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## The Unravelling of Bail Jurisprudence: The Umar Khalid Case and the UAPA

### ABSTRACT

*This article examines the recent bail rejection of Umar Khalid, arguing that the case serves as a powerful illustration of how India's anti-terror law, the Unlawful Activities (Prevention) Act (UAPA), has transformed the legal process into a form of punishment. It analyzes the legal straitjacket created by Section 43D(5) of the UAPA, which compels courts to deny bail if the charges appear "prima facie true," effectively inverting the constitutional principle of "innocent until proven guilty." The article contrasts Khalid's prolonged detention and repeated bail denials despite the trial not having begun. It also analyses the Supreme Court's precedent in the Union of India v. KA Najeed case, which held that prolonged incarceration is a valid ground for bail under the same law. The legal struggle, marked by procedural delays and the reliance on anonymous witnesses, highlights a systemic crisis where "dates upon dates" become the reality for undertrials. Ultimately, the article suggests that Khalid's case underscores the urgent need for a separate bail law to bring clarity and fairness to the justice system and ensure that the right to liberty is not indefinitely suspended.*

**Keywords:** UAPA, Bail Jurisprudence, Process as Punishment, Pre-trial Detention

## INTRODUCTION

Imagine being held in prison for years without a trial, your freedom suspended not by a conviction, but by an accusation. This isn't a fictional scenario; for Umar Khalid, it is a stark reality that has become a powerful symbol of a justice system under strain. His recent bail rejection by the Delhi High Court and subsequent appeal to the Supreme Court compels us to look beyond a single legal outcome and confront a systemic issue.

## BACKGROUND

The story begins with the tragic violence that occurred in parts of Northeast Delhi in February 2020, following protests against the Citizenship Amendment Act (CAA). The riots led to the deaths of 53 people and injured hundreds. In the aftermath, the Delhi Police's Special Cell initiated an FIR, alleging a "larger conspiracy" behind the unrest. Umar Khalid, a former student of Jawaharlal Nehru University, was arrested in September 2020 and charged under various sections of the Indian Penal Code and the stringent Unlawful Activities (Prevention) Act (UAPA). His legal journey has been long and arduous; his initial bail plea was rejected by a trial court in March 2022, a decision upheld by the High Court in October of the same year. He then approached the Supreme Court, but after a series of adjournments, he withdrew the plea in February 2024. He was again denied bail by the trial court in May 2024, a decision the Delhi High Court upheld on September 2, 2025. This history of repeated denial underscores a central argument: the Khalid case highlights how India's anti-terror laws have transformed the legal process itself into a form of punishment, fundamentally challenging the constitutional principle of "bail, not jail."

To understand this complex issue, we will first delve into the legal provisions that make bail so difficult under the UAPA. Then, we will analyze how these provisions were applied in Khalid's specific case. Finally, we will examine the wider implications for civil liberties and the future of bail reforms in India.<sup>1</sup>

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<sup>1</sup> *Umar Khalid moves Supreme Court for bail in Delhi riots conspiracy case*, BAR & BENCH (Sep. 10, 2025, 3:39 PM), <https://www.barandbench.com/news/umar-khalid-moves-supreme-court-for-bail-in-delhi-riots-conspiracy-case>

## THE LEGAL STRAITJACKET OF THE UAPA

Have you ever wondered why securing bail under a law like the UAPA seems to follow a different set of rules? It's because of a specific provision that fundamentally re-engineers a core tenet of our criminal justice system.

In normal criminal law, the principle of "innocent until proven guilty" is a cornerstone of our jurisprudence, deeply rooted in the constitutional guarantee of personal liberty under Article 21.<sup>2</sup> This principle, famously articulated by the Supreme Court with the dictum "bail is the rule, jail is the exception," means the burden is on the state to prove a person's guilt. Unless there are clear reasons to believe the accused will flee, tamper with evidence, or influence witnesses, bail is generally granted.

However, the UAPA operates in a different way or rather in an opposite way. Its most controversial provision is Section 43D (5)<sup>3</sup>, which effectively inverts this fundamental principle. It states that a court shall not release a person on bail if it has "reasonable grounds for believing that the accusation... is prima facie true."

What does "prima facie true" mean? In simple terms, it means "true at first glance." It's a much lower standard than "beyond a reasonable doubt." A judge is not allowed to dig deep into the evidence or question whether the police's claims are solid. They only have to check if the police report and documents seem believable at first sight.

This phrase flips the burden onto the accused. Now, the accused must prove that the allegations are not credible, even before the trial begins. This standard makes bail exceptionally difficult to obtain.

## LEGAL ANALYSIS OF THE CASE OF UMAR KHALID<sup>4</sup>

The police claim that Umar Khalid was not a simple participant but a main planner or "mastermind" behind a "premeditated, well-orchestrated" plot to cause riots.

The charges against him are based on a series of alleged actions, including:

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<sup>2</sup> India Const. art. 21.

