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

I.A. No. 11-2020 (Natasha Narwal)
FIR No. 59/2020
PS : Crime Branch (being investigated by Special Cell)
U/S. 13/16/17/18 UA (P)Act, 120B read with Section 109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/353/395/419/420/427/435/436/452/454/468/471/34 IPC & Section 3 & 4 Prevention of Damage to Public Property Act,1984 and Section 25/27 Arms Act
State vs. Tahir Hussain & Ors.

Dated 28.01.2021

ORDER

1. Vide this order, I shall dispose off the bail application under Section 439 Cr.P.C of applicant/accused Natasha Narwal.

2. Arguments on bail application were heard at length on behalf of applicant/accused Natasha Narwal by Sh. Adit S. Pujari, Ld. Counsel for applicant and for prosecution by Sh. Amit Prasad, Ld. Special Public Prosecutor for State. Written submissions were also filed on behalf of accused.

3. I have perused the record including the charge-sheet and the annexures.

ARGUMENTS PUT FORTH ON BEHALF OF THE ACCUSED NATASHA NARWAL

4. (a) Ld. Counsel for the applicant/accused had contended that this is the first bail application after the filing of the charge-sheet.

(b) It was also strongly argued that on the reading of the charge-sheet, no offence under Chapter IV/VI of Unlawful Activities (Prevention) Act are made out. Moreover, the twin conditions envisaged under Section 43D of UAPA is not applicable to the applicant as the material on record lacks the ingredients for an offence under Section 15 and therefore, Section 18 of UAPA. Reliance was made to ***Prathvi Raj Chauhan vs. Union of India****, AIR 2020 SC 1036.* Even offences under IPC and other allied Act are ex-facie not made out.

It was also argued that there is difference between taking cognizance of offences and summoning of an accused. The prosecution has to discharge burden of proof which has not been done in the present case. It was strongly argued that the strict conditions under Section 43D of UAPA are attracted only if there is a prima facie case shown by prosecution and the correct way to interpret Section 43D of UAPA is to look into the Parliamentary debates leading to the enactment/amendment of the said Section. It was contended that the debates show that amendment was carried out to introduce a stringency in the legislation as regards bail to curb a mischief after 26/11 terrorist incident and the fact that Prevention of Terrorism Act (POTA) had been repealed. However, bar for grant of bail is lower than in POTA, MCOC Act, etc. The Ld. Counsel had taken the court to the debates and stated that the opinion of the introducer of the Bill was relevant for interpreting the said provision as per ***K.P. Verghese v. Income Tax Officer, Ernakulam & Ors., (****1981) 4 SCC 173; and* ***Chiranjit Lal Chowdhuri v. Union of India & Ors.***

It was also argued that burden of proof is clearly on the prosecution to put forth a prima facie case against accused and it is only reversed if specific

recoveries are made as per Section 43 E UAP Act. There is no automatic presumption of guilt against accused.

Moreover, it was also argued that the sanction under the UAP Act had been given in haste and without appreciation of evidence/material on record.

(c) Ld. Counsel for accused had vehemently argued that there was only a protest against the CAA and no conspiracy. Furthermore, the protest was organic in nature and was also secular. It was then suggested that why would applicant being a Hindu, organized violence and riot by Muslims against Hindus when the applicant herself is sitting there.

(d) It was argued that during 23.02.2020 till 26.02.2020, incidents of communal violence took place in North-East Delhi in which 53 people lost their lives. Nobody lost life because of acid related injury in their MLC and 08 persons were injured because of acid, were not within the jurisdiction of Police Station Jafrabad. No document indicate that injuries were due to Lal Mirchi powder. It was contended that the prosecution version of Lal Mirchi powder was completely incorrect.

(e) It was also argued that even on the reading of the DPSG Whatsapp group and other groups, it was apparent that the applicant was constantly striving for peace. The police did not act as per the Police Rules and many persons whose role is larger than that of the applicant, have not even been arrested and thus, even on parity, bail can be given.

(f) It was also argued that throughout, the applicant has been cooperating with the police. In fact, the applicant was arrested in FIR No. 48/20 and was granted bail by the Ld. Duty Magistrate and immediately thereafter, the applicant was arrested in FIR No. 50/20. In the present case, the applicant was formally arrested within the Tihar Jail Complex. The applicant is a law-abiding citizen and has deep roots in the society. She is an academic with credentials and an activist of repute.

(g) Ld. Counsel had also argued that the applicant has satisfied the triple test for grant of bail even prior to her arrest in as much as there was no attempt of fleeing from justice or to influence the witnesses or to even attempt to tamper with the evidence. Moreover, the applicant has been granted bail in FIR No. 50/20, Police Station Jafrabad and thus, she has satisfied the triple test criteria.

(h) It was contended that at present farmers are holding a chakka-jam, protesting against an Act of legislature but a different yardstick of instigation and conspiracy ought not to be applied to the applicant as allegations of blocking roads has to be applied uniformly to pro-CAA protesters as well.

