IN THE COURT OF SH. SHAILENDER MALIK, ADDL. SESSIONS JUDGE – 03 (NEW DELHI) PATIALA HOUSE COURTS : NEW DELHI

State (NIA) vs. Mohd. Danish Ansari & Ors.
SC No.142/2014 (08/2016)
RC No.06/2012/NIA/DLI

ORDER ON CHARGE

1. This order would decide the question of charge in the present case as against each of the accused persons in main charge sheet as well as supplementary charge sheets.

Introductory Facts

2. It appears from the record that present case RC No. 06/2012/DLI/NIA dated 10.09.2012 was registered by NIA as per directions of Ministry of Home Affairs vide order no.F.No.11011/ 21/2012-IS-IV dated 29.03.2012 for offence u/s 121A, 123 IPC as well as u/s 17, 18, 18A, 18B and 20 of UA(P) Act against 12 named accused i.e. (i) Yasin Bhatkal @ Ahmed Zarrar @ Imran @ Asif @ Shahrukh; (ii) Riyaz Bhatkal @ Ahmed; (iii) Iqbal Bhatkal @ Mohammad; (iv) Mohsin Choudhary; (v) Amir Reza Khan @ Parvez @ Rizwan @ Muttaki; (vi) Tahsin Akhtar @ Monu; (vii) Dr.Shahnawaz Alam; (viii) Asadullah Akhtar @ Haddi; (ix) Ariz Khan @ Junaid; (x) Md. Sajid @ Bada Sajid; (xi) Md. Khalid; (xii) Mirza Shadab Beg, with the allegations of entering into criminal conspiracy to wage war against India being members of banned terrorist organization “Indian Mujahideen” (IM).

3. It is in allegations that in furtherance of a criminal

conspiracy, functionaries of Indian Mujahideen undertook large scale recruitment/induction of new members for commission of terrorist activities in various parts of India, with active aid and support from Pakistan based associates as well as sleeper cells within the country to commit terrorist acts by bomb blasts at prominent places in India, especially in Delhi. Source information also revealed that Indian Mujahideen operatives and its frontal organizations have been receiving regular funds for their terrorist activities.

4. Indian Mujahideen a terrorist organization proscribed under UA(P) Act (as amended in 2008), was formed around end of year 2003 when group of ultra radicalized Muslim youths including Iqbal Bhatkal, Riyaz Bhatkal, Mohd. Siddibappa Zarrar @ Yasin Bhatkal who were associated earlier with another banned terrorist organization "Student Islamic Movement of India" (SIMI), segregated themselves in aftermath of communal mobilization on account of Babri Masjid demolition incident (1992) and riots in Gujarat after Godhara incident (2002) and formed new terrorist organization called Indian Mujahideen to carry out terrorist attacks in different parts of India. Those ultra radicalized youths belong to different parts of India including Bhatkal, Azamgarh, Kolkata, Mumbai, Delhi and others and they entered into conspiracy to carry out terrorist attacks in different parts of India to wage war against Government of India. Indian Mujahideen was banned as terrorist organization on 22.06.2009 and included in First Schedule of UA(P) Act.

5. Role of Indian Mujahideen in commission of

terrorist incidents revealed for the first time when certain media channels/news networks received email after bombing in the courts of Varanasi, Faizabad (Ayodhya) and Lucknow in UP on 23.11.2007. Through this email Indian Mujahideen not only claimed responsibility of UP court blasts but also took responsibility of earlier terror incidents at Varanasi on 07.03.2006, Mumbai serial blasts on 11.07.2006, Hyderabad twin blasts on 25.08.2007. The group cited Babri Masjid demolition and Gujarat riots being main reason for adopting violent path. Indian Mujahideen further owned responsibility of terrorist incidents at Jaipur on 13.05.2008, serial blasts in Ahmedabad on 26.07.2008 as well as Delhi serial blasts on 13.09.2008.

