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

Date of decision: 15 June 2021

\+ **CRL.A. 39/2021**

ASIF IQBAL TANHA ..... Appellant

Through: Mr. Siddharth Aggarwal, Advocate with Ms. Sowjhanya Shankaran, Mr. Siddharth Satija, Mr. Abhinav Sekhri & Ms. Nitika Khaitan, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Aman Lekhi, ASG alongwith Mr. Amit Mahajan, Mr. Rajat Nair and Mr. Amit Prasad, SPPs with Mr. Ujjwal Sinha, Mr. Aniket Seth, Mr. Ritwiz Rishabh, Ms. Riya Krishnamurthy and Mr. Dhruv Pande, Advocates.
Sh. P. S. Kushwaha, DCP with Sh. Alok Kumar, Addl. DCP, Special Cell, Insp. Lokesh Kumar Sharma and Insp. Anil Kumar.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

Introduction

By way of the present appeal under section 21(4) of the National Investigation Agency Act 2008 ('NIA Act', for short), the appellant Asif

Iqbal Tanha, a 25 year old student, pursuing his final year of the B.A. (Hons.). (Persian) Programme at the Jamia Milia Islamia University, New Delhi ('Jamia University', for short) impugns order dated 26.10.2020 made by the learned Special Court ('impugned order', for short), whereby the appellant's second application seeking enlargement on bail has been rejected.

2. The appellant is presently in judicial custody, having been arrested on 19.05.2020 in case FIR No. 59/2020 dated 06.03.2020 registered under sections 147 / 148 / 149 / 120B Indian Penal Code 1860 ('IPC', for short) at P.S.: Crime Branch ('subject FIR', for short) in connection with the incidents of violence and rioting that occurred in North-East Delhi between 22.02.2020 and 26.02.2020. It may be noted that offences under sections 109 / 114 / 124A / 153A / 186 / 201 / 212 / 295 / 302 / 307 / 341 /353 / 395 / 419 / 420 / 427 / 435 / 436 / 452 / 454 / 468 / 471 / 34 IPC, sections 3 / 4 of the Prevention of Damage to Public Property Act, 1984 ('PDPP Act', for short), sections 25 / 26 of Arms Act, 1959 and sections 13 / 16 / 17 / 18 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA', for short) were subsequently added to the subject FIR. At the time of his arrest in the subject FIR on 19.05.2020, the appellant was already in judicial custody in a different case arising from FIR No. 298/2019 dated 16.12.2019 registered under sections 143 / 147 / 148 / 149 / 435 / 427 / 323 / 186 / 353 / 332 / 308 / 341 / 120B / 34 IPC and sections 3 / 4 of the PDPP Act at P.S.: Jamia Nagar, New Delhi. For completeness it may be mentioned that FIR No. 298/2019 was registered in connection with protests held in Delhi in 2019 against the Citizenship

(Amendment) Act 2019 ('CAA', for short) passed by the Parliament and the exercise proposed to be undertaken by the Central Government for creating a National Register of Citizens ('NRC', for short). It must be mentioned that in case FIR No. 298/2019 the appellant has since been admitted to regular bail by the learned Sessions Court, Saket, New Delhi.

3. Charge-sheet dated 16.09.2020 has been filed in the subject FIR *inter alia* against the appellant ('subject charge-sheet', for short); and though supplementary charge-sheets dated 22.11.2020 and 01.03.2021 have also been filed in the subject FIR, the said other charge-sheets do not relate to the appellant and are therefore not relevant for purposes of the present proceedings. *Vidé* order dated 17.09.2020 the learned Special Court has taken cognizance of the offences alleged in the subject charge-sheet *except* offences under sections 124A / 153A / 109 / 120B of the IPC, since requisite sanction for prosecution from the State Government was awaited for those offences as of the date of the impugned order. Charges have not yet been framed against the appellant.

4. In a Criminal Miscellaneous Petition bearing CRL.M.C. No. 2119/2020 filed by the respondent/State against order of the trial court directing the State to provide a hardcopy of the charge-sheet to all accused persons, further proceedings in the trial before the learned Special Court were stayed by a learned Single Judge of this court *vidé* order dated 10.11.2020; which stay order has however since been vacated by the learned single Judge *vidé* order dated 23.03.2021.

Essence of allegations against Appellant & role assigned to him

5. The essential allegations against the appellant as contained in the subject charge-sheet as also set-out in reply dated 24.07.2020 filed by the Special Cell, Delhi Police before the learned Special Court opposing the appellant's bail application are the following :

a) that the appellant is one of the main conspirators as well as instigators behind the riots that happened in the North-East parts of Delhi from 22.02.2020 to 26.02.2020; that the appellant played an active role in the conspiracy and is one of the 'masterminds';

b) that the appellant is a member of the Student Islamic Organisation ('SIO', for short);

c) that on 13.12.2019, a protest was held at Gate No. 7 of Jamia University and the appellant, alongwith other co-accused persons, formed the Jamia Co-ordination Committee ('JCC', for short). The JCC was formed to protest against the CAA;

d) that on 17.12.2019, a WhatsApp group of the JCC was formed to monitor, control and manage the protest sites in Delhi; and the office of the JCC was set-up in a room at Gate No. 18 of Jamia University;

e) that at a meeting of members of the JCC and representatives of another entity called '*Pinjra Tod*', it was decided to hold a *chakkajam* in North-East Delhi (*chakkajam* being loosely

translatable as a form of protest in which protesters cause complete stoppage of vehicles and blockade of roads);

f) that as part of the conspiracy, women and children were mobilized to prevent the police from using force against them;

g) that for the foregoing purposes, the co-conspirators gave directions to the appellant; and the appellant, alongwith other co-accused persons ratified them;

h) that the appellant provided a SIM card to one of the co-accused, in the office of the JCC, using which the latter posted directions and instructions on the JCC WhatsApp group;

i) that co-accused persons instructed the appellant to visit Muslim majority and Muslim dominated areas for campaigning as part of the protest; and the appellant was also instructed to co-ordinate with local Imams to mobilize people for the protest;

j) that on 22.02.2020, an urgent meeting of the JCC was called at the Jafrabad Metro Station while the road there was blocked; at which meeting the appellant said that he had spoken to other co-accused persons, who had told the appellant that preparations for riots "were ready". Furthermore, the appellant had also said at that meeting that other co-accused persons had told him that they were prepared and ready for riots "if anything happens";

k) that as per plan, on 23.02.2020 messages relating to urgent mobilisation were posted on the JCC WhatsApp group, after which riots occurred in Delhi;

l) that active members of the JCC were responsible for the riots that occurred in Delhi, as per a well designed conspiracy;

m) that the appellant, alongwith other co-accused persons, was an active radical member of the JCC;

n) that the motive of the JCC was to create riots, which led to the death of several people in Delhi;

o) that from the evidence collected so far, there remains no doubt that the appellant played a key part in the conspiracy, whereby he organised mobilisation of a mob of a particular community, thereby flaring-up communal passion and instigated them to commit violence; while simultaneously other co-conspirators were "actually collecting and organising the means and material" through which the mob was to indulge in violence and rioting; and

p) that it is clear that the case pertains to a very deep-rooted and sinister conspiracy conceived and executed by the appellant to create unrest in the society and to uproot a lawfully constituted government by employing unconstitutional and violent means;

q) that the appellant's role in relation to the foregoing "has been described in great detail by the witnesses" in their statements recorded under sections 161 and 164 of the Cr.P.C.

In the aforesaid reply to the appellant's bail application before the learned Special Court, the respondent has also said that : "it is learned that funds were sent by Jamia and terrorist for protest".

6. The subject charge-sheet dated 16.09.2020 which relates to the appellant is stated to run into some 19000 pages. The portions of the subject charge-sheet that are alleged to contain *specific allegations* against the appellant, as referred to by the learned Additional Solicitor General appearing for the Delhi Police (Special Cell), are extracted in a separate Annexure to this judgment for ease of reference.

Genesis of UAPA

7. The genesis of The Unlawful Activities (Prevention) Act 1967 lies in the recommendations of the Committee on National Integration and Regionalisation set-up by the National Integration Council to look *inter alia* into the aspect of putting reasonable restrictions on certain freedoms in the interests of the sovereignty and integrity of India. As reflected in the Statement of Objects and Reasons of the UAPA, it was pursuant to the recommendations of the said committee that the Parliament enacted the Constitution (Sixteenth Amendment) Act 1963 to impose reasonable restrictions in the interests of sovereignty and integrity of India on:

   (i) the freedom of speech and expression;

   (ii) the right to assemble peacefully and without arms; and

   (iii) the right to form associations and unions.

8. Pursuant thereto, the Unlawful Activities (Prevention) Bill was introduced in the Parliament to make powers available for dealing with activities directed against the sovereignty and integrity of India, which bill came on the statute book as the Unlawful Activities (Prevention) Act 1967 ('UAPA', for short) w.e.f. 30.12.1967.

Enactment & Amendment of UAPA & Legislative Competence

9. The Preamble to the UAPA as originally enacted read as follows :

> *"An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith".*

10. In 2004, the Preamble to the UAPA was amended and 'terrorist activities' were brought within its fold by amending the Preamble and long-title with retrospective effect from 21.09.2004. The amended Preamble reads as under:

> *"An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations, and dealing with terrorist activities and for matters connected therewith".*

(emphasis supplied)

11. Subsequently, in order to give effect to certain resolutions passed by the Security Council of the United Nations and to give effect to the Prevention and Suppression of the Terrorism (Implementation of Security Council Resolution) Order 2007 and to make special provision for prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto, the UAPA was further amended in 2008 *inter alia* by substituting the then existing section 15 relating to 'terrorist act' under the UAPA.

12. At this point it will be relevant to allude briefly to Article 246 of the Constitution of India and the three Lists set-out in the Seventh Schedule to the Constitution. Put very briefly, Article 246 sets-out the legislative competence of the Parliament and of the State Legislatures

under the scheme of our Constitution; and says that the Parliament has exclusive power to make laws with respect to any matter enumerated in List-I appearing in the Seventh Schedule which is called the 'Union List', that the State Legislature has exclusive powers to make laws for such State with respect to any matter enumerated in List-II of the Seventh Schedule, called the 'State List'; and that the Parliament and the State Legislature have concurrent powers to make laws with respect to matters enumerated in List-III of the Seventh Schedule, called the 'Concurrent List'. In the context of the present matter, what is to be noticed is that the UAPA has been enacted by Parliament and must therefore have been enacted in relation to a matter appearing in Entry 1 and/or Entry 93 of List-I, namely the Union List in the Seventh Schedule of the Constitution since no other legislative subject appears to cover the enactment of the UAPA. Entries 1 and 93 of List-I read as under:

> "***SEVENTH SCHEDULE***
>
> *[Article 246]*
>
> *List I — Union List*
>
> *1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.*
>
> * * * * *
>
> *93. Offences against laws with respect to any of the matters in this List."*

13. It further requires to be noticed that Entry 1 of List-II refers to matters of 'public order', which subject therefore falls within the legislative

competence of the State Legislature; and Entry 1 of List-III relates to matters of 'criminal law', including all matters included in the IPC but excluding offences against laws with respect to any matter specified in List-I or List-II and excluding the use of Naval, Military, Air Force or any other Armed Forces of the Union. The purpose of referring to Entry 1 of List-I (Defence of India) and Entry 2 of List-II (Public Order) is to take notice of the fact that since UAPA is a central legislation, it would have been enacted in relation to the 'defence of India' *as contra-distinct* from 'public order', since it must be presumed that when the Parliament enacted the UAPA, it was acting within the scope of its powers under the constitutional scheme and was therefore enacting a legislation relating to a matter that was within its competence under Article 246 and the Seventh Schedule of the Constitution.

14. Post the amendments made from time-to-time, as of date, the provisions of the UAPA that are relevant for the purposes of the present matter are extracted below :

> "***2. Definitions.—****(1) In this Act, unless the context otherwise requires,—*
>
> *.....*
>
> *(k)* ***"terrorist act" has the meaning assigned to it in Section 15****, and the expressions "terrorism" and "terrorist" shall be construed accordingly;*
>
> *(l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;*

(m) "terrorist organisation" means an organisation listed in the First Schedule or an organisation operating under the same name as an organisation so listed;

.....

(o) ***"unlawful activity"****, in relation to an individual or association,* ***means any action*** *taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—*

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, ***the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession****; or*

(ii) ***which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India****; or*

(iii) ***which causes or is intended to cause disaffection against India****;*

* * * * * "

*"**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*

(iii-a) 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 organisation or any other person to do or abstain from doing any act; or (sic)

commits a terrorist act*.*

Explanation.—For the purpose of this sub-section,—

(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

*"**16. Punishment for terrorist act.—**(1) Whoever commits a terrorist act shall,—*

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, 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.

*"**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 organisation 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, organising 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 organisation for the purpose not specifically covered under Section 15 shall also be construed as an offence.

*"**18. Punishment for conspiracy, etc.—<u>Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act</u>**, 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."*

* * * * *

*"**43-D. Modified application of certain provisions of the Code.—** (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.*

.....

*(5) Notwithstanding anything contained in the Code, no person accused of an **<u>offence punishable under Chapters IV and VI</u>** of this Act shall, if in custody, be released on bail or on his own bond **<u>unless the Public Prosecutor has been given an opportunity of being heard</u>** on the application for such release:*

*Provided that such accused person **<u>shall not be released on bail</u>** or on his own bond **<u>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</u>**.*

(6) The restrictions on granting of bail specified in sub-section (5) <u>is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail</u>."

(emphasis supplied)

Construction of bail provisions under similar legislations

15. Before we examine the provision relating to bail under UAPA, it would benefit if we briefly examine the bail provisions under other similar statutes. Grant of bail has been restricted and stringent conditions have been engrafted for admitting accused persons on bail under several other legislations relating to serious offences. It would be useful at this point to allude to the construction placed by the courts upon such provisions. A comparative chart of the bail provisions under such comparable legislations is given as **Annexure - A** to this judgment.

Bail under the Narcotic Drugs and Psychotropic Substances Act 1985 ('NDPS Act')

16. Interpreting section 37[1] of the NDPS Act, in ***State of Kerala & Ors. vs. Rajesh & Ors.***[2]**,** the Hon'ble Supreme Court says:

> "*20. The **expression "reasonable grounds" means something more than prima facie grounds**. It **contemplates substantial probable causes for believing** that the **accused is not guilty** of the alleged offence. The **reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction** that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its **liberal approach in the matter of bail under the NDPS Act is indeed uncalled for**.*"
>
> (emphasis supplied)

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[1] cf. Annexure-A to judgment.

[2] (2020) 12 SCC 122.

17. In ***Union of India vs. Shiv Shanker Kesari[3],*** the Hon'ble Supreme Court has said :

> "*7.* ***The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing*** *that the accused is not guilty of the offence charged and* ***this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction*** *that the accused is not guilty of the offence charged.*
>
> *"8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".*
>
> > *""7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."*
> >
> > *(See* ***Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar*** *[(1987) 4 SCC 497] (SCC p. 504, para 7) and* ***Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.*** *[(1989) 1 SCC 532]*
>
> *"9. It is often said that 'an attempt to give a specific meaning to the word "reasonable" is trying to count what is not number and measure what is not space'. The author of Words and Phrases (Permanent Edn.) has quoted from* ***Nice & Schreiber, In re*** *[123 F 987 at p. 988] to give a plausible meaning for the said word. He says '****the expression "reasonable" is a relative term, and the facts of the particular controversy must be considered before the***

[3] (2007) 7 SCC 798.

question as to what constitutes reasonable can be determined'*. It is not meant to be expedient or convenient but certainly something more than that." [Ed.: As observed in* ***Rena Drego v. Lalchand Soni****, (1998) 3 SCC 341, p. 346, para 9.]*

"*10.* ***The word "reasonable" signifies "in accordance with reason"****. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See* ***Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd.*** *[(2003) 6 SCC 315])*

"*11.* ***The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty****. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds.* ***But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty****."*

(emphasis supplied)

Bail under Terrorist & Disruptive Activities (Prevention) Act 1987 ('TADA')

18. The Hon'ble Supreme Court has interpreted section 20(8)[4] TADA in ***State of Maharashtra vs. Anand Chintaman Dighe[5],*** in the following words :

"*5. Sub-section (8) of Section 20 of the Act clearly provides that unless the court is satisfied for the reasons to be recorded that there are reasonable grounds to believe that the respondent is not involved in disruptive activities, bail shall ordinarily be refused****.***

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[4] cf. Annexure-A to judgment.

[5] (1990) 1 SCC 397.

Even under the provisions of Sections 437 and 438 of the Code of Criminal Procedure, the powers of the Sessions Judge are not unfettered. The salient principles in granting bail in grave crimes have not been taken note of.

* * * * *

"*7. There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the court. Where the offence is of serious nature the court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such similar other considerations.*"

(emphasis supplied)

19. A Constitutional Bench of the Hon'ble Supreme Court in ***Kartar Singh vs. State of Punjab***[6]**,** while *inter alia* determining the constitutional validity of Section 20(8) of TADA, held:

"*341. The learned Additional Solicitor General attempts to meet the above arguments stating that there is no question of unconstitutionality of the provision and in fact, the conditions imposed under clause (b) of sub-section (8) is in consonance with the requirements prescribed under clauses (i) and (ii) of sub-section (1) of Section 437 and clause (b) of sub-section (3) of that section. In any event, according to him,* ***the conduct of an accused seeking bail in the context of his background and the nature of crime committed are to be evaluated before the concession of bail can be granted and that the evaluation is fundamentally from the point of view of his likelihood of either tampering with the evidence or***

[6] (1994) 3 SCC 569.

unleashing a threat to the society during the period when he may be allowed to be on bail. *He also quotes another observation of Krishna Iyer, J. in* ***Gudikanti*** *[(1978) 1 SCC 240] in support of his submission which reads : (SCC p. 245, para 12)*

> *"**All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. … No seeker of justice shall play confidence tricks on the court or community.**"*

* * * * *

*"352. **It is true that on many occasions, we have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA Act with an oblique motive of depriving the accused persons from getting bail and in some occasions when the courts are inclined to grant bail in cases registered under ordinary criminal law, the investigating officers in order to circumvent the authority of the courts invoke the provisions of the TADA Act. This kind of invocation of the provisions of TADA in cases, the facts of which do not warrant, is nothing but sheer misuse and abuse of the Act by the police. Unless, the public prosecutors rise to the occasion and discharge their onerous responsibilities keeping in mind that they are prosecutors on behalf of the public but not the police and unless the Presiding Officers of the Designated Courts discharge their judicial functions keeping in view the fundamental rights particularly of the personal right and liberty of every citizen as enshrined in the Constitution to which they have been assigned the role of sentinel on the qui vive, it cannot be said that the provisions of TADA Act are enforced effectively in consonance with the legislative intendment."***

(emphasis supplied)

Bail under Maharashtra Control of Organised Crime Act 1999 ('MCOCA')

20. Dealing with section 21[7] MCOCA, which is the bail provision under that statute, in ***State of Maharashtra vs. Vishwanath Maranna Shetty***[8], the Hon'ble Supreme Court holds :

> "*30. The analysis of the relevant provisions of MCOCA, similar provision in the NDPS Act and the principles laid down in both the decisions shows that* ***substantial probable cause for believing that the accused is not guilty of the offence for which he is charged must be satisfied.*** *Further, a reasonable belief provided points to existence of such facts and circumstances as are sufficient to justify the satisfaction that the accused is not guilty of the alleged offence. We have already highlighted the materials placed in the case on hand and we hold that the High Court has not satisfied the twin tests as mentioned above while granting bail."*

(emphasis supplied)

Bail under Prevention of Terrorism Act 2002 ('POTA')

21. Section 49 (6)[9] and (7)[10] POTA has been explained by the Hon'ble Supreme Court in ***State of T.N. vs R.R. Gopal alias Nakkeeran Gopal***[11]**,** as follows :

> "*12. It is to be seen that at the stage of granting bail, the court does not decide the merits of the matter. Of course, a prima facie view has to be formed in the court in order to satisfy itself that there are*

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[7] cf. Annexure-A to judgment.

[8] (2012) 10 SCC 561.

[9] cf. Annexure-A to judgment.

[10] cf. Annexure-A to judgment.

[11] (2003) 12 SCC 237.

grounds for believing that the accused is not guilty of committing the offence he is charged with. ***However, such a prima facie view must be based on very cogent material.*** *The High Court has relied on alleged discrepancies of the description of the weapon. One must keep in mind that the articles recovered have been sent to the court and are in custody of the court. It must also be noted that the first of the documents, relied upon by the High Court was in Tamil language. The other documents are in English. Some police officer has translated it from Tamil to English. If some police officer wrongly translates the type of weapon one cannot conclude with any reasonable certainty that there was no recovery. It is to be seen that under Section 4 mere possession not just of an arm but also of an ammunition, is sufficient. Ammunition has also been allegedly recovered. There is no discrepancy in the description of the ammunition. Thus, at this stage it is difficult to sustain the finding of the High Court that due to the discrepancies in the description of weapon the non-existence of recovery was so probable that the Court could act on the supposition that the recovery did not exist.*

* * * * *

"14. Further, when bail is granted the court has to ensure that the accused would not abscond and/or that he would not tamper with the evidence or witnesses. The High Court does not seem to have applied its mind to this aspect at all. It has not adverted to these matters and made no provisions in respect thereof.

(emphasis supplied)

22. In ***Paza Neduraman and Ors vs. State***[12], a Division Bench of the Madras High Court has said this :

"*6. The language of sub-section (6) of Sec. 49 of POTA, however, only suggests that a person accused of an offence punishable under this Act (POTA) shall not be released on bail or on his own bond*

[12] (2003) SCC OnLine Mad 166.

unless the Public Prosecutor is heard by the court. This subsection is also being read by the Prosecution as a repository of the power to grant bail because of the peculiar language thereof which presumes the existence of such a power. The only additional condition added by the subsection is the requirement of giving an opportunity to the Public Prosecutor before the order of release on bail or on bond is passed. ***Sub-section (7), however, is a departure from the normal rule in the sense that it heightens the burden on the defence. The language suggests that where the Public Prosecutor opposes the bail application, such accused could not be released on bail until the Court is satisfied that there are grounds for believing that he is innocent. The plain meaning would be that instead of showing that there is no prima facie case against him for his conviction, the accused would have to show that there is a prima facie case for his acquittal.*** *Then comes the questioned proviso which suggests that after the expiry of one year from the date of detention of the accused, the provisions of sub-section (6) of Sec. 49 shall apply. We shall go to the other provisions later on but, at this juncture, it would be better to see the logic applied by the Special Court.*

* * * * *

"*8. ... The language of sub-section (7) is complementary to subsection (6). It suggests that where during such hearing the Public Prosecutor opposes the bail application of the accused then, it would have to be shown to the Court and the Court would have to be satisfied that there exists some material or ground suggesting that the accused is not guilty of committing such offence. Plainly speaking, it would be for the defence to plead and prove to the satisfaction of the Court a prima facie case for acquittal.*

(emphasis supplied)

Bail under Unlawful Activities (Prevention) Act 1967 ('UAPA')

23. Opining specifically on section 43D(5) of the UAPA, in its seminal and recent verdict in ***National Investigation Agency vs. Zahoor Ahmad Shah Watali[13],*** ('Watali', for short) the Hon'ble Supreme Court has said this:

> "*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 the 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 a 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 accused concerned 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***

[13] (2019) 5 SCC 1.

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 the 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* ***Ranjitsing Brahmajeetsing Sharma*** *[(2005) 5 SCC 294], wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail…*

"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 [****Zahoor Ahmad Shah Watali v. NIA****, 2018 SCC OnLine Del 11185], it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence.* ***It also noted*** *that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 CrPC, on the specious ground that the*

same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) ***and other material gathered*** *by the investigating agency during investigation.*

"*26. Be it noted that* ***the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the 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 against 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) CrPC, 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 CrPC),* ***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.***

* * * * *

"30. In our opinion, the High Court, having noticed that the Designated Court had not looked at the stated statements presented in a sealed cover, coupled with the fact that the application under Section 44 filed by the investigating agency was pending before the Designated Court, and before finally answering the prayer for grant of bail, should have directed the Designated Court to first decide the said application and if allowed, consider the redacted statements, to form its opinion as to whether there are reasonable grounds for believing that the accusation made against the respondent is prima facie true or otherwise. ***For, in terms of Section 43-D, it is the bounden duty of the Court to peruse the case diary and/or the report made under Section 173 of the Code and all other relevant material/evidence produced by the investigating agency, for recording its opinion****.*

* * * * *

"47. The fact that there is a high burden on the accused in terms of the special provisions contained in Section 43-D(5) to demonstrate that the prosecution has not been able to show that there exist reasonable grounds to show that the accusation against him is prima facie true, does not alter the legal position expounded in ***K. Veeraswami*** *[(1991) 3 SCC 655], to the effect that* ***the charge-sheet need not contain detailed analysis of the evidence. It is for the Court considering the application for bail to assess the material/***

> ***evidence presented by the investigating agency along with the report under Section 173 CrPC in its entirety****, to form its opinion as to whether there are reasonable grounds for believing that the accusation against the named accused is prima facie true or otherwise."*
>
> (emphasis supplied)

24. Harmonising the power to grant bail on considerations of violation of Part-III of the Constitution with the restrictions imposed by UAPA and explaining that the nature of section 43D(5) UAPA is less stringent than that of section 37 NDPS, in ***Union of India vs. K.A. Najeeb***[14]*,* a 3-Judge Bench of the Hon'ble Supreme Court says:

> *"17. ...at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence…*
>
> * * * * *
>
> *"19. Yet another reason which persuades us to enlarge the Respondent on bail is that* ***Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act****. Unlike the NDPS where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre-condition under the UAPA. Instead,* ***Section 43-D(5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the***

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[14] (2021) 3 SCC 713.

witnesses or chance of the accused evading the trial by absconsion etc."

(emphasis supplied)

Appellant's Submissions

25. Mr. Siddharth Aggarwal, learned counsel for the appellant has principally made the following submissions:

(i) It is submitted that the subject FIR *viz.* FIR No. 59/2020 dated 06.03.2020 registered at P.S.: Crime Branch was initially registered under sections 147 / 148 / 149 / 120B IPC, which are all bailable offences. Subsequently however, on 19.04.2020 offences under the UAPA were added to the subject FIR; investigation in which is also now complete and subject charge-sheet dated 16.09.2020 has now been filed naming 15 accused persons in such charge-sheet.

(ii) It is submitted that on a perusal of the subject charge-sheet alongwith other material on which the prosecution relies, including statements of witnesses (some of which are protected witnesses) recorded under sections 161 and 164 Cr.P.C., will show that even *prima facie* no offence is made-out against the appellant that would warrant his continued custody;

(iii) It is further submitted that in any event, no offence under section 15 of the UAPA, which defines "Terrorist Act" nor any offence under section 18 which defines "Punishment for Conspiracy, etc." or any offence engrafted in Chapter IV and/or Chapter VI is made-out against the appellant. Consequently, the

stringent provisions contained in section 43D(5) of the UAPA against grant of bail are not attracted at all;

(iv) In the alternative it is submitted, that though the material on record does not even make-out the offence of engaging in any unlawful activity as defined in section 2(1)(o) and as punishable under section 13 of UAPA, even assuming that that issue is debatable, the harsh provisions against release on bail under section 43D(5) have no application to an offence punishable under section 13, since it falls under Chapter III of UAPA;

(v) Insofar as the allegations of an offence under section 124A IPC are concerned, it is submitted that serious as these allegations may be, they are still only to be dealt with under the ordinary penal law and do not take the matter into the scope and ambit of UAPA; and therefore section 43D(5) UAPA has no application.

26. To flesh-out his submissions, Mr. Aggarwal has drawn the attention of this court to certain portions of the subject charge-sheet, which portions are essentially the same as those referred to by the learned ASG, which are extracted and discussed below in this judgment.

Respondent's Submissions

27. Written Submissions dated 22.03.2021 have been filed on behalf of the respondent/Delhi Police, summarising the arguments made by Mr. Aman Lekhi, learned Additional Solicitor General appearing on their behalf, which are detailed herein below. Dealing with the role of the appellant in the offences alleged, the learned ASG has relied upon certain portions of the subject FIR and the subject charge-sheet, which

are extracted as screenshots in **Annexure - B** to this judgment for ease of reference.

(i) That considering the "totality of evidence, including the statements of the protected witnesses, the documentary evidence and other evidences collected", the complicity of the appellant in the offences of which he is accused is *prima facie* established, within the meaning of section 43D(5) UAPA. It is urged that the test to justify rejection of bail is whether on the evidence available *it is possible* to arrive at the conclusion that the case against the appellant is *prima facie* true. It is not the purport of a bail proceeding that evidence be weighed and benefit of doubt be given to the appellant.

(ii) It is argued that the present case is one of "serious disturbance of public order undermining security of state" as distinguished from one directed against the individuals, and the acts in their degree, extent and reach justifying the invocation of the provisions under which the appellant is accused. Moreover, it is submitted that the "context and circumstances in which the acts were committed would clearly cause reactions affecting not merely specific individuals but disorders of most extreme gravity".

(iii) It has been argued that a communally surcharged environment was deliberately created by the conspirators, sharply dividing the religious communities hardening cleavages and eliminating any possibility of consensus, apart from disavowing all belief in the efficacy and worth of the existing system and portraying the

political establishment as inimical to a religious community. Having roused sentiments and having created a sense of insecurity, the "likelihood that any act or disorder would have the potential of tumultuous consequences could not only be foreseen but it is apparent that the conspirators desired these consequences"; and the intent to disrupt the unity and strike terror is obvious. Not merely physical and mental damage but prolonged psychological effect was produced affecting the society as a whole, disturbing its even tempo and tranquility and creating a general sense of fear and insecurity.

(iv) Relying upon *Kartar Singh* (supra), it has been submitted that the proviso to section 43D(5) UAPA bars release on bail if, on perusal of the case diary or report under section 173 Cr.P.C., the court is of the opinion that there are "reasonable grounds for believing that the accusations against such persons are *prima facie* true"; and that the source of the power of the Special Court to grant bail is not in section 43D(5) UAPA which only places limitations on the grant of bail is referable to section 437 Cr.P.C. since the Special Court is a Court other than the High Court and Court of Sessions. While the power of the High Court and Court of Sessions to grant bail is conferred by section 439 Cr.P.C. which, unlike section 437 Cr.P.C., is unfettered by any conditions or limitations under section 437 Cr.P.C., however, bail cannot be granted "if there appear to be reasonable grounds for believing that an accused is guilty of an offence punishable with death or imprisonment for life".

(v) Referring to the observations of the Supreme Court in ***Martin Burn Ltd. vs. R.N. Bangerjee***[15]**,** the State has argued that a *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed; and that while determining whether a *prima facie* case has been made-out the relevant consideration is whether on the evidence led *it was possible* to arrive at the conclusion in question and *not whether that was the only conclusion* which could be arrived at on that evidence.

(vi) It is also pointed-out that in ***State of Gujarat vs. Gadhvi Rambhai Nathabhai and Ors***[16]**,** while construing section 20(8) TADA, which provision imposed a far more onerous responsibility than the one under section 43D(5) UAPA, the Hon'ble Supreme Court held that the power to grant bail cannot be exercised in a manner virtually amounting to an order of acquittal, giving benefit of doubt to the accused after weighing the evidence collected during investigation.

(vii) The learned ASG has read the verdict of the Hon'ble Supreme Court in *Watali* (supra) to submit that the Hon'ble Supreme Court has said that at the stage of granting or denying bail under UAPA, an elaborate examination or dissection of the evidence is not required and the court is merely expected to record a finding on the basis of broad probabilities regarding the

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[15] AIR 1958 SC 79.