<sup>3</sup> The Unlawful Activities (Prevention) Act, 1967, § 43D(5).

<sup>4</sup> *Delhi 2020 Riots: Delhi HC denies bail to Sharjeel Imam & Umar Khalid*, SCC TIMES (Sep. 4, 2025), [<https://www.scconline.com/blog/post/2025/09/04/delhi-hc-denies-bail-sharjeel-imam-umar-khalid-delhi-2020-riots/>].

- In December 2019, he and a co-accused supposedly told their group members to use "roadblock" tactics (chakka jam) to disrupt services.
- In January 2020, at a meeting, he allegedly said that "spilling of blood of the policemen was the only means" to get what they wanted. He also allegedly told people to collect weapons like knives, acid, and stones.
- In February 2020, he is accused of giving speeches to cause protests during a US President's visit.

Because of these claims, Khalid was charged with being a key player in a bigger plan to cause violence.

#### • **Why the Court Denied Bail**

The Delhi High Court's decision to deny bail was based on a specific legal rule in the UAPA: Section 43D (5). The court specifically rejected Khalid's argument that he was not present at the riots. It said that his role was as a "key conspirator" who planned the events, and that this planning was more important than his physical location during the riots themselves. In other words, the court believed he was a leader who directed others from a distance.

The prosecution's case relied on statements from "protected" or "anonymous" witnesses whose identities were not revealed. Some of these witnesses were referred to using pseudonyms, such as 'Bond,' 'Romeo,' and 'Juliet'.<sup>5</sup> This has raised concerns among critics and legal experts, who argue that the inability to properly question these witnesses about their motives or credibility is a major concern and a "serious blow to the principle of a fair and open justice system". Some of these anonymous statements were also described as vague.

The legal process for Umar Khalid shows how courts can apply the UAPA law strictly. The court focused on the idea that he was a key planner of the conspiracy, which was a strong enough reason to deny bail under this law, even though he was not physically at the riots. This case shows the difficult balance between a person's right to freedom and the government's need to investigate serious crimes.

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<sup>5</sup> Apoorva Mandhani, *Bond, Romeo, Juliet, WhatsApp group chats: Why Umar Khalid was denied bail in Delhi riots case*, THE PRINT (Mar. 25, 2022, 04:30 PM), <https://theprint.in/india/bond-romeo-juliet-whatsapp-group-chats-why-umar-khalid-was-denied-bail-in-delhi-riots-case/887996/>.

## **THE MAN BEHIND THE HEADLINES: A PROFILE OF UMAR KHALID<sup>6</sup>**

Before becoming a key figure in a major legal case, Umar Khalid was a very active and methodical person, always busy with his work as an activist. His friends recall a man who was constantly preparing for his next speech or protest. It is deeply ironic that a person so dedicated to action has now been forced to slow down in the most unexpected way: by being kept in jail for years.

A former student of modern history at Jawaharlal Nehru University (JNU), Khalid was accused by the police of being one of the main conspirators behind the 2020 Delhi riots. These riots followed widespread protests against a new law, the Citizenship Amendment Act (CAA), and tragically resulted in many deaths. Khalid was arrested in September 2020 and has been in Tihar Jail ever since. He has consistently maintained his innocence, stating that he only took part in peaceful protests, many of which were far from where the riots happened.

Khalid's passion for social justice began at a young age. Growing up in a Muslim-majority neighbourhood in Delhi, he was very aware of the discrimination his community faced. He later realized that other groups, like Adivasis, also faced similar problems, which became the focus of his PhD thesis.

His life as an activist has been challenging. In 2016, he faced sedition charges for a protest at JNU. He was also a strong voice in other student movements and was even accused of giving "provocative" speeches during a separate incident. His partner, Banojyotsna Lahiri, highlights a striking contrast: those who were arrested for a physical attack on him in 2018 are out on bail, while he remains in jail.

A friend, Anirban Bhattacharya, who visited Khalid just before his recent bail rejection, described how the years in jail have changed him. Khalid spoke about how the lack of information behind bars makes life feel much slower. Despite this, his friend says Khalid is not easily affected by daily events anymore and remains committed to his cause. His story is a powerful reminder of the human side of the legal battles you are writing about.

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<sup>6</sup> Ishita Mishra, *Activist behind bars*, TH, September 7, 2025 at 12.

## THE NAJEEB PRECEDENT: ANALOGY WITH THIS CASE

Even with the UAPA's strict rules, the Supreme Court has shown that liberty still matters. In the landmark case of *Union of India v. KA Najeeb*<sup>7</sup>, the Court upheld the bail granted to a man accused of a very serious crime. The court's reasoning gives a strong argument for Umar Khalid's case.

The Supreme Court said that even under a tough law like the UAPA, a person can't be kept in jail forever just because the trial is slow. The judges said that the strictness of the UAPA's bail rules "will melt down" if it looks like the trial won't finish in a reasonable amount of time. The Court noted that Najeeb had already spent more than five years in jail, and that was enough to grant him bail.

