CASE LAW UPDATES

Case Brief: Gulfisha Fatima v. State (Govt. of NCT of Delhi)

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The case *Gulfisha Fatima v. State (Govt. of NCT of Delhi)* concerns the relationship between prolonged pre-trial detention, Article 21 of the Constitution and the special bail restriction under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 (UAPA).

Citation: 2026 INSC 2

Date of judgment: 5 January 2026

Court: Supreme Court of India

Bench: Justices Aravind Kumar and N.V. Anjaria

Relevant provisions: Article 21 of the Constitution, Sections 13, 16, 17, 18 and 43D(5) of the UAPA

Can a person remain in prison for years without a trial simply because the case is filed under an anti-terror law? The question becomes more difficult when the case concerns a serious allegation of conspiracy behind the 2020 Delhi riots. In *Gulfisha Fatima v. State (Govt. of NCT of Delhi)*, the Supreme Court had to balance the individual's right to personal liberty with the State's duty to protect public order and national security.

The judgment arose from a group of appeals filed by persons accused in the larger Delhi riots conspiracy case. The Court did not decide their guilt. It decided whether the statutory restrictions on bail under the UAPA justified their continued custody. The judgment is important for the CLAT PG students as it deals with the relation of Section 43D(5) with Article 21 and why the alleged role of each accused should be looked at differently.

Facts (Gulfisha Fatima v. State)

FIR was registered by the Delhi Crime Branch in connection with the riots that took place in parts of North-East Delhi in February 2020. The prosecution alleged that the violence was not

spontaneous but resulted from a larger conspiracy connected with protests against the Citizenship Amendment Act, 2019 and the proposed National Register of Citizens.

According to the prosecution, the plan involved mobilisation of people, road blockades, coordination through meetings and digital groups, and collection of materials that could be used during violence. The riots allegedly caused 54 deaths, injuries to civilians and police personnel, and extensive damage to public and private property. The accused were booked under several provisions of the Indian Penal Code, the UAPA, the Arms Act and the Prevention of Damage to Public Property Act.

Gulfisha Fatima was arrested on 11 April 2020. The main charge-sheet was filed in September 2020, followed by supplementary charge-sheets. By the time the Supreme Court considered the appeals, the investigation was substantially complete, but the trial had not made meaningful progress. The prosecution relied on witness statements, electronic material, alleged meetings and WhatsApp groups to connect the accused with the conspiracy.

The connected appeals were filed by Gulfisha Fatima, Sharjeel Imam, Umar Khalid, Shifa-ur-Rehman, Mohd. Saleem Khan, Meeran Haider and Shadab Ahmed. Their alleged roles were not identical. This difference became central to the Supreme Court's decision.

In relation to Gulfisha, the prosecution alleged that she was associated with Pinjra Tod and was involved in coordinating protest activity around Seelampur and Jafrabad. It alleged that she helped mobilise local women, created or administered a WhatsApp group, attended meetings, used coded communications and assisted in arranging materials at protest sites. The prosecution also claimed that she participated in the escalation of protests into disruptive road blockades and violence.

The lower courts rejected her bail. They held that the prosecution material, if taken at face value, showed her prima facie involvement in the larger conspiracy. Gulfisha therefore approached the Supreme Court under Article 136 of the constitution.

Procedural History (Gulfisha Fatima v. State)

The Delhi High Court upheld the rejection of Gulfisha's bail application. It found that the material collected by the prosecution satisfied the threshold under Section 43D(5) of the UAPA. Gulfisha then filed SLP under Article 136 of the constitution. The Supreme Court heard it together with the connected bail appeals.

The Court noted that the investigation was substantially complete, while the trial remained lengthy and complex. It therefore considered both the statutory bar on bail and the constitutional concern arising from prolonged custody.

Issues Before the Court

1. What is the correct approach to bail under Section 43D(5) of the UAPA?
2. prolonged pre-trial incarceration and delay in trial violate the right to personal liberty under Article 21?
3. Should all accused in a common conspiracy case be treated alike, or must the Court examine the individual role of each accused?
4. Was Gulfisha Fatima's continued detention necessary despite the seriousness of the allegations?

Arguments of the Parties

Gulfisha argued that she had been in custody for a long period although the trial was unlikely to finish soon. She submitted that the prosecution had not attributed any direct act of violence to her and that her alleged role was limited to protest participation and local coordination. She also relied on parity with co-accused Natasha Narwal and Devangana Kalita, who had already been granted bail.