[16] (1994) 5 SC 111.

involvement of the accused in the commission of the stated offence or otherwise. It is pointed-out that relying on *Watali* (supra), this court in ***Ghulam Mohd. Bhat vs. National Investigating Agency***[17]*,* has said that the determination to be made by this court at the stage of dealing with a bail application is within a very narrow compass and what the court is required to examine is the issue whether there are reasonable grounds for believing that the accusations made against the appellant are "*prima facie* true", which means the test to justify rejection of bail is whether on the evidence available it is possible to arrive at the conclusion that the case against the appellant is *prima facie* true.

(viii) The State says therefore, that the case against the appellant is one of conspiracy to commit a crime, which is itself punishable as a substantive offence and every individual offence committed pursuant to conspiracy is a separate and distinct offence; and though all conspirators may not be liable for an individual offence, they are all guilty of the offence of conspiracy. It is further argued that it not necessary to prove that the parties actually came together and expressly agreed to have a common design; nor that they knew all details of the conspiracy, as long as the conspirators took several steps all towards the realisation of the object of conspiracy through a continued period of time, which it is urged, the record clearly shows in the instant case.

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[17] (2019) SCC OnLine Del 9431.

(ix) It is submitted that a perusal of the record will show that *the appellant and the other conspirators, by their acts, pursued the same object, often by the same means, one performing one part of the act and the other performing the other part, so as to complete it with a view to attainment of the same object.*

(x) The State says that even if the objective of the conspiracy did not originate with the appellant or he joined after it was formed, he would even then be as guilty; and whatever may have been said or done by any of the conspirators in pursuance of the common design would be considered to be an act of the appellant.

(xi) The State in fact submits that despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions and that the rule of admissibility of evidence is relaxed in cases of conspiracy, since the principle of agency is attracted.

(xii) Most importantly, it is the case of the prosecution, that the conspiratorial design contemplated something much more dire and malevolent, with repercussions on public tranquility that are far more serious than ordinary forms of political protest. It is further alleged that the *chakkajam* which was planned was with a "difference" and the intention was "to stop milk and water" and was to be done not only in Delhi but in "every place where it was possible for Muslims" to organise it. It was intended to "cause riots and fear". To support this submission the State draws attention to the portion of the subject charge-

sheet extracted as Screenshot 1 and 2 in Annexure - B attached to this judgment.

(xiii) As evidence of the "*general agreement between the conspirators with regard to the common purpose*", the State draws attention of this court to a portion of the purported statement dated 19.06.2020 of one of protected witnesses named Hector. To support this submission the State draws attention to the portion of the subject charge-sheet extracted as Screenshot 3 in Annexure - B.

(xiv) The State alleges thereby that "*a radical approach animated by extremist intent giving a* different orientation to words of ordinary connotation like *chakkajam* is *self-evident*". To support this, the State has relied upon page No. 2052 of the subject charge-sheet as well as the statement of a protected witness named Bond, which portions are extracted as Screenshot 4 and 5 in Annexure - B.

(xv) The CAA only provided an excuse for the agitation, the real motivation of which was to denounce the existing system and create extreme disenchantment with it. Reliance has been placed by the State on the portion at page 2048 of the charge-sheet, which has been extracted as Screenshot 6 in Annexure - B.

(xvi) It is argued that the subject charge-sheet further shows that the actions of the conspirators was premeditated, which is apparent from the meetings of 16.12.2019 and 17.12.2019, which

followed the protest at the Parliament and at Jamia University on 13.12.2019 and 15.12.2019 respectively; and the two events having failed to yield desired results, the conspirators realised that stray or isolated events would not serve in achieving the objective of widespread turmoil, for which reason at the meetings of 16.12.2019 and 17.12.2019, in which the appellant had also participated, it was decided to hold protests in "an organised and planned way" and for this purpose the JCC was constituted; which, it is alleged, used religious identity as the tool to achieve its objectives. To support this submission, attention of the court is invited to pages 2045, 2057-59, 2067-68 and 2070 of the subject charge-sheet, which portions are extracted as Screenshot 7, 8a-8c, 9a-9b and 10 in Annexure - B.

(xvii) The above alleged objective of the JCC is stated to be corroborated by the statements recorded under section 164 Cr.P.C. of the protected witness Bond and James.

(xviii) The State contends that the object of JCC, with which the appellant is alleged to have been associated, was aligned with that of Muslim Students of JNU being run by one of the co-accused/co-conspirator; and was to debunk the secular values of the Constitution and to aggravate differences between the communities so as to cause social disharmony and bring out a feeling of disunity.

(xix) It is also alleged that the co-conspirators committed themselves to "*avoiding over secularisation of movement*", for which

reference is made to portions of pages 2025 - 26 of the subject charge-sheet, which are extracted as Screenshot 11 in Annexure - B.

(xx) It is contended that the pamphlets were inflammatory and incendiary, were deliberately provocative and seditious in content and *clearly undermined the State*. In this regard the State refers to page 2040 of the subject charge-sheet, which is extracted as Screenshot 12 in Annexure - B.

(xxi) Mr. Lekhi contends that the CAA had nothing to do with Indian Muslims; that there was no project to disenfranchise and definitely nothing to justify the allegation that Muslims will be put in detention camps. It is alleged that the endeavour of the co-conspirators was therefore only to inflame passions, whip-up religious frenzy and foment violence. The "burning" of Assam, "killing" of people and "disruption" of Delhi was intended towards that end.

(xxii) It is urged that there was thus, an "emphasis upon division and polarisation through narrowing the areas of mutual engagement by emphasising ethnocultural nationalism over cosmopolitanism and using the excuse of a political protest to give primacy to religion"; and a general disenchantment was sought to be created affecting the security of the State. Reference in this regard was made by the State to the statement dated 25.06.2020 of protected witness named Romeo, which is extracted as Screenshot 13 in Annexure - B, alleging that the actions therefore had the tendency of *creating public disorder of*

the most extreme gravity and demonstrated not just disaffection to the country but disloyalty to it.

(xxiii) Though it is conceded that the appellant was excluded from the JCC after he was named in other FIRs, it is contended that such exclusion was nominal and the appellant continued to be associated with and participated in the objects of the conspiracy, which it is alleged, is apparent from his involvement in the meeting at Jamia University on 22.02.2020.

(xxiv) It is argued that the "voice of sanity" (allegedly of one of the protected witness) was shut-out. Attention of the court was drawn in this regard to portions of pages 2205-06 of the subject charge-sheet, which portions are extracted as Screenshot 14a-14b in Annexure - B; and it is submitted that the ill-boding intent of the secrecy of the real objective was apparent from the message of one of the co-conspirator / co-accused advising members from desisting sharing the real plans of conspirators in public. Reference in this regard was made to the portion of the subject charge-sheet extracted as Screenshot 15 in Annexure - B.

(xxv) It is alleged that in pursuance of the object, the "continued steps" towards the "shared intent" is apparent from page 2210 of the subject charge-sheet, which portion is extracted as Screenshot 16 in Annexure - B.

(xxvi) The State further argues that the appellant was part of the JCC meeting which was held on 22.02.2020 which further shows

that his so-called exclusion on 24.01.2020 was "mere trickery to disguise his continued involvement and participation in the conspiracy"; and that he "remained party" to the plan to affect public tranquility by "engineering riots". To support this allegation, the State relies upon the statement of protected witnesses Bond and James which have been extracted as Screenshot 17 and 18 in Annexure - B.

(xxvii) It is urged that the fact that the protest planned was "not a typical protest" normal in the political culture or democracy but one far more evil and injurious geared towards extremely grave consequences. To bolster this contention, the State relies upon alleged statements of protected witness Victor (page 1527-1531 of the subject charge-sheet), Silver (page 1542-1545), Ct. Sunil (page 1662-1667), Ct. (GD) Mukesh (page 1681-1682), HC (GD) G. Nallaperumal (page 1682-1684) and Ct. (GD) Srinivas Rao (page 1684-1685), SI. Bheesham Rana (page 1801-1802) and Harender at (page 1802-1803), which are extracted as Screenshot 19a-19e, 20a-20c, 21, 22, 23, 24, 25 and 26 in Annexure - B.

(xxviii) It is alleged that the breach of public order was neither small nor insignificant but was grave and serious affecting public tranquility, impacting unity and integrity and creating terror; and that not merely law and order was affected but the even "tempo of the life of the community was also disturbed".

(xxix) The State contends that the subject charge-sheet shows that there were 53 deaths including those of public functionaries,

over seven hundred people were injured, deployment of an additional police force of 7800 was needed over and above the 2200 policemen already deployed; that "protests were coordinated across Delhi and covered diverse areas like Jamia, Seelampur, Khajuri, Hauzrani, Khureji and Jafrabad", with there being plans to extend this protest across other cities of the country; and that there was extensive and widespread destruction of property involving settlement of claims of approximately Rs. 22 crores. As many as 16,381 PCR calls were received between 22.02.2020 and 26.02.2020; and cartridges, knives and swords, broken glass bottle (used for petrol bombs) and even scissors were weaponised and loose stones were liberally used.

(xxx) It is argued that the *activity in its essential quality may not be different from another act but in its potentiality and in its effect upon public tranquility there can be a vast difference*. Reliance in this behalf is placed on the decision of the Hon'ble Supreme Court in ***Arun Ghosh vs. State of West Bengal***[18]**,** :

> *"3. ... Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is*

[18] (1970) 1 SCC 98.

jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. …"

(xxxi) It is further argued that the same principle was reiterated by the Hon'ble Supreme Court in ***Giridhari Parmanand Vadhava vs. State of Maharashtra***[19]**,** in the context of what constitutes a terrorist act, where the Hon'ble Supreme Court holds that it is the impact of the crime and its fallout on the society and potentiality of such crime in producing fear in the minds of the people or a section of the people which makes a crime, a terrorist activity under section 3(1) of TADA.

(xxxii) Much emphasis was laid by the learned ASG on the word 'likely' being part of section 15, to urge that even presuming that 'intention' is not held to be disclosed on the appellant's part, the 'likelihood' of what section 15 contemplates will attract the provision. It is argued that the word 'likely' means "of such nature or so circumstantial as to make probable".

(xxxiii) The State accordingly alleges that the actions of the co-conspirators, including the appellant were (i) premeditated (ii) directed at a wider audience (iii) involved attacks on symbolic targets including civilians (iv) entailed acts of violence seen by the society as "extra normal" intended to provoke an

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[19] (1996) 11 SCC 179.

overreaction serving as a catalyst for more general conflict and publicised as a political cause inducing both fear and a sense of insecurity, by reason of which the characteristics of 'terrorism' as set-out by Paul Wilikson and cited in ***People's Union For Civil Liberties and Anr. vs. Union of India***[20]**,** ('PUCL', for short) and ***Mohd. Iqbal M. Shaikh and Ors. vs. State of Maharashtra***[21] are duly satisfied. The State argues that under the UAPA, it is not just the intent to threaten the unity and integrity but the likelihood to threaten the unity and integrity, not just the intent to strike terror but the likelihood to strike terror, not just the use of firearms but the use of any means of whatsoever nature, the means not just causing but likely to cause not just death but injuries to any person or persons or loss or damage or destruction of property, constitutes terrorist act within the meaning of section 15 of UAPA.

(xxxiv) It is urged that moreover, under section 18 of UAPA, not merely conspiracy to commit a terrorist act but an attempt to commit or advocating the commission or advising it or inciting or directing or knowingly facilitating commission of a terrorist act is also punishable. In fact, even acts preparatory to commission of terrorist acts are punishable under section 18 of UAPA.

(xxxv) It is submitted that the objection of the appellant that a case is not made-out under UAPA is based on assessing the degree of sufficiency and credibility of evidence not the absence of its

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[20] (2004) 9 SCC 580.

[21] (1998) 4 SCC 494.

existence but the extent of its applicability; but that such objection of the appellant is outside the scope of section 43D(5) of the UAPA.

(xxxvi) Distinguishing the present case from that in *K.A. Najeeb* (supra), the State argues that the reason for grant of bail in that case was "long period of incarceration and unlikelihood of the trial being completed anytime in the near future"; and that in *K.A. Najeeb* (supra), the High Court had relied upon a judgment of the Hon'ble Supreme Court in ***Shaheen Welfare Association vs. Union of India and Ors***[22], wherein it was held that "no one can justify gross delay in disposal of cases when undertrial perforce remains in jail giving rise to possible situations that may justify invocation of Article 21"; and that the Hon'ble Supreme Court did not interfere with the order passed by the High Court because of "there being no likelihood of trial being completed within the reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence". It is pointed-out that in ***State of Maharashtra vs. Abdul Hamid Haji Mohammed***[23], notwithstanding section 19 of TADA providing for an appeal to the Supreme Court from an order passed by the Designated Court, the Hon'ble Supreme Court had yet held that in extreme cases where accusations are *ex facie* not constituting an offence, power under Article 226 of the Constitution can be invoked but

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[22] (1996) 2 SC 616.

[23] (1994) 2 SCC 664.

that in the present case the appellant has not chosen to invoke Article 226 of the Constitution.

Analysis of section 15 UAPA

28. Before applying the additional conditions engrafted in section 43D(5) UAPA, it would be advisable to first analyse if the allegations against the appellant contained in the subject charge-sheet even *prima facie* disclose the commission of an offence under sections 15 and 18 of the UAPA. Although section 15 of the UAPA defines 'terrorist act' and section 18 provides for 'punishment for conspiracy for committing a terrorist act, including an attempt to commit or advocating, abetting, advising or inciting the commission of a terrorist act, as also of any act preparatory to the commission of a terrorist act', the word 'terrorism' or 'terror' has nowhere been defined in the UAPA. For completeness it may be noticed that section 2(1)(k) of the UAPA says that the phrase 'terrorist act' shall have the meaning as assigned to it in section 15 and that the expressions 'terrorism' and 'terrorist' shall be construed accordingly.

29. What however, is 'terrorism' or 'terror', from which the meaning of 'terrorist act' and other related words may be derived?

30. The concept and construction of terrorism has been dealt-with by the Hon'ble Supreme Court in relation to earlier legislations *inter alia* in the decisions discussed below.

31. In ***Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.***[24]**,** defining terrorism, the Hon'ble Supreme Court says :

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[24] (1994) 4 SCC 602.

"*7.* ***'Terrorism' is one of the manifestations of increased lawlessness and cult of violence.*** *Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA* ***nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process*** ***but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land*** *and its* ***main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity.*** ***A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order****.* ***The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law****. Experience has shown us that* ***'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof*** ***and is a totally abnormal phenomenon****.* ***What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation.*** *More often than not, a hardened criminal today takes advantage of the situation and by wearing the cloak of 'terrorism', aims to achieve for himself acceptability and respectability in the society because unfortunately in the States affected by militancy, a 'terrorist' is projected as a hero by his group and often even by the misguided youth. It is therefore, essential to treat such a criminal and deal with him differently than an ordinary criminal capable of*

> *being tried by the ordinary courts under the penal law of the land.* ***Even though the crime committed by a 'terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the Legislature that every criminal should be tried under TADA, where the fall out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA.*** *The criminal activity in order to invoke TADA must be committed with the requisite intention as contemplated by Section 3(1) of the Act by use of such weapons as have been enumerated in Section 3(1) and which cause or are likely to result in the offences as mentioned in the said section."*

(emphasis supplied)

32. TADA deals with activity "which cannot be classified as a mere law and order problem or disturbance of public order or even disturbance of the even tempo of the life of the community of any specified locality, but is of the nature which cannot be tackled as an ordinary criminal activity under the ordinary penal law by the normal law enforcement agencies because the intended extent and reach of the criminal activity of the 'terrorist' is such which travels beyond the gravity of the mere disturbance of public order even of a 'virulent nature' and may at times transcend the frontiers of the locality...", as explained by the Hon'ble Supreme Court in *Kartar Singh* (supra) :

> "*68.* ***The terrorism, the Act (TADA) contemplates, cannot be classified as mere disturbance of 'public order'*** *disturbing the "even tempo of the life of community of any specified locality" — in the words of Hidayatullah, C.J. in Arun Ghosh v. State of W.B. [(1970) 1 SCC 98] but* ***it is much more, rather a grave emergent situation created either by external forces particularly at the***

frontiers of this country or by anti-nationals throwing a challenge to the very existence and sovereignty of the country in its democratic polity."

(emphasis supplied)

33. Since the theme of section 15 is evidently the intent or likelihood of an act threatening (i) the security of the State, described variously in the section as unity, integrity, security, economic security, sovereignty and (ii) of striking terror, it is necessary to understand the concept and distinction between "law and order", "public order" and "security of the State", as eloquently explained by Hidayatullah, J. (as the learned Chief Justice then was) of the Hon'ble Supreme Court in ***Ram Manohar Lohia (Dr) vs. State of Bihar***[25]:

> *"55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order".* ***One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.****...*

34. The Hon'ble Supreme Court in *Kartar Singh* (supra) observed:

> "*67. In order to ascertain the* ***pith and substance of the impugned enactments, the preamble, Statement of Objects and Reasons, the legal significance and the intendment of the provisions of these Acts, their scope and the nexus with the object that these Acts seek to subserve must be objectively examined in the background of the***

[25] AIR 1966 SC 740.

totality of the series of events *— due to the unleashing of terrorism, waves after waves, leading to the series of bomb blasts causing extensive damage to the properties, killing of hundreds of people, the blood-curdling incidents during which the blood of the sons of the soil had been spilled over the soil of their motherland itself, the ruthless massacre of the defenceless and innocent people especially of poor as if they were all 'marked for death' or for 'human sacrifice' and the sudden outbreak of violence, mass killing of army personnel, jawans of Border Security Force, government officials, politicians, statesmen, heads of religious sects by using bombs and sophisticated lethal weapons thereby injecting a sense of insecurity in the minds of the people, with the intention of destabilizing the sovereignty or overthrowing the Government as established by law.* ***The way in which the alleged violent crimes is shown to have been perpetrated, the manner in which they have been cruelly executed, the vulnerable territorial frontiers which form part of the scene of unprecedented and unprovoked occurrences, lead to an inescapable illation and conclusion that the activities of the terrorists and disruptionists pose a serious challenge to the very existence of sovereignty as well as to the security of India*** *notwithstanding the fact whether such threats or challenges come by way of external aggression or internal disturbance.*

* * * * *

"*113. Though normally the plain ordinary grammatical meaning of an enactment affords the best guide and the object of interpreting a statute is to ascertain the intention of the legislature enacting it,* ***other methods of extracting the meaning can be resorted to if the language is contradictory, ambiguous or leads really to absurd results so as to keep at the real sense and meaning.*** *See (1) Salmond : Jurisprudence, 11th Edn. p. 152, (2)* ***South Asia Industries (P) Ltd. v. S. Sarup Singh*** *[AIR 1966 SC 346, 348] (AIR at p. 348), and (3)* ***G. Narayanaswami v. G. Panneerselvam*** *[(1972) 3 SCC 717] (SCC at p. 720)."*

(emphasis supplied)

35. Illustrating what terrorist acts might be, in *PUCL* (supra), the Hon'ble Supreme Court says :

> "*6.* ***In all acts of terrorism, it is mainly the psychological element that distinguishes it from other political offences, which are invariably accompanied with violence and disorder.*** *Fear is induced not merely by making civilians the direct targets of violence but also by exposing them to a sense of insecurity. It is in this context that this Court held in* ***Mohd. Iqbal M. Shaikh v. State of Maharashtra*** *[(1998) 4 SCC 494] that: (SCC p. 504, para 7)*
>
> > *"[I]t is not possible to give a precise definition of terrorism or to lay down what constitutes terrorism. But ... it may be possible to describe it as* ***use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole****. ... if the object of the activity is to disturb harmony of the society or to terrorize people and the society with a view to disturb the even tempo, tranquillity of the society, and a sense of fear and insecurity is created in the minds of a section of the society at large, then it will, undoubtedly, be held to be a terrorist act."*
>
> * * * * *
>
> "*8. All these terrorist strikes have certain common features. They could be very broadly grouped into three:*
>
> > *1. Attack on the institution of democracy, which is the very basis of our country (by attacking Parliament, Legislative Assembly etc.). And the attack on economic system by targeting economic nerve centres.*
> >
> > *2. Attack on symbols of national pride and on security/ strategic installations (e.g. Red Fort, military installations and camps, radio stations etc.).*

3. Attack on civilians to generate terror and fear psychosis among the general populace. ***The attack at worshipping places to injure sentiments and to whip communal passions. These are designed to position the people against the Government by creating a feeling of insecurity****.*

"*9.* ***Terrorist acts are meant to destabilise the nation by challenging its sovereignty and integrity****, to* ***raze the constitutional principles that we hold dear****, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow democratically elected government, to promote prejudice and bigotry, to demoralise the security forces, to thwart the economic progress and development and so on.* ***This cannot be equated with a usual law and order problem within a State. On the other hand, it is inter-State, international or cross-border in character. Fight against the overt and covert acts of terrorism is not a regular criminal justice endeavour. Rather, it is defence of our nation and its citizens. It is a challenge to the whole nation and invisible force of Indianness that binds this great nation together.*** *Therefore, terrorism is a new challenge for law enforcement. By indulging in terrorist activities organised groups or individuals, trained, inspired and supported by fundamentalists and anti-Indian elements are trying to destabilise the country. This new breed of menace was hitherto unheard of.* ***Terrorism is definitely a criminal act, but it is much more than mere criminality.*** *Today the Government is charged with the duty of protecting the unity, integrity, secularism and sovereignty of India from terrorists, both from outside and within the borders. To face terrorism we need new approaches, techniques, weapons, expertise and of course new laws. In the abovesaid circumstances Parliament felt that a new anti-terrorism law is necessary for a better future. This parliamentary resolve is epitomised in POTA."*

(emphasis supplied)

36. More recently in ***Yakub Abdul Razak Memon vs State of Maharashtra through CBI, Bombay***[26]**,** the Hon'ble Supreme Court held:

> "*809. The term "terrorism" is a concept that is commonly and widely used in everyday parlance and is derived from the Latin word "terror" which means the state of intense fear and submission to it. There is no particular form of terror, hence, anything intended to create terror in the minds of general public in order to endanger the lives of the members and damage to public property may be termed as a terrorist act and a manifestation of terrorism. Black's Law Dictionary defines terrorism as:*
>
> > *"Terrorism.—The use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct." (8th Edn., p. 1512.)*
>
> *"810. Terrorism is a global phenomenon in today's world and India is one of the worst victims of terrorist acts. Terrorism has a long history of being used to achieve political, religious and ideological objectives. Acts of terrorism can range from threats to actual assassinations, kidnappings, airline hijackings, bomb scares, car bombs, building explosions, mailing of dangerous materials, computer based attacks and the use of chemical, biological, and nuclear weapons—weapons of mass destruction (WMD).*
>
> * * * * *
>
> ***"816. The United Nations Security Council in its 2004 Resolution [Ed. : UN Doc. S/RES/1566 (2004); Resolution 1566 (2004) adopted by the Security Council on 8-10-2004.] denounced "terrorist acts" as follows"***
>
> > ***"criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of***

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[26] (2013) 13 SCC 1.

> ***persons or particular persons, intimidate a population or compel a Government or an international organisation to do or abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations or a political, philosophical, ideological, racial, ethnic, religious or other similar nature,..."***

(emphasis supplied)

37. In ***Zameer Ahmed Latifur Rehman Sheikh vs. State of Maharashtra & Ors***[27]**,** dealing with the constitutionality of MCOCA and opining on the distinction between 'public order' and 'security of the State', the Hon'ble Supreme Court says :

> "*31. It has been time and again held by this Court that* ***the expression "public order" is of a wide connotation****. In* ***Romesh Thappar v. State of Madras*** *[AIR 1950 SC 124] it has been held by this Court that* ***"public order" signifies a state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established****. This Court, in para 10, at AIR p. 128, quoted a passage from Stephen's Criminal Law of England, wherein he observed as follows:*
>
> > *"Unlawful assemblies, riots, insurrections, rebellions, levying of war, are offences which run into each other and are not capable of being marked off by perfectly defined boundaries. All of them have in common one feature, namely, that the normal tranquillity of a civilised society is in each of the cases mentioned*

[27] (2010) 5 SCC 246.

disturbed either by actual force or at least by the show and threat of it."

This Court further observed that though all these offences involve disturbances of public tranquillity and are in theory offences against public order, the difference between them is only one of degree. ***The Constitution thus requires a line, perhaps only a rough line, to be drawn between the fields of public order or tranquillity and those serious and aggravated forms of public disorder which are calculated to endanger the security of the State****.*

"32. In ***Supdt., Central Prison v. Dr. Ram Manohar Lohia*** *[AIR 1960 SC 633] this Court had held that* ***"public order" is synonymous with public safety and tranquillity, and it is the absence of any disorder involving a breach of local significance*** *in* ***contradistinction to national upheavals****,* ***such as revolution, civil strife, war, affecting the security of the State****.*

"33. Subsequently, in ***Ram Manohar Lohia (Dr.) v. State of Bihar*** *[AIR 1966 SC 740], Hidayatullah, J., held that* ***any contravention of law always affected order****, but* ***before it could be said to affect public order, it must affect the community at large****. He was of the opinion that offences against "law and order", "public order", and "security of State" are demarcated on the basis of their gravity. The said observation is as follows: (AIR pp. 758-59, para 52)*

> *"52. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and*

> *order but not public order just as an act may affect public order but not security of the State."*
>
> "*34. The Constitution Bench of this Court in* ***Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*** *[(1970) 3 SCC 746] while adopting and explaining the scope of the test laid down in* ***Ram Manohar Lohia (Dr.) v. State of Bihar*** *[AIR 1966 SC 740] stated that the State is at the centre of the society. Disturbances in the normal functioning of the society fall into a broad spectrum, from mere disturbance of the serenity of life to jeopardy of the State. The acts become more and more grave as we journey from the periphery of the largest circle towards the centre. In this journey we travel first through public tranquillity, then through public order and lastly to the security of the State. This Court further held that in the judgment of this Court, the expression "in the interest of public order" as mentioned in the Constitution of India encompasses not only those acts which disturb the security of the State or acts within ordre publique as described but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression "in the interest of public order" is very wide."*
>
> (emphasis supplied)

38. In the same judgment observing that a court must always presume that a statute was within the legislative competence of the legislature that drafted it, the Hon'ble Supreme Court further says:

> *"39. It is also a cardinal rule of interpretation that* ***there shall always be a presumption of constitutionality in favour of a statute*** *and* ***while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature****. (Reference may be made to* ***Charanjit Lal Chowdhury v. Union of India*** *[AIR 1951 SC 41],* ***T.M.A. Pai Foundation v. State of Karnataka*** *[(2002) 8 SCC 481] and* ***Karnataka Bank Ltd. v. State of A.P.*** *[(2008) 2 SCC 254])"*
>
> (emphasis supplied)

39. In the same judgment the Hon'ble Supreme Court has also explained the intention of Legislature in enacting UAPA and has said that UAPA falls under Entry 1 of List-I of the Seventh Schedule of the Constitution:

> "*64. Prior to the 2004 Amendment, UAPA did not contain the provisions to deal with terrorism and terrorist activities. By the 2004 Amendment, new provisions were inserted in UAPA to deal with terrorism and terrorist activities. The Preamble of UAPA was also amended to state that the said Act is enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations, and dealing with terrorist activities and for matters connected therewith.*
>
> "*65. In the 2008 Amendment, the Preamble has again been amended and the amended Preamble now also contains a reference to the Resolution adopted by the Security Council of the United Nations on 28-9-2001 and also makes reference to the other resolutions passed by the Security Council requiring the States (nations which are members of the United Nations) to take action against certain terrorist and terrorist organisations. It also makes reference to the order issued by the Central Government in exercise of power under Section 2 of the United Nations (Security Council) Act, 1947 which is known as the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007.*
>
> * * * * *
>
> ***"**72. The precise reason why we have extracted the list of terrorist organisations under UAPA hereinbefore is to bring to the fore the contrast between the two legislations which are in question before us**. The exhaustive list of terrorist organisations in the First Schedule to UAPA has been included in order to show the type and nature of the organisations contemplated under that Act. A careful look of the same would indicate that all the organisations mentioned therein have as their aims and objects undermining***

and prejudicially affecting the integrity and sovereignty of India, which certainly stand on a different footing when compared to the activities carried out by the forces like the appellant.

* * * * * *

"*75. A perusal of the Preamble, the Statement of Objects and Reasons and the interpretation clauses of MCOCA and UAPA would show that* ***both the Acts operate in different fields and the ambit and scope of each is distinct from the other***. *So far as MCOCA is concerned, it principally deals with prevention and control of criminal activity by organised crime syndicate or gang within India and its purpose is to curb a wide range of criminal activities indulged in by organised syndicate or gang.* ***The aim of UAPA, on the other hand, is to deal with terrorist and certain unlawful activities, which are committed with the intent to threaten the unity, integrity, security or sovereignty of India or with the intent to strike terror in the people or any section of the people in India or in any foreign country or relate to cessation or secession of the territory of India.***

* * * * *

"77. The offence of terrorist act under ***Section 15*** *and the offence of unlawful activity under* ***Section 2(1)(o)*** *of UAPA have some elements in commonality.* ***The essential element in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India.*** *While Section 15 requires some physical act like use of bombs and other weapons, etc., Section 2(1)(o) takes in its compass even written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India.* ***The said offences are related to the defence of India and are covered by Entry 1 of the Union List***.

"*78. Moreover, the meaning of the term "unlawful activity" in MCOCA is altogether different from the meaning of the term "unlawful activity" in UAPA. It is also pertinent to note that MCOCA*

> *does not deal with the terrorist organisations which indulge in terrorist activities and similarly, UAPA does not deal with organised gangs or crime syndicate of the kind specifically targeted by MCOCA. Thus, the offence of organised crime under MCOCA and the offence of terrorist act under UAPA operate in different fields and are of different kinds and their essential contents and ingredients are altogether different."*

(emphasis supplied)

40. Another sacrosanct principle of interpretation of penal provisions is that they must be construed strictly and narrowly, to ensure that a person who was not within the legislative intendment does not get roped into a penal provision. Also, the more stringent a penal provision, the more strictly it must be construed. A brief reference to the decisions of the Hon'ble Supreme Court in this behalf may be made here.

41. In ***A.K. Roy vs. Union of India and Ors.***[28]**,** dealing with the validity of certain provisions of the National Security Ordinance/Act, which were challenged as unconstitutional on the ground of vagueness, and which ordinance provided for preventive detention, the majority of a 5-Judge Bench of the Hon'ble Supreme Court partly accepted the challenge, holding that what constitutes 'essential services and supplies' should have been specified and published in advance by a law, order or notification, and says:

> "*62.* ***The requirement that crimes must be defined with appropriate definiteness is regarded as a fundamental concept in criminal law and must now be regarded as a pervading theme of our Constitution since the decision in Maneka Gandhi*** *[AIR 1978 SC 597].* ***The underlying principle is that every person is entitled to be***

[28] (1982) 1 SCC 271.

informed as to what the State commands or forbids and that the life and liberty of a person cannot be put in peril on an ambiguity. *However, even in the domain of criminal law, the processes of which can result in the taking away of life itself, no more than a reasonable degree of certainty has to be accepted as a fact. Neither the criminal law nor the Constitution requires the application of impossible standards and therefore,* ***what is expected is that the language of the law must contain an adequate warning of the conduct which may fall within the proscribed area, when measured by common understanding.*** *In criminal law,* ***the legislature frequently uses vague expressions like 'bring into hatred or contempt', or 'maintenance of harmony between different religious groups', or 'likely to cause disharmony or … hatred or ill will', or 'annoyance to the public'*** *[see Sections 124-A, 153-A(1)(b), 153-B(1)(c), and 268 of the Penal Code].* ***These expressions, though they are difficult to define, do not elude a just application to practical situations. The use of language carries with it the inconvenience of the imperfections of language.***

"63. ***We see that the concepts aforesaid, namely, 'defence of India', 'security of India', 'security of the State' and 'relations of India with foreign powers', which are mentioned in Section 3 of the Act, are not of any great certainty or definiteness. But in the very nature of things they are difficult to define****. We cannot therefore strike down these provisions of Section 3 of the Act on the ground of their vagueness and uncertainty.* ***We must, however, utter a word of caution that since the concepts are not defined, undoubtedly because they are not capable of a precise definition, courts must strive to give to those concepts a narrower construction than what the literal words suggest****. While construing laws of preventive detention like the National Security Act, care must be taken to restrict their application to as few situations as possible.* ***Indeed, that can well be the unstated premise for upholding the constitutionality of clauses like those in Section 3,***

which are fraught with grave consequences to personal liberty, if construed liberally.