6. Indian Mujahideen is a group of highly radicalized Muslim youths, waging war against Government of India and nurse communal hate against Hindu community. In the mail sent before Ahmedabad serial blasts, IM proclaimed executing Jihad against Hindus. Some of the operatives of IM were identified, for the first time after an encounter with Special Cell Delhi Police at Batla House, Jamia Nagar, New Delhi on 19.09.2008 in which one member of IM was arrested. Later more operatives of IM were arrested from other parts of country. During the investigation of Special Cell Delhi Police, various important aspects regarding origin and functioning of IM was revealed, it also came in light that members of IM executed bomb blasts under the directions of senior functionaries like Riyaz Bhatkal, Iqbal Bhatkal, Yasin Bhatkal and Amir Reza Khan, who were absconding from the investigating agency.

7. Indian Mujahideen operatives started making efforts

in different places in India to find new potential recruits, the role of operatives including Md. Ahmed Siddibappa Zarrar @ Yasin Bhatkal, Riyaz Bhatkal, Iqbal Bhatkal, Mohd. Aftab Alam (A-2), Imran Khan (A-3), Syed Maqbool (A-4) and others were to motivate several persons to get recruited in IM. First charge sheet in this case was filed on 17.07.2013 as against five accused persons namely **Md. Danish Ansari @ Abdul Wahab @ Saleem @ Abdullah (A-1); Mohd. Aftab Alam @ Farooq @ Shaikhchilli @ Hafij Ji (A-2); Imran Khan @ Zakaria @ Saleem @ Fazal @ Tabrez @ Raj @ Patel (A-3); Syed Maqbool @ Zuber (A-4); and Obaid Ur Rehman (A-5)**.

8. First supplementary charge sheet has been filed on 20.02.2014 against **A-6 Mohd. Ahmad Siddibappa @ Yasin Bhatkal @ Imran @ Asif @ Shahrukh, A-7 Asaudullah Akhtar @ Haddi @ Daniel @ Tabrez @ Asad, A-8 Manzar Imam @ Zamil @ Abbu Hanifa, A-9 Ujjair Ahmad @ Ozair**.

9. Second supplementary charge sheet was filed in this case on 22.09.2014 as against different accused, out of which are **A-12 Md. Tehsin Akhtar @ Monu @ Hasan; A-20 Haider Ali @ Abdullah @ Black Beauty; A-24 Zia Ur Rehman @ Wakas @ Javed**.

10. Whereas other accused A-10 Riyaz Ahmad Shah @ Riyaz Bhatkal; A-11 Mohd. Iqbal @ Shabandari Mohd. Iqbal @ Iqbal Bhatkal; A-13 Ariz Khan @ Junaid; A-14 Mohd. Sajid @ Baba Sajid @ Chikna; A-15 Dr.Shahnawaz Alam ; A-16 Mirza Shadab Baig @ Engineer ; A-17 Amir Reza Khan @ Parvez @ Rizwan; A-18 Mohd. Khalid; A-19 Mohsin Chaudhary @ Ashfaq; A-21 Mohd. Salim Ishaqui ; A-22 Afif Jeelani @ Afif @

Mota Bhai ; A-23 Abdul Rashid @ Shaikh ; A-25 Abdul Khadir Sultan Armar @ Sultan ; A-26 Mohd. Shafi Armar; A-27 Mohd. Hussain Farhan ; A-28 Mohd. Rashid @ Sultan have been arraigned as accused but are absconding. Whereas A-29 Abu Faizal Khan @ Doctor was arrested during the investigation on 10.02.2014, but has not been charge sheeted.

11. Third supplementary charge sheet was filed on 15.11.2016, wherein **A-30 Abdul Wahid Siddibappa @ Abdul Wahid @ Khan** has been made accused. In this manner A-1 to A-9, A-12, A-13, A-20, A-24 and A-30 are facing trial in this case.

12. It is stated in main charge sheet that during the investigation it revealed that accused Mohd. Ahmad Siddibappa Zarar @ Yasin Bhatkal (A-6) was instrumental in motivating young Muslim boys into path of violent Jihad and to further indoctrinated them and to induct them into Indian Mujahideen, while staying in his hometown Bhatkal. He allegedly contacted several students of Anjuman Engineering College for that purpose. He travelled to Darbhanga Bihar and later in pursuance to conspiracy said Mohd. Ahmad Siddibappa adopted different names like Shahrukh, Asif and Yasin only to conceal his actual identity. He was earlier member of SIMI. It is stated that it is Yasin Bhatkal @ Mohd. Ahmad Siddibappa Zarar who played active roles in causing bomb blasts resulting into loss of several lives, destruction of properties.

