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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 26th May, 2026
Pronounced on: 7th July, 2026
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\+ **CRL.A. 137/2026 & CRL.M.A. 9910/2026**

ATHAR KHAN .....Appellant
Through: Mr. Arjun Dewan, Ms. Varisha Sharma, with Mr Aryan Deol, Adv.

versus

STATE OF NCT OF DELHI .....Respondents
Through: Mr. S. V. Raju, ASG along with Mr. Madhukar Pandey, SPP, Mr. Dhurv Pandey, Ms. Ananya Bose, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The unfortunate North East Delhi riots which occurred on 23rd, 24th, and 25th February, 2020 are the context in which the present appeal has arisen.

3. The Appellant- Athar Khan has filed this appeal under Section 21(4) of the National Investigation Agency Act, 2008 read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 assailing the order dated 29th January, 2026 (hereinafter, *'impugned order'*) passed by the ld. Additional Sessions Judge-03 (Shahdara), Karkardooma Court, Delhi in ***I.A. No. 271/2026*** in ***Sessions Case No. 163/2020.*** The present case arises out of ***FIR No. 59/2020*** dated 6th March, 2020 registered at PS. Crime Branch, Delhi.

4. *Vide* the impugned order, the application filed by the Appellant seeking regular bail has been dismissed by the Trial Court.

Background

5. In the riots which took place in the heart of East Delhi on 23rd, 24th and 25th February, 2020, a total of 53 persons succumbed to their injuries and lost their lives. Approximately more than 100 persons sustained injuries, and extensive damage was caused to the properties of the residents. The situation took several days to return to normalcy.

6. ***FIR No. 59/2020*** was registered at PS. Crime Branch, Delhi initially under Sections 147, 148, 149 and 120B of the Indian Penal Code, 1860 (hereinafter, *'IPC'*). However, during the course of investigation, offences under Section 120B read with Sections 109, 114, 124A, 147, 148, 149, 153A, 186, 201, 212, 295, 302, 307, 341, 353, 395, 420, 427, 435, 436, 452, 454, 468, 471 and 34 of the IPC as also under Sections 13, 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter, *'UAPA'*), Sections 25 and 27 of the Arms Act, 1959 and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 were added to the subject FIR.

7. The allegations in the said FIR were that there was a criminal conspiracy hatched by several persons for commission of large scale riots against the enactment of the Citizenship Amendment Act (hereinafter, *'CAA'*) and the National Register of Citizens (hereinafter, *'NRC'*).

8. The factual narrative in the present matter emanates from the case of the prosecution that a deep-rooted criminal conspiracy was allegedly hatched by several accused persons and individuals, including the present Appellant, to

orchestrate large-scale riots in the National Capital Territory of Delhi in protest against the enactment of the CAA and the NRC.

9. These riots were allegedly carried out by inciting widespread communal violence on and around the 23rd, 24th and 25th of February, 2020, which resulted in the loss of 53 lives, including the death of a Senior Police Officer and an Intelligence Bureau Official, grievous injuries to several Police officers and members of the public, damage to more than 1,500 public and private properties, etc, apart from the other intangible harm caused to the Nation as a consequence.

10. As per the Appellant, he was initially examined as a witness in the present FIR. During the course of the investigation, the mobile phone of the Appellant was also seized on 1st May, 2020. The Appellant was, thereafter, arrested on 2nd July, 2020 and was arrayed as Accused No. 15 in the main charge-sheet dated 16th September, 2020.

11. The first supplementary charge-sheet in the present case was filed on 22nd November, 2020. Further charge-sheets have also been filed, however, for the present purpose, the details of the same would not be relevant.

12. Various accused persons arrayed in the present case had filed applications, initially, before the Trial Court seeking regular bail. The said bail applications had been rejected by the Trial Court from time to time. Even the Appellant in the present case had initially filed an application seeking regular bail before the Trial Court being ***I.A. No. 126/2022***. However, the same was rejected *vide* order dated 12th October, 2022 passed by the ld. Additional Sessions Judge-03 (Shahdara), Karkardooma Court, Delhi.

13. The said order was challenged in an appeal by the Appellant which resulted in a detailed judgment being passed by a Co-ordinate Bench of this

Court on 2nd September, 2025 in ***CRL. A. 677/2022*** titled ***'Athar Khan v. State of NCT of Delhi'***. *Vide* the said judgment, the Court considered and adjudicated upon nine appeals preferred by nine accused persons, including the present Appellant, arising out of the present FIR *i.e.,* ***FIR No. 59/2020***, wherein regular bail was sought. The Co-ordinate Bench of this Court rejected all the said appeals and declined to grant bail to the accused persons, including the Appellant. The role of the Appellant was discussed in detail in the said judgment by the Co-ordinate Bench of this Court.

14. In the said judgment, the Co-ordinate Bench of this Court, from paragraph 151 onwards records that the Appellant-Athar Khan had participated actively as part of the Delhi Protest Support Group (hereinafter, *'DPSG'*) WhatsApp group, United Against Hate (hereinafter, *'UAH'*) group and CAB Team. On the night of 22nd February, 2020 a meeting was held at Ayaz's basement in Chand Bagh, Delhi in which the Appellant had participated leading to co-ordinated attacks. Again on 23rd February, 2020 a meeting was held at one Mukhtyar's house in Chand Bagh attended by DPSG members including the Appellant where they had co-ordinated destruction and disablement of the CCTVs and mobilisation on a large scale for violent outbreaks.