"*64.* ***What we have said above in regard to the expressions 'defence of India', 'security of India', 'security of the State' and 'relations of India with foreign powers' cannot apply to the expression "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" which occurs in Section 3(2) of the Act. Which supplies and services are essential to the community can easily be defined by the legislature*** *and indeed, legislations which regulate the prices and possession of essential commodities either enumerate those commodities or confer upon the appropriate Government the power to do so.* ***In the absence of a definition of 'supplies and services essential to the community', the detaining authority will be free to extend the application of this clause of sub-section (2) to any commodities or services the maintenance of supply of which, according to him, is essential to the community.***

"*65. But that is not all. The Explanation to sub-section (2) gives to the particular phrase in that sub-section a meaning which is not only uncertain but which, at any given point of time, will be difficult to ascertain or fasten upon. ... We find it quite difficult to understand as to which are the remaining commodities outside the scope of the Act of 1980, in respect of which it can be said that the maintenance of their supplies is essential to the community.* ***The particular clause in sub-section (2) of Section 3 of the National Security Act is, therefore, capable of wanton abuse in that, the detaining authority can place under detention any person for possession of any commodity on the basis that the authority is of the opinion that the maintenance of supply of that commodity is essential to the community****. We consider the particular clause not only vague and uncertain but, in the context of the Explanation, capable of being extended cavalierly to supplies, the maintenance of which is not essential to the community. To allow the personal liberty of the people to be taken away by the application of that*

clause would be a flagrant violation of the fairness and justness of procedure which is implicit in the provisions of Article 21.

* * * * *

"*67. We do not, however, propose to strike down the power given to detain persons under Section 3(2) on the ground that they are acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The reason for this is that it is vitally necessary to ensure a steady flow of supplies and services which are essential to the community, and if the State has the power to detain persons on the grounds mentioned in Section 3(1) and the other grounds mentioned in Section 3(2), it must also have the power to pass orders of detention on this particular ground.* ***What we propose to do is to hold that no person can be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community unless, by a law, order or notification made or published fairly in advance, the supplies and services, the maintenance of which is regarded as essential to the community and in respect of which the order of detention is proposed to be passed, are made known appropriately, to the public."***

(emphasis supplied)

42. In ***Sanjay Dutt vs State through CBI (II)***[29], a 5-Judge Constitution Bench of the Hon'ble Supreme Court cites with approval its decision in ***Niranjan Singh Karam Singh Punjabi vs Jitendra Bhimraj Bijjaya***[30]**,** and says :

"17. … *Applying the settled rule of construction of penal statutes in* ***Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*** *[(1990) 4 SCC 76], a Division Bench of this Court speaking through*

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[29] (1994) 5 SCC 410.

[30] (1990) 4 SCC 76.

one of us (Ahmadi, J.) construing certain provisions of the TADA Act reiterated the principle thus: (SCC pp. 85-86, para 8)

> *"The Act is a penal statute. Its provisions are drastic in that they provide minimum punishments and in certain cases enhanced punishments also; make confessional statements made to a police officer not below the rank of a Superintendent of Police admissible in evidence and mandates raising of a rebuttable presumption on proof of facts stated in clauses (a) to (d) of sub-section (1) of Section 21. Provision is also made in regard to the identification of an accused who is not traced through photographs. There are some of the special provisions introduced in the Act with a view to controlling the menace of terrorism. These provisions are a departure from the ordinary law since the said law was found to be inadequate and not sufficiently effective to deal with the special class of offenders indulging in terrorist and disruptive activities. There can, therefore, be no doubt that the legislature considered such crimes to be of an aggravated nature which could not be checked or controlled under the ordinary law and enacted deterrent provisions to combat the same. The legislature, therefore, made special provisions which can in certain respects be said to be harsh, created a special forum for the speedy disposal of such cases, provided for raising a presumption of guilt, placed extra restrictions in regard to the release of the offender on bail, and made suitable changes in the procedure with a view to achieving its objects. It is well settled that statutes which impose a term of imprisonment for what is a criminal offence under the law must be strictly construed.*
>
> * * *
>
> *Therefore when a law visits a person with serious penal consequences* ***extra care must be taken to ensure that***

<u>those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the law</u>."

With respect, we fully concur with the above perception for construing the provisions of the TADA Act"

(emphasis supplied)

43. In ***Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and Anr***[31]**,** a 3-Judge Bench of the Hon'ble Supreme Court says :

"*23. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are interrelated. An "organised crime syndicate" refers to an "organised crime" which in turn refers to "continuing unlawful activity". As at present advised, it may not be necessary for us to consider as to whether the words "or other unlawful means" contained in Section 2(e) should be read "ejusdem generis"/"noscitur a sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation, or (iv) coercion. We may, however, notice that the word "violence" has been used only in Sections 146 and 153-A of the Penal Code, 1860. The word "intimidation" alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to "criminal intimidation". The word "coercion" finds place only in the Contract Act.* ***If the words "unlawful means" are to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, <u>which prima facie, does not appear to have been intended by Parliament</u>.***

"*24.* ***The Statement of Objects and Reasons clearly states as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression "any unlawful means" must refer to any such act***

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[31] (2005) 5 SCC 294.

which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control*. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Penal Code, 1860 and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed.* ***As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA****.*

* * * * *

"*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****. …What would further be necessary on the part of the court is to see the culpability of the accused in 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.…"*

(emphasis supplied)

44. To complete the analysis as regards the presumption of constitutionality of a statute, a brief reference may also be made to this presumption as explained succinctly in ***Shri Ram Krishna Dalmia & Ors. vs. Shri Justice S.R. Tendolkar & Ors***[32], where a 5-Judge Bench of the Hon'ble Supreme Court says:

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[32] AIR 1958 SC 538.

"11. …The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

> *...*
>
> *(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people,* ***that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds****;*
>
> *(d) that the* ***legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest****;*
>
> *(e) that* ***in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times*** *and may assume every state of facts which can be conceived existing at the time of legislation; and*
>
> *(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.*

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

(emphasis supplied)

45. Since the event that led to the registration of the subject FIR arose from a protest allegedly organised and arranged *inter alia* by the appellant, it would be worthwhile at this point to appreciate the constitutional protection offered under our jurisprudence to the 'right to protest', which right has been repeatedly and unequivocally been held to be part of the fundamental rights guaranteed under our Constitution. The right to protest has been discussed and expatiated in various judgements, a reference to some of which is made below.

46. In ***Mazdoor Kisan Shakti Sangathan vs Union of India and Anr***[33]**,** the Hon'ble Supreme Court says:

> "*48. ...**Undoubtedly, holding peaceful demonstrations by the citizenry in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right.** This right is specifically enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. Article 19(1)(a) confers a very valuable right on the citizens, namely, right of free speech. Likewise, Article 19(1)(b) gives the right to assemble peacefully and without arms. **Together, both these rights ensure that the people of this country have the right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking. Legitimate dissent is a distinguishable feature of any democracy**. **Question is not as to whether the issue raised by the protestors is right or wrong or it is justified or unjustified**. **The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They have a right to express their views. A particular cause which, in the first instance, may appear to be insignificant or irrelevant may gain momentum and**

[33] (2018) 17 SCC 324.

acceptability when it is duly voiced and debated. That is the reason that this Court has always protected the valuable right of peaceful and orderly demonstrations and protests.

"49. In ***Babulal Parate v. State of Maharashtra*** *[AIR 1961 SC 884], this Court observed: (AIR p. 891, para 31)*

> *"31. The right of citizens to take out processions or to hold public meetings flows from the right in Article 19(1)(b) to assemble peaceably and without arms and the right to move anywhere in the territory of India."*

"50. In ***Kameshwar Prasad v. State of Bihar*** *[AIR 1962 SC 1166] the Court was mainly dealing with the question whether the right to make a demonstration is protected under Articles 19(1)(a) and (b) and whether a government servant is entitled to this right. This Court held: (AIR p. 1171, para 13)*

> *"13. ...* ***A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles****. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Articles 19(1)(a) and 19(1)(b).* ***It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b).*** *It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."*

"*51.* ***The Supreme Court has also gone beyond upholding the right to protest as a fundamental right and has held that the State must aid the right to assembly of the citizens****. In the* ***Constitution***

***Bench** judgment, **Himat Lal K. Shah v. Commr. of Police** [(1973) 1 SCC 227], while dealing with the challenge to the Rules framed under the Bombay Police Act regulating public meetings on streets, held **that the Government has power to regulate which includes prohibition of public meetings on streets or highways to avoid nuisance or disruption to traffic and thus, it can provide a public meeting on roads, but it does not mean that the Government can close all the streets or open areas for public meetings, thus denying the fundamental right which flows from Articles 19(1)(a) and (b)**. The Court held: (SCC pp. 239 & 248, paras 33 & 70)*

> *"33. This is true but nevertheless the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. **The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order**.*
>
> * * *
>
> ***70. Public meeting in open spaces and public streets forms part of the tradition of our national life. In the pre-Independence days such meetings have been held in open space and public streets and the people have come to regard it as a part of their privileges and immunities. The State and the local authority have a virtual monopoly of every open space at which an outdoor meeting can be held. If, therefore, the State or Municipality can constitutionally close both its streets and its parks entirely to public meetings, the practical result would be that it would be impossible to hold any open-air meetings in any large city. The real problem is that of reconciling the city's function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks, with its other obligations, of providing adequate places for public***

discussion in order to safeguard the guaranteed right of public assembly. *The assumption made by Justice Holmes is that a city owns its parks and highways in the same sense and with the same rights as a private owner owns his property with the right to exclude or admit anyone he pleases. That may not accord with the concept of dedication of public streets and parks. The parks are held for public and the public streets are also held for the public. It is doubtless true that the State or local authority can regulate its property in order to serve its public purposes. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion."*

"*52. While adjudicating with respect to the validity of police action against protestors, this Court again reiterated that right to protest was a fundamental right guaranteed to the citizens under Article 19. In* ***Ramlila Maidan Incident, In re*** *[(2012) 5 SCC 1], the Court observed that the right to assembly and peaceful agitations were basic features of a democratic system and the Government should encourage exercise of these rights: (SCC p. 99, para 245)*

"245. ***Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage***

> ***exercise of such rights***. *It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions.* ***The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order***. *This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them."*

"*53. Further, in* ***Anita Thakur*** *[(2016) 15 SCC 525], the Court recognised that the right to peaceful protest was a fundamental right under Articles 19(1), (b) and (c) of the Constitution, subject to reasonable restrictions. It was finally held that in that while the protestors turned violent first, the police used excessive force: (SCC pp. 533-34, paras 12-13 & 15)*

> *"12. ..... The "right to assemble" is beautifully captured in an eloquent statement that "an unarmed, peaceful protest procession in the land of "salt satyagraha", fast-unto-death and "do or die" is no jural anathema".* ***It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent***. *One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest.* ***Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution***.
>
> *13.* ***Notwithstanding above, it is also to be borne in mind that the aforesaid rights are subject to reasonable restrictions in the interest of the sovereignty and***

integrity of India, as well as public order*. It is for this reason, the State authorities many a times designate particular areas and routes, dedicating them for the purpose of holding public meetings.*

* * *

15. Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. ***Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become "unlawful"****.* ***At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses****."*

* * * * *

"61. Undoubtedly, right of people to hold peaceful protests and demonstrations, etc. is a fundamental right guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution. The question is as to whether disturbances, etc. caused by it to the residents, as mentioned in detail by the NGT, is a larger public interest which outweighs the rights of protestors to hold demonstrations at Jantar Mantar Road and, therefore, amounts to reasonable restriction in curbing such demonstrations. ***Here, we agree with the detailed reasoning given by the NGT that holding of demonstrations in the way it has been happening is causing serious discomfort and harassment to the residents****. At the same time, it is also to be kept in mind that for quite some time Jantar Mantar has been chosen as a place for holding demonstrations and was earmarked by the authorities as well. Going by the dicta in* ***Asha Ranjan*** *[(2017) 4 SCC 397], principle of primacy cannot be given to one right whereby the right of the other gets totally extinguished. Total extinction is not balancing. Balancing would mean curtailing one right of one class to some extent so that the right of the other class is also protected.*

*"62. **We feel that the pathetic conditions which were caused as a result of the processions, demonstrations and agitations, etc. at the Jantar Mantar were primarily because of the reason that the authorities did not take necessary measures to regulate the same**. **Had adequate and sufficient steps been taken by the authorities to ensure that such dharnas and demonstrations are held within their bounds, it would have balanced the rights of protestors as well as the residents**. For example, the dharnas and protests were allowed to be stretched almost on the entire Jantar Mantar Road, on both sides, and even across the width of the road. Instead, a particular area could have been earmarked for this purpose, sufficiently away from the houses, etc. so that there is no unnecessary blockage of roads and pathways. Likewise, the demonstrators were allowed to go on with nonstop slogans, even at odd hours, at night, and that too with the use of loudspeakers, etc. The authorities could have ensured that such slogans are within the parameters of noise pollution norms and there are no shoutings or slogans at night hours or early morning hours. Again, these dharnas, agitations and processions could be prohibited on certain occasions, for example, whenever some foreign dignitaries visit and pass through the said area or other such sensitive occasions. The authorities could also ensure that the protestors do not bring their trucks/buses, etc. and park those vehicles in and around the residential buildings; the protestors are not allowed to pitch up their tents and stay for days together; they are not allowed to bathe or wash their clothes using Delhi Jal Board tankers or defecate in the open, on pavements; and do not create any unhygienic situations. The authorities could also examine, while allowing such demonstration, as to the number of protestors who are likely to participate and could refuse permission to hold any such demonstration, etc. when the number is going to be abnormally large which, if allowed, would per se create hardships of various kinds to the residents. These are some of the examples given by us. The underlying message is that certain categories of peaceful protests and demonstrations, in a guarded and regulated manner, could be allowed so as to enable the protestors to exercise their right and, at the same time, ensuring that no inconvenience of any kind is caused to the residents.*

* * * * *

"64. At this juncture, while discussing the aspect of balancing of the two rights, we have to keep in mind certain other relevant factors as well. In the first instance, what needs to be noted is that a portion of Ramlila Maidan has been earmarked for such demonstrations, etc. Therefore, that space is already available. One of the arguments raised by the petitioner in the writ petition and the appellants in the

appeal is that Ramlila Maidan is far away from that portion of New Delhi area where there is a concentration of "power" and, therefore, holding protests and demonstration at a far place in Ramlila Maidan would have no impact or very little effect. It was stressed that the purpose of holding such demonstrations and raising slogans is that they reach persons concerned for whom these are meant. This may be correct. ***However, it is also to be borne in mind that we are living in an era of technology where a concerned voice by a group of persons can reach the right quarters by numerous means. Electronic and print media play a pivotal role. Then, we have social media and various applications like "WhatsApp", "Twitter", "Instagram", etc. which take no time in spreading such events****. ....."*

(emphasis supplied)

True connotation of 'terrorist act' & do accusations make-out an offence under UAPA

47. First and foremost, this court would be required to consider whether the allegations against the appellant in the subject charge-sheet make-out any offence under Chapters IV and/or VI of the UAPA, and if so, which offence or offences are disclosed. As seen from the discussion above, the offences alleged against the appellant under Chapter IV are offences under sections 15, 17 and 18, all of which fall under Chapter IV of the UAPA. Section 15 engrafts the offence of 'terrorist act', section 17 lays-down the punishment for raising funds for committing a terrorist act and section 18 engrafts the offence of 'punishment for conspiracy etc. to commit a terrorist act or any act preparatory to commit a terrorist act'. At this point, we would remind ourselves that 'terrorist act', including conspiracy and act preparatory to the commission of a terrorist act, were brought within the purview of the UAPA by an amendment made in 2004, on the heels of the Parliament repealing POTA in the year 2004, TADA having already been repealed

in 1995. Evidently therefore, the phrase 'terrorist act' must get its colour and flavour from the problem of terrorism as was earlier addressed by the Parliament under TADA and POTA.

48. Though, as seen above, the phrase 'terrorist act' has been defined in a *very wide and detailed* manner within section 15 itself, in our opinion, the court must be careful in employing the definitional words and phrases used in section 15 in their absolute literal sense or use them lightly in a manner that would trivialise the extremely heinous offence of 'terrorist act', without understanding how terrorism is different even from *conventional, heinous crime*.

49. As observed by the Hon'ble Supreme Court in *Hitendra Vishnu Thakur* (supra), the extent and reach of terrorist activity must travel beyond the effect of an ordinary crime and must not arise merely by causing disturbance of law and order or even public order; and *must be such that it travels beyond the capacity of the ordinary law enforcement agencies to deal with it under the ordinary penal law*. The following words of the Hon'ble Supreme Court in *Hitendra Vishnu Thakur* (supra) bear repetition:

> *"…'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and* ***is a totally abnormal phenomenon*** *…".*
>
> (emphasis supplied)

50. Furthermore, in the same judgment the Hon'ble Supreme Court says:

> *"...it is not the intention of the Legislature that every criminal should be tried under TADA, where the fall out of his activity does not extend beyond*

the normal frontiers of the ordinary criminal activity. ***Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA*** *..."*

(emphasis supplied)

51. The same sense and meaning has been echoed by the Hon'ble Supreme Court in *PUCL* (supra) where, quoting *Mohd. Iqbal M Shaikh,* the Hon'ble Supreme Court says:

> *"...it may be possible to describe it as use of violence when its* ***most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole*** *..."*

(emphasis supplied)

52. Furthermore, in *PUCL* (supra) the Hon'ble Supreme Court also observes that:

> *"...* ***Terrorist acts are meant to destabilise the nation by challenging its sovereignty and integrity, to raze the constitutional principles that we hold dear, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow democratically elected government, to promote prejudice and bigotry, to demoralise the security forces, to thwart the economic progress and development and so on****. This cannot be equated with a usual law and order problem within a State. On the other hand,* ***it is inter-State, international or cross-border in character****. Fight against the overt and covert acts of terrorism is not a regular criminal justice endeavour. Rather, it is defence of our nation and its citizens.* ***It is a challenge to the whole nation and invisible force of Indianness that binds this great nation together*** *..."*

(emphasis supplied)

53. Again, in *Yakub Abdul Razak Memon* (supra), the Hon'ble Supreme Court refers to acts of terrorism by saying that:

> *"... **Acts of terrorism can range from threats to actual assassinations, kidnappings, airline hijackings, bomb scares, car bombs, building explosions, mailing of dangerous materials, computer based attacks and the use of chemical, biological, and nuclear weapons—weapons of mass destruction (WMD)**"*

(emphasis supplied)

54. In our view therefore, notwithstanding the fact that the definition of 'terrorist act' in section 15 UAPA is wide and even somewhat vague, the phrase must partake of the *essential character of terrorism* and the phrase 'terrorist act' cannot be permitted to be casually applied to criminal acts or omissions that *fall squarely within the definition of conventional offences* as defined *inter alia* under the IPC. We remind ourselves of the principle laid down by the Constitution Bench of the Hon'ble Supreme Court in *A.K. Roy* (supra) where it said that ***the requirement that crimes must be defined with an appropriate definitiveness is a fundamental concept of criminal law and must be regarded as a pervading theme of our Constitution*** since the decision in ***Maneka Gandhi vs. Union of India***[34]; and that the underlying principle is that ***every person is entitled to be informed as to what the State commands or permits and the life and liberty of the person cannot be put on peril of an ambiguity***. The Constitution Bench further says that to stand true to this principle what is expected is that the language of the law must contain adequate warning of the conduct

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[34] 1978 (1) SCC 248

which may fall within the proscribed area '***when measured by common understanding***'. Most importantly, the Constitution Bench observes, and it is imperative that we extract the words again:

> *"... **These expressions, though they are difficult to define, do not elude a just application to practical situations**. The use of language carries with it the inconvenience of the imperfections of language...".*
>
> *"...We must, however, utter a word of caution that since the concepts are not defined, undoubtedly because they are not capable of a precise definition, **courts must strive to give to those concepts a narrower construction than what the literal words suggest** ...".*

55. Also noteworthy are the words of another Constitution Bench of the Hon'ble Supreme Court in *Sanjay Dutt* (supra) to the effect that when law visits a person with serious penal consequences, the courts must take extra care to ensure that ***those to whom the legislature did not intend to be covered by the express language of the statute "are not roped in by stretching the law"***.

56. It is therefore clearly the position in our jurisprudence that where a provision of law engrafting serious penal consequences is vague, such provision must be construed narrowly in order to bring it within the constitutional framework; and *must be applied in a just and fair way, lest it unjustly ropes within its ambit persons whom the Legislature never intended to punish*. Where the court finds that an act or omission is adequately addressed and dealt with by the ordinary penal law of the land, the court must not countenance a State agency '*crying wolf*'.

57. In our opinion, the intent and purport of the Parliament in enacting the UAPA, and more specifically in amending it in 2004 and 2008 to bring

terrorist activity within its scope, was, and could only have had been, to deal with matters of profound impact on the 'Defence of India', nothing more and nothing less. Absent this, UAPA could not have been enacted by the Parliament since the only entries in List-I of the Seventh Schedule to the Constitution that would bring the statute within the legislative competence of the Parliament are Entry 1 read with Entry 93 relating to the Defence of India and offences with respect to the Defence of India. It was neither the intent nor purport of enacting UAPA that other offences of the usual and ordinary kind, *however grave, egregious or heinous in their nature and extent*, should also be covered by UAPA, since such conventional matters would have fallen within Entry 1 of List-II (State List) and/or Entry 1 of List-III (Concurrent List) of the Seventh Schedule to our Constitution. In order to lean in favour of constitutionality of the provisions of section 15, 17 and 18 of the UAPA, as we must, it must be taken that the Parliament acted within the realm of its legislative competence and that UAPA came to be enacted and amended in 2004 and 2008 to address issues relating to the 'Defence of India'.

58. In the above view of the scope and ambit of UAPA, and in particular sections 15, 17 and 18 thereof, and based on the allegations made in the subject charge-sheet against the appellant as highlighted before us on behalf of the State, what we find is the following:

(a) The essential aim and intent of the activities, in which the appellant is alleged to have been involved, was to orchestrate and participate in a protest across the city of Delhi to oppose the enactment of the CAA, which was perceived as a law

intended to deprive members of the Muslim community of citizenship of the Republic of India;

(b) The allegation is that, alongwith co-conspirators, the appellant engaged in various steps and actions, the object of which was to organise a protest and take it to a crescendo that would lead to a *chakkajam*, namely to cause complete stoppage of vehicles and blockade of roads, so that supplies and services to the people of Delhi are adversely affected; and also to spread fear and cause riots;

(c) There is no allegation in the subject charge-sheet that the appellant was leading the co-conspirators, who are alleged to have been indulging in the aforestated acts; nor that he had formed the JCC; nor that he was even the group administrator of any of the WhatsApp groups, which, the allegation goes, were formed with the sinister aim of organising a protest against the CAA that would cause havoc amongst the ordinary citizenry;

(d) The appellant is stated to be a member of the SIO and the JCC, admittedly neither of which is a banned organisation or terrorist organisation listed in the First Schedule to the UAPA. The JCC in fact is not even an organisation but only an inchoate committee, defined perhaps only by the WhatsApp group that it runs;

(e) The common refrain running through the subject charge-sheet, as seen from the extracts cited and relied upon by the

State, is that the appellant's co-conspirators directed and instructed him to do certain things, including to visit Muslim areas, coordinate with local *Imams*, and help in orchestrating the anti-CAA protests at various locations in Delhi;

(f) There is no allegation in the subject charge-sheet that the anti-CAA protest extended even to the whole of the National Capital Territory of Delhi; and a perusal of the subject charge-sheet shows that the protest and the disruptions it is alleged to have caused were restricted to North-East Delhi. It would therefore be a stretch to say that the protest affected the *community at large* for it to qualify as an act of terror;

(g) In fact, from the extracts of the subject charge-sheet cited on behalf of the State, which are the most material allegations against the appellant, this court is able to discern *only one specific, particular and overt act* that the appellant is stated to have committed, namely that he handed over a SIM card given to him by someone else, to a co-conspirator / co-accused, which, it is further alleged, was used by the said co-accused to send messages on a WhatsApp group. Other than *this one action that is specifically attributed* to the appellant, this court is unable to discern any other act or omission attributed specifically to the appellant;

(h) Furthermore, there is no allegation whatsoever that the arms, ammunition and other articles, that were supposedly to be used as weapons, were recovered from or at the instance of the appellant. In this context the provisions of section 43E of

the UAPA may be noted, which contain a presumption against an accused person, to the effect that unless the contrary is shown, the court shall presume that the accused had committed an offence under section 15 *provided it is proved that the arms, explosives or other substances were recovered from the possession of the accused and there is reason to believe that these were used in the commission of the offence; or finger prints or other definitive evidence suggesting involvement of the accused was found at the site of the offence*. In the present case, since there is not even a whisper of an allegation that any of the articles referred to above were even recovered from the possession or at the instance of the appellant, the question of any presumption arising under section 43E does not arise;

(i) The State is at pains to argue that section 15 contemplates not only an act *'with intent to threaten'* the foundations of a nation but also any act *'likely to threaten'* such foundations. It is further stressed that not only is the *'intent to strike terror'* outlawed under section 15 but also an act that is *'likely to strike terror'*. The point sought to be made is that even the likelihood that the appellant's acts or omissions may threaten the nation are an offence within the meaning of sections 15 and 18 of the UAPA. Having given our anxious consideration to this aspect of 'likelihood' of threat and terror, we are of the view that the foundations of our nation stand on surer footing than to be likely to be shaken by a

protest, however vicious, organised by a tribe of college students or other persons, operating as a coordination committee from the confines of a University situate in the heart of Delhi;

(j) It has been a recurrent theme, repeatedly urged by the State, that what was contemplated and in fact brought to fruition was *not a typical protest but an aggravated protest* which was intended to disrupt the life of the community in Delhi. We find ourselves unpersuaded and unconvinced with this submission since we find it is not founded on any *specific factual allegation* and we are of the view that the *mere use of alarming and hyperbolic verbiage in the subject charge-sheet* will not convince us otherwise. In fact, upon a closer scrutiny of the submissions made on behalf of the State, we find that the submissions are based upon inferences drawn by the prosecuting agency and not upon factual allegations;

(k) It is the admitted position that the protest that is alleged to have been the culmination of the so-called conspiracy, in which *inter alia* the appellant participated, was neither banned nor outlawed. The protest was monitored by law enforcement agencies; and it is precisely by reason of disorderliness of the protest that the appellant is also an accused in another FIR bearing No. 298/2019 dated 16.12.2019, in which however the appellant has already been enlarged on bail *vidé* order dated 28.05.2020 by the learned ASJ, Saket District Courts, New Delhi;

(l) In the statutory framework of the now repealed TADA and POTA, before allowing a bail plea, the court was required to assess whether the accused person was 'not guilty' of the offence alleged; and therefore the burden was clearly on the defence to disprove the allegations on a *prima facie* basis. Correspondingly therefore, under section 43D(5) of the UAPA, where, before allowing a bail plea, the court is required to assess if the accusation against an accused is *prima facie* true, *the burden to demonstrate the prima facie veracity of the allegation must fall upon the prosecution*. The requirement of being satisfied that an accused is 'not guilty' under TADA or POTA meant that the court must have reasons to *prima facie exclude guilt*; whereas the requirement of believing an accusation to be '*prima facie* true' would mean that the court must have reason to *prima facie accept guilt* of the accused persons, even if on broad probabilities;

(m) The decision of the Hon'ble Supreme Court in *Watali* (supra) proscribes the court from delving into the ***merits or demerits*** of the evidence at the stage of deciding a bail plea; and as a sequitur, for assessing the *prima facie* veracity of the accusations, the court would equally *not delve into the suspicions and inferences that the prosecution may seek to draw* from the evidence and other material placed with the subject charge-sheet. To bring its case within Chapter IV of the UAPA the State must therefore, *without calling upon the court to draw inferences and conclusions*, show that the

accusations made against the appellant *prima facie* disclose the commission of a 'terrorist act' or a 'conspiracy' or an 'act preparatory' to the commission of a terrorist act.

59. In so far as the reliance placed by the State on the decision in *Ghulam Mohd. Bhat* (supra) is concerned, to which decision one of us was a member, we need only say that in that case charges had already been framed against the appellant therein and two co-accused had already pleaded guilty; whereby, after appreciating the evidence adduced alongwith the charge-sheet, the Special Court had already determined that the accusations against the appellant therein were *prima facie* true; and the order framing charges was not under challenge before the High Court.

60. In this case, we find that the State's attempt to show that the accusations made against the appellant are *prima facie* true, does not commend itself for acceptance.

61. Once we are of the opinion, as we are in the present case, that there are no reasonable grounds for believing that the accusations against the appellant are *prima facie* true, the *Proviso to section 43D(5) would not apply*; and we must therefore fall back upon the general principles of grant or denial of bail to an accused person charged with certain offences.

Right to Protest

62. Since this matter emanates from a protest organised by certain persons, which the State alleges, was no ordinary protest but one that has shaken or is likely to have shaken, the entire foundations of our Republic, we

feel compelled to discuss what might be the permissible contours of a protest that would not threaten our nation.

63. In this context we examined, when, the constitutionally guaranteed right to protest, which derives from the rights under Article 19(1)(b) of the Constitution to "assemble peaceably and without arms", crosses the line and ventures into commission of a cognizable offence under the ordinary penal law; and even more so, when, the right to protest further crosses into the territory of becoming a terrorist act or a conspiracy or an act preparatory to commission of a terrorist act under the UAPA.

64. The observations of the Hon'ble Supreme Court in *Mazdoor Kisan Shakti Sangathan* (supra) appear to us to be the most lucid and pithy answer as to the contours of legitimate protest and these bear repetition. In the said decision the Hon'ble Supreme Court says that legitimate dissent is a distinguishable feature of any democracy and the *question is not whether the issue raised by the protestors is right or wrong or whether it is justified or unjustified*, people have the right to express their views; and a particular cause, which in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. The Hon'ble Supreme Court further says that a demonstration may take various forms : *it may be noisy, disorderly and even violent*, in which case it would *not* fall within the permissible limits of Articles 19(1)(a) or 19(1)(b) and in such case the Government has the power to regulate, including prohibit, such protest or demonstration. The Government may even prohibit public meetings, demonstrations or protests on streets or highways to avoid nuisance or disturbance of traffic *but* the

Government cannot close all streets or open areas for public meetings thereby defeating the fundamental right that flows from Articles 19(1)(a) and 19(1)(b) of the Constitution.

65. Assuming, *without however expressing any opinion thereon*, that in the present case the protest in question crossed the limit of what is permissible under Articles 19(1)(a) and 19(1)(b) and went into the forbidden realm of a non-peaceful protest, first of all there is nothing to show that the Government had prohibited the protest at the relevant time, much less is there anything to show that the appellant was the perpetrator or conspirator or was involved in any illegal protest. In any case, whatever offences are alleged to have been committed by reason of the protests having turned non-peaceful are subject matter of F.I.R. No. 298/2019, in which the appellant is an accused *and in which he has already been admitted to bail* and will face trial in due course. There is absolutely nothing in the subject charge-sheet, by way of any specific or particularised allegation that would show the possible commission of a 'terrorist act' within the meaning of section 15 UAPA; or an act of 'raising funds' to commit a terrorist act under section 17; or an act of 'conspiracy' to commit or an 'act preparatory' to commit, a terrorist act within the meaning of section 18 UAPA. We are unable to discern in the subject charge-sheet the *elemental factual ingredients* that are a must to found the offences defined under section 15, 17 or 18 UAPA.