13. A-6 has been involved in Chinnaswamy Stadium Bengaluru blast case, Ahmedabad serial blast case of 2008. It is stated that after the encounter and arrest of some of Indian

Mujahideen operatives by Special Cell of Delhi Police in Batla House case, this accused namely Mohd. Ahmad Siddibappa Zarar was looking for a safe hideout to escape from the clutches of law. One of the hideouts was at Shaheen Bagh in 2008 to 2011. It is also in the allegations that it is during this period A-6 tried to develop new hideouts at Darbhanga Biha and came in contact with A-2 and others.

14. This court heard the submissions of ld. SPP for NIA as well as ld. Counsels for the accused appearing for different accused and also gone through the written submissions filed on the judicial record. This court for the sake of brevity would discuss the relevant allegations, evidence qua each of the accused persons while examining their case for the purpose of charge.

Common Submissions on behalf of NIA

15. It is submitted by Ms.Shilpa Singh, ld. SPP for NIA that present case has been registered by the NIA upon receipt of credible inputs against the named accused in the FIR being cadre of Indian Mujahideen, a banned terrorist organization for their entering into larger conspiracy to wage war against the Government of India and to recruit/induction of members in the IM fold for committing terrorist activities in various parts of country, with the aid and support from Pakistan based associates as well as sleeper cells from country. Ld. SPP for NIA submitted that since Indian Mujahideen being a break away group from SIMI of highly radicalized youths of Muslim community, have been involved in different incidences of bomb blasts/terrorist activities. Ld. SPP for the NIA submitted that absconding accused Mohd. Ahmad Siddibappa @ Yasin Bhatkal (A-6), Iqbal

Bhatkal @ Mohd. Iqbal, Riyaz Ahmad Shah @ Riyaz Bhatkal (A-10), Amir Reza Khan (A-17), Tehsin Akhtar @ Monu (A-12) and others were principal conspirators and executors of terrorist acts including Jaipur serial blasts in May 2008, Ahmedabad serial blasts in July 2008, Delhi serial blast in September 2008, Pune Bakery blast in February 2010, Chinnaswamy Stadium blast in April 2010 and Mumbai serial blast in July 2011.

16. Ld. SPP for NIA submitted that different operatives of IM have been involved in a larger conspiracy to commit more such terrorist incidents in other parts of India. Ld. SPP for the NIA submits that in the investigation of the present case it has been found that evidence has been overlapping against different accused persons and showing that these accused charge sheeted in the present case were part of larger conspiracy despite being part of conspiracy to commit individual incidents of bomb blasts.

Legal Principles For Consideration At Stage of Charge

17. Before this court proceed to examine the case of each of the accused persons for the purpose of charge, it is appropriate to remind ourselves with basic legal proposition regarding factors to be kept in mind at the stage of charge. There is well known judgment of Apex Court in **State of Bihar vs. Ramesh Singh** 1977 SCC (Cri) 533 as well as the judgment in **Union of India vs. Prafulla Kumar Samal** 1979 SCC (Cri) 609, para 10 of the said judgment is relevant which reads as under :

> "Thus, on a consideration of the authorities mentioned above, the following principles emerge:

> (1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:
> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.
> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
> (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

18. Ld. Counsels for the accused have relied upon the judgment of Apex Court in **Dipakbhai Jagdishchandra Patel vs. State of Gujarat and Ors.** 2019 (16) SCC 547, wherein in para 23 it was observed as :

> "At the stage of framing the charge in accordance with the principles which have been laid down by

> the Supreme Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, th court must be satisfied that with the material available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence ata the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

<u>Discussion of Relevant provisions of UA(P) Act</u>

19. In the present case different accused persons have been charge sheeted for separate offences of UA(P) Act. Before this court examine the facts and evidence put forth against each of the accused persons, it would be rather beneficial and convenient to precisely discuss the relevant offences of UA(P) Act on which charge sheet has been filed.

