



From Rule to Exception: UAPA and the Death of Bail Jurisprudence

Introduction

The principle that ‘bail is the rule and jail is the exception’ is foundational to the bail jurisprudence in India.^[i] Courts have repeatedly held that this principle is indispensable even for cases relating to special laws like the Unlawful Activities (Prevention) Act, 1967.^[ii] In practice however, Section 43D(5) of the UAPA, places a stringent restriction on this principle by mandating that an accused cannot be released on bail if the court finds *prima facie* that the allegations are true.^[iii] This statutory bar essentially works to turn the rule into an exception, as has been observed through several recent cases.^[iv] The most recent judgement in this regard is the decision of the Delhi High Court (September 2025), denying bail to Sharjeel Imam, Umar Khalid, and seven others in the Delhi riots conspiracy case.^[v]

The decision comes after more than five years since Sharjeel Imam and the other co-accused were incarcerated. The plea for bail was pending before the Delhi High Court for more than three years before it was denied. The Supreme Court, through several judgements, has highlighted the need for expediency in bail matters.^[vi] The crucial question that must be asked, therefore, is to what extent is the Court’s rationale justified with respect to the long period of incarceration, and the ultimate dismissal of the bail application?

This article examines the Delhi High Court’s judgment through three lenses: first, a brief overview of the facts of the case; second, the rationale adopted by the Court in denying bail to the accused; and third, a critical analysis of how Section 43D(5) of the UAPA undermines established bail jurisprudence, transforming the foundational principle that bail is the rule and jail the exception into a restricted and exceptional remedy.

Facts of the Case

In February 2020, several protests erupted across Shaheen Bagh, Jamia Millia Islamia and North-East Delhi against the enactment of the controversial Citizenship Amendment Act, 2019 (CAA)^[vii] and the National Register of Citizens (NRC). The protests started out as sit-ins and demonstrations,

but soon turned into violent clashes in North-East Delhi. These riots left at least 53 people dead, injured several others and caused extensive destruction to property.^[viii] However, the prosecution alleges that this violence was not spontaneous, but the result of a “larger conspiracy” hatched by student leaders and activists.^[ix]

Nine accused - Sharjeel Imam, Umar Khalid, Athar Khan, Abdul Khalid Saifi, Meeran Haider, Shifa-ur-Rehman, Gulfisha Fatima, Mohd. Saleem Khan, and Shadab Ahmed - were charged under the UAPA, alongside provisions of the IPC^[x], Arms Act^[xi], and Prevention of Damage to Public Property Act^[xii]. Since then, all nine accused have remained in jail for more than five years.

The prosecution attributed distinct roles for each of the nine petitioners. Sharjeel Imam and Umar Khalid were accused of conceptualising and mobilising protests, and the Court noted that their speeches had the effect of instigating people.^[xiii] Meeran Haider and Shifa-ur-Rehman were accused of mobilising funds through student organisations.^[xiv] The petitioners Athar Khan, Shadab Ahmed, Abdul Khalid Saifi, and Mohd. Saleem Khan were alleged to have coordinated on-the-ground activities, organized multiple protest sites, managed communication through WhatsApp groups, and facilitated the stockpiling of weapons and other materials to escalate the protests into violence.^[xv] Finally, the prosecution alleged that Gulfisha Fatima coordinated protests and managed multiple sites in Seelampur and Jafrabad.^[xvi]

The Rationale of the Court in Denying Bail to the Accused

Cumulatively, the Court observed that all the aforementioned offences amounted to a larger conspiracy to instigate widespread violence and destruction of property.^[xvii] Considering the bail pleas, the Court, while reiterating the principle that ‘bail is the rule, and jail is the exception’, emphasised that Section 43D(5) of the UAPA created a special embargo on bail wherein bail applications could be denied if the accusations appeared *prima facie* to be true. In the present case, the Court observed that a *prima facie* case could be made out against all the accused, and hence Section 43D(5) was applicable. The Court also observed that the discretion of the Court with regard to the grant of bail was circumscribed by the statutory embargo created by Section 43D(5) of the UAPA.^[xviii]

On the argument of delay and prolonged incarceration, the Court observed that while prolonged incarceration is a relevant consideration for the grant of bail, the ultimate discretion for granting or denying bail rests with the Court.^[xix] Essentially, the Court held that the gravity of the charges,

the alleged role of each accused in the conspiracy, and the prima facie truth of the allegations all outweighed the inordinate delay in the trial and the prolonged period of incarceration as a consideration for the grant or denial of bail. As a result, the Court concluded that bail could not be granted to any of the accused.