66. In our view, on an objective reading of the allegations contained in the subject charge-sheet, there is complete lack of any ***specific, particularised, factual allegations***, *that is to say allegations* ***other than those*** *sought to be spun by mere grandiloquence,* contained in the

subject charge-sheet that would make-out the ingredients of the offences under sections 15, 17 or 18 UAPA. Foisting extremely grave and serious penal provisions engrafted in sections 15, 17 and 18 UAPA frivolously upon people, would undermine the intent and purpose of the Parliament in enacting a law that is meant to address threats to the very existence of our Nation. Wanton use of serious penal provisions would only trivialise them. Whatever other offence(s) the appellant may or may not have committed, at least on a *prima facie* view, the State has been unable to persuade us that the accusations against the appellant show commission of offences under sections 15, 17 or 18 UAPA.

67. On another note, the learned ASG has attempted to distinguish the decision of a 3-Judge Bench of the Hon'ble Supreme Court in *K. A. Najeeb* (supra), submitting that that decision came to be made in the backdrop of an extended period of incarceration of the accused person as an undertrial and there being no likelihood of the trial being completed in a reasonable time. This, the learned ASG says, is not the case in the present matter. As presently advised, though the subject charge-sheet has been filed, there are some 740 prosecution witnesses, including public witnesses, protected witnesses, police witnesses cited in it; and trial is yet to commence. Should this court then wait until the appellant has languished in prison for a *long enough time* to be able to see that it will be impossible to complete the deposition of 740 prosecution witnesses in any foreseeable future, especially in view of the prevailing pandemic when all proceedings in the trial are effectively stalled? Should this court wait till the appellant's right to a speedy trial guaranteed under Article 21 of the Constitution *is fully and completely*

negated, before it steps in and wakes-up to such violation? We hardly think that that would be the desirable course of action. In our view the court must exercise foresight and see that trial in the subject charge-sheet will not see conclusion for many-many years to come; which warrants, nay invites, the application of the principles laid down by the Hon'ble Supreme Court in *K. A. Najeeb* (supra).

68. Since we are of the view that no offence under sections 15, 17 or 18 UAPA is made-out against the appellant on a *prima facie* appreciation of the subject charge-sheet and the material collected and cited by the prosecution, the additional limitations and restrictions for grant of bail under section 43D(5) UAPA do not apply; and the court may therefore fall back upon the usual and ordinary considerations for bail under the Cr.P.C.

69. In this behalf the submission made on behalf of the State, which we must address, is that the High Court while deciding an appeal under section 21 of the NIA Act must consider the grant or denial of bail *only within the parameters of section 437 Cr.P.C. and not section 439 Cr.P.C.* since the High Court is seized of an appeal arising from the Special Court, which (latter) has acted under section 437 Cr.P.C., since in dealing with a case under the UAPA, the Special Court is *not* a Court of Sessions. Although, the learned ASG contends that this is the principle laid down by the Hon'ble Supreme Court in *Kartar Singh* (supra), we are unable to find any precept to that effect laid down in *Kartar Singh* (supra). Moreover, to say that while considering a bail plea, even if in an appeal under section 21 of the NIA Act, the High Court would be constrained by the restrictive power for bail under

section 437 Cr.P.C., in our view, does violence both to the express wording of section 437 Cr.P.C. as also to the wider powers of the High Court with regard to bail under section 439 Cr.P.C. It requires to be noticed that section 439 Cr.P.C. in so many words applies to "a Court other than the High Court or Court of Sessions". These words in section 437 Cr.P.C. cannot be deemed to have been amended by any provision of the NIA Act or the UAPA. Moreover, it does not appeal to our sense of reason, that when dealing with a bail plea *in an appeal under section 21* of the NIA Act, the High Court would be bereft of its own powers under section 439 Cr.P.C., or absent even those powers, would be unable to act *ex debito justitiae* in exercise of its inherent powers under section 482 Cr.P.C. In our view therefore, regardless of the fact that the present case arises as an appeal under section 21 of the NIA Act, since the additional constraints of section 43D(5) of UAPA do not apply, this court would be entitled to consider the matter of bail on the touchstone of the provisions of section 439 Cr.P.C.

70. In this behalf, we remind ourselves of the following precepts laid down by the Hon'ble Supreme Court for grant or denial of bail.

General Principles of Bail

71. A quick conspectus of the general principles for considering a bail plea would not be out of place at this point. Outlining the considerations for bail, in ***Ash Mohammad vs. Shiv Raj Singh & Anr.***[35] the Supreme Court expressed itself as follows:

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[35] (2012) 9 SCC 446

"8. In Ram Govind Upadhyay v. Sudarshan Singh[36], it has been opined that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the learned Judges referred to the decision in Prahlad Singh Bhati v. NCT, Delhi and stated as follows: (Ram Govind case, SCC p. 602, para 4)

> *"(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*
>
> *(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*
>
> *(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*
>
> *(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

"9. In Chaman Lal v. State of U.P.[37] this Court while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are: (SCC p. 525)

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[36] (2002) 3 SCC 598

[37] (2004) 7 SCC 525

> *"... (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge."*

"10. In Masroor v. State of U.P.[38], while giving emphasis to ascribing reasons for granting of bail, however, brief it may be, a two-Judge Bench observed that: (SCC p. 290, para 15)

> *"15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case."*

"11. In Prasanta Kumar Sarkar v. Ashis Chatterjee[39] it has been observed that (SCC p. 499, para 9) normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail of 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.

> *"9. ... among other circumstances, the factors [which are] 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;*

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[38] (2009) 14 SCC 286

[39] (2010) 14 SCC 496

(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."

* * * * * *

"20. Having said about the sanctity of liberty and the restrictions imposed by law and the necessity of collective security, we may proceed to state as to what is the connotative concept of bail. In Halsbury's Laws of England it has been stated thus:

"166. Effect of bail.—The effect of granting bail is not to set the defendant [(accused) at liberty], but to release him from the custody of the law and to entrust him to the custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law, and he will then be imprisoned…."

"21. In Sunil Fulchand Shah v. Union of India[40] Dr A.S. Anand, learned Chief Justice, in his concurring opinion, observed: (SCC pp. 429-30, para 24)

"24. ... Bail is well understood in criminal jurisprudence and Chapter 33 of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of

[40] (2000) 3 SCC 409

granting bail is to release the accused from internment ***though the court would still retain constructive control over him through the sureties****. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word 'bail' is surety."*

(emphasis supplied)

72. In a recent decision in ***Sanjay Chandra vs. CBI***[41] the Supreme Court has held that :

> *"21. In bail applications, generally, it has been laid down from the earliest times that the* ***object of bail is to secure the appearance of the accused person at his trial*** *by reasonable amount of bail. The* ***object of bail is neither punitive nor preventative****. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that* ***punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty****.*
>
> *"22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases,* ***"necessity" is the operative test****. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*

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[41] (2012) 1 SCC 40

"23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and ***it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson****.*

"24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, ***they have not placed any material*** *in support of the allegation. In our view,* ***seriousness of the charge*** *is, no doubt, one of the relevant considerations while considering bail applications but* ***that is not the only test*** *or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice"."*

* * * * *

"39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to

which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."

* * * * *

"46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the ***investigating agency has already completed investigation and the charge-sheet is already filed*** *before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."*

(emphasis supplied)

73. Most recently, in ***P. Chidambaram vs. CBI***[42] the Supreme Court has held :

"22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The ***following factors*** *are to be taken into consideration while considering an application for bail:- (i) the* ***nature of accusation*** *and the* ***severity of the punishment*** *in the case of conviction and the nature of the materials relied upon by the prosecution; (ii)* ***reasonable apprehension of tampering with the witnesses*** *or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the* ***likelihood of his abscondence****; (iv)* ***character behaviour and standing*** *of the accused and the circumstances which are peculiar to the accused; (v)* ***larger interest***

[42] 2019 SCC OnLine SC 1380

> ***of the public or the State*** *and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. ....."*
>
> * * * * *
>
> *"33. The appellant is not a "flight risk" and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the prosecution. The charge-sheet has been filed against the appellant and other co-accused on 18.10.2019. The appellant is in custody from 21.08.2019 for about two months. The co-accused were already granted bail. The appellant is said to be aged 74 years and is also said to be suffering from age related health problems. Considering the above factors and the facts and circumstances of the case, we are of the view that the appellant is entitled to be granted bail."*

(emphasis supplied)

74. Furthermore in ***P. Chidambaram vs. Directorate of Enforcement***[43], the Supreme Court has explained the concept and application of 'gravity' of an offence in the following way :

> *"12. .... The* ***gravity can only beget the length of sentence*** *provided in law and* ***by asserting that the offence is grave, the grant of bail cannot be thwarted****. The respondent cannot contend as if the appellant should remain in custody till the trial is over.*
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> * * * * * *

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[43] 2019 SCC OnLine SC 1549

> *"23. .... Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is* ***not a rule*** *that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial."*

(emphasis supplied)

75. Commenting on the consequences of pre-trial detention, in ***Moti Ram vs. State of M.P.***[44] the Supreme Court said :

> *"14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his*

[44] (1978) 4 SCC 47

detention frequently falls heavily on the innocent members of his family."

(emphasis supplied)

76. In ***Babu Singh vs. State of U.P.***[45] the Supreme Court observed :

> *"18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. ..... The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible."*

(emphasis supplied)

Conclusions

77. Upon a conspectus of the general law relating to bail and applying these well-worn principles to the present case, in our view, though during trial the State will no doubt attempt to marshal evidence and make good the allegations made against the appellant, as we speak now *these are mere allegations* and, as discussed above, we are not convinced *prima facie* of the veracity of the allegations so made. Charge-sheet dated 16.09.2020 has already been filed in the matter. Some 740 witnesses have been cited in the subject charge-sheet. Trial is yet to commence. In view of the truncated functioning of courts by

[45] (1978) 1 SCC 579

reason of the prevailing second wave of the COVID-19 pandemic, it is unlikely that trial will commence anytime soon.

78. That apart, the appellant has already been admitted to bail in case F.I.R. No. 298/2019 dated 16.12.2019 *vidé* order dated 28.05.2020 made by the learned Sessions Court; and in our view there also appears to be an overlap between the so-called larger conspiracy, acts and omissions alleged against the appellant in the said other FIR and in the subject FIR from which the present appeal arises. While the presence of the appellant for purposes of trial must be secured, there is no material or basis to suspect; nor is there any reasonable apprehension that the appellant will tamper with evidence or intimidate witnesses. As very pithily put by the Hon'ble Supreme Court in *P. Chidambaram* (supra) the gravity of the offence alleged would beget the length of sentence, as may be awarded upon conclusion of trial; but an assertion as to the gravity of the offence cannot thwart the grant of bail. On the other hand, apart from militating against the presumption of innocence, pre-trial detention would lead to needless psychological and physical deprivations; and above all, would seriously hamper the appellant from participating in and contributing to the preparation of his defence at the trial. The three cardinal concerns against grant of bail pending trial, namely of evidence tampering, witness intimidation and abscondence, can be addressed by imposition of requisite conditions on grant of bail.

79. In view of the above considerations and discussion, we are inclined to allow the appeal.

80. We accordingly set-aside impugned order dated 26.10.2020 made by the learned Special Court in the case arising from F.I.R. No. 59/2020

dated 06.03.2020 registered at P.S.: Crime Branch; and admit the appellant to *regular bail* until conclusion of trial, subject to the following conditions:

(a) The appellant shall furnish a personal bond in the sum of Rs. 50,000/- (Rs. Fifty Thousand Only) with 02 *local* sureties in the like amount, to the satisfaction of the learned Trial Court;

(b) The appellant shall furnish to the Investigating Officer/ S.H.O. a cellphone number on which the appellant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

(c) The appellant shall *ordinarily* reside at his place of residence as per prison records and shall inform the Investigating Officer if he changes his usual place of residence;

(d) If the appellant has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;

(e) The appellant shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The appellant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

81. For clarity, this judgment supersedes the interim custody bail granted to the appellant *vidé* order dated 04.06.2021.

82. Nothing in this order shall be construed as an expression on the merits of the pending trial.

83. A copy of this order be sent to the concerned Jail Superintendent.

84. The appeal stands disposed of in the above terms.

85. Pending applications, if any, are also disposed of.

SIDDHARTH MRIDUL, J

ANUP JAIRAM BHAMBHANI, J

JUNE 15, 2021
*uj/*Ne/*ds*

ANNEXURE-A

COMPARISON TABLE OF PROVISIONS

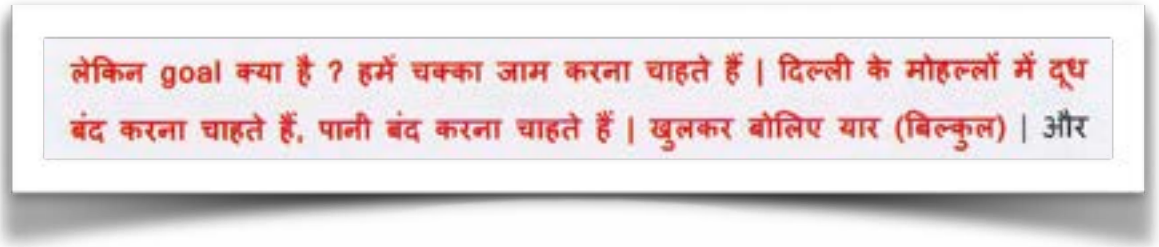
NDPS	TADA	MCOCA, 1999	POTA	UAPA
Narcotic Drugs and Psychotropic Substances Act, 1985	Terrorist and Disruptive Activities (Prevention) Act, 1987	Maharashtra Control of Organised Crime Act, 1999	Prevention of Terrorism Act, 2002	Unlawful Activities (Prevention) Act, 1967
S. 37(1)	**S. 20(8)**	**S. 21(4)**	**S. 49(6)-(7)**	**S. 43-D(5)**
37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— … (b) **no person accused of** an offence punishable for **offences under Section 19 or Section 24 or Section 27-A** and also for **offences involving commercial quantity** shall be released on bail or on his own bond **unless**— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) **where** the Public Prosecutor opposes the application, the court is **satisfied** that there are **reasonable grounds** for believing that he is **not guilty** of such offence and that he is **not likely to commit any offence** while on bail.	20. Modified application of certain provisions of the Code. — … (8) Notwithstanding anything contained in the Code, **no person accused** of an **offence** punishable **under this Act** or any rule made thereunder shall **if in custody**, be released on bail or on his own bond **unless**— (a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (b) **where** the Public Prosecutor **opposes** the application, the court is **satisfied** that there are **reasonable grounds** for **believing** that he is **not guilty of such offence** and that he is **not likely to commit any offence while on bail.**	21. Modified application of certain provisions of the code … 4) Notwithstanding anything contained in the Code, **no person accused** of an **offence** punishable **under this Act** shall, **if in custody**, be released on bail or on his own bond, **unless**— (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and (b) **where** the Public Prosecutor **opposes** the application, the Court is **satisfied** that there are **reasonable grounds** for **believing** that he is **not guilty of such offence** and that he is **not likely to commit any offence while on bail.**	49. Modified application of certain provisions of the Code. —… (6) Notwithstanding anything contained in the Code, **no person accused** of an **offence** punishable **under this Act** shall, **if in custody**, be released on bail or on his own bond unless the court gives the Public Prosecutor an opportunity of being heard. (7) **Where** the Public Prosecutor **opposes** the application of the accused to release on bail, **no person accused** of **an offence** punishable under this Act or any rule made thereunder shall be released on bail **until** the court is **satisfied** that there are **grounds for believing** that he is **not guilty** of committing such offence: Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-section (6) of this section shall apply.	43-D. 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***.

ANNEXURE-B

RELEVANT SCREENSHOTS EXTRACTED FROM THE SUBJECT CHARGE-SHEET

The names and other identifying details of persons other than the appellant have been redacted by this Court.

Screenshot 1


लेकिन goal क्या है ? हमें चक्का जाम करना चाहते हैं | दिल्ली के मोहल्लों में दूध बंद करना चाहते हैं, पानी बंद करना चाहते हैं | खुलकर बोलिए यार (बिल्कुल) | और

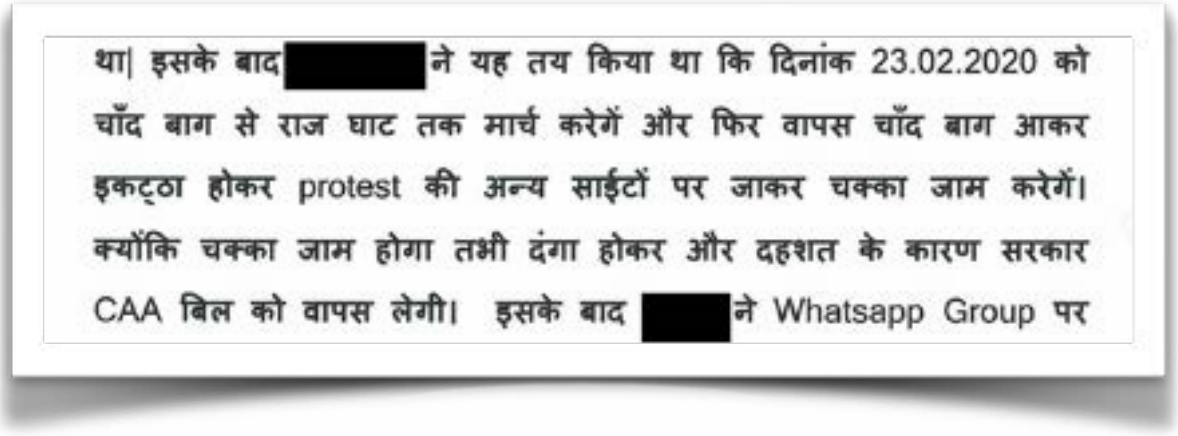
2051

Screenshot 2


कर रहे हैं | हमारी ख्वाहिश और हमारी आरजू यह है कि दिल्ली में चक्का जाम हो | और सिर्फ दिल्ली में ही नहीं ,बल्कि जिस जगह ,जिस शहर में मुसलमान कर सकता है ,मुसलमान हिंदुस्तान के 500 शहरों में चक्का जाम कर सकता है ,ठीक है ? अब उसमें रोड ब्लॉक कौन है ? रोड ब्लॉक भाजपा नहीं है ,रोड ब्लॉक कांग्रेस नहीं है ,रोड ब्लॉक है जमीयत-ए-उलेमा-ए-हिंद) | सही (रोड ब्लॉक है जमात-ए-इस्लामी हिंद ठीक है ? यह लोग है रोड ब्लॉक | अब नाम में नहीं हजारों है | आप सब के बयानात पढ़ रहे हैं | आप रोडब्लॉक कौन है यह समझ लीजिए | क्या मुसलमानों में इतनी हैसियत भी नहीं कि उत्तर भारत के शहरों को बंद किया जा सके ? बताइएआप .....)है है बिल्कुल है | (यूपी में शहरी आबादी मुसलमानों की 30 फीसदी से ऊपर है | अरे भाई शर्म करो, 30 फीसदी के बाद भी शहर चल क्यूं रहा है ? दूसरी चीज बिहार

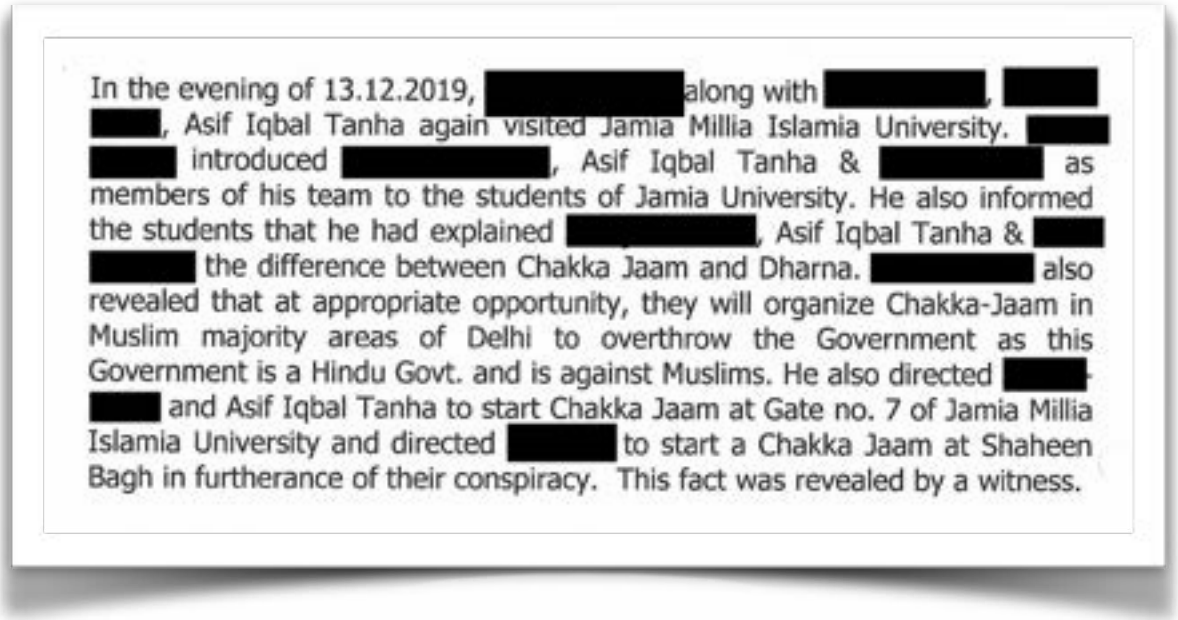
2047

Screenshot 3


था| इसके बाद [redacted] ने यह तय किया था कि दिनांक 23.02.2020 को चाँद बाग से राज घाट तक मार्च करेगें और फिर वापस चाँद बाग आकर इकट्ठा होकर protest की अन्य साईटों पर जाकर चक्का जाम करेगें। क्योंकि चक्का जाम होगा तभी दंगा होकर और दहशत के कारण सरकार CAA बिल को वापस लेगी। इसके बाद [redacted] ने Whatsapp Group पर

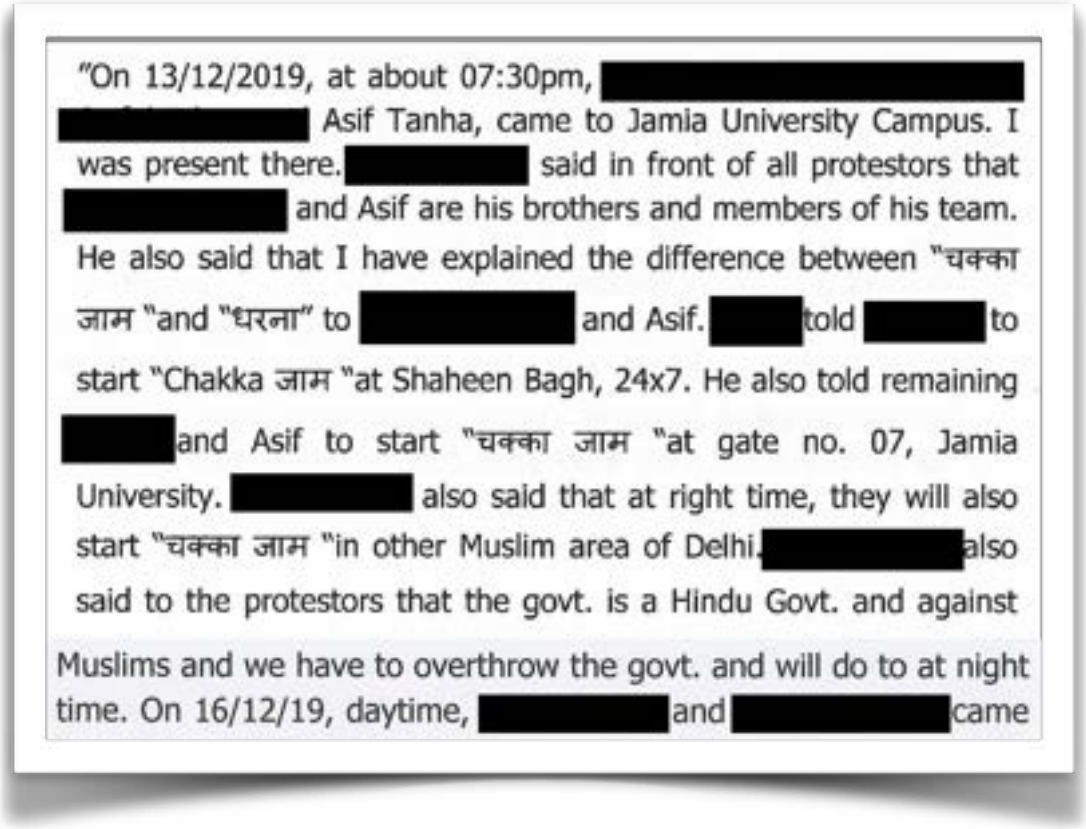
1546

Screenshot 4


In the evening of 13.12.2019, [redacted] along with [redacted], [redacted], Asif Iqbal Tanha again visited Jamia Millia Islamia University. [redacted] introduced [redacted], Asif Iqbal Tanha & [redacted] as members of his team to the students of Jamia University. He also informed the students that he had explained [redacted], Asif Iqbal Tanha & [redacted] the difference between Chakka Jaam and Dharna. [redacted] also revealed that at appropriate opportunity, they will organize Chakka-Jaam in Muslim majority areas of Delhi to overthrow the Government as this Government is a Hindu Govt. and is against Muslims. He also directed [redacted] and Asif Iqbal Tanha to start Chakka Jaam at Gate no. 7 of Jamia Millia Islamia University and directed [redacted] to start a Chakka Jaam at Shaheen Bagh in furtherance of their conspiracy. This fact was revealed by a witness.

2052

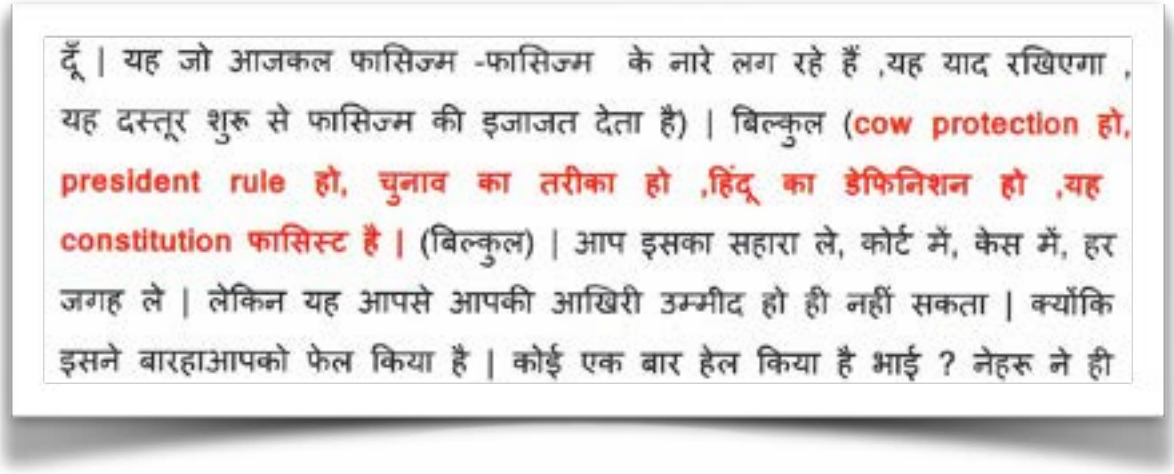
Screenshot 5



"On 13/12/2019, at about 07:30pm, [redacted] Asif Tanha, came to Jamia University Campus. I was present there. [redacted] said in front of all protestors that [redacted] and Asif are his brothers and members of his team. He also said that I have explained the difference between "चक्का जाम "and "धरना" to [redacted] and Asif. [redacted] told [redacted] to start "Chakka जाम "at Shaheen Bagh, 24x7. He also told remaining [redacted] and Asif to start "चक्का जाम "at gate no. 07, Jamia University. [redacted] also said that at right time, they will also start "चक्का जाम "in other Muslim area of Delhi. [redacted] also said to the protestors that the govt. is a Hindu Govt. and against Muslims and we have to overthrow the govt. and will do to at night time. On 16/12/19, daytime, [redacted] and [redacted] came

1762-1763

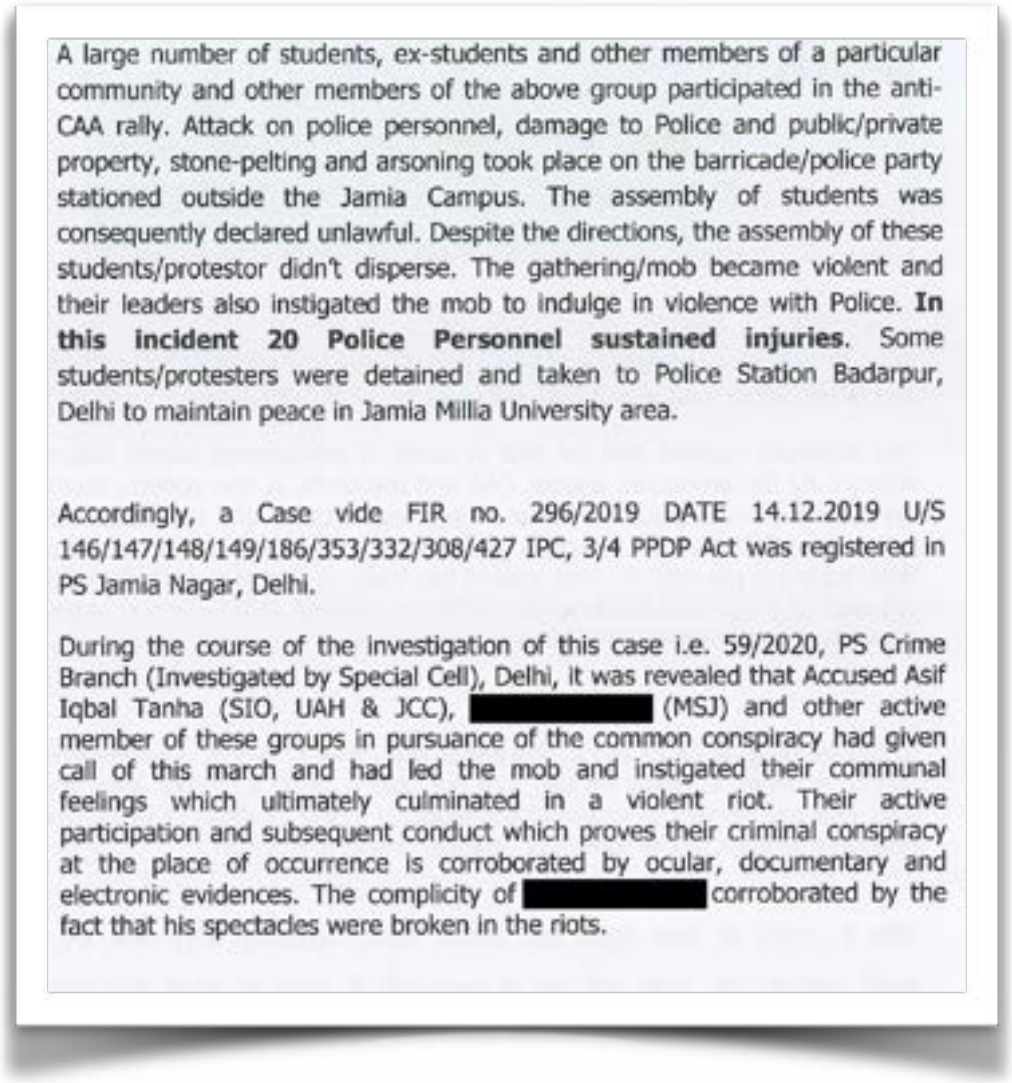
Screenshot 6



दूँ | यह जो आजकल फासिज्म -फासिज्म के नारे लग रहे हैं ,यह याद रखिएगा , यह दस्तूर शुरु से फासिज्म की इजाजत देता है) | बिल्कुल (cow protection हो, president rule हो, चुनाव का तरीका हो ,हिंदू का डेफिनिशन हो ,यह constitution फासिस्ट है | (बिल्कुल) | आप इसका सहारा ले, कोर्ट में, केस में, हर जगह ले | लेकिन यह आपसे आपकी आखिरी उम्मीद हो ही नहीं सकता | क्योंकि इसने बारहाआपको फेल किया है | कोई एक बार हेल किया है भाई ? नेहरू ने ही