20. **<u>Section 18</u>** One of the general offence, for which charge sheet against the accused persons has been filed is for offence of conspiracy punishable u/s 18 of UA(P) Act, which reads as under :

> "18. Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

21. It is evident from the bare provision of Section 18 of Act that offence of conspiracy under said provision has been given widest possible expression. Section 18 requires whoever

(a) (i) Conspires as defined u/s 120A IPC; (ii) Advocates; (iii) abets; (iv) incites; (v) knowingly facilitates commission of 'a terrorist act'.

or

(b) any act 'preparatory' to commission of 'a terrorist act'.

22. So what law requires is that there must be evidence of any act of conspiracy, abetting or inciting or facilitation and same is towards 'a terrorist act' or there may be an act of preparation towards 'a terrorist activity'. In other words mere act of conspiracy, facilitation or preparation etc. as referred above may not be sufficient if there is no evidence of "a terrorist act" for which such conspiracy is hatched.

23. However this court is of the view that it is not that in every case there must be actual commission of 'terrorist act', then only charge u/s 18 of Act can be invoked. No doubt generally charge of conspiracy is fastened along with the

commission of principle act of crime, for which conspiracy was allegedly hatched but as it is a settled law even in case of commission of any crime under IPC that conspiracy is in itself a substantive offence, if evidence indicate with clarity as to for which crime such criminal conspiracy was being hatched. In that situation investigating agency cannot be expected to wait for actual crime to be committed and then to charge accused for offence committed as well as for offence of conspiracy of the same.

24. With similar analogy this court is of the view that it cannot be the intention of the legislature that section 18 of UA(P) Act can be invoked only when there is actual commission of 'terrorist act'. Law of UA(P) Act was enacted and amended from time to time till 2018, with the intention to not only to prosecute and deal with offences of unlawful activity, terrorist activity but also to prevent commission of any such offence which has tendency to breach national integrity and sovereignty of the country. Therefore, if there is sufficient evidence showing as to for which terrorist activity, conspiracy was being hatched and evidence of conspiracy is also specific and clear, in that case a charge u/s 18 can be invoked even without actual commission of terrorist act.

25. Such aspect assumes importance in the facts of the present case because present case is based on basic premise that banned terrorist organization named 'Indian Mujahideen' had hatched a larger conspiracy to commit terrorist activities in different parts of India. By the time the present case was registered, such organization IM had already committed different

incidence of terrorist activities and most of the accused being prosecuted herein were involved in those incidence of terrorist activities. It is also matter of record that in those cases, be it investigated by NIA or State investigating agency, accused have inter alia faced charges for offence u/s 18 as well as u/s 20 of UA(P) Act. In such context it becomes all the more important for this court to examine the availability of sufficient evidence for framing charge u/s 18 or other offences of UA(P) Act, when those accused have already faced trial for similar offences in the particular incidents of terrorist activities.

26. This court would here also precisely discuss requisite evidence required for proving conspiracy as defined in terms of Section 120A IPC. There has been lot of judgments of superior courts explaining the requirement of law for proof of offence of conspiracy. Without going into detailed discussion of those judgments, one can easily state that essentially there must be evidence of existence of criminal conspiracy i.e. there must be prior meeting of mind of the accused about the ultimate object for which the conspiracy has been hatched. No doubt there can hardly be any direct evidence of offence of conspiracy as it is hatched in a discreet manner. However still court requires circumstantial, indirect evidence in the form of conduct of the accused or other circumstances, concretely indicating not only towards prior meeting/ concert of two or more accused persons but also towards the ultimate object/ purpose for which the conspiracy has been hatched.

27. **Section 20** of the UA(P) Act reads as under:-

<u>Punishment for being member of terrorist gang or organization</u> :

> "Any person who is a member of a terrorist gang or a terrorist organization, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine."

28. Evidently section is widely worded. It lays down that a mere membership of a terrorist gang or organization which is involved in terrorist act would invite punishment, which is imprisonment for life.

29. Section 10 of Unlawful Activities (Prevention) Act 1967 punishes being member of 'unlawful association'. Unlawful association has been defined in Section 2(p) of the Act. In similar analogy Section 20 penalize being member of terrorist gang or organization. Section 2(m) of the Act defines terrorist organization means an organization listed in the Schedule of the Act or an organization operating under the same name as an organization so listed. Expression 'terrorist gang' is defined u/s 2(l) of the Act means an association other than the terrorist organization which whether systematic otherwise concerned with or involved in terrorist act. Expression 'terrorist act' as stated in section 2(k) of the Act has been given same meaning as defined u/s 15 of the Act.