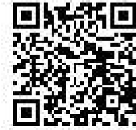
15. The findings of the Co-ordinate Bench of this Court in respect of the Appellant, after analysing the statements of various protected witnesses, showed that he had played an active role in the entire conspiracy. The Appellant was also present at the various meetings especially on the intervening night of 23rd and 24th February, 2020. The Appellant had conspired to destroy Government property along with the other co-accused persons. The Co-ordinate Bench of this Court further distinguished the role of the Appellant from that of the other co-accused persons namely Devangana Kalita, Natasha

Narwal and Asif Iqbal Tanha. Accordingly, the Co-ordinate Bench of this Court refused to grant relief to the Appellant.

16. The said judgment dated 2nd September, 2025 passed by the Co-ordinate Bench of this Court was challenged by several co-accused persons before the Supreme Court. The said appeals were decided by the Supreme Court *vide* its judgment in ***Gulfisha Fatima v. State (Govt. of NCT of Delhi), 2026 INSC 2.*** Out of the nine accused persons whose appeals were decided by the Co-ordinate Bench of this Court *vide* judgment dated 2nd September, 2025, seven accused persons approached the Supreme Court, out of whom bail was denied to two accused persons *i.e.,* Umar Khalid and Sharjeel Imam. The remaining accused persons were granted bail by the Supreme Court. Notably, the present Appellant did not challenge the judgment dated 2nd September, 2025 before the Supreme Court.

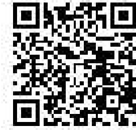
17. The judgment in ***Gulfisha Fatima (Supra)*** was rendered on 5th January, 2026 and, thereafter, the Appellant, on 13th January 2026, moved an application before the Trial Court seeking regular bail relying upon the judgment of the Supreme Court in ***Gulfisha Fatima (Supra).***

18. The Appellant in effect sought parity with five co-accused who were granted bail by the Supreme Court *vide* the judgment passed in ***Gulfisha Fatima (Supra)***. The said application for bail was considered by the Trial Court. The Trial Court came to the conclusion that the *prima facie* opinion recorded by it in the earlier round, *i.e.*, *vide* order dated 12th October, 2022, wherein the accusations against the Appellant–Athar Khan were held to be true, and the same having been upheld by the High Court and not having been challenged by the Appellant before the Supreme Court, no other opinion could be formed by the Trial Court. The relevant portion of the impugned order is set



out below:

> *"9. The Court has heard arguments and perused the record.*
>
> *10. As far as the merits of the case are concerned, the Court has already discussed the same in its previous order dated 12.10.2022 and now, the only question before the Court is, if after the order dated 05.01.2026 of the Hon'ble Supreme Court, this Court should consider the application and grant the desired relief to the applicant.*
>
> *11. No doubt that vide order dated 05.01.2026, the Hon'ble Supreme Court has granted bail to co-accused persons namely Shifa-Ur- Rehman, Salim Khan, Meeran Haider, Shadab Ahmad and Gulfisha Fatima. As submitted by ld. counsel for the applicant, as discussed by the Hon'ble Supreme Court in the mentioned order, the case of the applicant may be on parity with the case of any other accused persons who have been granted bail,* ***but this Court must keep in mind that the earlier bail application of the applicant has already been dismissed by this Court after considering merits in detail. Moreover, this Court in its previous order dated 12.10.2022 has given clear opinion that the accusation against the applicant Athar Khan are prima-facie true and as such the embargo created by Section 43D(5) of UAPA applies. Thus, when the Court has formed a certain opinion against the applicant, it cannot review its order and give any opinion contrary to the previous opinion. More importantly, the facts and circumstances of the case remain the same and the bar u/s 43D(5) of UAPA still persists. Furthermore, vide order dated 02.09.2025, the Hon'ble High Court of Delhi has also dismissed the appeal of the applicant and denied bail to the applicant, giving opinion that there is prima-facie case against the applicant and embargo u/s 43D(5) of UAPA automatically got attracted. Therefore, after the said finding of the Hon'ble High***



> ***<u>Court, this Court cannot form any other opinion and grant the desired relief to the applicant.</u>***
> *12. Accordingly, the Court doesn't find merits in the application and the same is hereby dismissed."*

The above order rejecting bail in the second round, after the rendering of the judgement by the Supreme Court, in ***Gulfisha Fatima (supra)*** is under appeal in the present case.

<u>Submissions on behalf of the Appellant</u>

19. Mr. Arjun Dewan, ld. Counsel for the Appellant submits that the role of the Appellant is almost similar to the role of the co-accused, Shadab Ahmad who has already been granted bail by the Supreme Court in the decision in ***Gulfisha Fatima (Supra)***. Various paragraphs of the said judgment have been relied upon by the ld. Counsel for the Appellant.

