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SUPREME COURT OF INDIA

*Present: Justice Aravind Kumar and Justice N.V. Anjaria.*

GULFISHA FATIMA & ORS. – Appellant(s)

*Versus*

STATE (GOVT. OF NCT OF DELHI) – Respondent(s)

Criminal Appeal Nos. arising out of SLP (Crl.) Nos. 13988, 14030, 14132, 14165, 14859, 15335 & 17055 of 2025

**(i) Unlawful Activities (Prevention) Act, 1967 (37 of 1967), S. 43D(5) – Bail – Prima facie satisfaction – Scope of judicial inquiry** – The expression ‘prima facie true’ does not invite a detailed examination of evidence, nor does it require the Court to assess the probability of conviction – Equally, it does not reduce the judicial role to a mechanical acceptance of the prosecution’s assertions – The statutory standard contemplates a threshold inquiry of limited but real content – At this stage, the Court is required to examine whether the material relied upon by the prosecution, taken at face value and without rebuttal, discloses the essential ingredients of the offences alleged against the accused – The inquiry is one of statutory plausibility, not evidentiary sufficiency – The Court tests the allegations against the legal ingredients of the offence, not against possible defences or competing factual narratives. **[Paras 70-72]**

**(ii) Unlawful Activities (Prevention) Act, 1967 (37 of 1967), S. 43D(5) – Bail – Accused-specific inquiry** – A salient feature of S. 43D(5) is its express reference to ‘such person’ – The statutory text mandates an inquiry that is accused-specific rather than case-centric – The provision does not permit a collective or undifferentiated approach to bail merely because multiple accused are arraigned in the same prosecution or alleged conspiracy – The Court is thus required to examine the role attributed to the individual accused, as emerging from the prosecution material, and to determine whether such attribution bears a prima facie nexus to the offences under Chapters IV or VI – This inquiry does not involve ranking degrees of culpability or pronouncing upon guilt – It serves the limited purpose of determining whether the statutory threshold is crossed qua the accused before the Court. **[Paras 74-75]**

**(iii) Unlawful Activities (Prevention) Act, 1967 (37 of 1967), S. 43D(5) – Bail – Conspiracy cases – Differentiation between principal conspirators and facilitators** – At the threshold stage, the inquiry is directed towards whether the prosecution material suggests conspiratorial centrality or merely conspiratorial association – Conduct which, on

the prosecution's own showing, reflects conceptualisation, direction, orchestration, or mobilisation of unlawful activity or terrorist activity, stands on a different footing from conduct alleged to be episodic, peripheral, or substitutable – This distinction does not determine guilt; it informs the statutory assessment of whether continued restraint on liberty is justified at the pre-trial stage – The law of conspiracy explains how several persons may be bound together by a common design – That doctrine answers the question of liability – It does not answer, by itself, the separate question of how long and on what basis the liberty of each individual may be restrained before guilt is proved. **[Paras 76-77, 103]**

*“At the threshold stage, the inquiry is directed towards whether the prosecution material suggests conspiratorial centrality or merely conspiratorial association. Conduct which, on the prosecution's own showing, reflects conceptualisation, direction, orchestration, or mobilisation of unlawful activity or terrorist activity, stands on a different footing from conduct alleged to be episodic, peripheral, or substitutable. This distinction does not determine guilt; it informs the statutory assessment of whether continued restraint on liberty is justified at the pre-trial stage.”* **[Para 76-77]**

**(iv) Unlawful Activities (Prevention) Act, 1967 (37 of 1967), S. 15 - ‘Terrorist Act’ - Scope and meaning** – S. 15 defines what constitutes a ‘terrorist act’ for the purposes of the statute – The definition is structured around two essential elements: First, the act must be done with intent to threaten, or be likely to threaten, the unity, integrity, security including economic security, or sovereignty of India, or with intent to strike terror in the people or any section thereof – Second, the act must be of such a nature as to cause, or be likely to cause, the consequences enumerated in the provision – The means by which such acts may be committed are not confined to the use of bombs, explosives, firearms, or other conventional weapons alone – Parliament has consciously employed the expression ‘by any other means of whatever nature’ – The statutory emphasis is thus not solely on the instrumentality employed, but on the design, intent, and effect of the act. **[Paras 86-88]**