2048

Screenshot 7



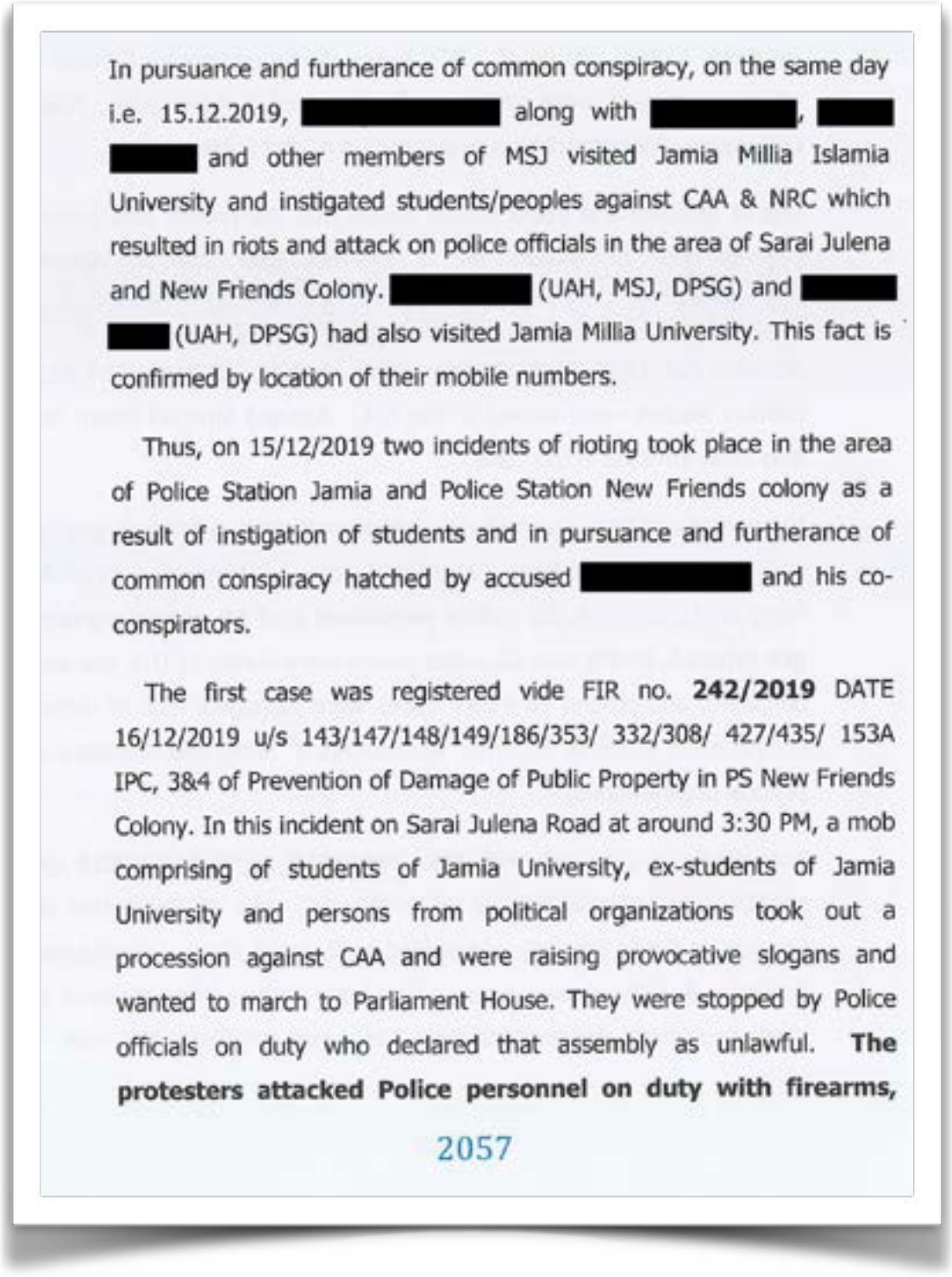
A large number of students, ex-students and other members of a particular community and other members of the above group participated in the anti-CAA rally. Attack on police personnel, damage to Police and public/private property, stone-pelting and arsoning took place on the barricade/police party stationed outside the Jamia Campus. The assembly of students was consequently declared unlawful. Despite the directions, the assembly of these students/protestor didn't disperse. The gathering/mob became violent and their leaders also instigated the mob to indulge in violence with Police. **In this incident 20 Police Personnel sustained injuries**. Some students/protesters were detained and taken to Police Station Badarpur, Delhi to maintain peace in Jamia Millia University area.

Accordingly, a Case vide FIR no. 296/2019 DATE 14.12.2019 U/S 146/147/148/149/186/353/332/308/427 IPC, 3/4 PPDP Act was registered in PS Jamia Nagar, Delhi.

During the course of the investigation of this case i.e. 59/2020, PS Crime Branch (Investigated by Special Cell), Delhi, it was revealed that Accused Asif Iqbal Tanha (SIO, UAH & JCC), [redacted] (MSJ) and other active member of these groups in pursuance of the common conspiracy had given call of this march and had led the mob and instigated their communal feelings which ultimately culminated in a violent riot. Their active participation and subsequent conduct which proves their criminal conspiracy at the place of occurrence is corroborated by ocular, documentary and electronic evidences. The complicity of [redacted] corroborated by the fact that his spectacles were broken in the riots.

2045

Screenshot 8a



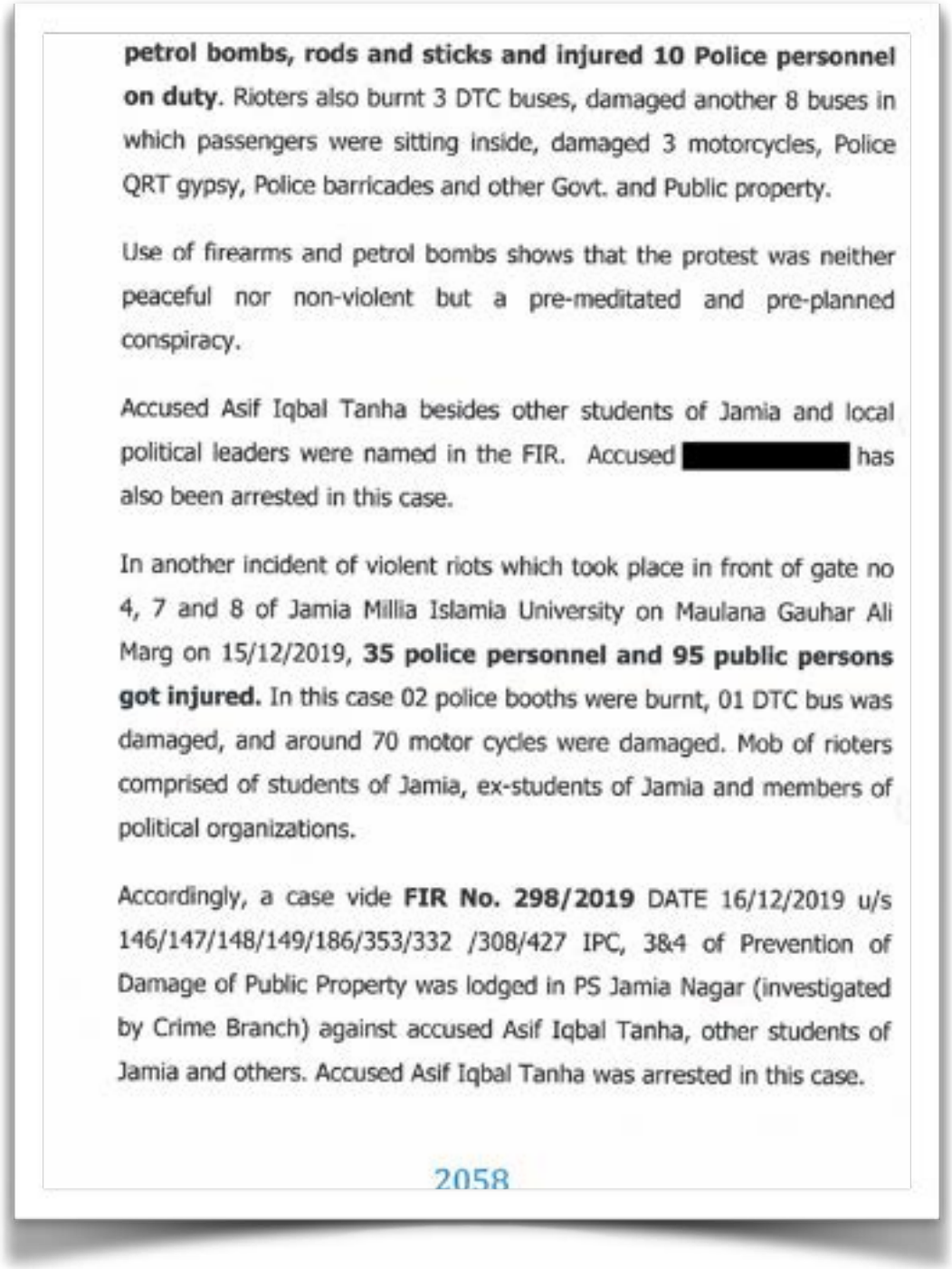
In pursuance and furtherance of common conspiracy, on the same day i.e. 15.12.2019, [redacted] along with [redacted], [redacted] and other members of MSJ visited Jamia Millia Islamia University and instigated students/peoples against CAA & NRC which resulted in riots and attack on police officials in the area of Sarai Julena and New Friends Colony. [redacted] (UAH, MSJ, DPSG) and [redacted] (UAH, DPSG) had also visited Jamia Millia University. This fact is confirmed by location of their mobile numbers.

Thus, on 15/12/2019 two incidents of rioting took place in the area of Police Station Jamia and Police Station New Friends colony as a result of instigation of students and in pursuance and furtherance of common conspiracy hatched by accused [redacted] and his co-conspirators.

The first case was registered vide FIR no. **242/2019** DATE 16/12/2019 u/s 143/147/148/149/186/353/ 332/308/ 427/435/ 153A IPC, 3&4 of Prevention of Damage of Public Property in PS New Friends Colony. In this incident on Sarai Julena Road at around 3:30 PM, a mob comprising of students of Jamia University, ex-students of Jamia University and persons from political organizations took out a procession against CAA and were raising provocative slogans and wanted to march to Parliament House. They were stopped by Police officials on duty who declared that assembly as unlawful. **The protesters attacked Police personnel on duty with firearms,**

2057

Screenshot 8b



petrol bombs, rods and sticks and injured 10 Police personnel on duty. Rioters also burnt 3 DTC buses, damaged another 8 buses in which passengers were sitting inside, damaged 3 motorcycles, Police QRT gypsy, Police barricades and other Govt. and Public property.

Use of firearms and petrol bombs shows that the protest was neither peaceful nor non-violent but a pre-meditated and pre-planned conspiracy.

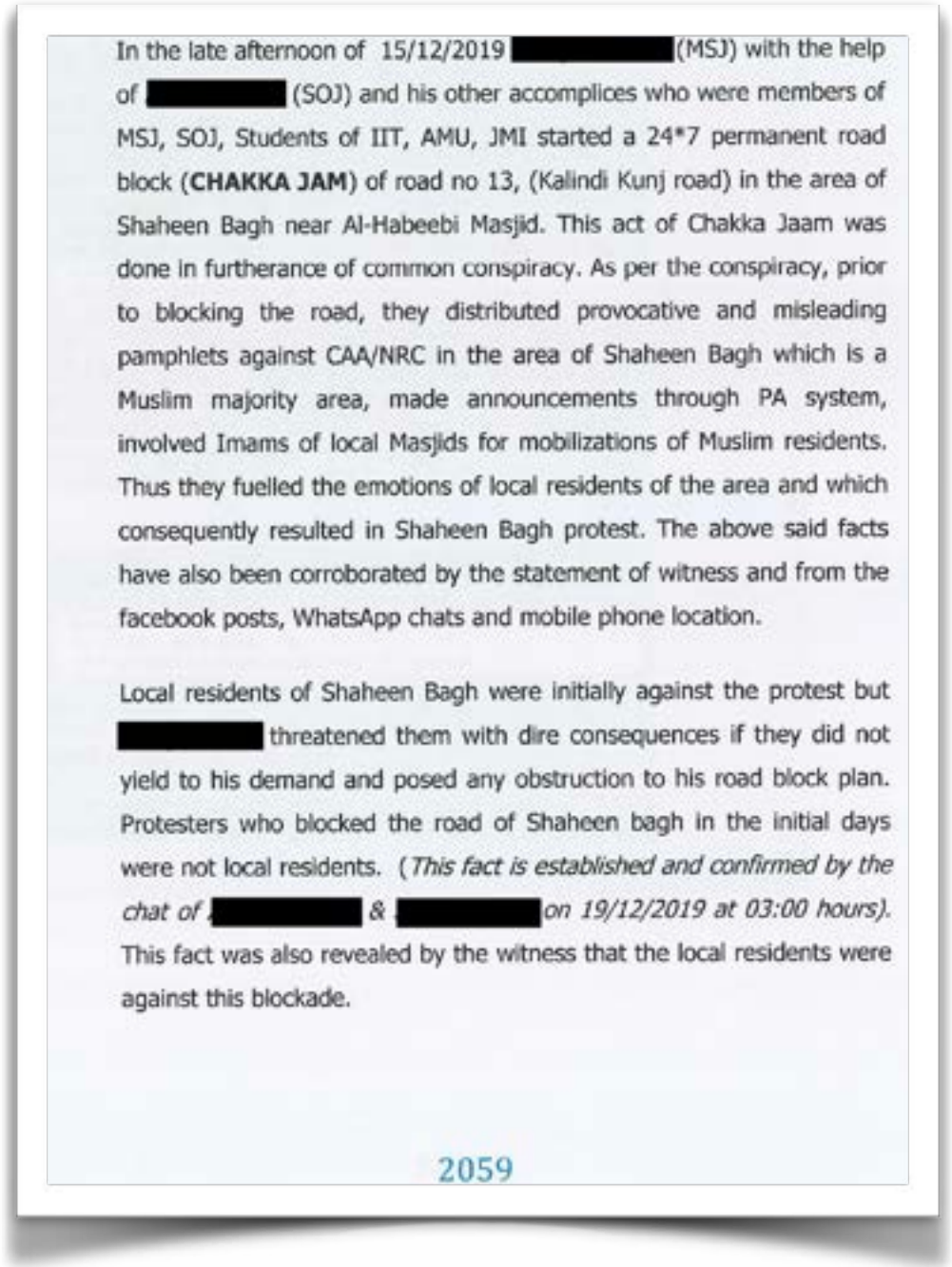
Accused Asif Iqbal Tanha besides other students of Jamia and local political leaders were named in the FIR. Accused [redacted] has also been arrested in this case.

In another incident of violent riots which took place in front of gate no 4, 7 and 8 of Jamia Millia Islamia University on Maulana Gauhar Ali Marg on 15/12/2019, **35 police personnel and 95 public persons got injured.** In this case 02 police booths were burnt, 01 DTC bus was damaged, and around 70 motor cycles were damaged. Mob of rioters comprised of students of Jamia, ex-students of Jamia and members of political organizations.

Accordingly, a case vide **FIR No. 298/2019** DATE 16/12/2019 u/s 146/147/148/149/186/353/332 /308/427 IPC, 3&4 of Prevention of Damage of Public Property was lodged in PS Jamia Nagar (investigated by Crime Branch) against accused Asif Iqbal Tanha, other students of Jamia and others. Accused Asif Iqbal Tanha was arrested in this case.

2058

Screenshot 8c

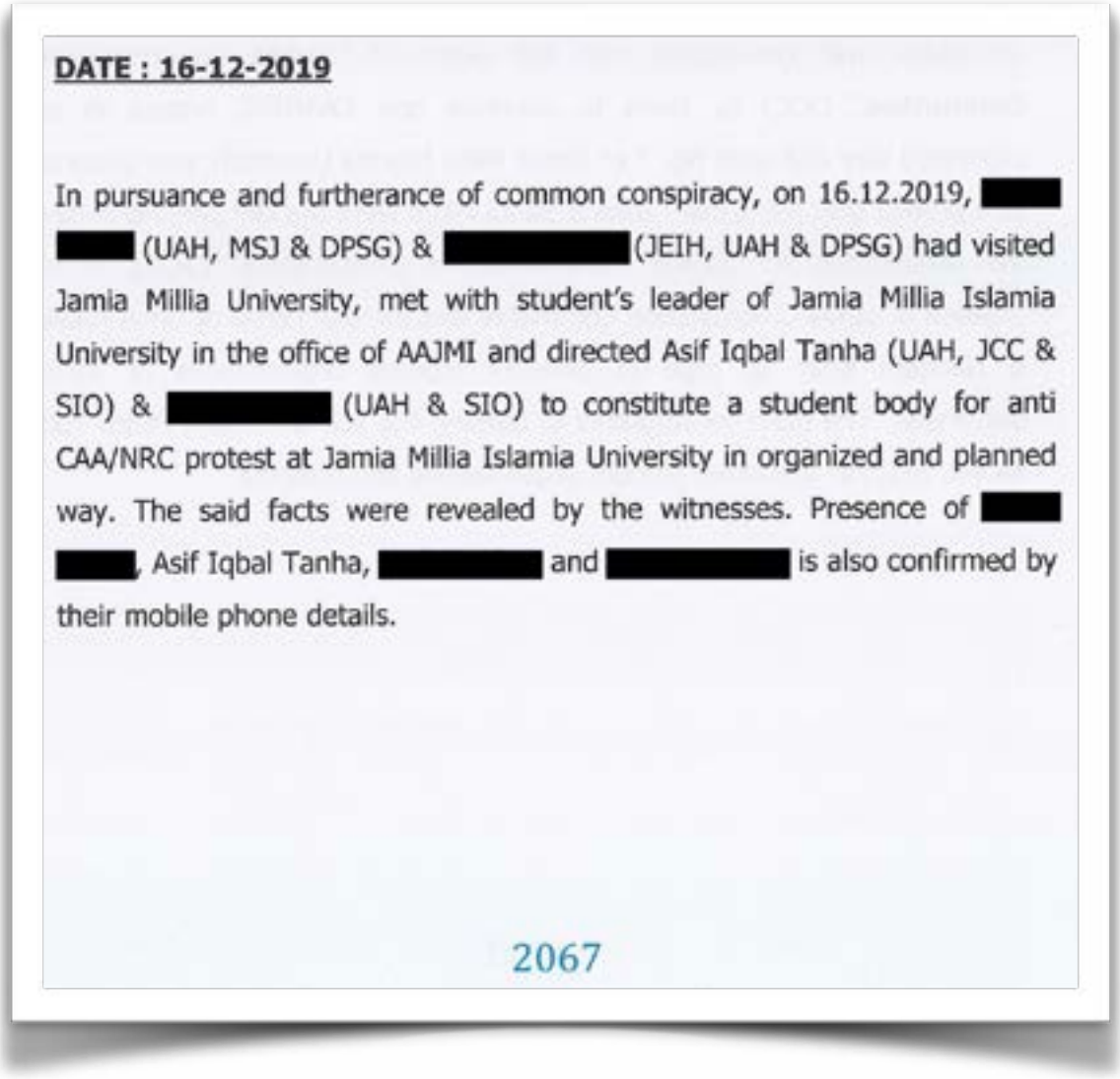


In the late afternoon of 15/12/2019 [redacted] (MSJ) with the help of [redacted] (SOJ) and his other accomplices who were members of MSJ, SOJ, Students of IIT, AMU, JMI started a 24*7 permanent road block (**CHAKKA JAM**) of road no 13, (Kalindi Kunj road) in the area of Shaheen Bagh near Al-Habeebi Masjid. This act of Chakka Jaam was done in furtherance of common conspiracy. As per the conspiracy, prior to blocking the road, they distributed provocative and misleading pamphlets against CAA/NRC in the area of Shaheen Bagh which is a Muslim majority area, made announcements through PA system, involved Imams of local Masjids for mobilizations of Muslim residents. Thus they fuelled the emotions of local residents of the area and which consequently resulted in Shaheen Bagh protest. The above said facts have also been corroborated by the statement of witness and from the facebook posts, WhatsApp chats and mobile phone location.

Local residents of Shaheen Bagh were initially against the protest but [redacted] threatened them with dire consequences if they did not yield to his demand and posed any obstruction to his road block plan. Protesters who blocked the road of Shaheen bagh in the initial days were not local residents. (*This fact is established and confirmed by the chat of* [redacted] & [redacted] *on 19/12/2019 at 03:00 hours).* This fact was also revealed by the witness that the local residents were against this blockade.

2059

Screenshot 9a

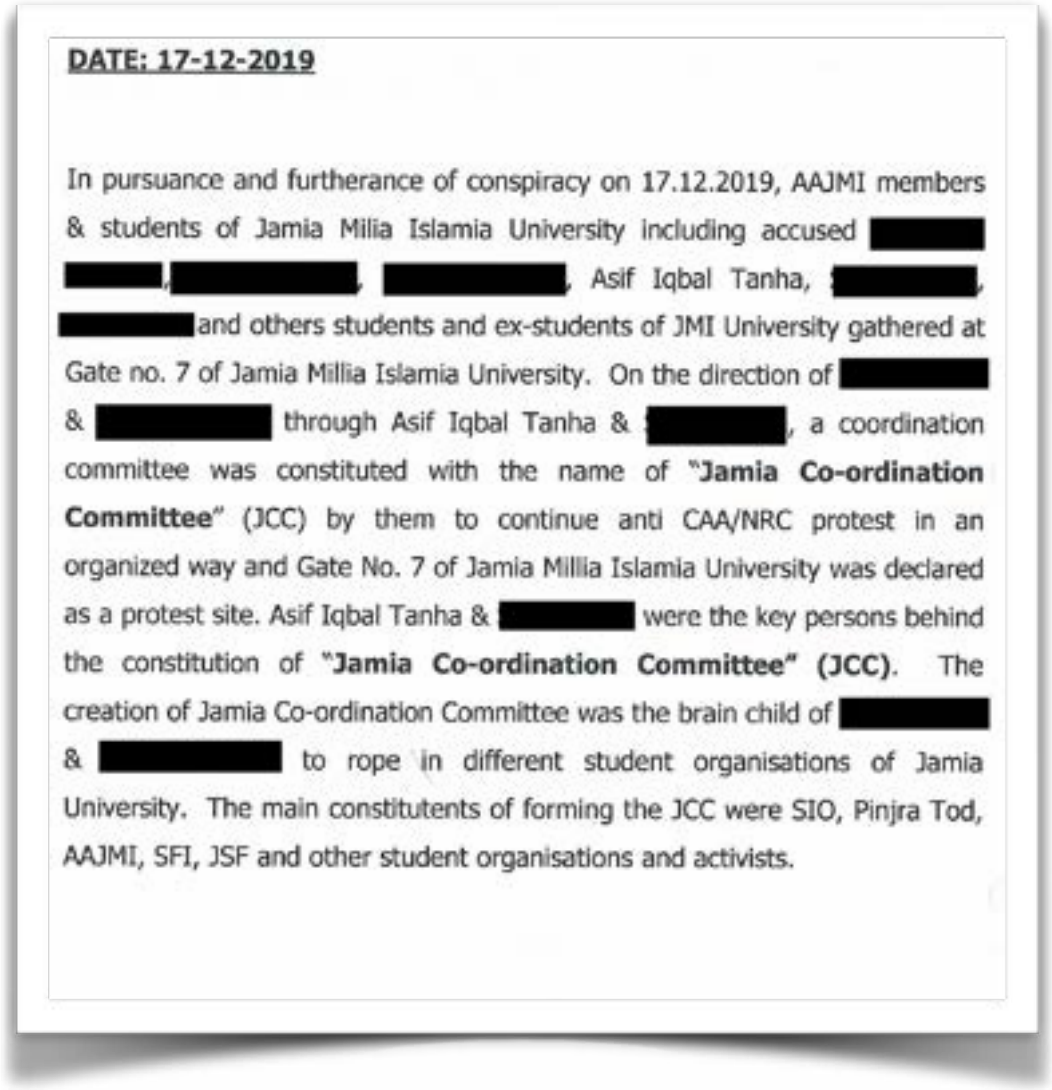


DATE : 16-12-2019

In pursuance and furtherance of common conspiracy, on 16.12.2019, [redacted] (UAH, MSJ & DPSG) & [redacted] (JEIH, UAH & DPSG) had visited Jamia Millia University, met with student's leader of Jamia Millia Islamia University in the office of AAJMI and directed Asif Iqbal Tanha (UAH, JCC & SIO) & [redacted] (UAH & SIO) to constitute a student body for anti CAA/NRC protest at Jamia Millia Islamia University in organized and planned way. The said facts were revealed by the witnesses. Presence of [redacted], Asif Iqbal Tanha, [redacted] and [redacted] is also confirmed by their mobile phone details.

2067

Screenshot 9b

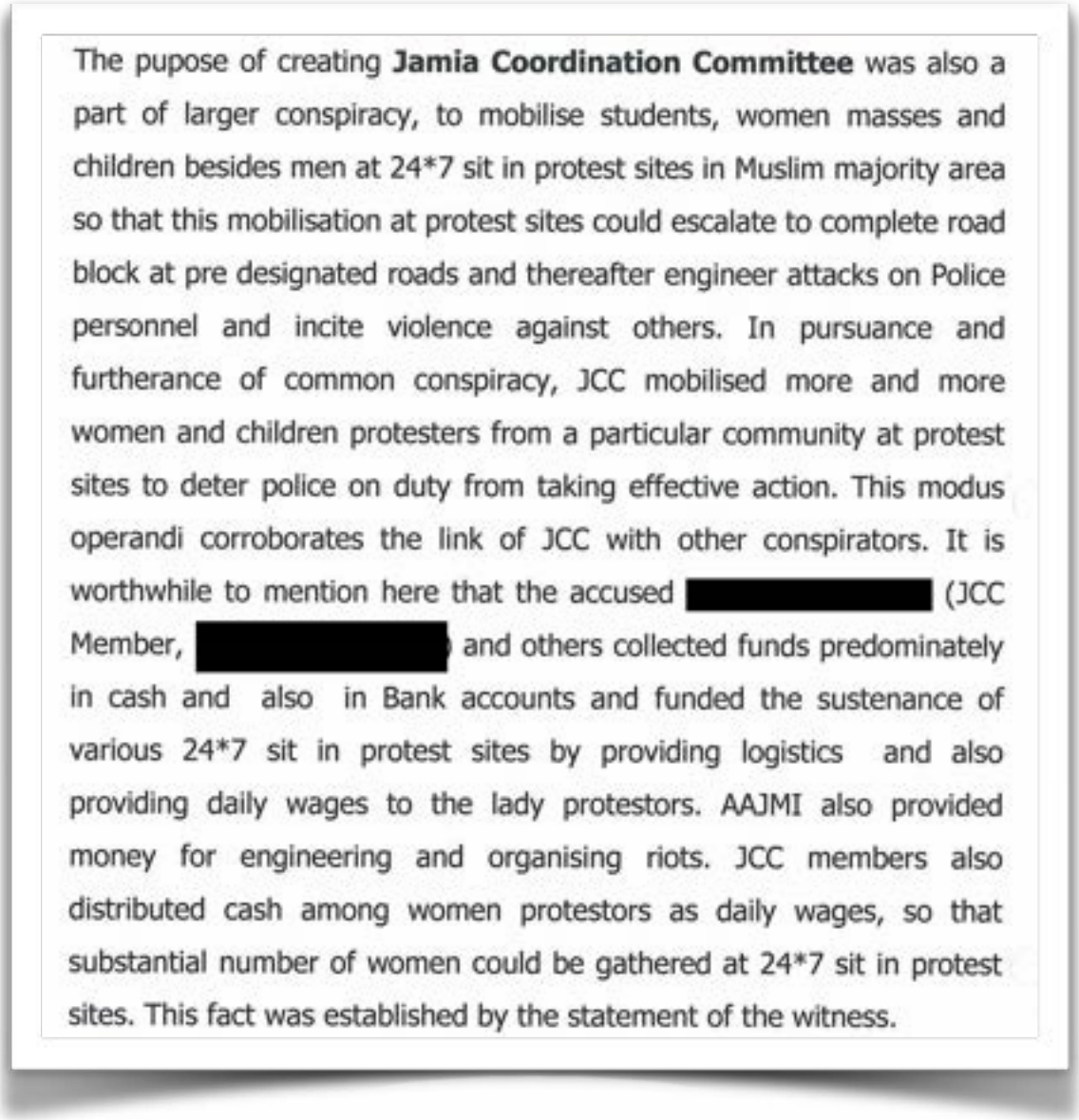


DATE: 17-12-2019

In pursuance and furtherance of conspiracy on 17.12.2019, AAJMI members & students of Jamia Milia Islamia University including accused [redacted], Asif Iqbal Tanha, [redacted] and others students and ex-students of JMI University gathered at Gate no. 7 of Jamia Millia Islamia University. On the direction of [redacted] & [redacted] through Asif Iqbal Tanha & [redacted], a coordination committee was constituted with the name of **"Jamia Co-ordination Committee"** (JCC) by them to continue anti CAA/NRC protest in an organized way and Gate No. 7 of Jamia Millia Islamia University was declared as a protest site. Asif Iqbal Tanha & [redacted] were the key persons behind the constitution of **"Jamia Co-ordination Committee" (JCC)**. The creation of Jamia Co-ordination Committee was the brain child of [redacted] & [redacted] to rope in different student organisations of Jamia University. The main constitutents of forming the JCC were SIO, Pinjra Tod, AAJMI, SFI, JSF and other student organisations and activists.