20. It is submitted on behalf of the Appellant that there are more than 880 witnesses to be examined in total in the present case and the Appellant has been in custody for around six years. Ld. Counsel for the Appellant submits that the Appellant is merely a local level facilitator and the judgment in ***Gulfisha Fatima (Supra)*** needs to be followed and hence, the Appellant should be granted bail. Ld. Counsel for the Appellant has also relied upon the recent decision of the Supreme Court in ***Syed Iftikhar Andrabi v. National Investigation Agency, Jammu, 2026 INSC 503***

21. The main submission on behalf of the Appellant is that the prosecution relies upon the statements of a protected witness namely *'Pluto'*, however, according to the ld. Counsel, the same is not reliable as there are clear contradictions between the statements made under Sections 161 and 164 of the Code of Criminal Procedure, 1973 (hereinafter, *'CrPC'*). Ld. Counsel for the

Appellant submits that both these statements read together would show that immense improvement has been made by the said witness within a period of four days. Ld. Counsel highlights that the statements of the protected witness, *'Pluto'* are diametrically opposite.

22. Ld. Counsel for the Appellant further submits that the statements of the protected witness, *'Pluto'* would be tested in evidence but for the time being, contradictions and improvements between the statements recorded under Section 161 of the CrPC and the statement under Section 164 of the CrPC are itself quite demonstrative of the fact that they are not *prima facie* reliable.

23. Further, it is submitted on behalf of the Appellant that the Whatsapp chats of the Appellant would also show that the only plan on behalf of the Appellant was to indulge in non-violent protests and that any messages to the contrary are required to be construed in the proper context, particularly in view of the fact that the Appellant was never found in possession of any weapons, had no meetings with Umar Khalid and no incriminating articles were recovered from his possession. The submission, therefore, on behalf of the Appellant is that the Whatsapp chats would also not implicate the Appellant in respect of any killings, whatsoever.

24. Ld. Counsel for the Appellant has placed reliance upon the order of the Supreme Court dated 22nd May, 2026 passed in ***SLP (CRL) No. 2867/2026*** titled ***'Tasleem Ahmed v. State of Govt. of NCT of Delhi'*** where similarly placed persons, who had undergone substantial periods of incarceration, have been granted bail. Paragraph 27 of the said order has been relied upon by the ld. Counsel for the Appellant.

25. Reliance is also placed upon the decision in ***Gulfisha Fatima (Supra)*** to argue that even in the case of the co-accused, Gulfisha Fatima, a lady who was

having a much graver participation and a more active role, the Supreme Court has granted bail to her. The submission in this regard is that the Appellant would at least be entitled to parity with Gulfisha Fatima, who stands on the same footing in terms of her alleged role, meetings, communication and execution on the ground.

26. Finally, ld. Counsel for the Appellant submits that the Appellant is at best a local-level facilitator or executor with no decision making power in the entire conspiracy and hence, deserves to be released on bail.

<u>Submissions on behalf of the Respondent- State</u>

27. On the other hand, Mr. S.V. Raju, ld. ASG along with Mr. Madhukar Pandey Ld. SPP has highlighted the statement of the protected witness, *'Pluto',* who has attributed a specific statement to the Appellant *i.e., '**that until 100-200 people are not killed, the issues will not be resolved'.***

28. Ld. ASG further relies upon the WhatsApp conversation between one Ovais Sultan Khan and the Appellant to argue that the Appellant has actually instigated violent protests despite opposition from his own group.

29. It is urged that initially the Appellant relied upon the role of Shadab Ahmad and parity was sought with him, however, the Appellant later on sought parity with Gulfisha Fatima.

30. Further it is contended that in the case of the Appellant, the judgment of the Co-ordinate Bench of this Court dated 2nd September, 2025 in ***CRL. A. 677/2022*** has attained finality as the same was not challenged before the Supreme Court by the Appellant. As per ld. ASG, the embargo under Section 43D(5) of the UAPA would apply to the Appellant as none of the findings against Appellant in the decision dated 2nd September, 2025 have been set

aside and the same having acquired finality, the Appellant cannot now take benefit of the judgments in ***Gulfisha Fatima (Supra)*** or ***Tasleem Ahmed (Supra).***

31. Finally, it is submitted that in the case of all the other accused persons who have been granted bail in the present FIR, there has been no evidence of killings that has come forward. Whereas in the present case, a witness has clearly deposed that the Appellant had intention to cause killings and the fact that 53 people were actually killed in these riots cannot be lost sight of.

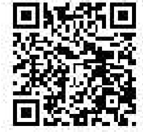
Analysis and Findings

32. At the outset, it needs to be noted that the present appeal arises out of the second regular bail application which had been filed by the Appellant before the Trial Court. In the first round, the regular bail application filed by the Appellant was dismissed by the Trial Court. The same was even upheld by a Co-ordinate Bench of this Court. There was no challenge to the said order by the Appellant.

33. The Court has perused the material placed on record. The prosecution's case is that the Appellant was an active conspirator in the North-East Delhi riots and the same is clear from various WhatsApp chats of the DPSG group placed on record by the ld. Counsel for the Appellant. It can be seen from the said chats that the Appellant has repeatedly sent messages on the said group and has actively participated in the riots. Moreover, the said WhatsApp chats would also show that in some places the Appellant has sent some extremely incriminating messages which prove an active role not just in causing riots, destruction of property, etc., but an active role in the deaths which have been caused during the riots.