The State stressed the gravity of the alleged conspiracy and the consequences of the riots. It argued that the prosecution material showed planned mobilisation rather than innocent participation in a protest. It further submitted that questions about witness reliability and electronic evidence had to be examined during trial, not at the bail stage.

Judgment of the Supreme Court

The Supreme Court partly allowed the batch of appeals. It granted bail to Gulfisha Fatima, Meeran Haider, Shifa-ur-Rehman, Mohd. Saleem Khan and Shadab Ahmed. It refused bail to Sharjeel Imam and Umar Khalid, while allowing them to renew their bail applications after the examination of protected witnesses or after one year, whichever was earlier.

1. Section 43D(5) requires limited but real scrutiny

Section 43D(5) prevents the release of an accused charged under the relevant UAPA provisions when the Court has reasonable grounds to believe that the accusation is prima facie true. The Court explained that this is not a meaningless formality. At the same time, it is not a full trial. The Court may examine the prosecution material at a threshold level, but it must not decide witness credibility, admissibility or final guilt.

The inquiry is accused-specific. A common FIR or a common allegation of conspiracy does not permit the State or the Court to treat every accused as equally responsible. The Court must ask what role is attributed to the particular person and whether that role has a prima facie connection with the alleged offence.

2. Article 21 remains relevant in UAPA cases

The Court accepted that the right to a speedy trial is part of Article 21. Pre-trial custody cannot quietly become punishment merely because the prosecution is filed under a special statute. However, prolonged custody does not automatically result in bail. Delay must be assessed along with the nature of the allegations, the stage of the trial, the realistic possibility of its completion, the reason for delay, the accused's role and the risks to witnesses or the trial process.

Thus, Article 21 controls the manner in which Section 43D(5) is applied, but it does not erase the statutory restriction. The Court adopted a balancing approach rather than an automatic rule in favour of either liberty or detention.

3. Gulfisha's role was treated as operational, not strategic

On a prima facie reading of the material, the Court accepted that Gulfisha's alleged role was not insignificant. It nevertheless found an important difference between her and the alleged principal conspirators. The prosecution case placed her at the level of local mobilisation, protest-site coordination and logistical execution. The material did not show that she had independently designed, directed or controlled the larger conspiracy.

The Court also noted that the investigation had substantially ended and that her present ability to influence witnesses or revive the alleged network was not shown to be continuing. These risks could be addressed by strict bail conditions. Her status as a woman and the absence of material showing a continuing, unavoidable threat were also relevant to assessing the necessity of continued custody.

Bail also does not mean that the case is false and the accused is free of trial. It only meant that further incarceration was not indispensable for a fair trial, subject to safeguards.

Ratio Decidendi (Gulfisha Fatima v. State)

The ratio of the case is that Section 43D(5) requires an accused-specific and disciplined assessment of the prosecution material. A common conspiracy case does not justify identical treatment of all accused. Prolonged incarceration is a serious concern under Article 21 , but it is not an automatic formula for bail. The Court must balance the statutory threshold, the accused's alleged role, the progress of trial and the necessity of continued detention.

Final Order and Bail Conditions

Gulfisha and the other four appellants were directed to execute a bond of ₹2 lakh with two local sureties. They were required to remain within Delhi, surrender their passports, provide current contact details and report twice every week to the Crime Branch. They could not contact or influence witnesses, associate with groups connected with the case, publish material about the case, address gatherings, or delay the trial. Breach of these conditions could lead to cancellation of bail.

Importance for CLAT PG Students

Indeed the case is clear that Section 43D(5) ought to be a limited judicial consideration and not merely refusal of bail as of right or a mini trial. It also reinforces individualised criminal justice: the seriousness of a common conspiracy cannot replace examination of the specific role of each accused.

The judgment later became part of a wider debate about its relationship with the three-judge decision in *Union of India v. K.A. Najeeb*. Later proceedings questioned whether prolonged incarceration is one factor among many or a stronger constitutional reason for bail when trial is unlikely to finish within a reasonable time. The later debate does not alter the January 2026 holding.

Conclusion

Gulfisha Fatima v. State does not declare that every UAPA accused must receive bail after a particular period. The important takeaway is that courts must apply Section 43D(5) carefully, examine accused-specific material and ask whether continued detention remains necessary in light of Article 21.