This is a powerful message that applies directly to Umar Khalid. Just like Najeeb, Khalid has been in jail for a very long time with no trial in sight. The Najeeb case proves that the justice system cannot hold a person indefinitely. It shows that the right to a speedy trial and personal liberty are important rights that cannot be ignored.

The Najeeb judgment affirmed that constitutional courts have the power to grant bail on grounds of a violation of fundamental rights, overriding the statutory restrictions of the UAPA. This offers a direct counter-argument to the High Court's repeated rejection of Khalid's bail.

The Supreme Court in Najeeb's case reiterated that: "undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter."<sup>8</sup> The Court also noted that "...gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail."<sup>9</sup> This is a key legal argument that applies directly to Umar Khalid's case, whose years of incarceration without a conviction

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<sup>7</sup> *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 (India).

<sup>8</sup> Kapil Madan & Pulkit Pandey, *Unlawful Activities (Prevention) Act, 1967: Interpretation on Rigours of Grant of Bail*, SCC ONLINE (Dec. 31, 2021), <https://www.scconline.com/blog/post/2021/12/31/unlawful-activities-prevention-act-1967-interpretation-on-rigours-of-grant-of-bail/>.

<sup>9</sup> *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 (India).

appear as a disproportionate form of punishment, especially when compared to the legal precedent set by the Supreme Court itself.

## **THE BATTLE FOR LIBERTY: POSTPONEMENTS AND DELAYS<sup>10</sup>**

The battle for Umar Khalid's freedom is not just about the law itself but it's also about a slow and difficult legal process. This is where the concept of "process as punishment" becomes very real. He has been in jail for years without his trial even starting, and this long imprisonment is a punishment in itself, regardless of whether he is eventually found guilty.

His recent journey through the Supreme Court highlights this struggle. His legal team has tried repeatedly to get him out on bail, but the hearings have been postponed again and again. For example, his bail plea was set for September 12, but the court pushed it back to September 19, stating that the judges received the case documents too late to properly review them. The hearing was then again postponed from September 19 to September 22, this time without any publicly stated reason. These repeated adjournments are not just minor inconveniences. They deny him a speedy trial, which is a fundamental right. It makes it seem like the system itself is working against him, adding years to his pre-trial detention and raising serious questions about the fairness of the legal process. Each delay is a step further away from the justice he seeks, a situation that many describe using the popular phrase, "Tarikh pe tarikh," which signifies the frustrating reality of endless postponements in the Indian legal system.

## **CONCLUSION**

The case of Umar Khalid is far from resolved, and its final outcome remains uncertain. What happens in the Supreme Court on September 22 will be a moment of truth. Will the Court proceed with the bail plea, or will it once again postpone the hearing, adding another "Tarikh pe tarikh" to a list that is already far too long? The decision on that day will not only determine Umar Khalid's immediate future but will also reflect on the judicial system's willingness to prioritize liberty in the face of legal and procedural hurdles.

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<sup>10</sup> Aaratrika Bhaumik, *Delhi riots case: Supreme Court adjourns bail pleas of Umar Khalid, Sharjeel Imam and others to September 22*, THE HINDU (Sept. 19, 2025, 06:18 PM), [<https://www.thehindu.com/news/national/delhi-riots-case-supreme-court-adjourns-bail-pleas-of-umar-khalid-sharjeel-imam-and-others-to-september-22/article70068800.ece>].

Whether the Court grants bail or denies it, the case has highlighted a deep-seated confusion and a profound sense of uncertainty surrounding bail provisions for undertrial prisoners in India. The sheer number of cases on this issue shows that it is not a small problem; it is a systemic crisis. As individuals lose years of their lives in pre-trial detention, the justice system faces a moral dilemma. If a person is later found innocent, how can those lost years ever be compensated? The suffering and the time can never truly be given back.

This situation makes it clear that a new approach is desperately needed. Perhaps it is time for a separate bail law that provides a clear and consistent mechanism to handle all bail provisions, especially for cases like the UAPA, where the current laws allow for indefinite pre-trial detention. While the Supreme Court has previously suggested the need for such a law<sup>11</sup>, it has yet to become a reality. The fate of Umar Khalid and countless other undertrials now depends on whether the legal system will finally choose to reform itself and close the gap between legal theory and the harsh reality of the Indian judicial system.

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<sup>11</sup> LIVELAW NEWS NETWORK, Union Govt Turns Down Supreme Court's Suggestion For Separate Law On Bail; Says BNSS Provisions Are Adequate, LiveLaw (Jan. 28, 2025, 10:09 AM), <https://www.livelaw.in/top-stories/union-govt-turns-down-supreme-courts-suggestion-for-separate-law-on-bail-says-bnss-provisions-are-adequate-282172>.