34. Further, one of the protected witness in the present case, namely, *'Pluto'* stated in his statement recorded under Section 164 of the CrPC as under:

> *"On S.A*
> *(Illegible/Blurred) । मैं ऑर्डर भी (Illegible/Blurred) हुँ। दिल्ली दंगों से चार दिन पहले 20/21 फरवरी 2020 को मुझे (Illegible/Blurred) ऑर्डर देने के लिये 5 आदमी आये। उनके नाम अथर, शादाब, सलीम मुन्ना, सलीम खान और रिजवान सिद्दीकी थे। उन्होंने मुझे 10,000 की बिरयानी का ऑर्डर दिया। (...sic...) चाँदबाग में अय्याज के ऑफिस (जो बेसमेंट में है) यहाँ जायेगी बिरयानी। कुछ पैसे एडवांस दिये और कहा बाकी पैसे आने पर अय्याज भाई देंगे।*
> *उसी दिन रात (overprint text) :30 बजे मैं बिरयानी लेकर पहुँचा। मैंने बिरयानी देकर पैसे मांगे तो अथर बोला कि पैसे अय्याज भाई आकर देंगे। तब तक हम बिरयानी खा लेते हैं। (Illegible/Blurred) बिरयानी खाने लगे। अथर बाकी (Illegible/Blurred) से बात करने लगा। "अब वक़्त आ गया है दिल्ली में आग लगाने का। राहुल राय भाई (Illegible/Blurred) आया था"। बोला "हमने सारी तैयारी कर ली है । हमने असलहे, पेट्रोल वगैरह भरवा लिया है।*
> *पैसे की हमारे पास कोई कमी नहीं है। **पूरी दिल्ली को दहलाना है। जब तक 100-200 लोग नहीं मरेंगे। 100-200 जगह आगजनी नहीं होगी तब तक हमारा मसला हल नहीं होगा।***
> *अब सब मिलके तैयारी कर लो" । बाकि चारों बोले "हम तुम्हारे साथ हैं" ।*
> *रिजवान बोला "कि मैंने यूपी (UP) से शूटर बुला रखे हैं। पैसा हमारे पास बहुत है। दिल्ली को तहस-नहस करना है।" फिर अय्याज आ गया। उसने मुझे पैसे दिये और मैं वापिस आ गया। मैं पूरी रात सो नहीं पाया। मैंने स्पेशल सेल के बारे में सुन रखा था। (Illegible/Blurred) मैं स्पेशल सेल के पास गया। (Illegible/Blurred) उनको मैंने सारे हालत बताए । डीसीपी*



साहब बोले "बाकि हमारा काम है। हम देख लेंगे"। (Illegible/Blurred) मैंने देशहित में किया है।"

35. A perusal of the above would show that as per the protected witness, the clear and unequivocal stand of the Appellant was *"Puri delhi ko dahlana hai. Jab tak 100-200 log nahi marenge, 100-200 jagah aagjani nahi hogi tab tak hamara masla hal nahi hoga."*

36. The above statement is corroborated by the WhatsApp messages of one Ovais Sultan Khan who in fact dissuaded the Appellant from causing any violence and had advised him to keep the protests against the CAA and NRC as non-violent. One such message of Ovais Sultan Khan was sent on 17th February, 2020 at 3:20 p.m. The same reads as under:

> *"Athar Mian,*
> *I am not educated one.*
> *But I would like to tell you that some local people have evidences of what you all were saying last night about your plans of road blockade-your proposal to incite violence.*
> ***So, don't play with fire because it will not hurt you. It will hurt us badly.***
> *Our protests will remain nonviolent."*

37. In fact, this was in response to a message sent by the Appellant at 2:47 p.m. where the Appellant is stated to have suggested road blockade and other violent steps. In fact, on the very same day at 3:34 p.m., Ovais Sultan Khan has again written to the Appellant - *"itnaa samjh lo sirf ki violence nahi karne denge tumhe aur tumhare dosto ko, bhai."*

38. Ovais Sultan Khan also confirms another WhatsApp chat where the Appellant is wanting violent protests which is being opposed by many members of the DPSG group. The WhatsApp chats of the DPSG group, therefore, clearly

confirm the intentions of the Appellant and the statement made by the protected witness *i.e., Pluto* wherein the Appellant was exhorting everyone to cause actual deaths and damage to public property. The above evidence along with findings in the earlier bail orders rendered by both the Trial Court and the Co-ordinate Bench of this Court would *prima facie* show that the role of the Appellant is not the same as the other co-accused who have been granted bail in the present FIR.

39. The prosecution has also set out a case against the Appellant that he was responsible for inciting violence which allegedly resulted in deaths. However, the same is based on statements recorded under Section 161 of the CrPC, which are yet to be established during trial.

40. In the opinion of this Court, any evidence which would point to the Appellant's role in the deaths which were caused during the riots would make Appellant a core conspirator and not merely an executor at the ground level.

41. In ***Gulfisha Fatima (Supra)***, the Supreme Court clearly distinguished between the role of core conspirators and field-level operators. In the said judgment, the Supreme Court considered and discussed in detail the role attributed to each of the Appellants therein. The Supreme Court undertook an individual assessment of the allegations, the material placed on record, and the specific role ascribed to each of the Appellants, which can be summarised as under:

<u>*Sharjeel Imam*</u>

42. In respect of Sharjeel Imam, the Supreme Court holds that the role of the said co-accused is not episodic. He was part of the mobilisation strategy and there was a continuing course of conduct by him. He had also engineered the

course of the WhatsApp groups and chats suggesting mass mobilisation. The Supreme Court considered the statement of the protected witnesses under Section 164 of the CrPC. The Supreme Court also considered that Sharjeel Imam may have outwardly couched his conduct in the language of non-violence, though he had, in fact, indulged in sustained blockade, choking of essential supplies and deliberate paralysis of civic life. The observations of the Supreme Court *qua* Sharjeel Imam are as under:

> *"163. The Court is also mindful of the appellant's reliance on the assertion that he opposed violence. Such an assertion does not, at the bail stage, neutralise an allegation of conspiracy and preparatory orchestration.* ***A conspirator may outwardly couch the conduct in the language of non-violence while engaging in acts intended to create conditions of confrontation and escalation. The prosecution case is that sustained blockade, choking of essential supplies, and deliberate paralysis of civic life are not benign political acts but steps in a planned trajectory, which then culminated in violence.****"*

43. The said Sharjeel Imam is stated to have not even been present in Delhi during the relevant period in January 2020 but still the Supreme Court held that even if the accusations are *prima facie* true, the bail application filed by such an individual needs to be rejected. Accordingly, the bail application of Sharjeel Imam was rejected.

Umar Khalid

44. In the case of Umar Khalid, the Supreme Court held him to be a principal conspirator who promoted the slogan *"Bharat Tere Tukde Honge, Insha Allah Insha Allah"*. He had mobilised for a chakka jam along with other co-accused

persons. He was an active member of the DPSG group. He was also not present in Delhi during the riots. However, he had delivered several provocative speeches. His stand before the Supreme Court was that no overt act of violence was attracted to him and no recoveries were effected but the Supreme Court held that the role of Umar Khalid was not episodic but was architectural. He was the organizer and co-ordinator of the Delhi riots. Even though there was no recovery of weapons from him, the manner in which he had conducted himself since inception points towards a clear conspiracy on his part. His entire conduct had the effect of destroying communal harmony. The observations of the Supreme Court in this regard are as under:

> *"234. At the bail stage, the Court cannot test whether the protected witness statements regarding stockpiling or inducement of local residents will ultimately withstand scrutiny. What the Court can do is to examine whether, if those statements are accepted as they stand, they support an allegation that the agitation was not confined to symbolic protest, but contemplated engineered confrontation along communal fault lines.*
>
> *xxxx*
>
> ***244. Having regard to the prosecution material as placed, including the chronology of meetings, the alleged articulation and propagation of the chakka jam strategy, the operation of coordinating committees and groups, the protected witness statements alleging preparatory and escalation-related discussions, the pleaded movement of protest activity into mixed-population zones, and the alleged systemic disruption of civic life in the National Capital, this Court is satisfied that reasonable grounds exist for believing that the accusations against Umar Khalid are prima facie true.***
>
> *245. The defence submissions, though weighty and articulated with care, would require this Court to*

adjudicate upon credibility, resolve factual disputes, and choose between competing inferences. That exercise lies beyond the permissible limits of a bail inquiry under Section 43D(5).

246. The statutory embargo is therefore attracted. The appeal filed by Umar Khalid in SLP (Crl.) No. 14165 of 2025 is dismissed. The prayer for bail is rejected.

247. It is clarified that the observations herein are confined to the consideration of bail and shall not influence the Trial Court in the adjudication of the matter on merits. The Trial Court shall endeavour to proceed with the trial expeditiously."

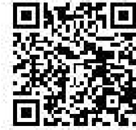
<u>Shifa Ur Rehman</u>

45. In the case of Shifa Ur Rehman, the Supreme Court found that she was the president of the Alumni Association of Jamia Millia Islamia and had raised substantial funds to finance the protests. In her case, the Supreme Court was of the view that mere jurisdictional proximity or associative proximity with the core conspirator would not be sufficient to deny bail. Accordingly, she was granted bail by the Supreme Court.

<u>Saleem Khan</u>

46. In the case of Saleem Khan, the allegations against him were that he had resorted to chakka jam and destruction of CCTV cameras. The Supreme Court granted bail to Saleem Khan and observed as under, while distinguishing his role from that of Umar Khalid and Sharjeel Imam:

"314. While the prosecution places reliance on his alleged attendance at meetings preceding the escalation of protests into chakka jams, the material does not disclose that Saleem exercised control over either the initiation of such meetings or formulation of their outcomes. The attribution is largely derivative,



*reflecting execution of tasks discussed by others and limited to coordination within the Chand Bagh–Jafrabad cluster. T**he evidentiary foundation relied upon, even if taken at its highest, does not presently establish that Saleem possessed independent command capacity or strategic discretion warranting ongoing incarceration solely on the basis of his associative presence at key locations.***

*315. The assertion that Saleem participated in the destruction of CCTV cameras and in facilitating the movement of protestors to designated sites raises matters for trial, however, pre-trial detention cannot be perpetuated merely because violent acts are alleged in proximity to his presence, unless a direct and continuing ability to influence or repeat such conduct is shown. **There is no material before this Court indicating that he presently retains access to organisational resources, communication networks, or mobilising power that could enable interference with the administration of justice. The legitimate concerns of the State can be sufficiently guarded by supervision and tailored restrictions**."*

Meeran Haider

47. Meeran Haider was a member of the UAH Group along with other students of Jamia Millia Islamia University. He was also the core member of the Jamia Coordination Committee and had participated in clandestine meetings in relation to protests itself. There was some evidence on record to indicate that Meeran Haider had collected certain funds for the protest, etc., however, the Supreme Court observed that he was merely part of the organisational structure and was not operating the same. Mere remote participation was held to be insufficient to withhold bail. His role was also found to be distinguishable from that of Umar Khalid and Sharjeel Imam.