2068

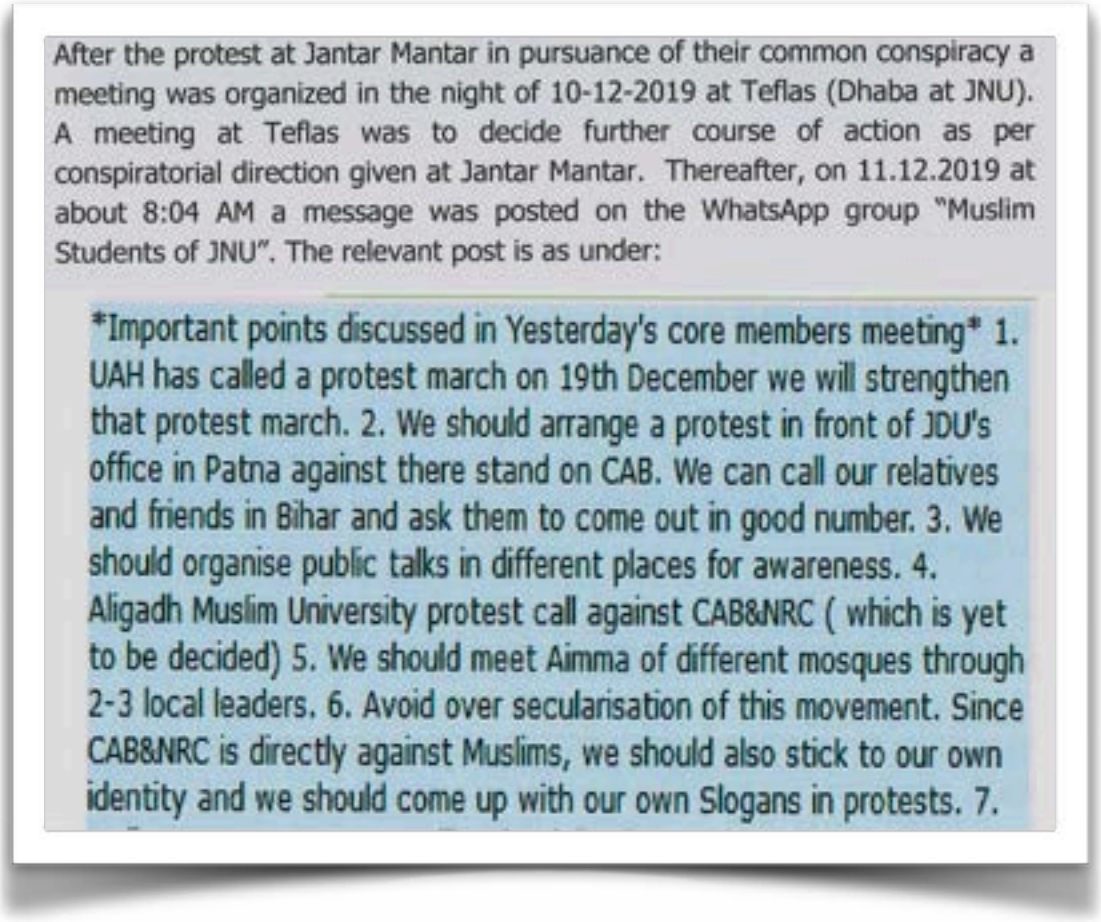
Screenshot 10



The pupose of creating **Jamia Coordination Committee** was also a part of larger conspiracy, to mobilise students, women masses and children besides men at 24*7 sit in protest sites in Muslim majority area so that this mobilisation at protest sites could escalate to complete road block at pre designated roads and thereafter engineer attacks on Police personnel and incite violence against others. In pursuance and furtherance of common conspiracy, JCC mobilised more and more women and children protesters from a particular community at protest sites to deter police on duty from taking effective action. This modus operandi corroborates the link of JCC with other conspirators. It is worthwhile to mention here that the accused [redacted] (JCC Member, [redacted]) and others collected funds predominately in cash and also in Bank accounts and funded the sustenance of various 24*7 sit in protest sites by providing logistics and also providing daily wages to the lady protestors. AAJMI also provided money for engineering and organising riots. JCC members also distributed cash among women protestors as daily wages, so that substantial number of women could be gathered at 24*7 sit in protest sites. This fact was established by the statement of the witness.

2070

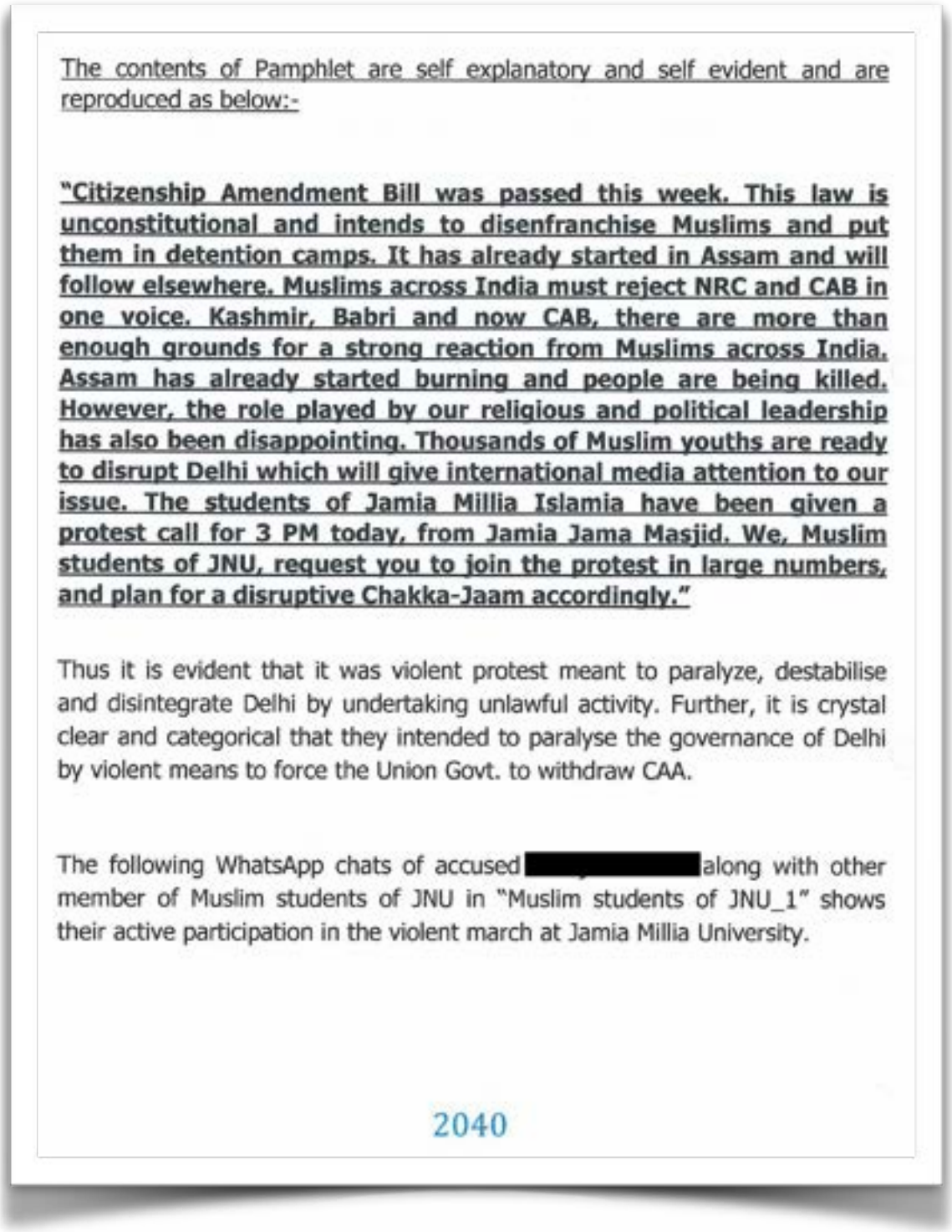
Screenshot 11


After the protest at Jantar Mantar in pursuance of their common conspiracy a meeting was organized in the night of 10-12-2019 at Teflas (Dhaba at JNU). A meeting at Teflas was to decide further course of action as per conspiratorial direction given at Jantar Mantar. Thereafter, on 11.12.2019 at about 8:04 AM a message was posted on the WhatsApp group "Muslim Students of JNU". The relevant post is as under:

Important points discussed in Yesterday's core members meeting 1. UAH has called a protest march on 19th December we will strengthen that protest march. 2. We should arrange a protest in front of JDU's office in Patna against there stand on CAB. We can call our relatives and friends in Bihar and ask them to come out in good number. 3. We should organise public talks in different places for awareness. 4. Aligadh Muslim University protest call against CAB&NRC (which is yet to be decided) 5. We should meet Aimma of different mosques through 2-3 local leaders. 6. Avoid over secularisation of this movement. Since CAB&NRC is directly against Muslims, we should also stick to our own identity and we should come up with our own Slogans in protests. 7.

2025 - 2026

Screenshot 12



The contents of Pamphlet are self explanatory and self evident and are reproduced as below:-

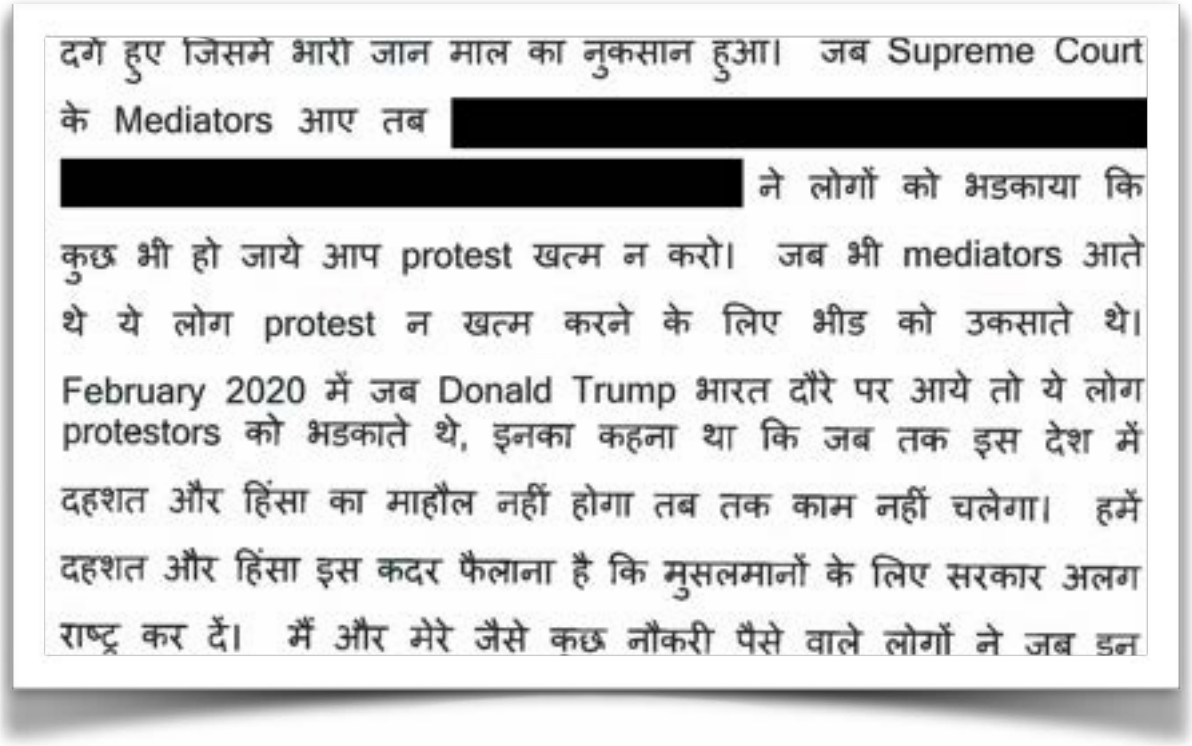
"Citizenship Amendment Bill was passed this week. This law is unconstitutional and intends to disenfranchise Muslims and put them in detention camps. It has already started in Assam and will follow elsewhere. Muslims across India must reject NRC and CAB in one voice. Kashmir, Babri and now CAB, there are more than enough grounds for a strong reaction from Muslims across India. Assam has already started burning and people are being killed. However, the role played by our religious and political leadership has also been disappointing. Thousands of Muslim youths are ready to disrupt Delhi which will give international media attention to our issue. The students of Jamia Millia Islamia have been given a protest call for 3 PM today, from Jamia Jama Masjid. We, Muslim students of JNU, request you to join the protest in large numbers, and plan for a disruptive Chakka-Jaam accordingly."

Thus it is evident that it was violent protest meant to paralyze, destabilise and disintegrate Delhi by undertaking unlawful activity. Further, it is crystal clear and categorical that they intended to paralyse the governance of Delhi by violent means to force the Union Govt. to withdraw CAA.

The following WhatsApp chats of accused [redacted] along with other member of Muslim students of JNU in "Muslim students of JNU_1" shows their active participation in the violent march at Jamia Millia University.

2040

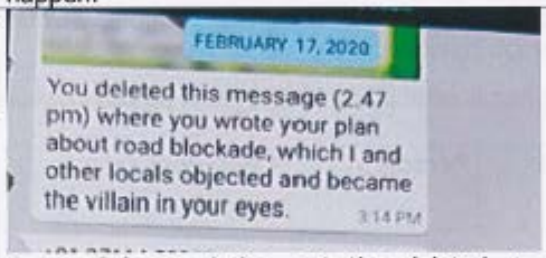
Screenshot 13



दगे हुए जिसमे भारी जान माल का नुकसान हुआ। जब Supreme Court के Mediators आए तब [redacted] ने लोगों को भडकाया कि कुछ भी हो जाये आप protest खत्म न करो। जब भी mediators आते थे ये लोग protest न खत्म करने के लिए भीड को उकसाते थे। February 2020 में जब Donald Trump भारत दौरे पर आये तो ये लोग protestors को भडकाते थे, इनका कहना था कि जब तक इस देश में दहशत और हिंसा का माहौल नहीं होगा तब तक काम नहीं चलेगा। हमें दहशत और हिंसा इस कदर फैलाना है कि मुसलमानों के लिए सरकार अलग राष्ट्र कर दें। मैं और मेरे जैसे कछ नौकरी पैसे वाले लोगों ने जब इन

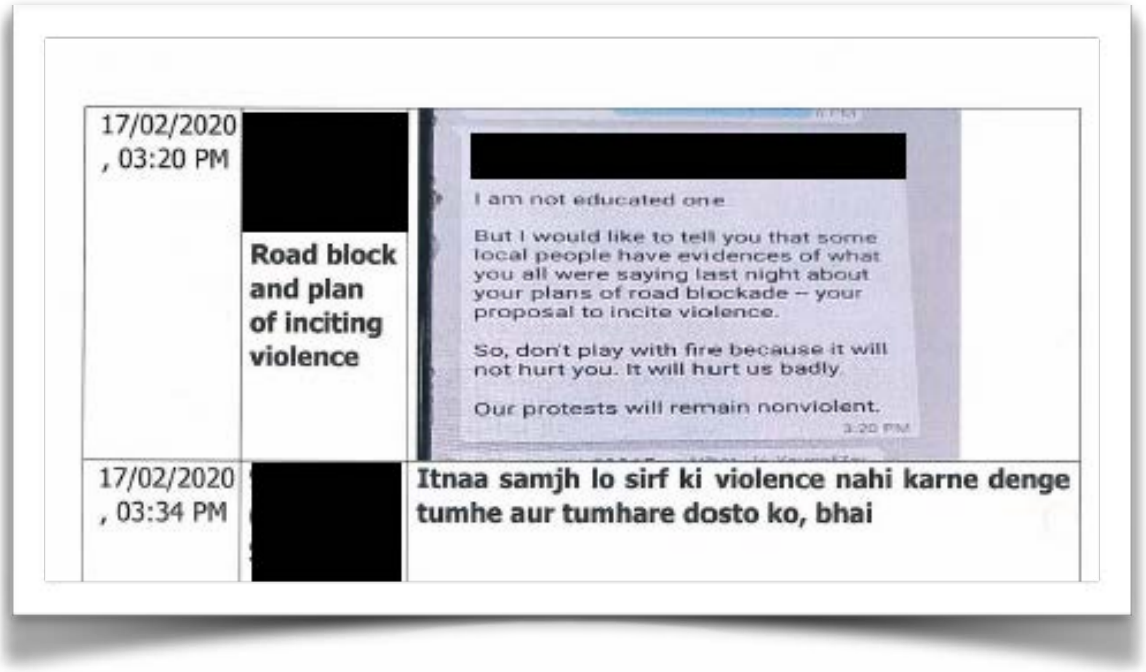
1586-1587

Screenshot 14a

17/02/2020, 02:58 PM	[redacted]	Locals from any protest sites are not willing to block the road. Because they are locals and they will suffer. But some outsiders who claim to facilitate the protests, they are planning to block the roads. [redacted]s saying disturbing elements to some of us who are strongly opposing any road blockade in our trans Yamuna protest sites. We want nonviolent protests. We can't allow road block plans.
17/02/2020, 03:06 PM	[redacted]	Two people from our organising team said. And you deleted your own message where you mentioned about the road block plan. I was there in my individual capacity. I was not representing any group. You can't distract the issue, please. We don't want violence in our areas. And we will prevent violence at any cost. You may label me with anything. I will not let violence happen.
17/02/2020, 03:14 PM	[redacted]	 [redacted] pointing out the deleted message of [redacted]

2205

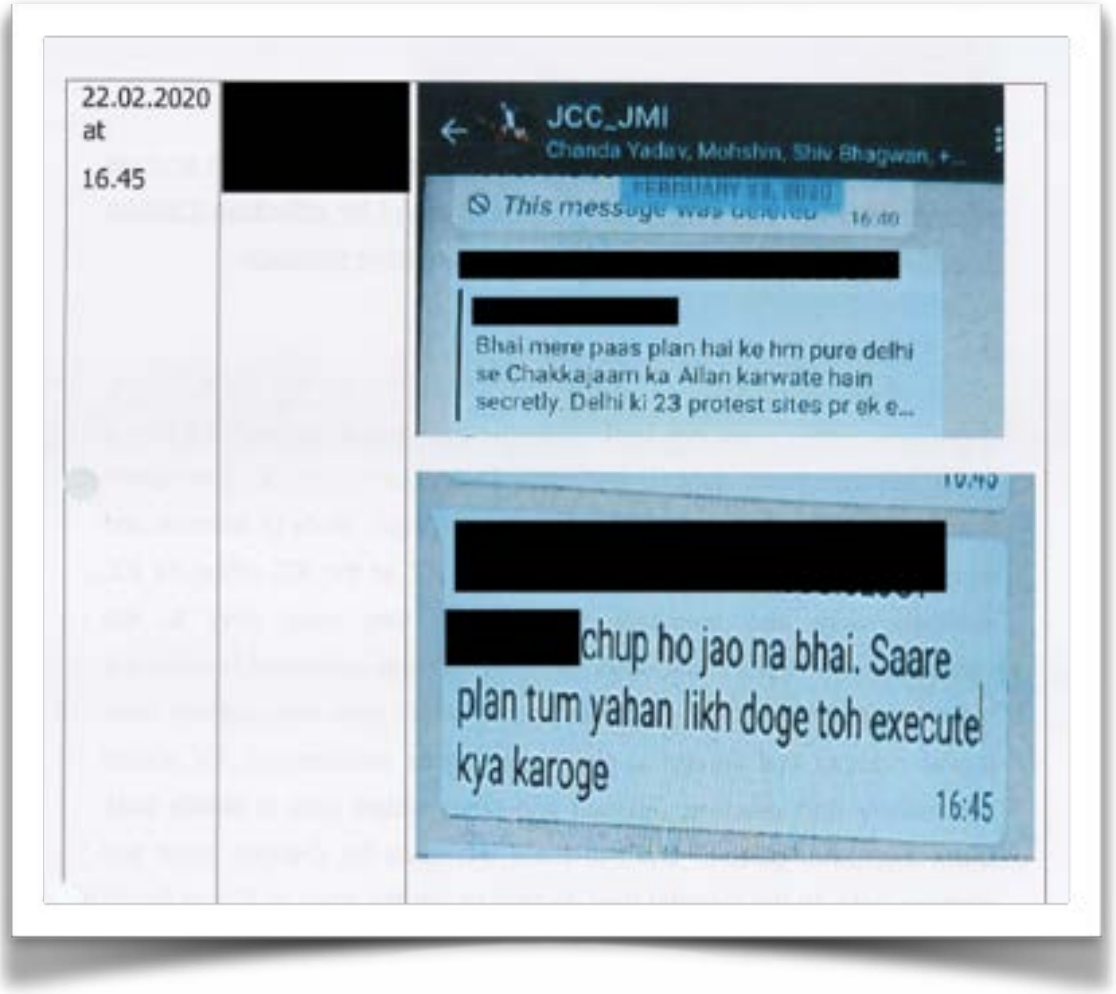
Screenshot 14b



17/02/2020 , 03:20 PM	[redacted] Road block and plan of inciting violence	[redacted] 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. 3:20 PM
17/02/2020 , 03:34 PM	[redacted]	Itnaa samjh lo sirf ki violence nahi karne denge tumhe aur tumhare dosto ko, bhai

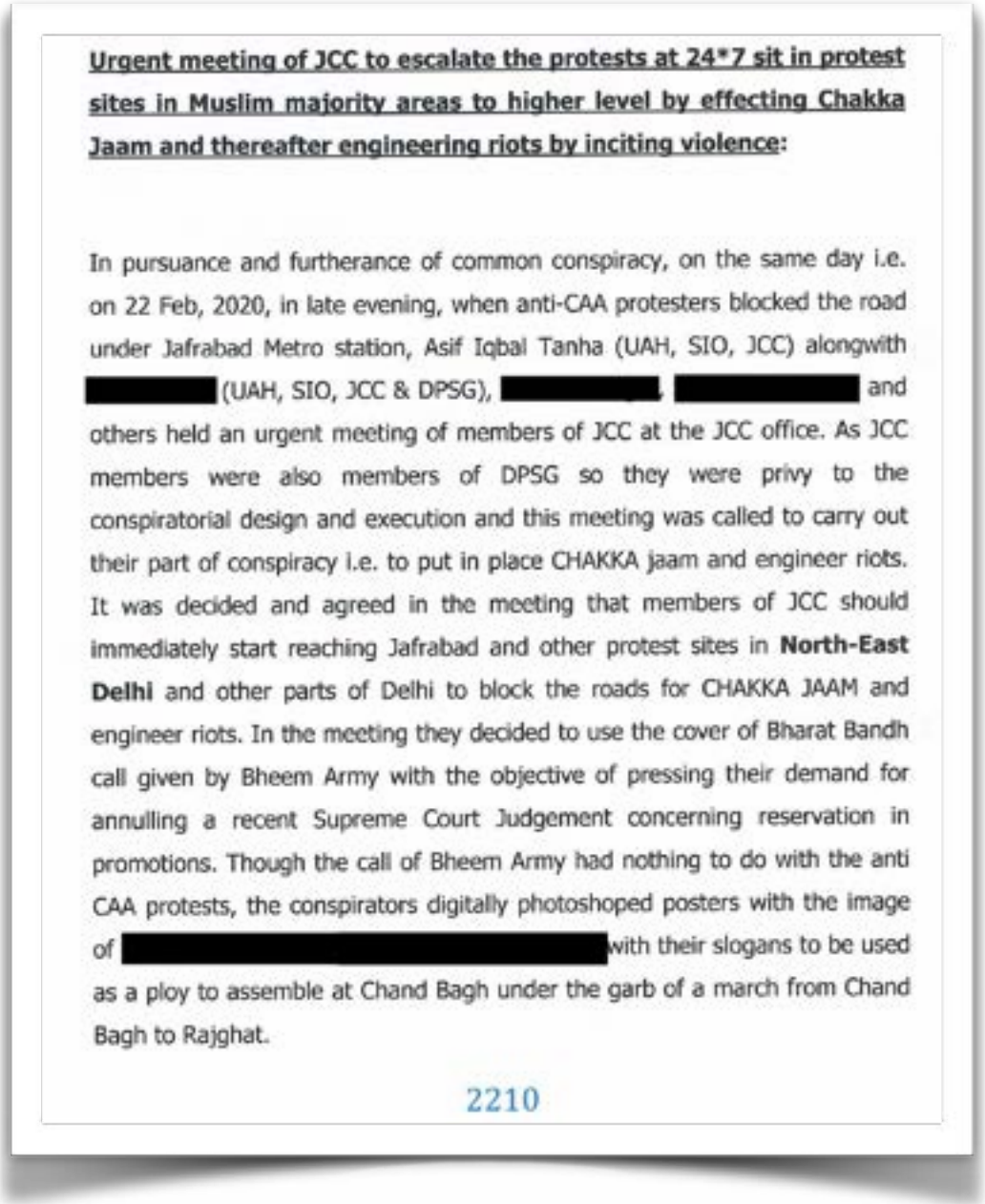
2206

Screenshot 15



2209

Screenshot 16

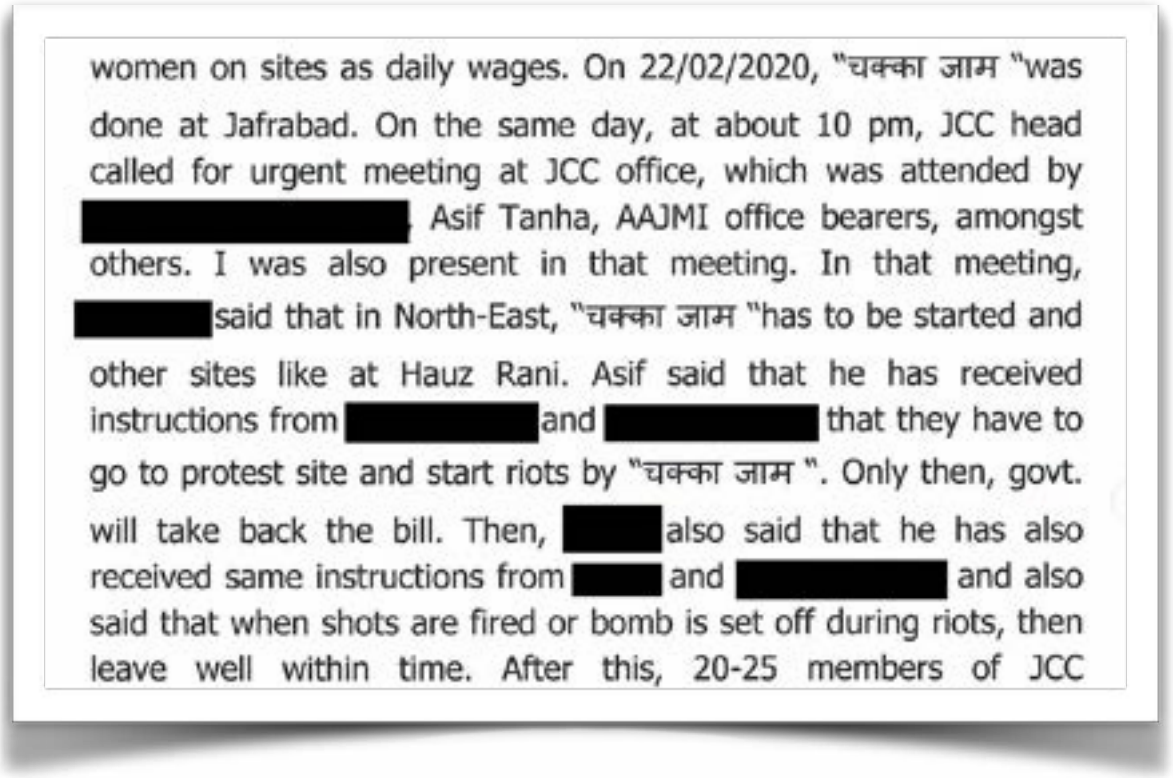


Urgent meeting of JCC to escalate the protests at 24*7 sit in protest sites in Muslim majority areas to higher level by effecting Chakka Jaam and thereafter engineering riots by inciting violence:

In pursuance and furtherance of common conspiracy, on the same day i.e. on 22 Feb, 2020, in late evening, when anti-CAA protesters blocked the road under Jafrabad Metro station, Asif Iqbal Tanha (UAH, SIO, JCC) alongwith [redacted] (UAH, SIO, JCC & DPSG), [redacted] and others held an urgent meeting of members of JCC at the JCC office. As JCC members were also members of DPSG so they were privy to the conspiratorial design and execution and this meeting was called to carry out their part of conspiracy i.e. to put in place CHAKKA jaam and engineer riots. It was decided and agreed in the meeting that members of JCC should immediately start reaching Jafrabad and other protest sites in **North-East Delhi** and other parts of Delhi to block the roads for CHAKKA JAAM and engineer riots. In the meeting they decided to use the cover of Bharat Bandh call given by Bheem Army with the objective of pressing their demand for annulling a recent Supreme Court Judgement concerning reservation in promotions. Though the call of Bheem Army had nothing to do with the anti CAA protests, the conspirators digitally photoshoped posters with the image of [redacted] with their slogans to be used as a ploy to assemble at Chand Bagh under the garb of a march from Chand Bagh to Rajghat.