30. In respect of unlawful association, in terms of Section 10 or in respect of terrorist gang or organization in terms of Section 20 of the Act, earlier there the consistent legal view of Hon'ble Supreme Court of India has been as laid down in State

of Kerala vs. Raneef (2011) 1 SCC 784 and re-affirmed in the matter of Arup Bhuyan vs. Union of India (2011) 3 SCC 377 that in view of the fundamental right under Constitution for freedom of association as well as freedom of speech and expression, membership of banned organization or terrorist organization, in itself would not incriminate any person unless, it shows that such member is active by resorting to violence and inciting people to violence and does an act to create disorder or disturbance etc.

31. However recently larger Bench of Hon'ble Apex Court in the Review Petition no.417/2011 in the matter of **Arup Bhuyan vs. State of Assam and others** (Criminal Appeal No.889/2007 decided on 24.03.2023) held that the law as laid down in the matter of State of Kerala vs. Raneef, wherein judgments of US Supreme Court were relied upon and rejected the doctrine of "guilt of association" held in context of Section 10 of UA(P) Act, and held that if anyone knowingly or willfully become or remains member of an unlawful association, would be liable for offence u/s 10. As such earlier judgments of Apex Court in Raneef's case, Arup Bhuyan's case as well as Indra Das vs. State of Assam (2011) 3 SCC 380 were held to have not laid down correct proposition of law.

32. Although above judgment was on Section 10 of UA(P) Act and not on Section 20. Charge under section 20 of UA(P) Act can be framed if material on the record show that anyone is member of a terrorist gang or terrorist organization, which is involved in terrorist act. Section 20 of the Act thus would be attracted if there is evidence that accused is member of terrorist

organization (in terms of list of First Schedule of the Act) and terrorist gang and that such organization/gang is involved in a terrorist activity as defined u/s 15 of the Act. So expression **'membership'** of terrorist organization/ gang means that there must be material to show that accused was not only merely associated or sympathizer of that organization/ group but was participating in the activities of such organization/ group. Beside this there must also be evidence of such organization/ group and its members have taken steps towards 'terrorist activity' as defined u/s 15 of the Act. As such charge of section 20 would certainly coincide with commission of terrorist act.

> **<u>Section 38 Offence relating to membership of a terrorist organisation</u>**
>
> (1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:
>
> PROVIDED that this sub- section shall not apply where the person charged is able to prove-
>
> (a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and
>
> (b) that he has not taken part in the activities of the organisation at any time during its inclusion in the First Schedule as a terrorist organisation.
>
> (2) A person, who commits the offence relating to membership of a terrorist organisation under sub- section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

33. On plain reading of Section 38, the offence punishable therein will be attracted if the accused associates himself or professes to associate himself with a terrorist organisation included in First Schedule with intention to further its activities. In such a case, he commits an offence relating to membership of a terrorist organisation covered by Section 38. The person committing an offence under Section 38 may be a member of a terrorist organization or he may not be a member. If the accused is a member of terrorist organisation which indulges in terrorist act covered by Section 15, stringent offence under Section 20 may be attracted. If the accused is only associated with a terrorist organisation, the offence punishable under Section 38 relating to membership of a terrorist organisation is attracted only if he associates with terrorist organisation or professes to be associated with a terrorist organisation with intention to further its activities. The association must be with intention to further the activities of a terrorist organisation.

34. So important to invoke Section 38 is that a person **knowingly or consciously** associating with a terrorist organisation or a person who professes to be associated with a terrorist organisation, with an intention to further its activities. Words "associated" and "professes to be associated" occurring in Section 38 of the UA(P) Act are employed in a broad sense and with a specific purpose. Anybody indulging in such activities will normally do so clandestinely or surreptitiously. Contextually therefore, not only overt actions, but covert actions may also at times satisfy the ingredients of the Section, provided they were done knowingly or consciously for the objectives mentioned in

the Section.