UAPA and the Erosion of Bail Jurisprudence

The denial of bail to Sharjeel Imam, and the other eight accused in the Delhi riots case shows a troubling shift in Indian bail jurisprudence under special laws like the UAPA. As stated above, the Indian Courts have traditionally applied the principle of bail being the rule and jail being the exception. Several landmark judgements have emphasised that the personal liberty of pretrial detainees must be guaranteed under Article 21 of the Indian Constitution^[xx], and bail is the manifestation of such liberty.^[xxi]

Section 43D(5) however, acts as a statutory inversion of this foundational principle of bail jurisprudence. It permits bail only in cases where the Court is satisfied that the allegations that have been made against the accused are not prima facie true. The present judgement also relies on the infamous case of *National Investigation Agency v. Zahoor Ahmad Shah Watali*, where the Supreme Court observed that the degree of satisfaction required to establish that the allegations made out against the accused are “prima facie true” is lighter as compared to that required in other special laws.^[xxii] This judgement has subsequently been relied on in several other cases relating to the grant of bail under UAPA.

This reasoning highlights the central problem with this provision. By significantly eroding the degree of satisfaction required to establish the allegations as true, the possibility of bail is drastically reduced. Essentially, whatever the prosecution argues in the Court is simply taken to be true at face value for consideration of the allegations made out.^[xxiii]

The *Watali* problem was sought to be addressed in the judgement in *Union of India v. K.A. Najeed*, where the Court held that special provisions regarding bail in enactments like the UAPA did not derogate the Constitutional Courts from granting bail where a violation of Part III of the Constitution was made out.^[xxiv]

On a reading of the present judgement, it is clear that the Court has not relied on the reasoning laid down in *Najeed*. Reading the right to speedy trial within Article 21, the Court could have observed that such a long period of incarceration violated the right to personal liberty of the pretrial

detainees. Instead, the Court proceeded with the narrow approach followed in *Watali*, preferring a strict and restrictive interpretation of Section 43D(5) of the UAPA.^[xxv]

The prolonged incarceration and subsequent denial of bail of the accused in the 2020 Delhi riots case have important implications with respect to international humanitarian law as well. The International Covenant on Civil and Political Rights (ICCPR), to which India is a party, guarantees the right to liberty and security of person, the presumption of innocence, and protection against arbitrary detention.^[xxvi] By denying bail only on the grounds of “prima facie” allegations made out against the accused, the judgement risks violating the standards demanded by the ICCPR. Article 9 makes it clear that liberty is the rule and detention is the exception. Five years of incarceration without trial, justified solely by the statutory embargo given under Section 43D(5) of UAPA, risks running afoul of these international standards that India must uphold.^[xxvii]

Conclusion

The denial of bail to Sharjeel Imam and the eight other accused in the Delhi riots case underscores a significant erosion of the established bail jurisprudence in Indian criminal law. It signifies how the Indian Courts have acquiesced to a more restrictive framework of bail, as envisioned under Section 43D(5) of the UAPA.^[xxviii] While this may be justified through the language of strict interpretation or legislative deference, broader questions relating to Constitutional morality are left unanswered. Mechanical application of bail provisions, especially in cases of special enactments which are already restrictive, risks encroaching upon the fundamental rights of the accused, enshrined under Part III of our Constitution. The Court’s failure to engage with established judicial procedure, prolonged incarceration period and the principle laid down in *Najeeb* regarding bail jurisprudence under special laws, all signify a troubling pattern of judicial discretion. This erosion has significant impacts not only on domestic law, but also has implications with respect to international humanitarian law.