2210

Screenshot 17



women on sites as daily wages. On 22/02/2020, "चक्का जाम "was done at Jafrabad. On the same day, at about 10 pm, JCC head called for urgent meeting at JCC office, which was attended by [redacted], Asif Tanha, AAJMI office bearers, amongst others. I was also present in that meeting. In that meeting, [redacted] said that in North-East, "चक्का जाम "has to be started and other sites like at Hauz Rani. Asif said that he has received instructions from [redacted] and [redacted] that they have to go to protest site and start riots by "चक्का जाम ". Only then, govt. will take back the bill. Then, [redacted] also said that he has also received same instructions from [redacted] and [redacted] and also said that when shots are fired or bomb is set off during riots, then leave well within time. After this, 20-25 members of JCC

1764

Screenshot 18

है । 22/02/2020 को जब Jafrabad Metro Station के नीचे चक्का जाम यानी Road Block हुआ, तब JCC की एक Urgent Meeting बुलाई गयी जिसमे 60-65 लोग members मोजूद थे । इस meeting में Asif Iqbal Tanha ने कहा की उसकी [redacted] और [redacted] से बात हो गयी है, जिन्होंने कहा है की दंगो की पूरी तैयारी हो चुकी है और सब लोग तैयार रहे । उसने आगे ये कहा की [redacted] और [redacted] ने ये भी कहा की अगर कुछ होता है तो दंगो की हद तक जायेंगे । लेकिन इस बार सरकार को झुका कर ही दम लेंगे । इस पर [redacted] ने कहा कि उसकी भी [redacted] और [redacted] से बात हो गयी है और उन्होंने वही कहा है जो Asif Iqbal Tanha कह रहा है । साथ ही साथ उसने ये भी कहा की दंगो में Bomb और गोलियां चल सकते है, इसलिए तुम लोग time रहते वहां से निकल जाना । मुझे ये बात गलत लगी तो मैंने Media Head [redacted]

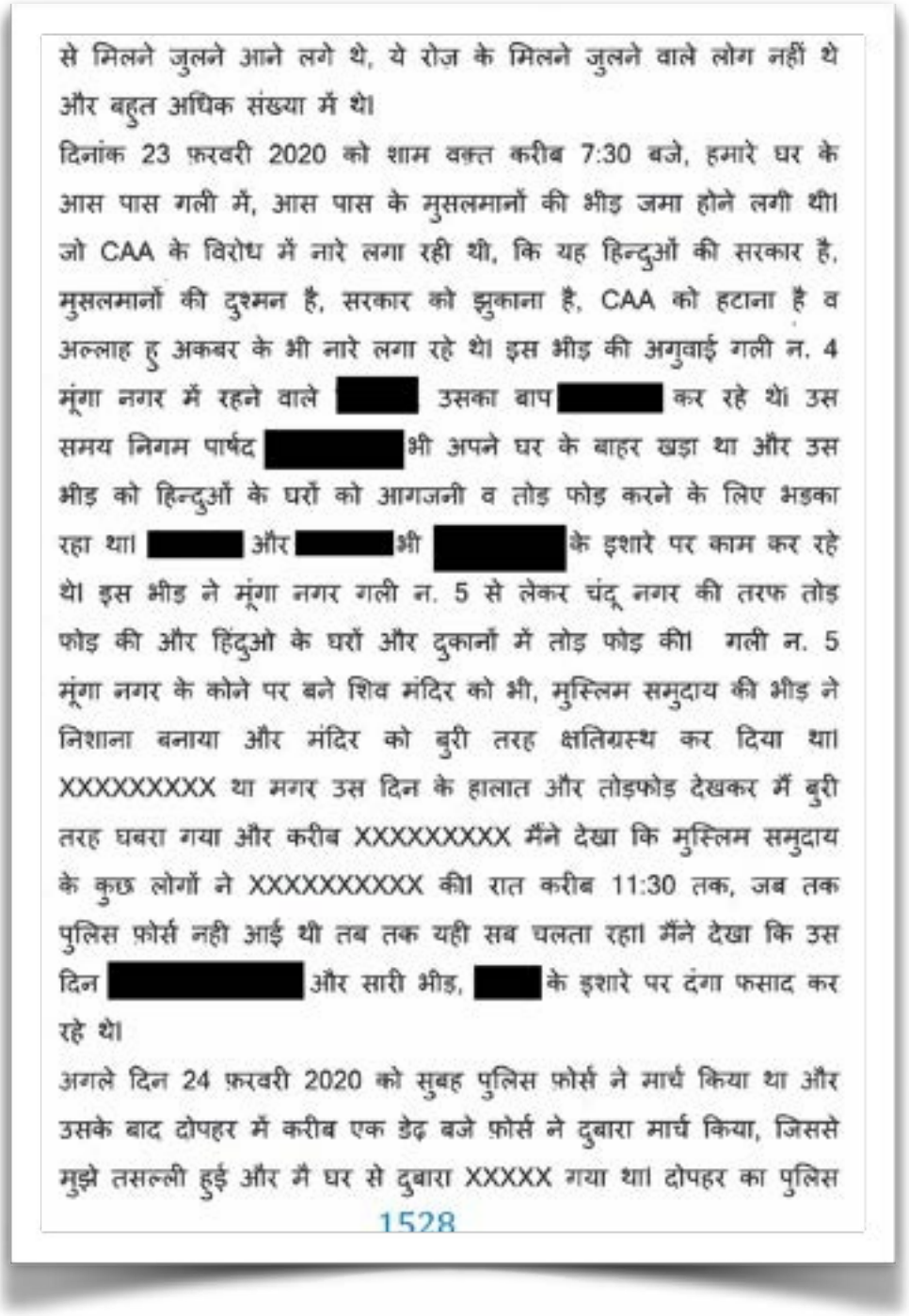
1688

Screenshot 19a

[redacted] को कई बार देखा था। दंगों से तीन दिन पहले [redacted] के घर छोटे छोटे ट्रक आते थे और उसकी पार्किंग का गेट काफी बड़ा होने से ट्रक सीधे घर के अंदर चले जाते थे। दंगो से 6-7 दिन पहले काफी लोग [redacted]

1527

Screenshot 19b



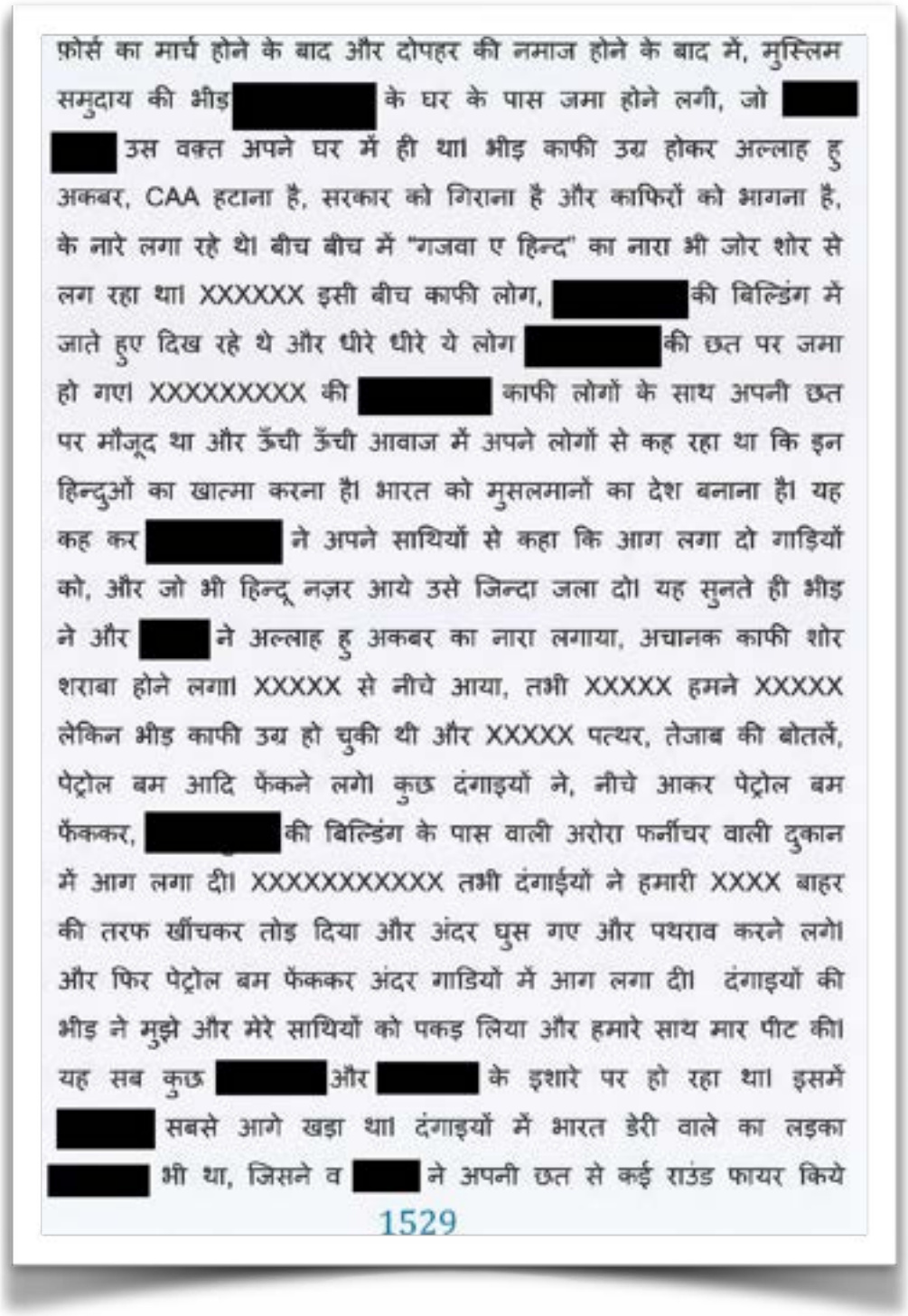
से मिलने जुलने आने लगे थे, ये रोज़ के मिलने जुलने वाले लोग नहीं थे और बहुत अधिक संख्या में थे।

दिनांक 23 फ़रवरी 2020 को शाम वक़्त करीब 7:30 बजे, हमारे घर के आस पास गली में, आस पास के मुसलमानों की भीड़ जमा होने लगी थी। जो CAA के विरोध में नारे लगा रही थी, कि यह हिन्दुओं की सरकार है, मुसलमानों की दुश्मन है, सरकार को झुकाना है, CAA को हटाना है व अल्लाह हु अकबर के भी नारे लगा रहे थे। इस भीड़ की अगुवाई गली न. 4 मूंगा नगर में रहने वाले [redacted] उसका बाप [redacted] कर रहे थे। उस समय निगम पार्षद [redacted] भी अपने घर के बाहर खड़ा था और उस भीड़ को हिन्दुओं के घरों को आगजनी व तोड़ फोड़ करने के लिए भड़का रहा था। [redacted] और [redacted] भी [redacted] के इशारे पर काम कर रहे थे। इस भीड़ ने मूंगा नगर गली न. 5 से लेकर चंदू नगर की तरफ तोड़ फोड़ की और हिंदुओ के घरों और दुकानों में तोड़ फोड़ की। गली न. 5 मूंगा नगर के कोने पर बने शिव मंदिर को भी, मुस्लिम समुदाय की भीड़ ने निशाना बनाया और मंदिर को बुरी तरह क्षतिग्रस्थ कर दिया था। XXXXXXXXX था मगर उस दिन के हालात और तोड़फोड़ देखकर मैं बुरी तरह घबरा गया और करीब XXXXXXXXX मैंने देखा कि मुस्लिम समुदाय के कुछ लोगों ने XXXXXXXXXX की। रात करीब 11:30 तक, जब तक पुलिस फ़ोर्स नही आई थी तब तक यही सब चलता रहा। मैंने देखा कि उस दिन [redacted] और सारी भीड़, [redacted] के इशारे पर दंगा फसाद कर रहे थे।

अगले दिन 24 फ़रवरी 2020 को सुबह पुलिस फ़ोर्स ने मार्च किया था और उसके बाद दोपहर में करीब एक डेढ़ बजे फ़ोर्स ने दुबारा मार्च किया, जिससे मुझे तसल्ली हुई और मै घर से दुबारा XXXXX गया था। दोपहर का पुलिस

1528

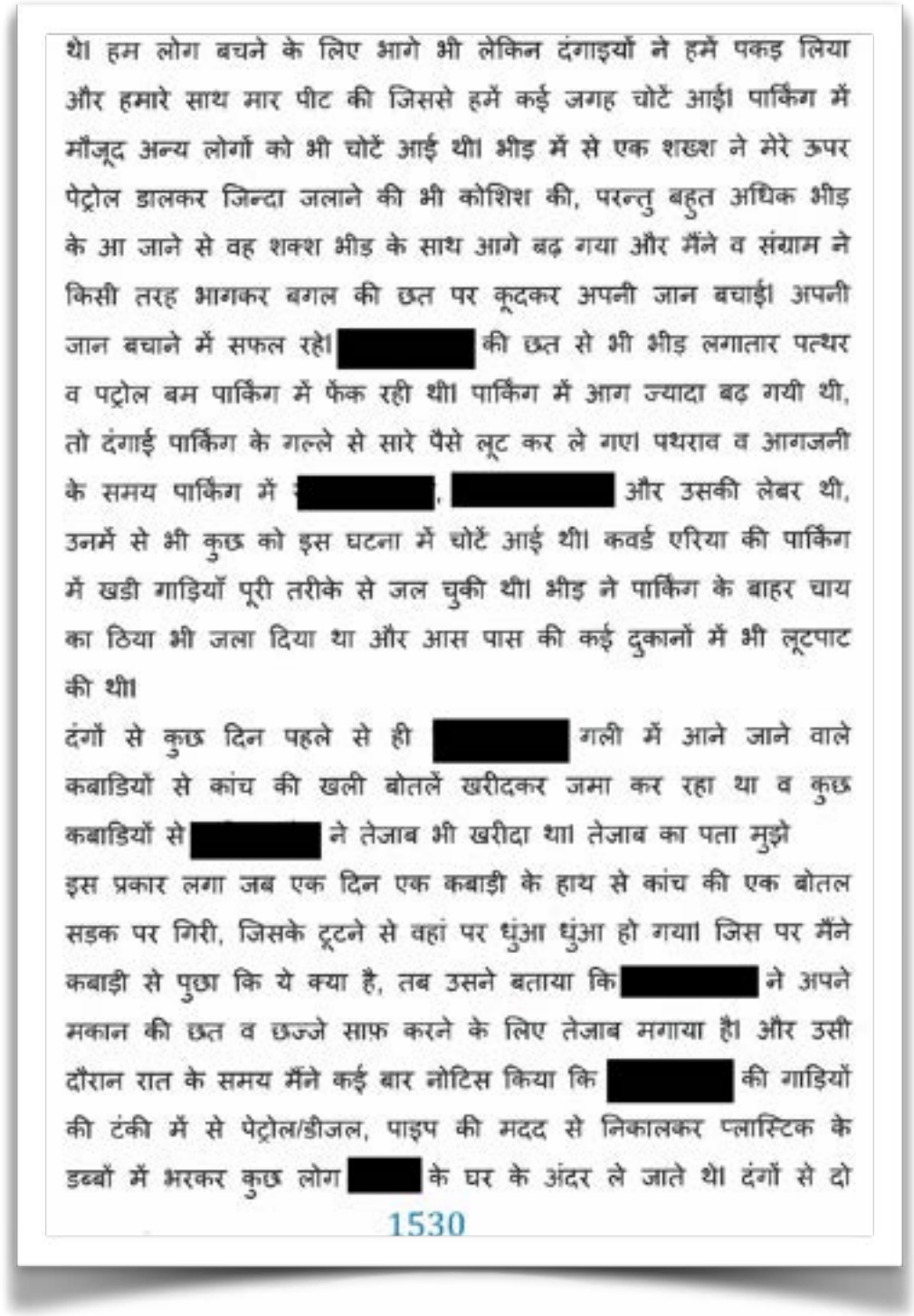
Screenshot 19c



फ़ोर्स का मार्च होने के बाद और दोपहर की नमाज होने के बाद में, मुस्लिम समुदाय की भीड़ [redacted] के घर के पास जमा होने लगी, जो [redacted] उस वक़्त अपने घर में ही था। भीड़ काफी उग्र होकर अल्लाह हु अकबर, CAA हटाना है, सरकार को गिराना है और काफिरों को भागना है, के नारे लगा रहे थे। बीच बीच में "गजवा ए हिन्द" का नारा भी जोर शोर से लग रहा था। XXXXXX इसी बीच काफी लोग, [redacted] की बिल्डिंग में जाते हुए दिख रहे थे और धीरे धीरे ये लोग [redacted] की छत पर जमा हो गए। XXXXXXXXX की [redacted] काफी लोगों के साथ अपनी छत पर मौजूद था और ऊँची ऊँची आवाज में अपने लोगों से कह रहा था कि इन हिन्दुओं का खात्मा करना है। भारत को मुसलमानों का देश बनाना है। यह कह कर [redacted] ने अपने साथियों से कहा कि आग लगा दो गाड़ियों को, और जो भी हिन्दू नज़र आये उसे जिन्दा जला दो। यह सुनते ही भीड़ ने और [redacted] ने अल्लाह हु अकबर का नारा लगाया, अचानक काफी शोर शराबा होने लगा। XXXXX से नीचे आया, तभी XXXXX हमने XXXXX लेकिन भीड़ काफी उग्र हो चुकी थी और XXXXX पत्थर, तेजाब की बोतलें, पेट्रोल बम आदि फेंकने लगे। कुछ दंगाइयों ने, नीचे आकर पेट्रोल बम फेंककर, [redacted] की बिल्डिंग के पास वाली अरोरा फर्नीचर वाली दुकान में आग लगा दी। XXXXXXXXXX तभी दंगाईयों ने हमारी XXXX बाहर की तरफ खींचकर तोड़ दिया और अंदर घुस गए और पथराव करने लगे। और फिर पेट्रोल बम फेंककर अंदर गाडियों में आग लगा दी। दंगाइयों की भीड़ ने मुझे और मेरे साथियों को पकड़ लिया और हमारे साथ मार पीट की। यह सब कुछ [redacted] और [redacted] के इशारे पर हो रहा था। इसमें [redacted] सबसे आगे खड़ा था। दंगाइयों में भारत डेरी वाले का लड़का [redacted] भी था, जिसने व [redacted] ने अपनी छत से कई राउंड फायर किये

1529

Screenshot 19d

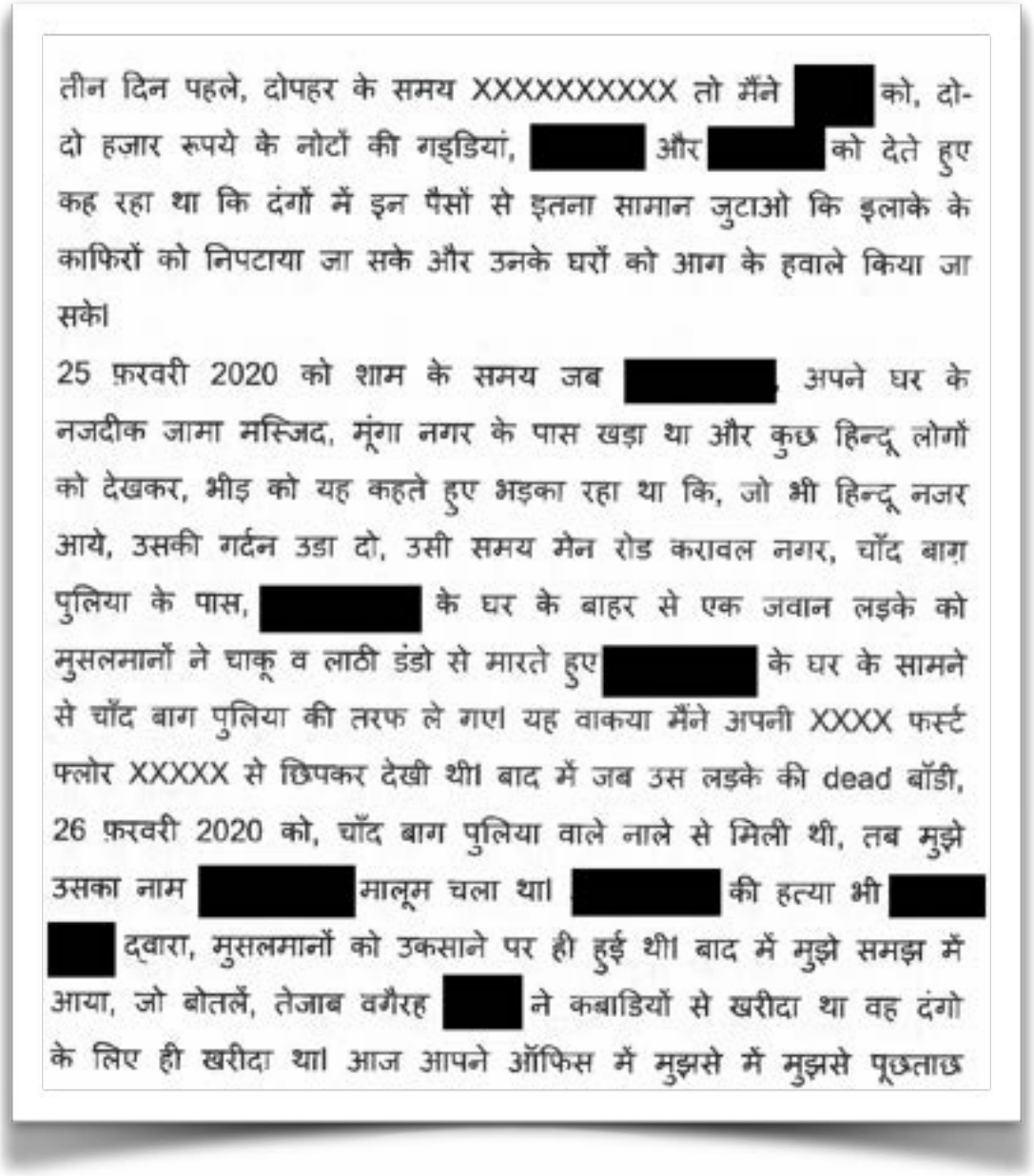


थी। हम लोग बचने के लिए भागे भी लेकिन दंगाइयों ने हमें पकड़ लिया और हमारे साथ मार पीट की जिससे हमें कई जगह चोटें आई। पार्किंग में मौजूद अन्य लोगों को भी चोटें आई थी। भीड़ में से एक शख्श ने मेरे ऊपर पेट्रोल डालकर जिन्दा जलाने की भी कोशिश की, परन्तु बहुत अधिक भीड़ के आ जाने से वह शक्श भीड़ के साथ आगे बढ़ गया और मैंने व संग्राम ने किसी तरह भागकर बगल की छत पर कूदकर अपनी जान बचाई। अपनी जान बचाने में सफल रहे। [redacted] की छत से भी भीड़ लगातार पत्थर व पट्रोल बम पार्किंग में फैंक रही थी। पार्किंग में आग ज्यादा बढ़ गयी थी, तो दंगाई पार्किंग के गल्ले से सारे पैसे लूट कर ले गए। पथराव व आगजनी के समय पार्किंग में [redacted], [redacted] और उसकी लेबर थी, उनमें से भी कुछ को इस घटना में चोटें आई थी। कवर्ड एरिया की पार्किंग में खडी गाड़ियाँ पूरी तरीके से जल चुकी थी। भीड़ ने पार्किंग के बाहर चाय का ठिया भी जला दिया था और आस पास की कई दुकानों में भी लूटपाट की थी।

दंगों से कुछ दिन पहले से ही [redacted] गली में आने जाने वाले कबाडियों से कांच की खली बोतलें खरीदकर जमा कर रहा था व कुछ कबाडियों से [redacted] ने तेजाब भी खरीदा था। तेजाब का पता मुझे इस प्रकार लगा जब एक दिन एक कबाड़ी के हाथ से कांच की एक बोतल सड़क पर गिरी, जिसके टूटने से वहां पर धुंआ धुंआ हो गया। जिस पर मैंने कबाड़ी से पुछा कि ये क्या है, तब उसने बताया कि [redacted] ने अपने मकान की छत व छज्जे साफ करने के लिए तेजाब मगाया है। और उसी दौरान रात के समय मैंने कई बार नोटिस किया कि [redacted] की गाड़ियों की टंकी में से पेट्रोल/डीजल, पाइप की मदद से निकालकर प्लास्टिक के डब्बों में भरकर कुछ लोग [redacted] के घर के अंदर ले जाते थे। दंगों से दो

1530

Screenshot 19e

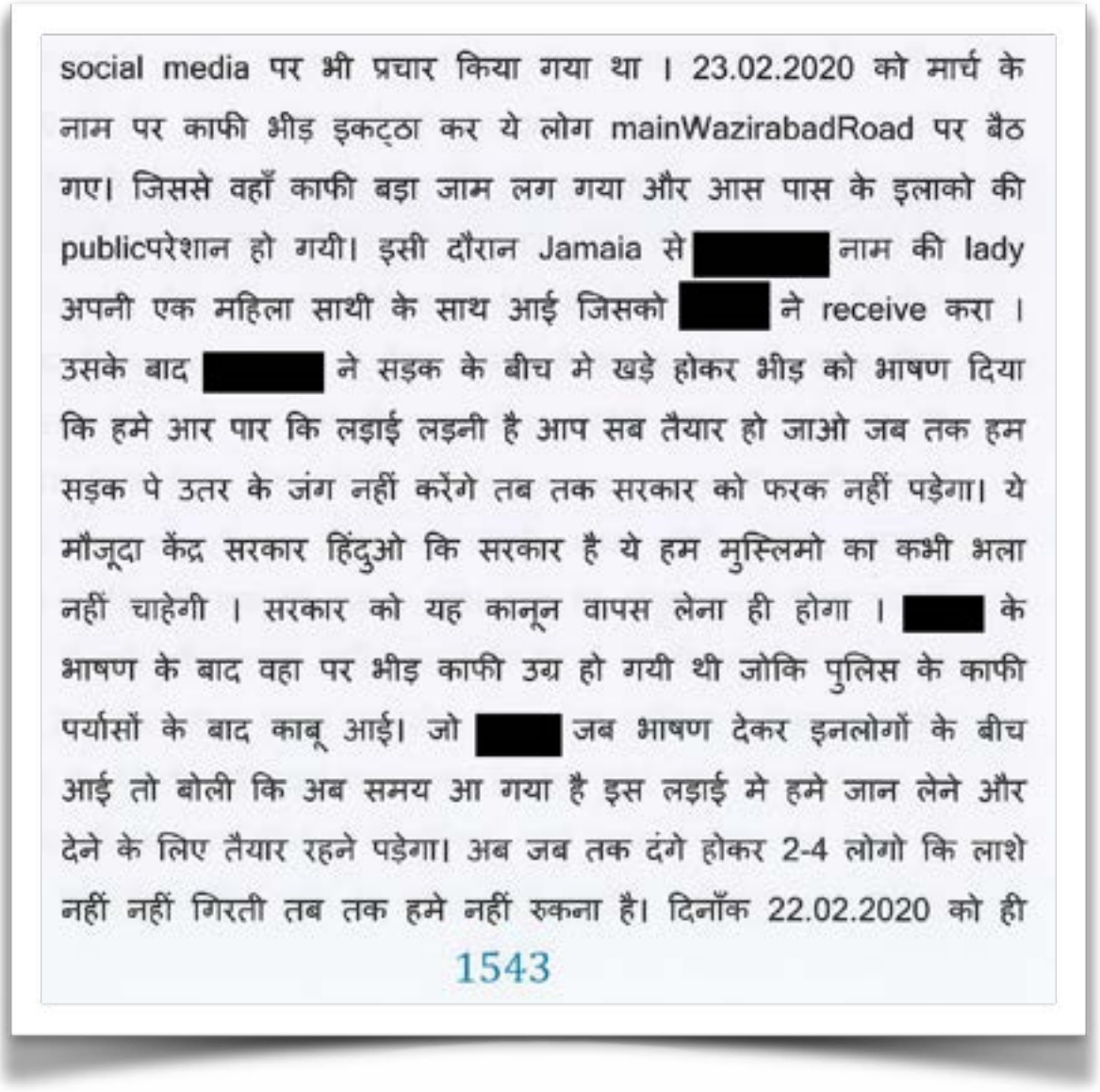


तीन दिन पहले, दोपहर के समय XXXXXXXXXX तो मैंने [redacted] को, दो-दो हज़ार रूपये के नोटों की गड्डियां, [redacted] और [redacted] को देते हुए कह रहा था कि दंगों में इन पैसों से इतना सामान जुटाओ कि इलाके के काफिरों को निपटाया जा सके और उनके घरों को आग के हवाले किया जा सके।

25 फ़रवरी 2020 को शाम के समय जब [redacted] अपने घर के नजदीक जामा मस्जिद, मूंगा नगर के पास खड़ा था और कुछ हिन्दू लोगों को देखकर, भीड़ को यह कहते हुए भड़का रहा था कि, जो भी हिन्दू नजर आये, उसकी गर्दन उड़ा दो, उसी समय मेन रोड करावल नगर, चाँद बाग़ पुलिया के पास, [redacted] के घर के बाहर से एक जवान लड़के को मुसलमानों ने चाकू व लाठी डंडो से मारते हुए [redacted] के घर के सामने से चाँद बाग पुलिया की तरफ ले गए। यह वाकया मैंने अपनी XXXX फर्स्ट फ्लोर XXXXX से छिपकर देखी थी। बाद में जब उस लड़के की dead बॉडी, 26 फ़रवरी 2020 को, चाँद बाग पुलिया वाले नाले से मिली थी, तब मुझे उसका नाम [redacted] मालूम चला था। [redacted] की हत्या भी [redacted] द्वारा, मुसलमानों को उकसाने पर ही हुई थी। बाद में मुझे समझ में आया, जो बोतलें, तेजाब वगैरह [redacted] ने कबाड़ियों से खरीदा था वह दंगो के लिए ही खरीदा था। आज आपने ऑफिस में मुझसे में मुझसे पूछताछ

1531

Screenshot 20a



social media पर भी प्रचार किया गया था । 23.02.2020 को मार्च के नाम पर काफी भीड़ इकट्ठा कर ये लोग mainWazirabadRoad पर बैठ गए। जिससे वहाँ काफी बड़ा जाम लग गया और आस पास के इलाको की publicपरेशान हो गयी। इसी दौरान Jamaia से [redacted] नाम की lady अपनी एक महिला साथी के साथ आई जिसको [redacted] ने receive करा । उसके बाद [redacted] ने सड़क के बीच मे खड़े होकर भीड़ को भाषण दिया कि हमे आर पार कि लड़ाई लड़नी है आप सब तैयार हो जाओ जब तक हम सड़क पे उतर के जंग नहीं करेंगे तब तक सरकार को फरक नहीं पड़ेगा। ये मौजूदा केंद्र सरकार हिंदुओ कि सरकार है ये हम मुस्लिमो का कभी भला नहीं चाहेगी । सरकार को यह कानून वापस लेना ही होगा । [redacted] के भाषण के बाद वहा पर भीड़ काफी उग्र हो गयी थी जोकि पुलिस के काफी पर्यासों के बाद काबू आई। जो [redacted] जब भाषण देकर इनलोगों के बीच आई तो बोली कि अब समय आ गया है इस लड़ाई मे हमे जान लेने और देने के लिए तैयार रहने पड़ेगा। अब जब तक दंगे होकर 2-4 लोगो कि लाशे नहीं नहीं गिरती तब तक हमे नहीं रुकना है। दिनाँक 22.02.2020 को ही

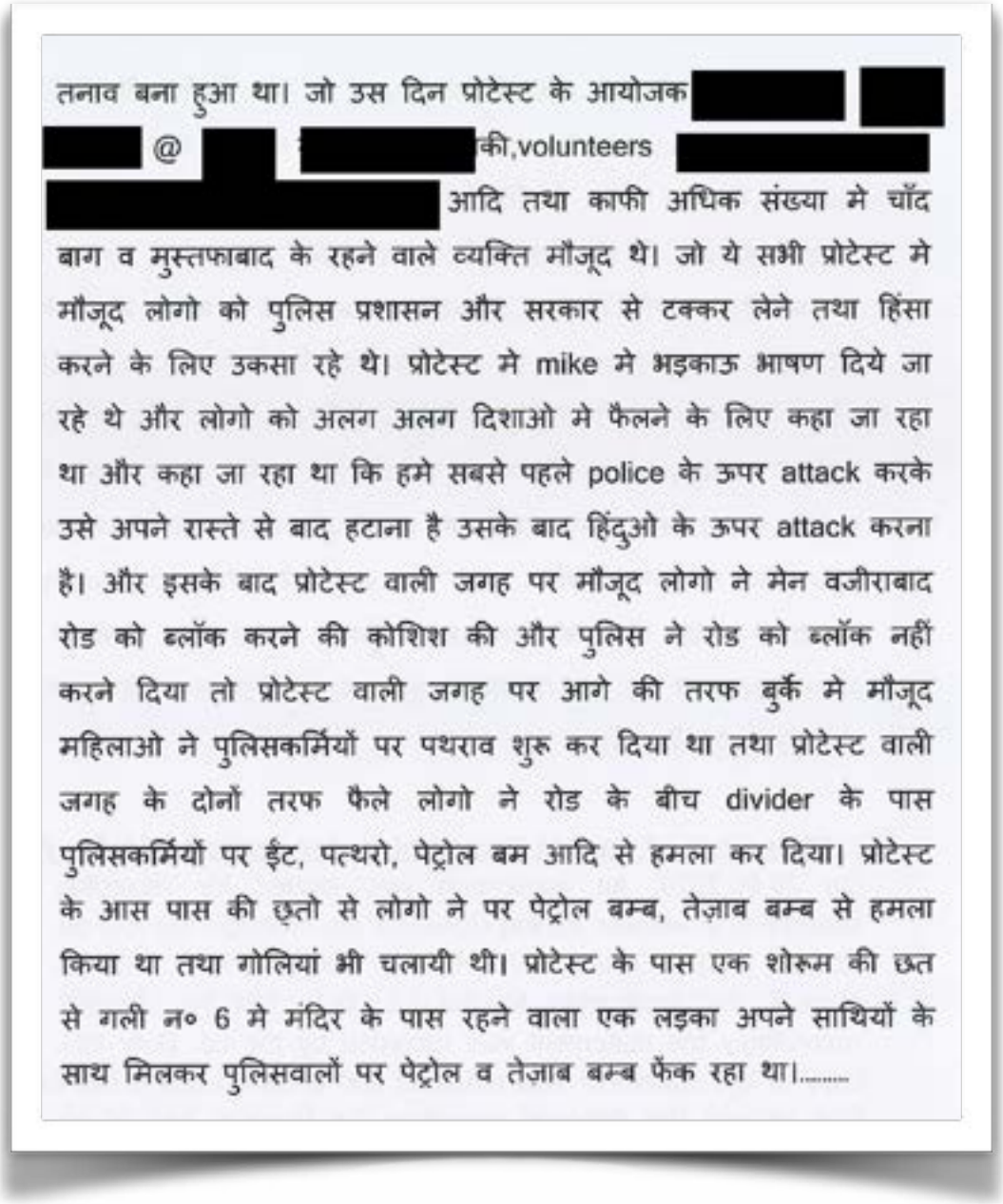
1543

Screenshot 20b

जाफराबाद मे CAA/NRC के विरोध प्रदर्शन मे हिंसा हुई थी। जो इसी वजह से चाँद बाग के प्रोटेस्ट से जुड़े हुए लोगो ने decide किया कि कल हम भी अपने area मे हिंसक प्रदर्शन करेंगे। दिनाँक 23.02.2020 को मेन वजीराबाद रोड ब्लॉक करने के बाद भी इन आयोजको ने [redacted] का Basement मे secret meeting की थी। दिनाँक 23.02.2020 की meeting के बाद प्रोटेस्ट मे announce हुआ कि अमेरिका के President Donald Trump भारत के दौरे पर है और हमे अपने प्रोटेस्ट की ताकत दिखानी होगी और दिल्ली मे आगजनी करके सरकार से अपनी बात मनवानी होगी और कहा गया की दिनाँक 24.02.2020 को प्रोटेस्ट मे अधिक से अधिक संख्या मे लोग अपने साथ तलवार, असला, पेट्रोल बम्ब, तेजाब बम आदि deadly weapons लेकर आयंगे। इस बारे मे अलग अलग groups मे wahtsapp पर भी messageviral हो रहे थे। दिनाँक 24.02.2020 को समय करीब 11 बजे दिन मे मैं अपने घर पर ही था कि गली मे अचानक से लोगो का शोर-शराबा होने लगा जो सभी लोग प्रोटेस्ट वाली जगह की ओर जा रहे थे जिनके हाथों मे deadlyweapon थे जो मैं भी उन लोगो के साथ प्रोटेस्ट वाली जगह की ओर चल दिया जो रास्ते मे लाउड स्पीकर से announcement हो रही थी कि सभी अपने अपने घरो से तलवार, असला, पेट्रोल बम्ब, तेजाब बम आदि deadlyweapons लेकर प्रोटेस्ट वाली जगह पहुचे। जो कुछ लोगो ने यह भी कहा कि प्रोटेस्ट वाली जगह पर दंगे शुरू हो गए है जो लोगो पर पुलिस द्वारा आँसू गैस के गोले छोड़े जा सकते है इसलिए सभी अपने शरीर पर नमक व तेल लगा लो, इन के लगाने से शरीर पर आँसू गैस का प्रभाव कम पड़ता है। जो मैंने भी लोगो के कहने पर अपने व अन्य कुछ व्यक्तियों के शरीर पर तेल और नमक लगाया था। उस दिन प्रोटेस्ट वाली जगह पर बहुत अधिक भीड़ थी और