Shadab Ahmad

48. The Appellant-Athar Khan seeks parity with co-accused, Shadab Ahmad. Both of them were members of the DPSG. The allegation *qua* Shadab Ahmad was that he functioned as a local-level operator and had participated in various meetings. The Supreme Court after considering the matter observed in respect of Shadab Ahmad as under:

> *" **382. Upon a prima facie assessment of the material relied upon by the prosecution, the role attributed to Shadab Ahmad appears to be that of a site-level executor associated with Chand Bagh and related protest clusters, whose presence at certain meetings is alleged to have facilitated operational coordination following directions emanating from others. The evidence presently placed on record does not disclose that he occupied an authoritative position in conceptualising the alleged conspiracy or that he exercised independent control over its strategic formulation.** His alleged association with chakka jam planning, while relevant to trial, does not by itself sustain the continued deprivation of liberty at the pre-trial stage in the absence of material showing autonomous command or unilateral decision-making authority.*
>
> *383. The prosecution narrative stresses Shadab's attendance at late-night meetings and his participation in conveying instructions to organisers of protest sites. However, even taken at its highest, this depiction situates him as a conduit for information and coordination rather than as an architect of escalation. The allegations neither establish that he devised the strategy to engineer violence nor that he exercised discretion over the location, timing, or modality of the*

alleged unlawful acts. ***<u>The attributed conduct is derivative and execution-centred, and the evidentiary record does not presently disclose that he shaped or altered the trajectory of the protests in a manner warranting further custodial curtailment.</u>***

384. The State expresses apprehension that Shadab's enlargement on bail may enable reactivation of dormant networks or interference with witnesses. However, there is no cogent material to suggest that he presently retains the organisational capacity or influence necessary to mobilise individuals or resources independent of the structures that, by the prosecution's own account, operated under a hierarchical command led by others. The risks articulated can be effectively addressed by imposing conditions restraining his interaction with co-accused and witnesses, restricting participation in assemblies concerning the subject matter, and ensuring regular attendance before the trial court.

385. The Court remains mindful that the alleged acts culminated in serious violence yet, the gravity of the incident cannot be the sole criterion to perpetuate detention when the individual's attributed role is operational rather than directive. The prosecution has not demonstrated that Shadab's custodial presence is required for ongoing investigation or that further evidence is contingent upon his continued incarceration. In the absence of such necessity, indefinite pre-trial detention would assume a punitive character inconsistent with constitutional guarantees of personal liberty under Article 21, particularly where the alleged conduct is neither shown to be ongoing nor presently repeatable in a manner jeopardising the proceedings."

49. Thus, the finding of the Supreme Court is that Shadab Ahmad is a local-level facilitator.

<u>*Gulfisha Fatima*</u>

50. The Appellant also seeks parity with co-accused, Gulfisha Fatima. She is stated to have actively mobilised women protestors in North-East Delhi. She provided them materials to attack police personnels and non-Muslims. She is also stated to have received funds from co-accused, Tahir Hussain. However, the Supreme Court observes on her role that she did not have any independent command, resource control or strategic oversight over multiple protest sites. While discussing the role of Gulfisha Fatima, the Supreme Court also mentions about the role of the Appellant-Athar Khan in paragraph 411 of the judgment as under:

> *"410. On 15.01.2020, Gulfisha Fatima is alleged to have been among the key individuals who initiated a women- and child-centric protest site at Seelampur near Madina Masjid, in accordance with the alleged plan of the conspirators. She, along with Devangana Kalita, is stated to have attended a conspiratorial meeting convened by Umar Khalid on 23.01.2020 at a purportedly secret office located at Yameen House, Seelampur. As noted hereinabove, in the said meeting, Umar Khalid is alleged to have issued directions for stockpiling red chilli powder, acid, bottles, and sticks. It is further alleged that pursuant to the said meeting, Gulfisha Fatima stockpiled chilli powder, wooden sticks (dandas), acid, bottles, and other materials, and that she used coded language to transmit directions of the conspirators to the protesters. Statements of protected witness "Echo" are relied upon in the charge-sheet in support of these allegations.*
>
> *411. On 17.02.2020, Gulfisha Fatima is alleged to have attended a meeting held at the Chand Bagh protest site during the night hours, which is stated to have been attended by members of DPSG. According to the charge-sheet, approximately twenty persons attended*

> *the said meeting, including Gulfisha Fatima.* ***At the said meeting, a roadmap for execution of the final phase of the alleged conspiracy namely, escalation of chakka jams into disruptive chakka jams and the organisation of violence and riots- is stated to have been outlined by co-accused Athar Khan.*** *The charge-sheet relies upon electronic evidence to assert the presence of Gulfisha Fatima at the said meeting."*

51. However, the Supreme Court observed that the role of Gulfisha Fatima was similar to that of Natasha Narwal and Devangana Kalita, both of whom had been granted bail, and accordingly, she was also granted bail.

52. In light of the above background and the findings of the Supreme Court in respect of the various co-accused, the question that arises for consideration is whether the Appellant deserves to be released on bail or not.