**(v) Constitution of India, Art. 21 - Personal Liberty - Prolonged incarceration - Plea under special statutes** – The right to life and personal liberty, and the insistence that any deprivation must conform to procedure established by law, are foundational guarantees – The right to a speedy trial has been recognised as an important facet of this guarantee – Pre-trial incarceration cannot, by the mere passage of time, be permitted to assume the character of punishment – At the same time, Art. 21 has never been understood as operating in isolation from law – The constitutional promise is not that liberty will be unregulated, but that deprivations of liberty will not be arbitrary, unconscionable, or unfair – The UAPA, as a special statute, represents a legislative judgment as to the conditions under which bail may be granted at the pre-trial stage – S. 43D(5) embodies the exercise of that judgment. **[Paras 30-31]**

*“Article 21 occupies a central place in the constitutional scheme. The right to life and personal liberty, and the insistence that any deprivation must conform to procedure established by law, are foundational guarantees. The right to a speedy trial has been recognised as an important facet of this guarantee. It follows that pre-trial incarceration*

*cannot, by the mere passage of time, be permitted to assume the character of punishment. At the same time, Article 21 has never been understood as operating in isolation from law. The constitutional promise is not that liberty will be unregulated, but that deprivations of liberty will not be arbitrary, unconscionable, or unfair.” [Para 30-31]*

**(vi) Constitution of India, Art. 21 - Prolonged incarceration - Delay in trial - Not automatic ground for bail under UAPA** - In prosecutions alleging offences which implicate the sovereignty, integrity, or security of the State, delay does not operate as a trump card that automatically displaces statutory restraint - Rather, delay serves as a trigger for heightened judicial scrutiny - The outcome of such scrutiny must be determined by a proportional and contextual balancing of legally relevant considerations, including (i) the gravity and statutory character of the offence alleged, (ii) the role attributed to the accused within the alleged design or conspiracy, (iii) the strength of the prima facie case as it emerges at the limited threshold contemplated under the special statute, and (iv) the extent to which continued incarceration has become demonstrably disproportionate - Only when the composite evaluation yields a clear conclusion that continued detention has crossed the bounds of constitutional permissibility, should the Court intervene notwithstanding statutory restrictions - *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 explained. **[Paras 52, 56-57]**

**(vii) Unlawful Activities (Prevention) Act, 1967 (37 of 1967), S. 43D(5) - Bail - Parity** - Parity is not applied by numerical comparison - It is applied by similarity of role, similarity of attribution, and similarity of the material relied upon - Where the courts have treated an appellant’s role as qualitatively distinct, parity cannot be invoked mechanically to dilute the statutory embargo - However, once bail has been granted to co-accused who stand on the same factual and legal footing in terms of alleged roles, meetings, communications, and purported execution on the ground, continued incarceration of the appellant violates the settled principle of parity. **[Paras 172, 422]**

*“The plea of parity, though pressed with emphasis, cannot override the statutory conclusion. Parity is not applied by numerical comparison. It is applied by similarity of role, similarity of attribution, and similarity of the material relied upon. The courts below have treated the appellant’s role as qualitatively distinct, and the material noticed above indicates why the prosecution alleges a foundational role at the early stage. In such circumstances, parity cannot be invoked mechanically to dilute the statutory embargo.”*  
**[Para 172]**