(i) Another limb of the argument was that the entire protest was peaceful and organic and was being led by local women of the area. The allegations against the applicant calling upon the women protesters to collect stones is also palpably false as videos from the protest at Jafrabad Metro Station demonstrates that the entire set of women protesters were surrounded by police personnel right from the beginning and despite presence of media persons, nobody reported about any of the the women present resorting to violence. The police deliberately acted late to not obtain videos under the Metro Station and has not

placed on record/provided to the applicant any other videos seized despite the seizure of the same.

(j) Ld. Counsel had strongly argued that the prosecution has failed to show any video to the court to show the involvement of the applicant in the present case when in fact, it has been held in ***Shambir v. State,*** *254 (2018) DLT 488,* that video evidence in cases of riots are the best piece of evidence. More-over, Ld. Counsel had referred to certain videos in the application and played the same and shown some cameras installed on the outside of the Jafrabad Metro Station to show that the footage was not filed by the prosecution.

(k) Moreover, there was only a peaceful protest at Jafrabad Metro Station whereas violence was escalating at Maujpur where Kapil Mishra had called for meeting for pro-CAA protesters.

There were multiple statements made by political leaders before the Delhi Elections. Election Commission of India had taken cognizance of incendiary statements made by political leaders and there was growing polarize communal charge atmosphere in Delhi. The police has not investigated many cases of violence at JNU or at Jamia or instances of police excesses.

(l) It was strongly argued that no reliance can be placed on statement of witnesses under Section 161 & 164 Cr.P.C as they are contradictory and do not inspire confidence. It was submitted that statement of various protected witnesses like Echo, Jupiter, Smith, Johny, Helium, Gama, Lamda cannot be relied upon as there are no photographs or video available to show the role of the applicant or her presence is not established as per the CDR.

(m) It was vehemently argued that even the contents of the Whatsapp chats from the DGSP Whatsapp group that are relied upon selectively by the prosecution while ignoring all the Whatsapp chats of the applicant, which are contemporaneous to said chats. Ld. Counsel for the applicant had taken the court to the numerous chats to drive home the point that due to some political differences in the group, some statements were made by members like Owais Sultan and the applicant had only strove for peace. It was also contended that there is no material to indicate in any contemporaneous internal Whatsapp chat, be it warriors, aurto ka inkalab, or even DPSG to show any attempt to escalate any hatred against India or to even use violent means for the purpose of protest.

(n) It was also argued that the prosecution is relying upon the selective messages of the Whatsapp group. Moreover, even in reference to the Whatsapp group of the police personnel regarding the movement of 300 ladies from Jahangir Puri which landed up in Jafrabad, is not complete and the prosecution is relying upon certain messages only.

(o) It was also contended that on a reading of the charge-sheet in FIR No. 48/20, Police Station Jafrabad with the present case, at the most, it could be said that there was a plan to block the road only from one side and not fully block the road.

(p) It was also contended that reliance placed by the prosecution on the message sent by Ms. Anjali Bhardwaj, a member of DPSG is misplaced as the message indicate that the applicant and other members of Pinjra Tod were not influential enough to have the brain wash the local women to block the road.

(q) It was contended that videos of various persons collecting stones in Maujpur area were not investigated by the police and though they are available in social media.

(r) It was vehemently argued that the police has carried out only one sidedinvestigation and acted in biased manner.

(s) It was also argued that there is no Whatsapp chat or any other documentary evidence to show that any violence took place at the place where the applicant was present or any attempt to call any women/protesters was made to collect chill-powder, glass bottles, sticks or any other items.

(t) It was also argued, in rebuttal, that the reference to the certain speeches and allegations against Sharjeel Imam, in the arguments of the prosecution, are not relevant as it does not concern the applicant.

It was, thus, prayed that bail may be granted.

ARGUMENTS PUT FORTH ON BEHALF OF THE PROSECUTION

5. (a) It was submitted by Sh. Amit Prasad, Ld. Special Public Prosecutor that the present case is one of multi-layered, multi-organizational and deep-rooted conspiracy which led to large-scale riots in Delhi causing numerous loss of lives, injuries to public and police personnel and damages to public and private property.

(b) It was argued that the provisions of Unlawful Activities (Prevention) Act, 1967 are attracted in the present case and prima facie case is made out.

Such being the situation, bar under Section 43 D of UA(P)A will apply and the present bail application deserves to be dismissed. It was pointed out that at the stage of bail, a mini trial cannot be held. It was also submitted that even sanction was given by the competent authority under the UAPA after being material on record.

(c) Ld. Special Public Prosecutor had submitted that the aspect of conspiracy and UAPA was argued in the bail application of co-accused Asif Iqbal Tanha and the court has already given the opinion that UAPA is applicable to the facts of the case.

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

Another speech delivered by Sharjeel Imam on 16.01.2020 at Aligarh Muslim University for Muslim students against CAA. Ld. Special Public Prosecutor also highlighted that the aim of the speech is to disturb the unity, integrity and sovereignty of India.