53. Firstly, the Appellant had not challenged the judgment dated 2nd September, 2025 passed by the Co-ordinate Bench of this Court. Since his appeal was not before the Supreme Court, his detailed role did not arise for consideration in the judgment rendered in ***Gulfisha Fatima (Supra).*** As a result, neither the allegations attributable to the Appellant nor the degree of his alleged participation fell for consideration before the Supreme Court while deciding the said matter.

54. Secondly, the statement of the protected witness, *'Pluto'* under Section 164 of the CrPC shows that the Appellant had specifically mentioned about violent protests leading to deaths and destruction of public property. As per the case of the prosecution, the Appellant is also stated to have received funds from co-accused, Tahir Hussain for the said protests.

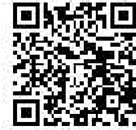
55. The role of Athar Khan, which has in fact been more than *prima facie* established from the chats recovered from Ovais Sultan Khan, would indicate

that while others were suggesting that he resort only to non-violent protests, he persisted with his objective of engaging in violent protests, to the extent of even causing death. The fact that deaths were caused during the said riots cannot be, therefore, a mere matter of co-incidence.

56. The statement of the protected witness, *'Pluto',* where the Appellant is stated to have clearly encouraged, exhorted and led others to cause destruction through fire and to cause deaths through violence is an extremely serious material. Releasing the Appellant on bail at this stage would in effect mean that he could also threaten witnesses and could cause disruption in the trial as well. Despite his team mates repeatedly asking him not to engage in violence, the Appellant refused to obey the same. The Appellant, therefore, cannot be held to be a mere local-level operator but one of the main conspirators who conspired to cause deaths during the riots. Thus, the case of the Appellant is clearly distinguishable from the other co-accused persons.

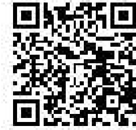
57. The decision in ***Gulfisha Fatima (Supra)*** has been recently considered by the Supreme Court in ***Syed Iftikhar Andrabi (Supra)*** wherein the Supreme Court observed as under:

> ***"29. We have serious reservations on various aspects of the judgment in Gulfisha Fatima, including foreclosing the right of the two appellants to seek bail for a period of one year. The judgment in Gulfisha Fatima would have us believe that Najeeb is only a narrow and exceptional departure from Section 43-D(5) justified in extreme factual situations. It is this hollowing out of the import of the observations in Najeeb that we are concerned with.***
>
> *30. No reading of Najeeb suggests that the mere passage of time, divorced from all surrounding circumstances, mechanically entitles an accused to release. The real*



concern addressed in Najeeb lay elsewhere. This Court was concerned with the manner in which Section 43-D(5) was, in practice, being deployed as an almost conclusive basis for denial of bail notwithstanding extraordinary delay in trial and prolonged incarceration. ***It is precisely for that reason that this Court observed that the 'rigours' of Section 43-D(5) would 'melt down' where there is no likelihood of the trial being completed within a reasonable time and where the period of incarceration undergone has already exceeded a substantial part of the prescribed sentence. This Court in Najeeb cautioned that such an approach was necessary to prevent provisions like Section 43-D(5) from being used as 'the sole metric for denial of bail or for wholesale breach of the constitutional right to speedy trial.'***

31. In K.A. Najeeb, a three-Judge Bench of this Court was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge the accused on bail. We have already extracted supra paragraph 17 of the said judgment where it has been clearly stated that the presence of statutory restrictions like Section 43D(5) of the UAP Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Whereas at the commencement of the proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will 'melt down' where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. In the facts of that case, this Court observed that it was conscious of the fact that the charges levelled against the accused were grave and a serious threat to societal harmony and had it been the



case at the threshold, perhaps the Court would have outrightly rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the accused had to be enlarged on bail.

32. The reasoning first in Gurwinder and then in Gulfisha Fatima, appears to proceed against something invented and then destroyed. We are constrained to reiterate that Najeeb was not warning courts against treating incarceration as the sole factor favouring bail. Instead, it was warning against treating the statutory embargo as the sole factor justifying continued detention by ignoring constitutional principles. Therefore, the subsequent reading that Najeeb does not create an automatic entitlement to bail on account of delay answers a proposition that Najeeb itself never advanced.

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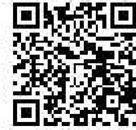
35. The often invoked phrase 'bail is the rule and jail is the exception' is not merely an empty statutory slogan flowing from the CrPC as Gurwinder has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UAP Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention. The statutory embargo of Section 43-D(5) must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution. ***Therefore, we have no manner of doubt in stating that even under the UAP Act, 'bail is the rule and jail is the exception'; of course, in an appropriate case, bail can be denied having regard to the facts of that particular***



case.

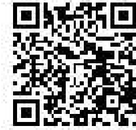
36. As we have noted above, several subsequent decisions of this Court, rendered after Gurwinder, have continued to apply the approach articulated in Najeeb in granting bail under the UAP Act on grounds of prolonged incarceration, gross delay in conclusion of trial, and the absence of any realistic possibility of the trial concluding in the near future.

37. The logic underlying all these judgments traces back to Najeeb, which is now the law of the land governing the grant of bail under the UAP Act in a situation of prolonged detention. In that context, it is noteworthy that while Gulfisha Fatima relied on Gurwinder to adopt a narrower reading of Najeeb, neither Gulfisha Fatima nor Gurwinder engage with this subsequent line of authority of case law.

