

Terrorising dissent

HC bail orders are an indictment of attempt to portray Delhi protests as terrorist acts

Caught between a statutory bar on grant of regular bail and a judicial embargo on any close examination of available evidence at the bail stage, those arrested under the country's main anti-terror law have been languishing in jails without trial for extended periods. The Delhi High Court orders granting bail to three student activists jailed for over a year for their alleged role in the February 2020 riots in Delhi represent a clear-headed effort to get around such impediments. Sound in legal reasoning and interpretation, the judgments of Justice Siddharth Mridul and Justice Anup Jairam Bhambhani have made a salient distinction between those accused of offences against the country's integrity and security on the one hand, and protesters or dissenters roped in unjustifiably under the rubric of 'terrorism' on the other. The Unlawful Activities (Prevention) Act has been invoked by the Delhi Police against activists and others who were among those organising the protests against the Citizenship (Amendment) Act, on the claim that they had also fomented the riots. Under Section 43D(5), there is a legal bar on granting bail if the court is of the opinion that there are reasonable grounds to believe that the accusation against those held is *prima facie* true. Adding to this onerous burden on the accused to demonstrate to the court that the accusation is untrue is a 2019 Supreme Court judgment that bars a detailed analysis of the evidence at the bail stage and rules that bail can be denied on "the broad probabilities" of the case.

The High Court has ruled that the bail court can look at the available evidence to satisfy itself about the *prima facie* truth of the case. In other words, there is no statutory invincibility to the prosecution case merely because the UAPA has been invoked. It has found that none of the three – Asif Iqbal Tanha, Natasha Narwal and Devangana Kalita – was specifically or particularly accused of any 'terrorist act', 'funding of a terrorist act' or an act amounting to a conspiracy to commit a terrorist act or something preparatory to it. Once the UAPA charges were not seen to be true, it was open to the court to admit them to regular bail until conclusion of the trial. Further, with 740 witnesses cited, there is no scope for early conclusion of the trial. Riots are matters concerning public order, and not the security of the state. The court's observation that the state, in its anxiety to suppress dissent, has blurred the line between the constitutionally guaranteed right to protest and "terrorist activity", is a stern indictment of the establishment. The Delhi Police has gone to the Supreme Court on appeal against the verdict, possibly in the fear that the ruling may foil its design to paint protesters as 'terrorists'. If the High Court's approach to grant of bail is upheld, it would help secure the liberty of other dissenters held under the UAPA elsewhere without sufficient basis.