When Constitutional principles are sidelined in favour of statutory rigidity, the very core of the rule of law is threatened. The question that must now be posed is whether special laws such as the UAPA must be subjected to the greater threshold of Constitutional morality. Any reform henceforth pursued must ask - how can the State ensure security of the society, without endangering the personal liberty of the individuals it is supposed to protect

ⁱ Amisha Shrivastava, ““bail Is the Rule, Jail Is the Exception” Even in Special Statutes like UAPA : Supreme Court’ (Live Law, 21 August 2024) <<https://www.livelaw.in/top-stories/bail-is-the-rule-jail-is-the-exception-even-in-special-statutes-like-uapa-supreme-court-266587>> accessed 11 September 2025.

ⁱⁱ Unlawful Activities (Prevention) Act, 1967.

ⁱⁱⁱ *ibid* s 43.

^{iv} Gursimran Bakshi, ‘How the Supreme Court of India Continues to Flout the “bail Is Rule, Jail an Exception” Principle’ (OHRH, 20 January 2025) <<https://ohrh.law.ox.ac.uk/how-the-supreme-court-of-india-continues-to-flout-the-bail-is-rule-jail-an-exception-principle/>> accessed 11 September 2025.

^v *Sharjeel Imam v. State (NCT of Delhi)*, 2025 SCC OnLine Del 5756.

^{vi} *Hussainara Khatoon (I) v. Home Secy., State of Bihar*, (1980) 1 SCC 81.

^{vii} Citizenship Amendment Act, 2019.

^{viii} Scroll Staff, ‘Explainer: What Do We Know about the Communal Violence That Left 53 Dead in Delhi in February 2020?’ (Scroll.in, 6 March 2020) <<https://scroll.in/article/955251/explainer-what-do-we-know-about-the-communal-violence-that-left-47-dead-in-delhi-in-february-2020>> accessed 11 September 2025.

^{ix} *Sharjeel Imam* (n 5) para 2.

^x Indian Penal Code, 1860.

^{xi} Arms Act, 1959.

^{xii} Prevention of Damage to Public Property Act, 1984.

^{xiii} *Sharjeel Imam* (n 5) para 113.

^{xiv} *ibid* para 231.

^{xv} *ibid* para 152.

^{xvi} *ibid* para 296.

^{xvii} *ibid* para 223.

^{xviii} *ibid* para 24.

^{xix} *ibid* para 33.

^{xx} The Constitution of India, 1950, art 21.

^{xxi} Rajeev Kumar Singh and Aparna Singh, 'An Overview of Bail Jurisprudence in India with Special Reference to Article 21 of the Constitution of India' (2023) 9 Indian Journal of Law and Human Behavior 17.

^{xxii} *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 para 22.

^{xxiii} Aroon Menon, 'Reimagining Bail Jurisprudence: Lessons on Section 43d(5), UAPA' (P39A Criminal Law Blog, 9 November 2021) <<https://p39ablog.com/2021/11/reimagining-bail-jurisprudence-lessons-on-section-43d5/>> accessed 11 September 2025.

^{xxiv} *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 para 17.

^{xxv} Rustam Kuraishi, 'A Mockery of Justice in Umar Khalid's Case' (Muslim Mirror, 11 September 2025) <<https://muslimmirror.com/a-mockery-of-justice-in-umar-khalids-case/>> accessed 11 September 2025.

^{xxvi} International Covenant on Civil and Political Rights, 1966, arts. 9-14.

^{xxvii} OHCHR, 'Chapter 5: Human Rights and arrest, pre-trial detention and administrative detention', in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (OHCHR 2003) <<https://www.ohchr.org/en/publications/training-and-education-publications/human-rights-administration-justice-manual-human>> accessed 12 September 2025.

^{xxviii} 'Bail under UAPA: Court in Review' (Supreme Court Observer, 9 October 2023) <<https://www.scobserver.in/journal/bail-under-uapa-court-in-review/>> accessed 12 September 2025.