detailed monthly report shall be sent to the Inspector General of prisons.
1457. Gynecological examination of the female prisoner shall be performed in the Prison Hospital. Proper pre-natal and ante-natal care shall be provided to the prisoner as per the advice of qualified medical officer.
1458. Adequate and timely food including supplemental nutrients, a healthy environment and opportunities for regular exercise shall

be provided to pregnant women, babies, children and breast-feeding mothers.

Child Birth in Prison

1459. As far as possible (provided the prisoner has a suitable option) arrangements for temporary release (or suspension of sentence in the case of a casual offender) will be made to enable a prisoner to deliver child in a hospital outside the prison. Only when there is high security risk in the case of any particular woman prisoner, the facility to deliver child outside the prison shall be denied.
1460. Births in prison shall be registered at the local birth registration office. The fact that the child has been born in prison shall not be recorded as the place of birth. Only the address of the locality shall be mentioned. As far as the circumstances permit, all facilities for performing the naming rites of the child born in a prison shall be extended to the mother.

Property of Women Prisoners

1461. Method of storing the prisoner's money, etc., shall be according to the general rules laid down relating to handling of the prisoner's property.

Certain Ornaments to be allowed to Women Prisoner

1462. Female prisoners shall be allowed to retain, in moderation, certain ornaments of small value such as mangal sutras (without Gold), plastic bangles and nose pin. The Superintendent may, however, at his discretion, refuse to allow the retention of these ornaments in any particular case for disciplinary/security reasons.

Children of Women Prisoners

1463. A child up to six years of age shall be admitted to prison with his mother if no other arrangements, for keeping him with relatives or otherwise, can be made. Children born in prison may remain with their mothers up to six years of age, if they cannot otherwise be suitably placed. The Medical Officer shall determine the age of children not born in prison for the purpose of this provision.
1464. No child shall be admitted into or retained in prison if he has attained the age of six years. The Superintendent shall inform the Directorate of Social Welfare about all children of that age for placing them in a home run by the Social Welfare Department. Such children shall