38. Thus it is clear beyond doubt that the preference for bail, or the often invoked principle 'bail is the rule and jail is the exception' flows from the constitutional primacy of personal liberty under Article 21 and, therefore, cannot be displaced by legislation.

39. In that spirit, we make it clear that Najeeb is binding law entitled to the protection of stare decisis. It cannot be diluted, circumvented, or disregarded by trial courts, High Courts or even by Benches of lower strength of this Court."

58. However, after the judgment in ***Syed Iftikhar Andrabi (Supra)***, the Supreme Court *vide* order dated 22nd May, 2026 passed in ***Tasleem Ahmed (Supra)*** has referred the tests under Section 43D(5) of the UAPA to a larger Bench. *Vide* the said order, bail was granted to two co-accused persons *i.e.,* Tasleem Ahmed and Abdul Khalid Saifi @ Khalid Saifi. The relevant portion of the said order reads as under:



"24. Having regard to the importance of the issue, we are of the view that the questions requiring consideration need not be confined to the correctness of any one decision. ***The controversy raises a broader question concerning the manner in which constitutional courts are to approach bail where prolonged incarceration is asserted in prosecutions governed by special statutes imposing restrictive bail conditions. In this background it would be imperative or in other words necessary for the appropriate bench that may be constituted by the Hon'ble Chief Justice of India, to clarify or expound the position of law laid down in K.A. Najeeb's case, particularly in the backdrop of the rigour of 43D (5) which imposes restriction consciously and has received the assent of the Parliament, which obviously was brought in keeping in mind the valuable right enshrined in Article 21 of the Constitution of India.***

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27. Having said so, we cannot lose sight of the fact that the present appellants have undergone substantial incarceration; that the trial is not likely to conclude immediately; that the appellants themselves have invoked the principle of calibrated constitutional discretion recognised in Gulfisha Fatima; and that the determination of the issues may consume further time. The appellants cannot be made to suffer continued incarceration merely because an important question of law has arisen for authoritative settlement. Without expressing any opinion on merits, and subject to stringent safeguards, we are inclined to grant interim bail to the appellants pending further orders."

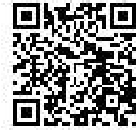
59. Recently, the Supreme Court, in ***State of Punjab v. Balraj Singh @ Billa, 2026 INSC 618***, after taking into consideration the order dated 22nd May, 2026 passed in ***Tasleem Ahmed (Supra)***, in the context of a matter

pertaining to the Narcotic Drugs and Psychotropic Substances Act, 1985, observed as under:

> *"22. However, we note that recently this Court in* ***Tasleem Ahmed v. State Govt. of NCT of Delhi*** *has referred the question concerning the approach of constitutional Courts in bail matters under special statutes, where "Article 21, prolonged incarceration and statutory restrictions intersect". In view of the said reference, we do not wish to deliberate on this issue further, save and except that in our view paramount consideration is nothing but interest of justice for all.* ***Should there be any conflict between the sovereignty of country and personal liberty, undoubtedly, the former shall prevail, particularly, when a war is waged against the nation, be it in the form of supply of drugs, which vitally affects the national economy and health of the people."***

60. Coming to the general principles for grant of bail, the Supreme Court, in the decision in ***State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21***, has elaborately discussed the factors which are required to be borne in mind by the Court while adjudicating an application seeking grant of bail. The relevant portion of the said judgment reads as under:

> *"**18.** It is well settled that the matters to be considered in an application for bail are* ***(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 *[see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)*

> *"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*
>
> > *(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
> >
> > *(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*

> *(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"*

61. The decision in ***Amarmani Tripathi (Supra)*** was followed by the Supreme Court in the decision in ***Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496*** wherein the Supreme Court further elaborated upon the factors required to be borne in mind by a Court while deciding bail applications. The relevant portion of the said decision reads as under:

> ***"9.*** *We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point.* ***It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:***
>
> ***(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 accusation;***
> ***(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 influenced; and***

> ***(viii) danger, of course, of justice being thwarted by grant of bail.***
> *[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]"*

The above principles for bail, as set out in the extracted decisions of the Supreme Court, are so well entrenched that they do not need reiteration or repetition.

Conclusion

62. In the opinion of this Court, the Appellant, having not challenged the earlier bail rejection orders, and his role being *prima facie* established in causing deaths through violent acts as also in the destruction of private and public property does not satisfy the test under Section 43D(5) of the UAPA for being released on bail. In fact, if the Appellant is released on bail, he is likely to pose a flight risk, having regard to the statements made by the protected witnesses. The Appellant is also likely to adversely influence the witnesses whose evidence is yet to be recorded. Thus, even if the normal conditions of bail are applied, in this case, the Appellant, owing to his role and the protection that needs to be given to witnesses, is not entitled to bail.

63. Accordingly, this Court is not inclined to grant bail to the Appellant. The impugned order is, therefore, upheld, and the present appeal stands dismissed. Pending applications, if any, are also disposed of.

64. Needless to add, the observations made herein are solely for the purpose of deciding the bail application of the Appellant and shall not be construed as an expression on the merits of the case. The same shall not influence the

proceedings before the Trial Court in any manner.

65. Copy of the charge-sheets handed to the Court by the ld. Counsel for the Respondent in a pen drive shall be kept in the safe custody of the Registry in a sealed envelope.

PRATHIBA M. SINGH
JUDGE

MADHU JAIN
JUDGE

JULY 07, 2026
Dj/Ck