1544

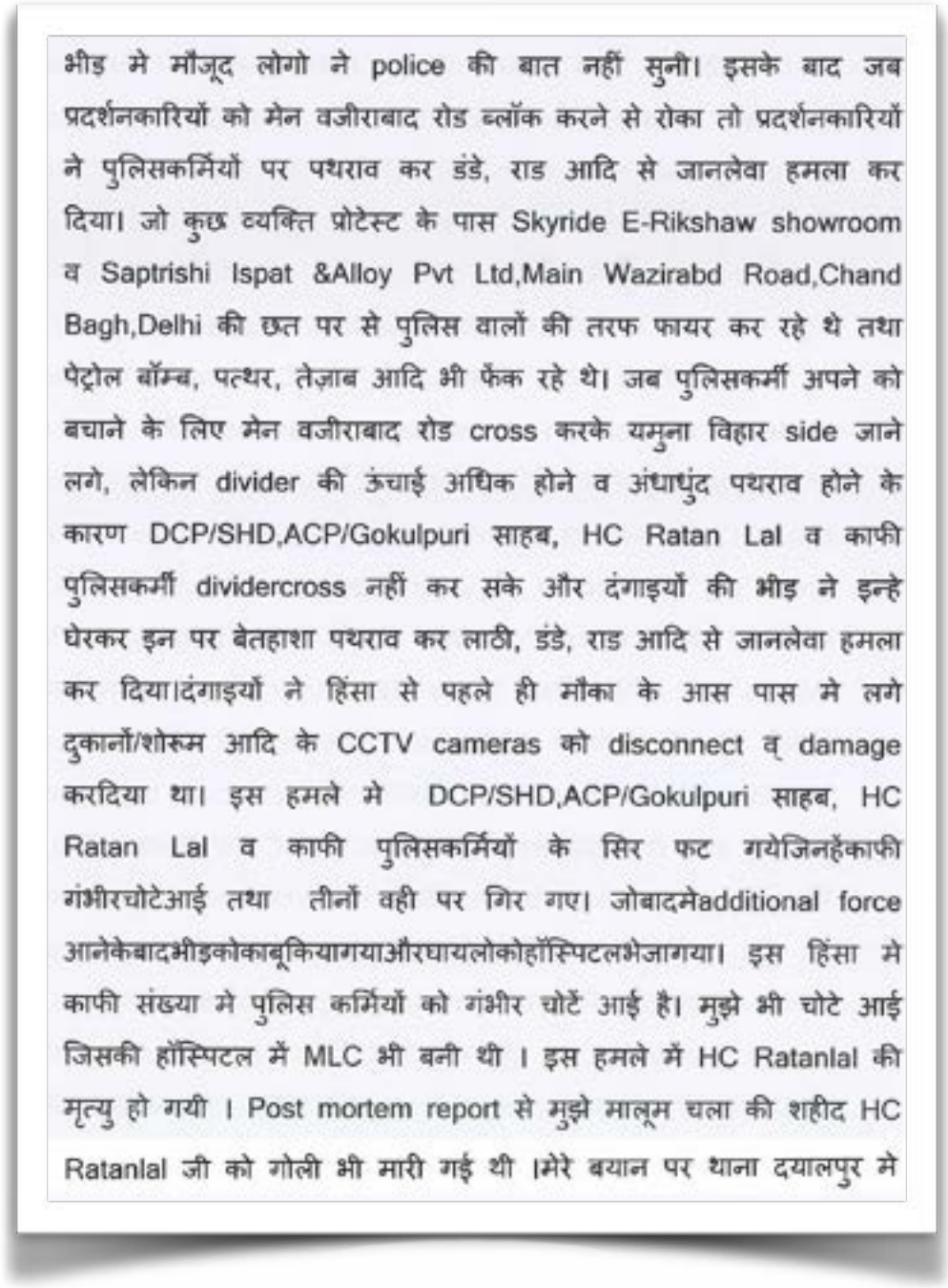
Screenshot 20c



तनाव बना हुआ था। जो उस दिन प्रोटेस्ट के आयोजक [redacted] @ [redacted] की,volunteers [redacted] आदि तथा काफी अधिक संख्या मे चाँद बाग व मुस्तफाबाद के रहने वाले व्यक्ति मौजूद थे। जो ये सभी प्रोटेस्ट मे मौजूद लोगो को पुलिस प्रशासन और सरकार से टक्कर लेने तथा हिंसा करने के लिए उकसा रहे थे। प्रोटेस्ट मे mike मे भड़काऊ भाषण दिये जा रहे थे और लोगो को अलग अलग दिशाओ मे फैलने के लिए कहा जा रहा था और कहा जा रहा था कि हमे सबसे पहले police के ऊपर attack करके उसे अपने रास्ते से बाद हटाना है उसके बाद हिंदुओ के ऊपर attack करना है। और इसके बाद प्रोटेस्ट वाली जगह पर मौजूद लोगो ने मेन वजीराबाद रोड को ब्लॉक करने की कोशिश की और पुलिस ने रोड को ब्लॉक नहीं करने दिया तो प्रोटेस्ट वाली जगह पर आगे की तरफ बुर्के मे मौजूद महिलाओ ने पुलिसकर्मियों पर पथराव शुरू कर दिया था तथा प्रोटेस्ट वाली जगह के दोनों तरफ फैले लोगो ने रोड के बीच divider के पास पुलिसकर्मियों पर ईंट, पत्थरो, पेट्रोल बम आदि से हमला कर दिया। प्रोटेस्ट के आस पास की छतो से लोगो ने पर पेट्रोल बम्ब, तेज़ाब बम्ब से हमला किया था तथा गोलियां भी चलायी थी। प्रोटेस्ट के पास एक शोरूम की छत से गली न० 6 मे मंदिर के पास रहने वाला एक लड़का अपने साथियों के साथ मिलकर पुलिसवालों पर पेट्रोल व तेज़ाब बम्ब फेंक रहा था।.....

1545

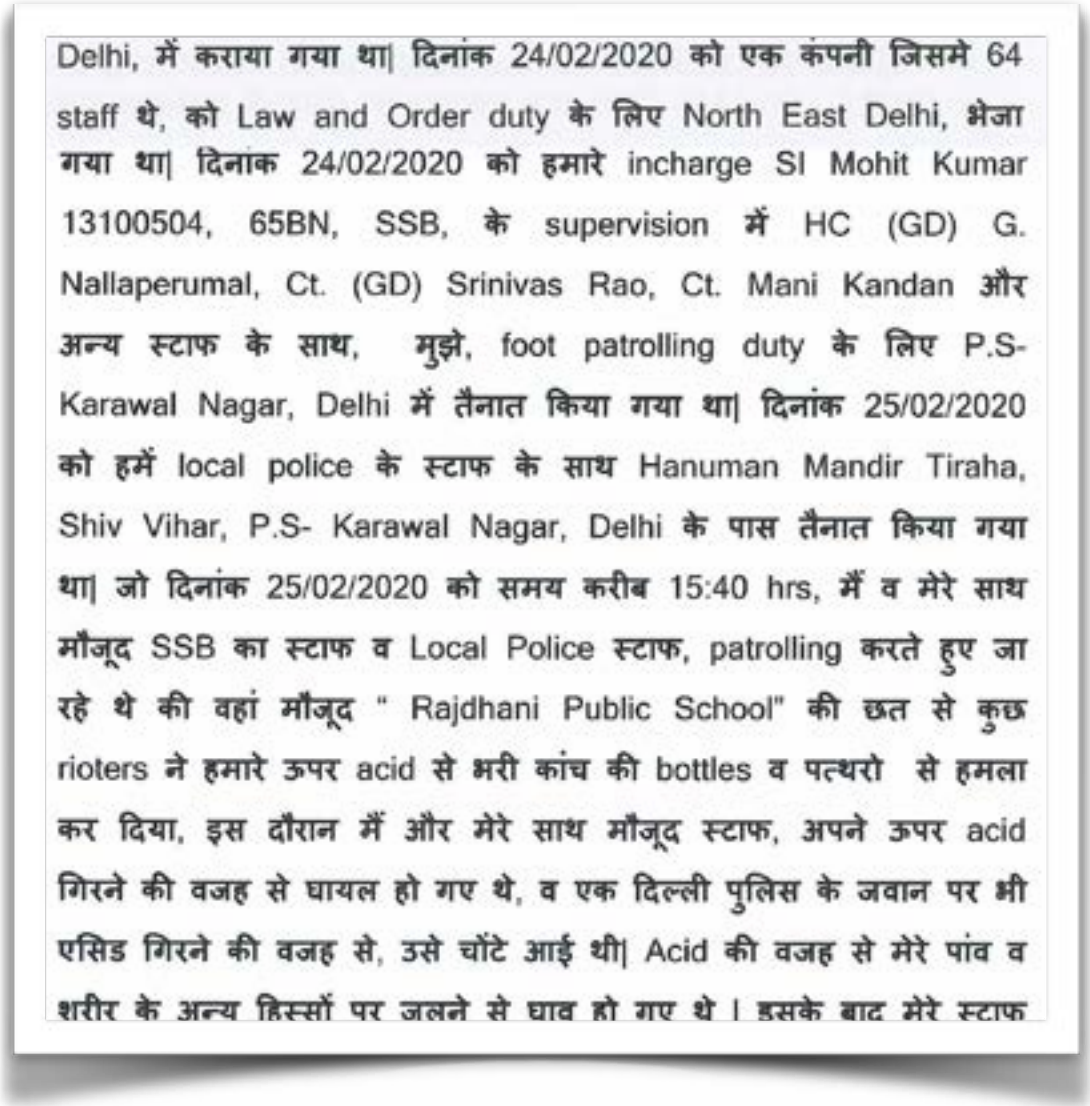
Screenshot 21



भीड़ मे मौजूद लोगो ने police की बात नहीं सुनी। इसके बाद जब प्रदर्शनकारियों को मेन वजीराबाद रोड ब्लॉक करने से रोका तो प्रदर्शनकारियों ने पुलिसकर्मियों पर पथराव कर डंडे, राड आदि से जानलेवा हमला कर दिया। जो कुछ व्यक्ति प्रोटेस्ट के पास Skyride E-Rikshaw showroom व Saptrishi Ispat &Alloy Pvt Ltd,Main Wazirabd Road,Chand Bagh,Delhi की छत पर से पुलिस वालों की तरफ फायर कर रहे थे तथा पेट्रोल बॉम्ब, पत्थर, तेज़ाब आदि भी फैंक रहे थे। जब पुलिसकर्मी अपने को बचाने के लिए मेन वजीराबाद रोड cross करके यमुना विहार side जाने लगे, लेकिन divider की ऊंचाई अधिक होने व अंधाधुंद पथराव होने के कारण DCP/SHD,ACP/Gokulpuri साहब, HC Ratan Lal व काफी पुलिसकर्मी dividercross नहीं कर सके और दंगाइयों की भीड़ ने इन्हे घेरकर इन पर बेतहाशा पथराव कर लाठी, डंडे, राड आदि से जानलेवा हमला कर दिया।दंगाइयों ने हिंसा से पहले ही मौका के आस पास मे लगे दुकानों/शोरूम आदि के CCTV cameras को disconnect व् damage करदिया था। इस हमले मे DCP/SHD,ACP/Gokulpuri साहब, HC Ratan Lal व काफी पुलिसकर्मियों के सिर फट गयेजिनहेंकाफी गंभीरचोटेआई तथा तीनों वही पर गिर गए। जोबादमेadditional force आनेकेबादभीड़कोकाबूकियागयाऔरघायलोकोहॉस्पिटलभेजागया। इस हिंसा मे काफी संख्या मे पुलिस कर्मियों को गंभीर चोटें आई है। मुझे भी चोटे आई जिसकी हॉस्पिटल में MLC भी बनी थी । इस हमले में HC Ratanlal की मृत्यु हो गयी । Post mortem report से मुझे मालूम चला की शहीद HC Ratanlal जी को गोली भी मारी गई थी ।मेरे बयान पर थाना दयालपुर मे

1665-1666

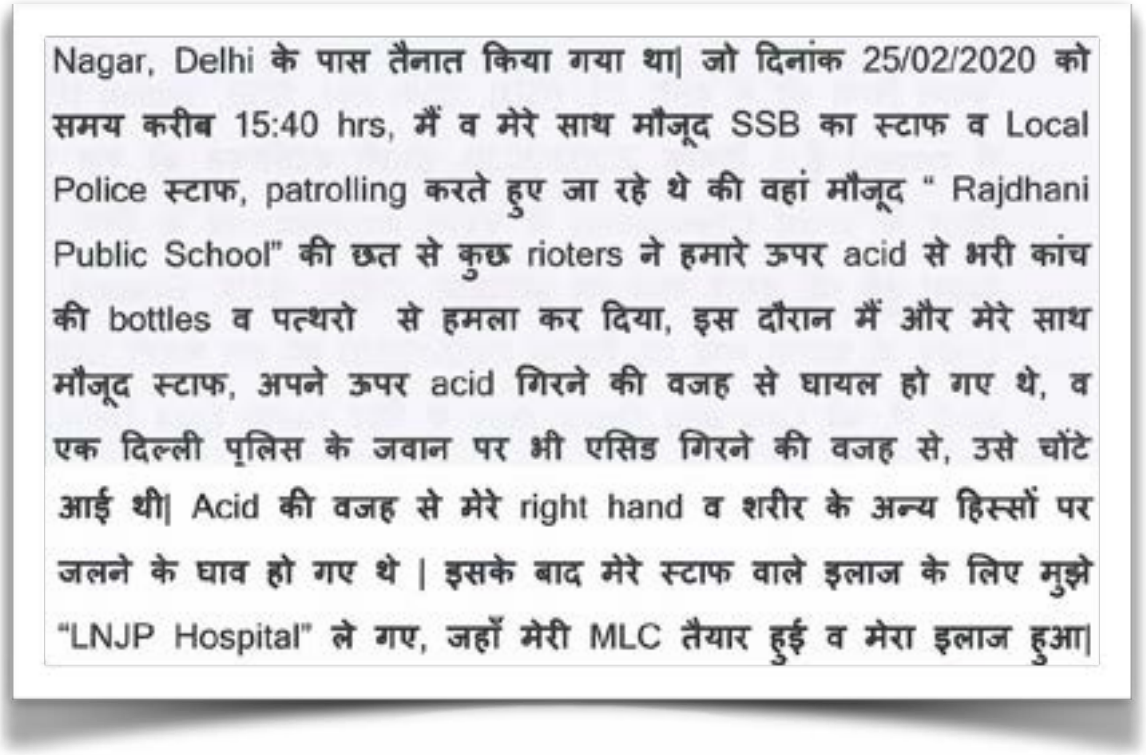
Screenshot 22



Delhi, मैं कराया गया था| दिनांक 24/02/2020 को एक कंपनी जिसमे 64 staff थे, को Law and Order duty के लिए North East Delhi, भेजा गया था| दिनांक 24/02/2020 को हमारे incharge SI Mohit Kumar 13100504, 65BN, SSB, के supervision में HC (GD) G. Nallaperumal, Ct. (GD) Srinivas Rao, Ct. Mani Kandan और अन्य स्टाफ के साथ, मुझे, foot patrolling duty के लिए P.S- Karawal Nagar, Delhi में तैनात किया गया था| दिनांक 25/02/2020 को हमें local police के स्टाफ के साथ Hanuman Mandir Tiraha, Shiv Vihar, P.S- Karawal Nagar, Delhi के पास तैनात किया गया था| जो दिनांक 25/02/2020 को समय करीब 15:40 hrs, मैं व मेरे साथ मौजूद SSB का स्टाफ व Local Police स्टाफ, patrolling करते हुए जा रहे थे की वहां मौजूद " Rajdhani Public School" की छत से कुछ rioters ने हमारे ऊपर acid से भरी कांच की bottles व पत्थरो से हमला कर दिया, इस दौरान मैं और मेरे साथ मौजूद स्टाफ, अपने ऊपर acid गिरने की वजह से घायल हो गए थे, व एक दिल्ली पुलिस के जवान पर भी एसिड गिरने की वजह से, उसे चोंटे आई थी| Acid की वजह से मेरे पांव व शरीर के अन्य हिस्सों पर जलने से घाव हो गए थे । इसके बाद मेरे स्टाफ

1681-1682

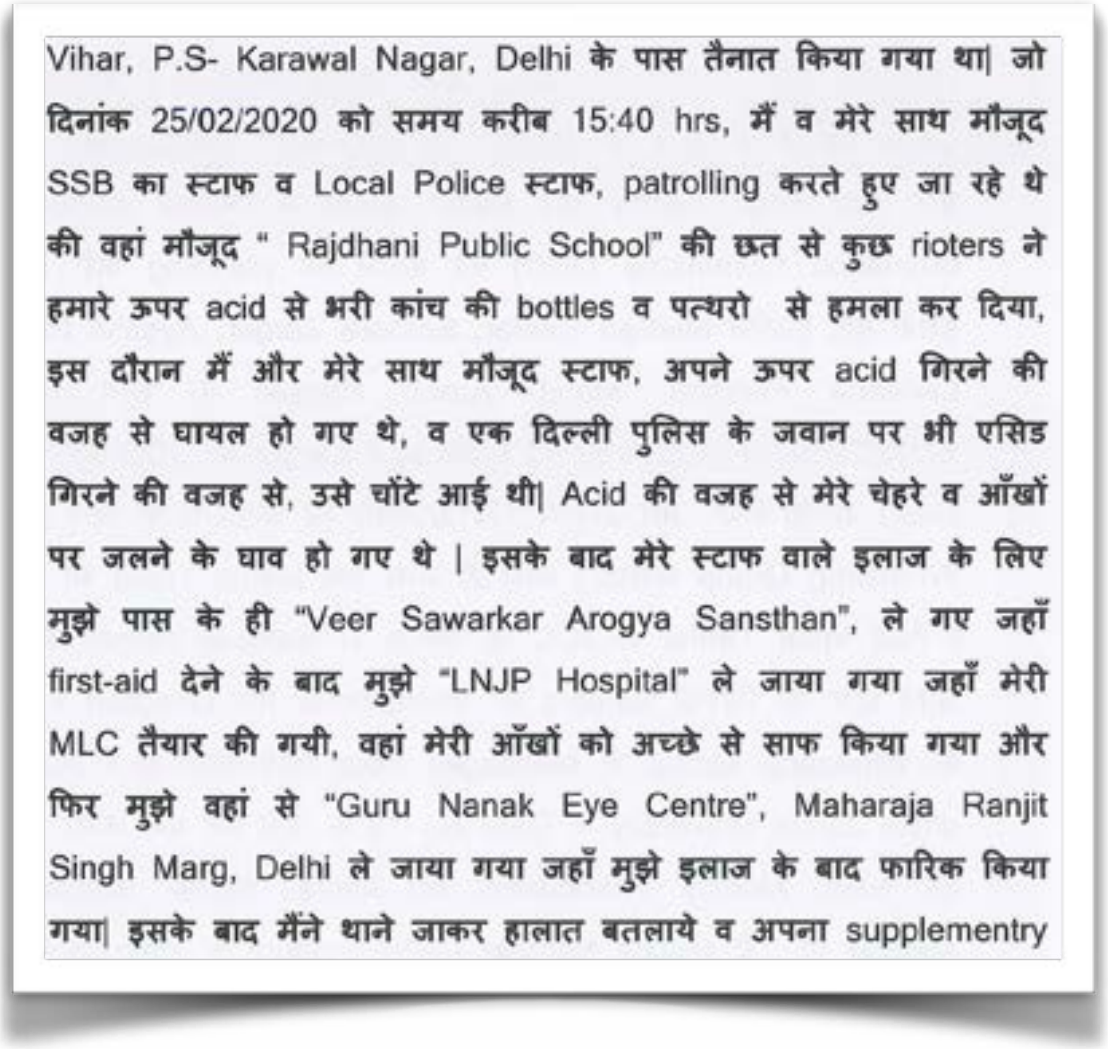
Screenshot 23



Nagar, Delhi के पास तैनात किया गया था| जो दिनांक 25/02/2020 को समय करीब 15:40 hrs, मैं व मेरे साथ मौजूद SSB का स्टाफ व Local Police स्टाफ, patrolling करते हुए जा रहे थे की वहां मौजूद " Rajdhani Public School" की छत से कुछ rioters ने हमारे ऊपर acid से भरी कांच की bottles व पत्थरो से हमला कर दिया, इस दौरान मैं और मेरे साथ मौजूद स्टाफ, अपने ऊपर acid गिरने की वजह से घायल हो गए थे, व एक दिल्ली पुलिस के जवान पर भी एसिड गिरने की वजह से, उसे चोंटे आई थी| Acid की वजह से मेरे right hand व शरीर के अन्य हिस्सों पर जलने के घाव हो गए थे | इसके बाद मेरे स्टाफ वाले इलाज के लिए मुझे "LNJP Hospital" ले गए, जहाँ मेरी MLC तैयार हुई व मेरा इलाज हुआ|

1683-1684

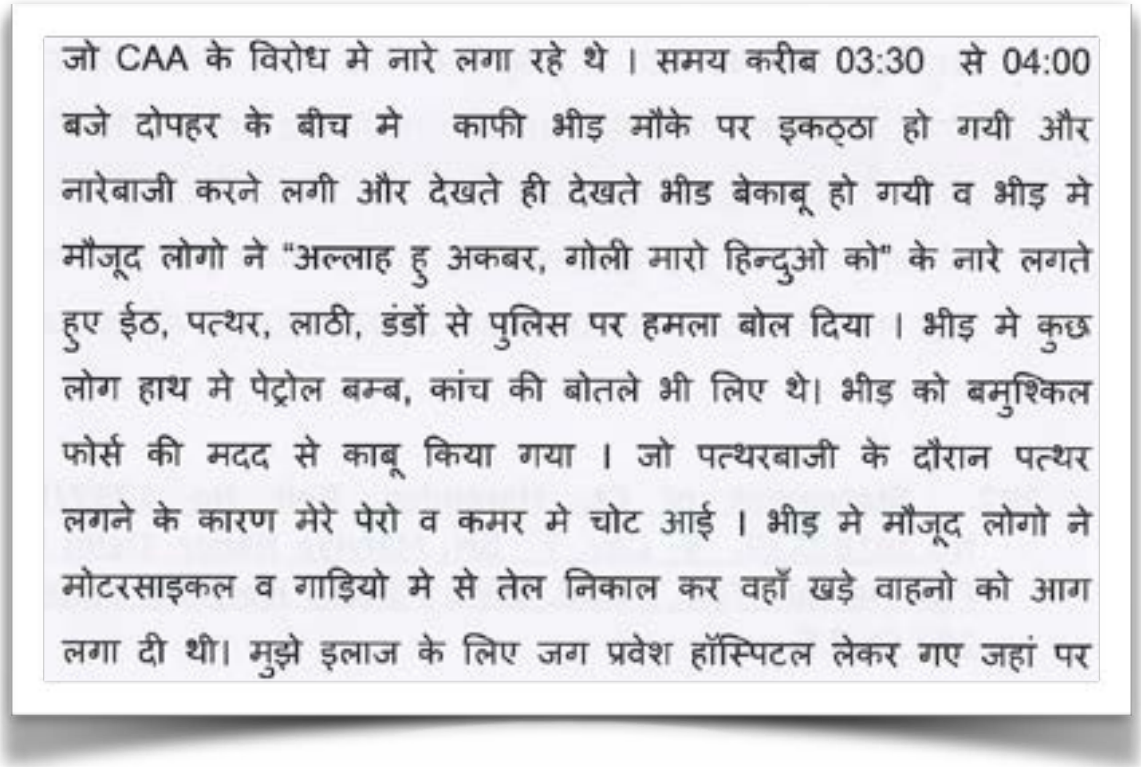
Screenshot 24



Vihar, P.S- Karawal Nagar, Delhi के पास तैनात किया गया था| जो दिनांक 25/02/2020 को समय करीब 15:40 hrs, मैं व मेरे साथ मौजूद SSB का स्टाफ व Local Police स्टाफ, patrolling करते हुए जा रहे थे की वहां मौजूद " Rajdhani Public School" की छत से कुछ rioters ने हमारे ऊपर acid से भरी कांच की bottles व पत्थरो से हमला कर दिया, इस दौरान मैं और मेरे साथ मौजूद स्टाफ, अपने ऊपर acid गिरने की वजह से घायल हो गए थे, व एक दिल्ली पुलिस के जवान पर भी एसिड गिरने की वजह से, उसे चोंटे आई थी| Acid की वजह से मेरे चेहरे व आँखों पर जलने के घाव हो गए थे | इसके बाद मेरे स्टाफ वाले इलाज के लिए मुझे पास के ही "Veer Sawarkar Arogya Sansthan", ले गए जहाँ first-aid देने के बाद मुझे "LNJP Hospital" ले जाया गया जहाँ मेरी MLC तैयार की गयी, वहां मेरी आँखों को अच्छे से साफ किया गया और फिर मुझे वहां से "Guru Nanak Eye Centre", Maharaja Ranjit Singh Marg, Delhi ले जाया गया जहाँ मुझे इलाज के बाद फारिक किया गया| इसके बाद मैंने थाने जाकर हालात बतलाये व अपना supplementry

1685

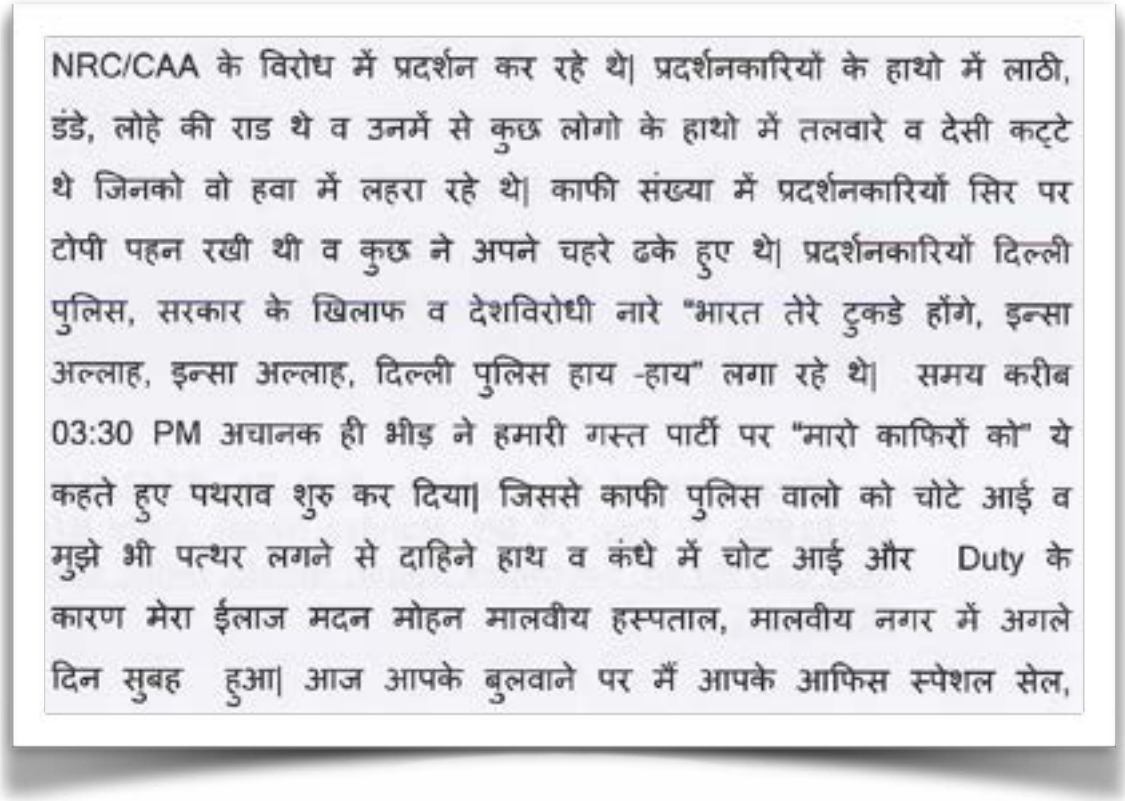
Screenshot 25



जो CAA के विरोध मे नारे लगा रहे थे । समय करीब 03:30 से 04:00 बजे दोपहर के बीच मे काफी भीड़ मौके पर इकठ्ठा हो गयी और नारेबाजी करने लगी और देखते ही देखते भीड बेकाबू हो गयी व भीड़ मे मौजूद लोगो ने "अल्लाह हु अकबर, गोली मारो हिन्दुओ को" के नारे लगते हुए ईठ, पत्थर, लाठी, डंडों से पुलिस पर हमला बोल दिया । भीड़ मे कुछ लोग हाथ मे पेट्रोल बम्ब, कांच की बोतले भी लिए थे। भीड़ को बमुश्किल फोर्स की मदद से काबू किया गया । जो पत्थरबाजी के दौरान पत्थर लगने के कारण मेरे पेरो व कमर मे चोट आई । भीड़ मे मौजूद लोगो ने मोटरसाइकल व गाड़ियो मे से तेल निकाल कर वहाँ खड़े वाहनो को आग लगा दी थी। मुझे इलाज के लिए जग प्रवेश हॉस्पिटल लेकर गए जहां पर

1801

Screenshot 26



NRC/CAA के विरोध में प्रदर्शन कर रहे थे| प्रदर्शनकारियों के हाथो में लाठी, डंडे, लोहे की राड थे व उनमें से कुछ लोगो के हाथो में तलवारे व देसी कट्टे थे जिनको वो हवा में लहरा रहे थे| काफी संख्या में प्रदर्शनकारियों सिर पर टोपी पहन रखी थी व कुछ ने अपने चहरे ढके हुए थे| प्रदर्शनकारियों दिल्ली पुलिस, सरकार के खिलाफ व देशविरोधी नारे "भारत तेरे टुकडे होंगे, इन्सा अल्लाह, इन्सा अल्लाह, दिल्ली पुलिस हाय -हाय" लगा रहे थे| समय करीब 03:30 PM अचानक ही भीड़ ने हमारी गस्त पार्टी पर "मारो काफिरों को" ये कहते हुए पथराव शुरु कर दिया| जिससे काफी पुलिस वालो को चोटे आई व मुझे भी पत्थर लगने से दाहिने हाथ व कंधे में चोट आई और Duty के कारण मेरा ईलाज मदन मोहन मालवीय हस्पताल, मालवीय नगर में अगले दिन सुबह हुआ| आज आपके बुलवाने पर मैं आपके आफिस स्पेशल सेल,

1803