He also took the court to speech of Sharjeel Imam delivered on 13.12.2019 & 24.02.2020. It was further submitted by Ld. Special PP that Sharjeel Imam, in his speeches and actions conceptualized the 'chakka-jam' and whatever was said was also actually implemented later on.

(e) It was submitted that in a case of conspiracy there are different roles

attributed to different accused persons as spelt out in the charge-sheet and thus, every accused plays his or her respective role. He had also referred to one judgment of ***NIA vs. Zahoor Shah Badali, 2019 V SCC 1***.

(f) It was contended that the conspiracy is mostly proved by circumstantial evidence which has come on record in the detailed charge-sheet filed. Further investigation is also underway and at this stage, the court is not expected to hold a mini trial to give a finding of guilt or innocence of the applicant.

(g) It was submitted that the reliance by the applicant on Shyamvir Vs. State of NCT of Delhi, is misplaced as the present case is in relation to a conspiracy and not actual riot. In fact, the conspiracy is mostly proved by circumstantial evidence by taking into account the cumulative effect of the circumstances indicating the guilt of the accused, rather than adopting an approach by isolating the role played by each of the accused. The acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to common design and its execution. He has referred to ***State (NCT of Delhi) v. Shiv Charan Bansal & Others***, *2019 SCC OnLine SC 1554*.

(h) It was argued that the riots that occurred in North-East Delhi were not spontaneous but as a result of deep-rooted conspiracy hatched by various persons including the applicant.

(i) Twenty three protest sites were created in a very planned and strategic manner and they were not organic at all. The locations were intentionally and strategically chosen in close proximity to Masjid. Various teams were formed to

monitor and handle the sites.

In fact, it was argued that kind of placard and banners used at the Jafrabad Protest Site shows that it was organized protest. Mobilization was done in a coordinated manner which also comes to the fore on the reading of the chats of the charge-sheet. The protest sites were not women dominated but were actively managed by men and women were also brought in from outside. It was contended that there were women brought from Jahangir Puri for this purpose only.

(j) There was similar pattern of occurrences in December 2019 riots and February 2020 riots in blocking roads, attacking police personnel and destroying properties and violence with police and public. Pinjra Tod was always active.

(k) Sharjeel Imam speeches and chats show that he was one of the masterminds and called for a destructive chakka-jam. Even the 'Pinjra Tod' Twitter handle was shown to the court and Pinjra Tod, before riots, was actively supportive of Sharjeel Imam.

(l) The contention of the counsel for applicant through some videos shown by counsel for accused, itself shows that the protest was not in relation to CAA/NRC but as regards CM Yogi, Triple Talaq and Burqa. Even Sharjeel Imam in his speech stated that CAA/NRC is only a ploy that has come for venting out other grievances.

It was not a female protest as was argued by the counsel for accused but the protest was guided and led by male members of groups like JCC, DPSG and Pinjra Tod.

(m) The statement recorded under Section 164 Cr.P.C are in line with contemporaneous Whatsapp chats and media report. Moreover, this is not the stage to test their credibility of the statements.

(n) The applicant's attempt to bring the narrative of Kapil Mishra being responsible for riots is wrong by referring to Whatsapp chats and the fact that the first MLC in riots is much prior in time then the visit of Kapil Mishra.

(o) Regarding the contention of the counsel for applicant that Bharat Bandh was from Bheem Army, the chat by Rahul Roy shows that it was not so and the strength of Bheem Army is not even a platoon. The call of Bheem Army had nothing to do with anti-CAA protests.

(p) There was no CCTV camera installed outside the Jafrabad Metro Station and the applicant misled the court by pointing to the lights as camera in the videos played by her. Moreover, the policy of Delhi Metro has been to save CCTV recording only for 07 days and by the time the present FIR was registered, the CCTV footages were already overwritten.

(q) The contention of the applicant that only one side of the road was blocked by them and the other side was opened, however, through videos of Chand Bagh, it has been shown that despite one side of the road being opened, the police was assaulted by the rioters.

(r) Ld. Special Public Prosecutor also referred to the contents of the charge-sheet to contend that the riot was a pre-planned conspiracy. It was also

contended that the flurry of calls on 24.02.2020 between various accused persons and other players in the riots show a pattern and behavior which point to a circumstantial evidence regarding the conspiracy which led to the riots.

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

6. There is no gainsaying the fact that all the citizens of the country under the Constitution of India have the right and freedom to protest including the right to oppose any legislation; however, it is not an absolute right but subject to reasonable restrictions.

Pertinently, what actually has to be seen in the context of the present case is whether there was a conspiracy which led to riots under the guise of protest against Citizenship Amendment Act (CAA) or not, in terms of the contents of the charge-sheet and the accompanying documents.

7. (a) This is the first bail application of accused Natasha Narwal after the filing of the charge-sheet. She was arrested in this case on 29.05.2020.