**(viii) Unlawful Activities (Prevention) Act, 1967 (37 of 1967), Ss. 15, 18 - Conspiracy - Role of preparatory conduct** - S. 18 makes punishable conspiracy, attempt, abetment, advice, incitement, and knowing facilitation of a terrorist act, as also acts preparatory to its commission - The statutory scheme thus contemplates that terrorist activity may involve multiple actors performing different roles towards a common unlawful objective - Read together, Ss. 15 and 18 disclose a legislative design wherein S. 15 defines the nature of acts which Parliament has characterised as terrorist acts, while S. 18 ensures that criminal liability is not confined only to the final execution, but extends to those who contribute to the commission of such acts through planning, coordination, mobilisation, or

other forms of concerted action. **[Paras 89-90]**

**(ix) Unlawful Activities (Prevention) Act, 1967 (37 of 1967), S. 43D(5) - Bail - Constitutional approach - Balance between liberty and security** - The Constitution guarantees personal liberty, but it does not conceive liberty as an isolated or absolute entitlement, detached from the security of the society in which it operates - The sovereignty, integrity, and security of the nation are constitutional values which Parliament is entitled to protect through law - Where a special statutory framework has been enacted to address offences perceived to strike at these foundations, courts are duty-bound to give effect to that framework, subject always to constitutional discipline - In the application of such law, the Court does not proceed on identity, ideology, belief, or association - It proceeds on role, material, and the statutory threshold governing the exercise of jurisdiction. **[Paras 426-428, 436-437]**

**(x) Unlawful Activities (Prevention) Act, 1967 (37 of 1967), S. 43D(5) - Bail - Pre-trial detention - Proportionality** - Pre-trial detention serves limited and clearly defined purposes - securing the presence of the accused, preventing obstruction of justice, and safeguarding public interest where demonstrable risk persists - The seriousness of the allegations, though relevant, does not obviate the constitutional requirement that deprivation of liberty must be necessary for legitimate investigative or trial-related objectives - Where the prosecution narrative itself distinguishes between strategic architects and operational facilitators, judicial scrutiny at the bail stage must remain attentive to proportionality in attribution - The material presently relied upon depicting an appellant as a conduit within a hierarchically structured mobilisation, rather than as a node of independent initiative, elevating such a role to one warranting prolonged custodial deprivation would risk diluting the constitutionally embedded principle that pre-trial restraint must correlate to demonstrated necessity rather than inferred association. **[Paras 276-278, 354-356]**

*“This Court is also cognisant that pre-trial detention serves limited and clearly defined purposes— securing the presence of the accused, preventing obstruction of justice, and safeguarding public interest where demonstrable risk persists. In the present case, none of these objectives appear incapable of being achieved through calibrated restrictions short of incarceration. The absence of material suggesting an enduring organisational infrastructure capable of being reactivated through the appellant’s efforts weighs significantly against the necessity of continued custody. Where the prosecution narrative itself draws a distinction between strategic architects and operational facilitators, judicial scrutiny at the bail stage must remain attentive to proportionality in attribution.”* **[Para 276, 278]**

**(xi) Unlawful Activities (Prevention) Act, 1967 - Section 43D(5) - Grant of Bail - Role of Local Facilitator** - Accused Gulfisha Fatima alleged to be local organiser at protest site and executor of directions from above - No attribution of conceptualising or directing larger conspiracy - Role distinguishable from principal conspirators - Continued incarceration not justified where role is executory and capacity to influence proceedings is attenuated - Parity with co-accused Natasha Narwal and Devangana Kalita applicable due to identical allegations of mobilisation and coordination - Bail granted subject to conditions.

[Paras 416, 417, 421, 424]

“At this stage, a prima facie evaluation of the material placed on record indicates that Gulfisha Fatima’s alleged role, though not insignificant, is confined to the operational execution of directions purportedly transmitted through other actors. The prosecution narrative does not attribute to her any determinative authority in conceptualising or directing the alleged conspiracy; rather, she is projected as a ground-level facilitator at Seelampur/Jafrabad. Where the evidentiary foundation itself distinguishes between those who are alleged to have architected the larger design and those alleged to have acted upon instructions, this Court is persuaded that her role remains materially distinct from that of the principal conspirators.” [Para 416]