Section 39 Offence relating to support given to a terrorist organisation

(1) A person commits the offence relating to support given to a terrorist organisation, -

(a) Who, with intention to further the activity of a terrorist organisation, -

(i) invites support for the terrorist organisation; and

(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) Who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is-

(i) to support the terrorist organisation; or

(ii) to further the activity of the terrorist organisation; or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) Who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub- section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both."

35. Section 39 of the UA(P) Act deals with punishment for support given to a terrorist organisation. On a reading of the Section, it will be clear that the support must be intentional and it

should be for furtherance of the activity of a terrorist organisation. For Section 39 of the UAPA to get attracted, support to a terrorist organisation must be within the meaning of either of three clauses viz clauses (a), (b) and (c) of sub Section (1).

36. View of this court is that the scope of sections 38 and 39 of Act as well as their fields of operation are different. One deals with association with a terrorist organisation with intention to further its activities while the other deals with garnering support for the terrorist organisation, not restricted to provide money; or assisting in arranging or managing meetings; or addressing a meeting for encouraging support for the terrorist organisation.

Plea of exclusion of evidence collected in the investigation of other cases.

37. Since Mr.M.S. Khan, ld. Counsel for A-1 to A-3, A-5 A-6, A-12, A-13, A-20, A-24 and A-30 as well as Ms.Warisha Farasat, ld. counsel for A-7 and other counsels for accused have specifically raised an argument that prosecution cannot rely evidence collected in the investigation of individual incidence of bomb blast in the present case as for that case accused has already faced the trial. Using of evidence in the present case would therefore be hit by Article 20(2) of Constitution as well as Section 300 of Cr.P.C. As accused cannot be tried for similar evidence in two different trials.

38. Before examining the contentions raised at bar, it is

appropriate to understand the legal provisions of concept of 'Double Jeopardy'. Article 20(2) of Constitution of India expressly provides that no person shall be prosecuted or punished for the same offence, more than once. The protection against double jeopardy is also supplemented by statutory provisions contained in Section 300 of the CrPC, Section 40 of the Indian Evidence Act, 1872, Section 71 of the IPC and Section 26 of the General Clauses Act, 1897. It would also be useful to discuss on the import of Section 300 of the CrPC. The said provision has been extracted hereinunder for ready reference:

> "**Person once convicted or acquitted not to be tried for same offence**.
> (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.
>
> (2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.
>
> (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."

39. So section 300 of the CrPC embodies the general rule which affirms the validity of the pleas of *autrefois acquit* (previously acquitted) and *autrefois convict* (previously convicted). Sub-section (1) of Section 300 lays down the rule of double jeopardy and sub-sections (2) to (5) deal with the exceptions. So basic principle is, so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the **same offence** for which he was tried earlier or for any other offence arising from the same fact situation, except the cases dealt in with under sub-sections (2) to (5) of the section. Section 300 CrPC is based on the maxim '*nemo deber bis vexari, si costest curiae quod sit pro una et eadem causa'* which means that a person cannot be tried for second

time for an offence which is involved in an offence with which he was previously charged.

40. Apex Court in **Vijayalakshmi vs. Vasudevan (1994) 4 SCC 656** held that in order to bar the trial of any person already tried, it must be shown that: (i) He has been tried by a competent court for the same offence or one for which he might have been charged or convicted at a trial, on the same facts; (ii) He has been convicted or acquitted at the trial, and (iii) Such conviction or acquittal is in force. The whole basis for Section 300 (1) is that if for particular incidence of commission of offence, accused based on certain evidence for that incidence/offence has been tried. After trial before court of competent court stand acquitted or convicted. If such order of conviction/acquittal stand in law. Such accused cannot be prosecuted again for same offence or even same evidence. Section 300 of the CrPC bars the trial of a person not only for the same offence but also for any other offence on the same facts. (Thakur Ram vs. State of Bihar **AIR 1966 SC 911.)**

41. However Sub section (2) to (5) Section 300 carve out certain exceptional situations when subsequent trial or proceeding, cannot be considered to be hit by principle of "**Double Jeopardy**". Here in this context it be noted that one of the exceptions mentioned in sub section (2) and (3) of Section 300 are that if an accused has been convicted for one offence in respect of an act. However by that act certain other consequences also occurred which together with other acts constitute different offence, in that situation he can be tried for such different offences

even if he has been convicted/ acquitted of main act committed by the accused.