(b) For the purpose of deciding the present bail application, the totality of the material as contained in the contents of the charge-sheet including the supplementary charge-sheet and annexures only have to be looked into. The reliance by the counsel for the applicant on videos or any other material outside the charge-sheet is of no assistance. Moreover, the references to various other persons, who as per the counsel for the applicant had given incendiary speeches in Delhi Elections or later on, is not as such germane to the present application

since the court is considering the bail application of the applicant/accused Natasha Narwal and not of others, particularly those who are not accused in the present case. Moreover, the contention that the applicant should have parity in bail vis a vis various persons who have not been arrested is also not legally tenable as there is no negative equality or parity with respect to somebody who is not accused in a particular case.

(c) In the present case, apart from various provisions of Indian Penal Code and other laws, provisions of Section 13/16/17/18 Unlawful Activities (Prevention) Act, 1967 (UAPA) have been invoked and taken cognizance of. Summons/notices were issued to 18 accused persons including the applicant. Soft copy of the charge-sheet including supplementary charge-sheet was supplied to them.

8. Section 43D of UAPA deals with the bail provisions and it is set out below :

> **Section 43D. Modified application of certain provisions of the Code.**--
>
> (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:
>
> Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie true.*

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

9. In the case of ***National Investigating Agency vs. Zahoor Ahmad Shah Watalli***, (2019) 5 SCC 1, in a case under Unlawful Activities (Prevention) Act, 1967, the Hon'ble Supreme Court of India discussed the legal position , stated as follows :-

> ***21.*** *Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an application for bail, to wit:*
> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
> *(ii) nature and gravity of the charge;*
> *(iii) severity of the punishment in the event of conviction;*
> *(iv) danger of the accused absconding or fleeing, if released on bail;*
> *(v) character, behaviour, means, position and standing of the accused;*
> *(vi) likelihood of the offence being repeated;*
> *(vii) reasonable apprehension of the witnesses being tampered with; and*
> *(viii) danger, of course, of justice being thwarted by grant of bail. (State of U.P. through CBI Vs. Amarmani Tripathi12).*
>
> ***22.*** *When it comes to offences punishable under special enactments, such as the 1967 Act, something more is required to be kept in mind in view of the special provisions contained in Section 43D of the 1967 Act, inserted by Act 35 of 2008 w.e.f. 31st December, 2008. Sub−sections (5), (6) and (7) thereof read thus:*
> ***43D. Modified application of certain provisions of the Code.*** *- (1)-(4)*
> *(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:*
> *Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the*

case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.
(6) The restrictions on granting of bail specified in sub−section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.
(7) Notwithstanding anything contained in sub−sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

23. *By virtue of the proviso to sub−section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. There is degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is not guilty of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is prima facie true. By its very nature, the expression prima facie true would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of*

facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is prima facie true, as compared to the opinion of accused not guilty of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.

Nevertheless, we may take guidance from the exposition in the case of Ranjitsing Brahmajeetsing Sharma (supra), wherein a three−Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paragraphs 36 to 38, the Court observed thus: (SCC pp. 316-17)

36. Does this statute require that before a person is released on bail, the court, al beit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.

38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. What would further be necessary on the part of the court is to see the

culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea.
And again in paragraphs 44 to 48, the Court observed: (SCC pp. 318-20)

44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis

of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub−section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In Kalyan Chandra Sarkar v. Rajesh Ranjan13 this Court observed: (SCC pp. 537−38, para 18)
18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in the case Puran v. Rambilas14 : (SCC p. 344, para 8)

"8....Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."

We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there

are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty−bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non−consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.

48. In Jayendra Saraswathi Swamigal v. State of T.N.15 this Court observed: (SCC pp. 21−22, para 16)

16. The considerations which normally weigh with the court in granting bail in non−bailable offences have been explained by this Court in State v. Capt. Jagjit Singh16 and Gurcharan Singh v. State (Delhi Admn.)17 and basically they are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.

24. *A priori, the exercise to be undertaken by the Court at this stage − of giving reasons for grant or non−grant of bail - is markedly different from discussing merits or demerits of*

the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.

25. *From the analysis of the impugned judgment, it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the Investigating Agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16th August, 2017 (paragraph 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 of Cr.P.C., on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge− sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the concerned accused is prima facie true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge−sheet (report under Section 173 of Cr.P.C.) and other material gathered by the Investigating Agency during investigation.*

26. *Be it noted that the special provision, Section 43D of the 1967 Act, applies right from the stage of registration of FIR for offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered agai nst him, but before filing of the charge−sheet by the Investigating Agency; after filing of the first charge−sheet and before the filing of the supplementary or final charge−sheet consequent to further investigation under*

Section 173(8) Cr.P.C., until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the court that despite the framing of charge, the materials presented along with the charge−sheet (report under Section 173 of Cr.P.C.), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

27. *For that, the totality of the material gathered by the Investigating Agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.*

10. To begin with, under the provisions of Section 45 of the Unlawful Activities (Prevention) Act, 1967, previous sanction is taken for prosecution of offences under Chapter III & IV of the said Act after considering a report of an authority appointed by the Central Government or State Government which makes an independent review of the evidence gathered in the course of investigation and makes a recommendation to the Central Government or State Government. The cognizance is taken only after the sanction is obtained under Section 45 of the said Act. The said provision was incorporated by way of an

Amendment in 2008.