### **Cases Referred to:**

1. (2021) 3 SCC 713, *Union of India v. K.A. Najeeb* – Constitutional safeguard against unconscionable detention; statutory restrictions cannot render guarantee of personal liberty illusory. [Para 32]
2. (2019) 5 SCC 1, *National Investigation Agency v. Zahoor Ahmad Shah Watali* – Prima facie satisfaction under S. 43D(5) UAPA; threshold of bail inquiry. [Para 69]
3. (2023) 8 SCC 1, *Vernon v. State of Maharashtra* – Application of S. 43D(5) UAPA. [Para 69]
4. (2021) 16 SCC 720, *Shoma Kanti Sen v. State of Maharashtra* – Scope of judicial inquiry under UAPA. [Para 69]
5. 2024 SCC OnLine SC 124, *Athar Parwez v. Union of India* – Principles governing bail under UAPA. [Para 69]
6. 2024 SCC OnLine SC 742, *Jalaluddin Khan v. Union of India* – Bail jurisprudence under S. 43D(5). [Para 69]
7. (2024) 6 SCC 1, *Gurwinder Singh v. State of Punjab* – Caution against mechanical invocation of prolonged incarceration as ground for bail. [Para 58]
8. 2025 INSC 1418, *CBI v. Dayamoy Mahato* – Art. 21 does not operate in vacuum; claims to liberty must be examined in totality. [Para 59]
9. 2025 SCC OnLine SC 1754, *Union of India v. Saleem Khan* – Delay-based pleas must be adjudicated on accused-specific footing. [Para 42]
10. 2023 SCC OnLine Del 3472, *Tasleem Ahmed v. State (NCT of Delhi)* – Delay in trial cannot be attributed to prosecution where accused contributed to delay. [Para 39]
11. (2022) 14 SCC 766, *Thwaha Fasal v. Union of India* – Test under S. 43D(5) UAPA for grant of bail. [Para 340]

### **Advocates:**

For the Appellants: Mr. Kapil Sibal, Mr. Abhishek Manu Singhvi, Mr. Salman Khurshid, Mr. Siddharth Luthra, Mr. Siddhartha Dave, Mr. Siddharth Aggarwal, Mr. Gautam Khazanchi, Senior Advocates with Mr. Tushar Singh Rawat, Advocate.

For the Respondent: Mr. Tushar Mehta, Solicitor General of India, Mr. S.V. Raju, Additional Solicitor General of India, with Mr. Rajat Nair, Advocate.

## Judgement

**Aravind Kumar, J. - (05-01-2026) -**

### Facts

The appeals arose from a common judgment of the High Court of Delhi affirming rejection of bail applications filed by the appellants arraigned as accused in FIR No. 59/2020, registered in connection with the riots that occurred in North-East Delhi in February 2020. The appellants were Gulfisha Fatima, Sharjeel Imam, Meeran Haider, Umar Khalid, Shifa-ur-Rehman, Mohd. Saleem Khan and Shadab Ahmed. The prosecution case was that the riots were not spontaneous but were the outcome of a larger criminal conspiracy hatched to protest against the Citizenship Amendment Act, 2019 and the proposed National Register of Citizens. Offences were alleged under the IPC, UAPA, Arms Act and Prevention of Damage to Public Property Act. The riots resulted in 54 deaths including a police officer and an IB official, and extensive damage to public and private property. The appellants raised pleas of prolonged incarceration, parity with co-accused granted bail, and challenged the applicability of the statutory embargo under S. 43D(5) UAPA.

The Supreme Court examined the role attributed to each appellant individually. For Umar Khalid and Sharjeel Imam, described as the principal conspirators and architects of the alleged conspiracy, the Court found the statutory threshold under S. 43D(5) attracted and declined bail, while granting liberty to renew prayer after examination of protected witnesses or expiry of one year. For the remaining appellants – Gulfisha Fatima, Meeran Haider, Shifa-ur-Rehman, Mohd. Saleem Khan and Shadab Ahmed – the Court found their roles to be that of local-level facilitators acting on directions of others, and allowed bail subject to stringent conditions.

Appeals of Gulfisha Fatima, Meeran Haider, Shifa-ur-Rehman, Mohd. Saleem Khan and Shadab Ahmed – ALLOWED; Bail granted subject to conditions. Appeals of Umar Khalid and Sharjeel Imam – DISMISSED; Liberty to renew bail prayer after examination of protected witnesses or expiry of one year, whichever is earlier.