

4. Verdict In 2020 Delhi Riots – Polity

Recently, the Supreme Court of India denied bail to Umar Khalid and Sharjeel Imam in the 2020 Delhi riots conspiracy case under the Unlawful Activities (Prevention) Act, 1967 (UAPA), while granting bail to five co-accused, reinforcing strict statutory bail standards. The judgment reflects a paradigm shift towards a Security-Centric Jurisprudence, where the Court acts as a mediator between Executive Necessity and the Sanctity of Individual Liberty under Article 21.

Key Highlights of the Supreme Court Judgment

Application of the Doctrine of Proportionality – The Supreme Court applied the Doctrine of Proportionality to assess restrictions on personal liberty under stringent national security laws. By distinguishing between “intellectual architects” and “subsidiary facilitators,” the Court ensured that–

1. Judicial restraint on liberty is commensurate with the degree of alleged threat to the sovereignty and integrity of the State.
2. Preventive detention under UAPA is not applied mechanically but through role-based evaluation.

This reflects a calibrated approach where severity of legal consequences aligns with the gravity of alleged involvement.

Differential Treatment of Accused – The Court clarified that criminal law does not mandate identical bail outcomes for all accused arising from a common transaction. Bail determination must be

1. Individualised
2. Role-specific
3. Based on the nature of allegations and evidentiary material

This rejects the argument that parity among co-accused is automatic, especially under special statutes like UAPA.

Judicial Recognition of a Hierarchy of Offenders – The judgment formally recognises a hierarchy of culpability among accused charged under identical provisions. Even when statutory sections invoked are the same Principal conspirators and ideological drivers stand on a qualitatively different footing from logistical or peripheral actors. This strengthens conspiracy jurisprudence by acknowledging **degrees of moral and legal responsibility.**

Qualitatively Different Legal Footing – Umar Khalid and Sharjeel Imam were found to have

1. Central
2. Formative
3. Ideological and organisational roles

Their alleged involvement was not limited to participation but extended to conceptualisation and mobilisation, placing them on a distinct legal plane from co-accused granted bail.

Bail Jurisprudence under UAPA

1. Stringent Bail Threshold under Section 43D (5) – Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967 imposes a statutory embargo on bail. Bail can be denied if the court finds the prosecution case to be prima facie true. The Court held that

1. Prolonged incarceration alone cannot justify bail.
2. Article 21 rights must be balanced against legislative intent and national security concerns.

2. Prima Facie Evaluation Standard – At the bail stage, courts must

1. Assess the statutory framework
2. Evaluate the nature and gravity of allegations
3. Examine whether the prosecution’s case appears prima facie credible

Courts are not expected to conduct a detailed trial-like scrutiny of evidence at this stage.

3. National Security as a Distinct Consideration – In offences affecting

1. Sovereignty
2. Integrity
3. Security of the State

Courts must exercise greater judicial restraint, even if personal liberty is implicated. This reflects a shift from individual-centric liberty analysis to State-centric security analysis in bail jurisprudence.

4. Bail to Co-accused – Bail was granted to five co-accused based on

1. Subsidiary nature of allegations
2. Absence of central conspiratorial role

Bail conditions were stringent to

1. Prevent interference with trial
2. Ensure presence during proceedings
3. Safeguard the integrity of the judicial process

Background of the Case

1. 2020 Delhi Riots – Communal violence in North-East Delhi in February 2020 resulted in

1. 53 deaths
2. Hundreds injured
3. Large-scale destruction of public and private property

The violence triggered extensive investigations under

1. UAPA
2. IPC (now BNS)

2. Nature of Allegations – The accused were alleged to be part of a larger, coordinated conspiracy to

1. Incite communal violence
2. Destabilise public order
3. Threaten national integrity

Charges included

1. Terrorist acts
2. Criminal conspiracy
3. Rioting and unlawful assembly

3. High Court Proceedings – The Delhi High Court (September 2023) denied bail to nine accused. It described Khalid and Imam as “intellectual architects”, shaping the Supreme Court’s analytical framework.