In the present case, previous sanction was taken under UAPA and thus, an independent review of the evidence gathered during the investigation has been done by an independent authority after its satisfaction about the evidence.

The contention of the counsel for accused that the sanction was given in haste is not for this court to give an opinion on. What is important is that an independent authority has given its opinion about the applicability of UAPA in the present case.

11. At the outset, it must be stated that a threadbare discussion of the charge-sheet or detailed analysis of the Unlawful Activities (Prevention) Act is not required at the stage of bail. However, considering that the issue was raised, I am touching upon the issue of applicability of the Unlawful Activities (Prevention) Act, 1967 for the limited purpose of bail application.

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

> **Section 15. Terrorist act.**-- *[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,--*
>
> *(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause--*
>
> *(i) death of, or injuries to, any person or persons; or*

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

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

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

Section 16 provides punishment for commission of terrorist act.

Section 17. Punishment for raising funds for terrorist act.--*Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding*

whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Explanation.--For the purpose of this section,
(a) participating, organizing or directing in any of the acts stated therein shall constitute an offence;

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

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

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

(i) Regarding the contention of the counsel for accused that Chapter VI of the Act is not applicable, it must be stated that Chapter VI deals with Terrorist Organization and the various groups involved in the present case like JCC, Pinjra Tod, DPSG Whatsapp Group, etc. are not proscribed organizations under the UAPA.

(ii) But we have to understand terrorist activity, with reference to the definition provided under Section 15 of the said Act. As per the said provision, any act the intention of which is to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or done with an

intent to strike terror in the people of India or any section of people in India by using bombs or other explosives substance or..... or any substance of hazardous nature or by any other means of whatever nature to cause death of or injury to persons or loss or damage or destruction of property or disruption of any supplies or services essential to the life of community in India is a terrorist act.

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

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

definition of terrorist act. Acts which threaten the unity and integrity of India, in as much as causing social disharmony and creating terror in any section of the people, by making them feel surrounded resulting in violence, is also a terrorist act.

It is also relevant to mention here that even taking the arguments of the counsel for accused at face value that only one side of the road was blocked, it would still be a complete blockage preventing ingress and egress for the people who are surrounded and for whom panic and terror is created.

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

12. (a) In brief, as per the charge-sheet, after the passing of Citizenship Amendment Bill by the Cabinet on 04.12.2019, on 06.12.2019, pamphlets were distributed in the area of Jama Masjid and Okhla. On 07.12.2019, protest were carried out at Jantar Mantar by United Against Hate and by Students of JNU. On 11/12/13 December, 2019, Sharjeel Imam gave speeches. Protest started at Jamia Millia University on 13.12.2019. On the pretext of the opposition to CAA, riots started in the month of December 2019 and thereafter, various FIRs were registered in Delhi. In January 2020, protest sites were created for opposition to CAA/NRC. In January, 2020 as well, various cases were registered for the violence perpetrated by the protesters.

(b) The speech dated 13.12.2019 at Jamia Millia University delivered by accused Sharjeel Imam also is very provocative. He calls the Constitution fascist. He calls for organization/mobilization and for disruption and communal

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

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

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

(e) There are inter-linkages of various accused persons with details of the

task done by them. Various groups including DPSG Whatsapp Group was also created for the said purpose.

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

MATERIAL AGAINST THE ACCUSED NATASHA NARWAL.

13. (a) Further, as per charge-sheet, the applicant/accused Natasha Narwal along with co-accused Devengana Kalita is admittedly a member of Pinjra Tod Group and Pinjra Tod was involved in FIR No. 250/2019, Police Station Darya Ganj, Delhi. Accused Natasha Narwal was arrested in FIR No. 48/20, Police Station Jafrabad regarding the incident of 22.02.2020 for chakka-jam and FIR No. 50/20 for the incident of 23.02.2020 for chakkaj-jam at Jafrabad Metro Station.

(b) The accused Natasha Narwal was a member of DPSG Group and DPSG Whatsapp Group on behalf of Pinjra Tod. She was in active contact with Devangana Kalita, Ishrat Jahan and others.

(c) In pursuance of the conspiracy, as per the DPSG meeting at Indian Social Institute, Lodhi Road on 26.12.2019, new protest sites were to be created. The accused played an active role in the riots by road blocks and disruptive

chakka-jam, provocative speeches, instigation of women for stock piling sticks, bottles, acid, stones, chilly-powder for the purpose of riots.

The accused Natasha Narwal alongwith Devangana, Gulfisha and others of Pinjra Tod Group, in furtherance of their conspiracy, established a 24 x 7 sit-in protest at 66 Foota Road, Seelampur Delhi on 15.01.2020 after two unsuccessful attempt at Seelampur Fruit Mandi and Old Central Bank, Seelampur.

(d) Two Whatsapp Group in the name of 'Warrior' and 'Aurto Ka Inklab' was created by accused Gulfisha while Devengana Kalita and Natasha Narwal were members of the group. Chats of both these groups were found deleted by the accused and it was recovered from the mobile phone of the accused Tasleem.

(e) Accused was part of a multi-layered conspiracy and in regular touch and reporting to the higher conspirator of Delhi Protest Support Group. She had attended DPSG meeting at Indian Social Institute, Lodhi Road. The Seelampur Protest site was created and preparation for chakka-jam followed by riots in the last week of January itself.

(f) Co-accused Umar Khalid had visited the Seelampur Protest site on the intervening night of 23/24 January 2020 and held a meeting at a secret office at E-1/13, New Seelampur, Delhi attended by Natasha, Devengana, Gulfisha and others. In the said meeting, Umar Khalid directed that protest should escalate to riots and should result in spilling of blood of policemen and others and this is the only way to bring the government of India to its knees and to force the

government to withdraw CAA/NRC. He also directed them to induce local women to stock pile knives, bottles, acids, chilly-powder and other dangerous articles to be used in executing chakka-jam and riots.

(g) During the intervening night of 16/17 February 2020 at 2.00 AM, a meeting of protest site leaders of Chand Bagh, Mustafabad, Kardampuri and Jafrabad was held and it was decided to completely block the road of North-East Delhi by creating chakka-jam and inciting violence in terms of a pre-planned conspiracy leading to the riots.

(h) In prosecution of the said conspiracy on 22.02.2020, Natasha with other accused mobilized the women of Seelampur Protest site and occupied the Jafrabad Metro Station blocking the Main 66 Foota Road. She distributed chilly powder to the women and instigated them to attack police personnel and start riots. Protesters from the other protest sites at Chand Bagh, Kardampuri and other protest sites of North-East District moved to the nearby main roads and blocked them and causing a massive chakka-jam leading to the shut down of the highway and shut down of essential services followed by attack on police and public persons using firearms, acid bottles and other weapons. As part of the conspiracy, disruptive chakka-jam led to the riots and she received instructions from the DPSG group and supported by members of JCC in these large-scale riots.

(i) Around 300 women had also come from Jahangir Puri and ultimately to Jafrabad Protest Site and they were received by the accused and others in afternoon hours of 23.02.2020 and their acts also precipitated the violence leading to riots. The contention of the counsel that if the police had

information of movement of these ladies, they should have been arrested prior to riots, is for prima facie purpose is not so relevant as the entire conspiracy was unearthed later on, as per the prosecution.

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

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

(A) Protected witness **"BETA"** had stated that after seeing some footage on television on news on 16.12.2019, he joined the protest. He noticed that various persons attended the said protests. He then details the events of 28.12.2019, 10.01.2020 about various protests sites. At the Seelampur Protest sites, there were members of Pinjra Tod like Devangana, Gul and other students. He then one day saw a video wherein Umar Khalid gave a speech in Amrawati, Maharashtra stating that Trump is coming to India and they have to show their power by coming on to the roads. Thereafter, Jamia Coordination Committee meeting (JCC) started happening continuously. It was decided to do chakka-jam by the JCC in coordination with Pinjra Tod. On 22.02.2020, he came to know that girls from Pinjra Tod had done chakka-jam at Jafrabad. He heard Ishrat Jahan stating that they will destroy the government. Stone pelting took place. He realized that entire protest has been done in a planned manner. Pinjra Tod alongwith others had done it in a planned manner due to which

people have died, property burnt and damaged. They used to give provocative speeches.

(B) Protected witness **"GAMA"** had stated that he went to meet one of his friends at Seelampur. He introduced him to his friends including Natasha and Devengana. Later when he went, Umar Khalid was there and was giving provocative speeches. After some days in February, road block was planned. It was also decided to assemble ladies and children and they were asked to get red chilly, dande, pathar, lathi to be used. On 22.02.2020, they started protest at Jafrabad Metro Station. Devangana gave provocative speeches. She also told that they will show their power to the police and gave provocative speeches. He, thereafter, stopped going there.

Later, he said that they went to a house near Delhi University and one Aunty took Gul and Sohail inside. There one uncle, one aunty, Natasha, Devengana, Sohail and Gul were present and they were calling the said uncle a professor, and it was said that they were to bring the government to its knees. Uncle stated that nobody's name has to be taken and that government has to be brought down and make it a Hindu-Muslim issue. He asked Gul who that uncle was and she told that he was Apurnanand.