4. Defence Arguments – Defence invoked

1. Article 19(1)(a) and 19(1)(b) – right to speech and protest
2. Article 21 – prolonged incarceration equals punishment without trial

The Supreme Court rejected these as insufficient to override UAPA’s statutory embargo.

Interpretation of “Terrorist Act” under UAPA

1. Section 15 – Broad and Expansive Interpretation – Terrorism is defined by

1. Intent
2. Design
3. Effect

Not merely by the weapon or method used.

2. Expansion of “Means” – The phrase “by any other means of whatever nature” was interpreted broadly. The Court held that

1. Terrorism is not confined to bombs or firearms.
2. Organised disruption, mass mobilisation, or economic destabilisation may qualify if alleged to threaten national security.

3. Non-Violent Acts as Terrorism

Even non-violent acts such as

1. Road blockades
2. "Chakka jams"

May attract UAPA if alleged to be part of a larger conspiratorial design.

Constitutional and Statutory Framework

CrPC vs Special Laws – While CrPC governs general criminal procedure Special statutes like UAPA override general law. This limits judicial discretion in bail matters.

IPC to BNS Transition

1. The **Bharatiya Nyaya Sanhita, 2023** now explicitly defines terrorist acts under Section 113.
2. This mirrors UAPA, signalling legislative continuity in counter-terror policy.

Constitutional Provisions

1. Article 21- Liberty subject to procedure established by law.
2. Article 19- Freedoms subject to reasonable restrictions in the interests of-
 - a. Public order
 - b. Security of the State

The judgment prioritises statutory restriction over expansive constitutional interpretation at the bail stage.

Judicial Precedents Relied Upon

NIA v. Zahoor Ahmad Shah Watali (2019)– Courts must

1. Accept prosecution's version at face value
2. Avoid detailed evidentiary analysis at bail stage

This precedent was reaffirmed.

Union of India v. K.A. Najeeb (2021)

1. Recognised delay-based bail under exceptional circumstances.
2. The present judgment confines Najeeb to a narrow exception, not a general principle.

Kartar Singh v. State of Punjab (1994)

1. Validated stringent anti-terror laws.
2. Emphasised judicial caution to prevent misuse.

Impact of the Judgment

On Bail Jurisprudence

1. Reinforces "incarceration as the norm" under special laws.
2. Weakens the traditional principle of "bail is the rule".

On Right to Dissent – Raises concerns of

1. Criminalisation of protest
2. Conflation of dissent with conspiracy

Potential chilling effect on civil society, students, and political mobilisation.

On Due Process – Prima facie standard risks

1. Prolonged pre-trial detention
2. Conversion of process into punishment

Raises questions of substantive due process under Article 21.

On Judicial Discretion

1. Judicial discretion at bail stage is subordinated to statutory mandate.
2. Encourages role-based differentiation but restricts equitable relief.

Critical Analysis

Arguments Supporting the Verdict

1. Protects national security
2. Respects legislative intent
3. Strengthens conspiracy jurisprudence
4. Aligns with established precedents
5. Enhances deterrence against organised violence

Arguments Against the Verdict

1. Prolonged incarceration without conviction
2. Erosion of bail jurisprudence
3. Low evidentiary threshold
4. Chilling effect on dissent
5. Risk of executive overreach

Challenges and Concerns

1. Prolonged pre-trial incarceration
2. Trial delays becoming punitive
3. Risk of misuse in politically sensitive cases
4. Narrowing of democratic space
5. Difficulty in early classification of "terrorist acts"

Way Forward

Key Reforms Needed

1. Time-bound trials in UAPA cases
2. Judicially defined delay thresholds
3. Clear bail guidelines balancing liberty and security
4. Periodic legislative review of UAPA
5. Protection of peaceful protest
6. Strengthening trial infrastructure
7. Institutional safeguards against misuse

Conclusion

The Supreme Court judgment marks a decisive consolidation of national security-centric bail jurisprudence. While it strengthens the State's counter-terror framework, it simultaneously narrows judicial discretion and constitutional space for dissent.

The enduring constitutional challenge lies in ensuring that exceptional laws remain exceptional, and that the Republic distinguishes between the Critic and the Conspirator, preserving both security and democratic liberty.

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