(C) Protected witness **"ECHO"** had stated that Gul, Devangana and Natasha had established their office at E-1/13, Seelampur. Umar stated that speech will not work, we will have to spill blood. Chakka-jam is the last resort and we will have to bring government to its knees. After some days, Gul started asking women to bring Lal Mirch powder, dandey, acid bottles. She also stated code words like 'kal eid hai', 'kal Nainital jana hai' which means that road block

karne chalna hai and ' aaj chand raat hai' which means today is road block's night. These code words are known to the women and girls there only. Gul alongwith Pinjra Tod girls decided to do road block. He opposed the move and tried to reason out Gul and her team. On 22.02.2020 at Seelampur protest site, they assembled the people and provoked them and blocked the road at Jafrabad Metro Station. Realizing that it will not be a peaceful protest but a chakka-jam, he decided not to go there. Pinjra Tod girls and Gul used to give provocative speeches. The motive was to cause riots in Delhi.

(D) Protected witness **"JUPITER"** had stated that he was the member of Whatsapp group DSPG (Delhi Solidarity Protest Group). Natasha, Athar were also members of the group. Athar was related to Chand Bagh Protest. Gul was not a member; she was member of 'Pinjra Tod Group'. Natasha was also in that group. On 20.02.2020, he received a call that there was a meeting held in Chand Bagh attended by Gul, Natasha, Athar alongwith others and he came to know that these three were planning 'chakka-jam' and violence and for this purpose, they had also distributed chilly powder to protesters. Some people have decided to stop and oppose them as it will cost the life of people. His motive was to stop chakka-jam and violence. Question was also put in the DPSG Whatsapp group. He called Rahul Roy who said that when chakka-jam happens, violence also happens. They requested to have a talk with Pinjra Tod members but it was ignored.

(E) Another protected witness **"DELTA"** in his statement under Section 164 Cr.P.C mentioned about the role of Pinjra Tod including the applicant regarding dharna at Seelampur. They were talking of road block plan. Gul was talking of mirch-powder, dande and bottles for facing the police.

After 12.02.2020, when he again came at the protest site, it came to his knowledge that they were again trying to block the road but they could not block it at the protest site. There was some code words like ' Eid per Nainital jana hai' which means 'road block karna hai'; 'aaj chand raat hai' and also gave provocative speeches like 'aandolan khoon maangta hai'. On the pretext of candle march, on 22.02.2020, they blocked the road beneath Jafrabad Metro Station. Police also reached at the spot but protesters did not budge and then they returned back to their home. Thereafter, Hindu-Muslim riots occurred.

(F) Protected witness **"JOHNY"** stated that on 15.01.2020, there was protest against CAA/NRC at Seelampur, Old Bus Stand. He also reached there and met with Gulfisha who introduced me with Devangana, Natasha, Proma, Subhashini, Tasleem, Sohail and Adnan as the member of Pinjra Tod and are running this protest. In the last week of January, he came to know that these people have started to collect dande, pathar and Lal Mirch and also asked the people to collect these things. On 15.02.2020, he came to know that a meeting is likely to be scheduled at Chand Bagh at night at 2-3 am (on 16/17 February) regarding blocking of road. He also joined the meeting and around 50-100 persons were there in the meeting besides Gulfisha, Devangana, Natasha, Shivangi, Shadab, Athar, Rashid, etc. Athar Khan told in the meeting that they will do chakka-jam in the protest site of North-East Delhi and nothing will happen by sitting silently. In the meeting, people were asked to collect acid beside pathar.

(G) Protected witness **"SMITH"** had stated that in the last year, CAA/NRC Act was passed by the government and thereafter, dharna pradarshan

started. Dharna also started near to his house (66 Foota Road). He used to remain there from 9.00 pm to 12.00 am. In his presence, Umar Khalid and Mehmood Pracha gave speeches. Gulfisha, who was living in Jafrabad, was organizing the protest. She met with me during protest. Devangana, Natasha, Gulfisha, Tasleem and other girls used to instigate local women of Seelampur-Jafrabad to come outside. They used to tell people if they would not have documents with them then they alongwith their families will be sent to detention center. In the night of 15.01.2020, Devangana, Natasha, Sohail and Shadab alongwith other girls and 100-150 women had carried out Dharna at Old Bus Stand, Madina Masjid. Yameen's house at E-1/13 was their office where their meeting used to happen. On 23.01.2020, Umar Khalid gave speech. Thereafter, Gulfisha, Devengana and Natasha brought Umar Khalid to their office. He also followed them and saw that Gulfisha, Natasha, Devengana, Sohail and Shadab alongwith other girls were also sitting there. Umar Khalid was saying that in the protest against CAA/NRC and to bring the Indian government down, they are ready even if riots occurred in Delhi; we have collected arms upon which all the persons stated that they are ready. Their motive was quite dangerous and he got scared after hearing this and came out from there. After two-three days, Gulfisha, Devangana, Natasha were asking ladies to collect empty glass bottles, acid, pathar, chhuri, etc. On 23.02.2020, he saw that Gulfisha, Devengana and Natasha alongwith many other women had blocked the road at Jafrabad Metro Station and they were asking to attack on the police officials. After some time, Wazirabad, Ghaziabad and Seelampur Road, were all jammed. Local ladies pelted stones on the crowd due to which Hindu-Muslims riots started. Riots also stated across Yamuna between Hindu-Muslims resulted killing of innocent people. They are very dangerous people.

15. It is pertinent to mention here that there are messages on DPSG Whatsapp Group, particularly on 22, 23 & 24 February 2020, showing the role of Pinjra Tod. Though there are certain messages of the applicant/accused and others as well, however, at the stage of bail, the messages of the DPSG Whatsapp group cannot be read and discussed and analyzed in detail, like in evidence but they are being considered in totality.

There are messages of the relevant contemporaneous period which shows that there was opposition to road block plans of Pinjra Tod and reference to a violent protest by them. It was stated that life of locals were being put in danger. The slogan of Pinjra Tod that " kafan baandh ke aye hain, aur jo humare saath nahin, desh ka gadhar hai", when local women protesters requested them to not block the road. It was also messaged that local women protesters were disagreeing with the road block plan and there was a specific suggestion that Pinjra Tod is inciting violence and there would be effort to stop them at Seelampur, Jafrabad. In fact, there was a reference to the accused regarding the distribution of Red Mirchi powder to women for attacking police and para-military of dated 23.02.2020 and thus, there is contemporaneous record which cannot be wished away at this stage of bail.

Regarding the contention that the said Whatsapp messages of the concerned individual in the DPSG Whastapp group was out of jealousy for political leadership is not borne out from record though any statement can be tested during evidence only.

Even Rahul Roy (Admn.) asks members to refrain them from sharing messages in the group on other Whatsapp groups and they will be removed, if it

is done.

One person says that communal disharmony is created by the acts of this Civil Society and Pinjra Tod has created a mob mentality due to which lives of common man is in danger.

After the riots began, during and after the riots, there was a change in the tone of the group members.

16. It is also important to mention here that on 24th February 2020 onwards there was a flurry of calls between accused and other persons who were not physically present with each other but which shows connection between them and many of them coming together at a place pointing to circumstances suggesting conspiracy.

17. After the initial arrest in the case, the administrator Rahul Roy of the DPSG Whatsapp group deleted/removed members and requested everyone for clearing the chat. There was a suggestion to move to another messaging group called Signal. Thereafter, members were removed and the group became dormant.

18. It would be not out of place to mention here that when the mobile of the present applicant/accused Natasha Narwal was seized, the entire chat of DPSG Whatsapp group was found deleted.

19. The contention that accused has no role in raising funds for riots or that acid related injury in the riots were not within the jurisdiction of P.S. Jafrabad or

injuries due to lal-mirch powder were not shown anywhere in any document is misplaced as firstly, other accused persons in this case are alleged to have done their part in the conspiracy and the conspiracy has to be read as a whole and not piecemeal. There is a linkages shown by the prosecution between applicant/accused Natasha Narwal with other accused persons.

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

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

> *44. A criminal conspiracy is generally hatched in secrecy, and it is difficult, if not impossible, to obtain direct evidence. Reliance is placed on the judgment of this Court in R. Venkatkrishnan v. CBI. The manner and circumstances in which the offence has been committed, and the lever of involvement of the accused persons are relevant factors. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in the general conspiracy, to accomplish the common object.*
>
> *45. Conspiracy is mostly proved by circumstantial*

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

(c) One of the contentions raised by the counsel for accused was that no video was shown by the prosecution to show the role of applicant/accused Natasha Narwal in the present case. The present case is one of the deep-rooted conspiracy which led to the riots killing scores of people besides causing injury and destruction of property. The prosecution had contended that there was no CCTV camera at outside the Jafrabad Metro Station and even the footages maintained inside the Metro Station by the DMRC is available only for 07 days. At this stage of bail, I am of the opinion that in a case of a conspiracy of such a large-scale, not having a video is not so vital as generally conspiracy, by its very nature, is hatched in secrecy and not having videos of such a conspiracy is obvious rather than doubtful. There are some videos of actual rioting that occurred in February 2020 in other cases of riots.

21. Moreover, in a case of conspiracy, even the presence of an accused at a site is not a sine qua non for establishing his or her role. In the present case, the presence of the applicant/accused is established over a period of time.

22. Thus, on the perusal of the charge-sheet and accompanying documents, for the limited purpose of the bail, I am of the opinion that allegations against the accused Natasha Narwal are prima facie true.

In view of the above discussion, since there are reasonable grounds for believing that the accusation against the accused Natasha Narwal are prima

facie true, hence, embargo created by Section 43D of UAPA applies for grant of bail to the accused.

Hence, the present application for bail of accused Natasha Narwal is dismissed.

Application is disposed off accordingly.

I may also put on record the extensive and forceful arguments made particularly by Sh. Adit Pujari, Ld. Counsel for the accused and the labour and hardwork put by him.

Copy of this order be e-mailed to Ld. Counsel for applicant/accused, Ld. Special Public Prosecutor and the Investigating Officer.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 28.01.2021