42. In the context of taking of an evidence of previous case/trial in subsequent trial against the same accused, there can hardly be any denial to the legal proposition that once an evidence has already been taken into consideration in earlier trial of one offence against an accused, same evidence alone cannot be taken into consideration again in another trial of same accused or even with other co-accused.

43. However in this regard this court is of the considered view that it is only if the evidence of previous case is sought to be led, same alone cannot be taken into consideration in subsequent trial. If that evidence along with certain other evidence establish commission of another offence of similar nature and earlier evidence of previous trial has been sought to be put forth only for the purpose of showing a continuous series of act or conspiracy. In such situation because of the necessity of proving continuity, involvement of the accused in different acts as well as in conspiracy, taking into consideration such evidence cannot be excluded if it is otherwise along with some other evidence showing commission of distinct and new offence.

44. Let us now examine case of each of the accused in the light of above discussion.

<u>Accused No.1 Md. Danish Ansari @ Abdul Wahab @ Saleem</u>

45. As per prosecution case A-1 Mohd. Danish Ansari resident of Darbhanga was recruited and indoctrinated by A-6 Yaseen Bhatkal with the assistance of Tehseen Akhtar @ Monu (A-12). After being inducted and indoctrinated with IM, A-1 allegedly regularly visited the hideouts of IM at Sara Mohanpur, Darbhanga and worked closely with A-6 whom he was introduced by A-12 by name 'Imran'. It is upon issuance of NBWs from Special Court, NIA, Delhi A-1 was arrested on 21.01.2013. NIA has filed the charge sheet against A-1 for alleged offence u/s 18, 20, 38(2) and 39(2) of UA(P) Act (as amended in 2008).

46. Ld. SPP for NIA submitted that A-1 Md. Danish Ansari was recruited and indoctrinated by Yasin Bhatkal with the assistance of Tahseen Akhtar @ Monu (A-12). It is submitted that Yasin Bhatkal and Tahseen Akhtar were closely associated with A-1 for hatching conspiracy. It is submitted that A-1 was involved in illegal activities of manufacturing of arms at Mir Vihar arms manufacturing factory at Delhi during April 2011. Ld. SPP for NIA submits A-1 made the confessional statement (D-86) admitting his involvement in the conspiracy of IM fold and also, during the investigation pointed out the places of hideouts of co-accused including Tehseen Akhtar (A-12), Yasin Bhatkal (A-6) and others not named accused, accused Danish Ansari also pointed out the site located at Darbhanga Bihar where he along with other IM operatives, Wakas, Daniel @ Shaikh, Yasin Bhatkal and A-6 Tehseen had experimented test blast and firing with firearms.

47. Ld. SPP for NIA submitted that during the

investigation mobile phone being used by A-1 Danish Ansari No.9430006842, the SIM card which was in the name of his brother was analyzed and CDR report established that A-1 was using other numbers 9905324189, 8083442720 to communicate with his associates at IM during different periods of time. Ld. SPP for NIA also relied upon documents D-4, D-5, D-6, D-7, D-18, D-19, D-32, D-33, D-44, D-57, D-69, D-77, D-79 and D-80 as well as also referred to statements of witnesses PW-7, 10, 11, 15, 24, 30, 59, 64, 65, 80, 83 to 89, 96, 98, 100, 103, 166, 175, 305, 307.

48. It is argued by Sh.M.S. Khan, ld. Counsel for accused that there is no admissible evidence against A-1. Alleged confession D-86 as relied upon by the prosecution, cannot be termed a confession in strict sense of law and therefore cannot be relied upon as it is only exculpatory in nature and perusal of that statement would show that accused himself stated that he came out of the alleged conspiracy. He further submits that there is no evidence that accused has manufactured arms at Meer Vihar arms manufacturing factory or there is no evidence that A-1 was in any manner part of any conspiracy.

49. Having considered the submissions, in the present case evidently A-1 Danish Ansari @ Abdul Wahab was arrested on 21.01.2013 and thereafter made a confessional statement (D-86). Such confessional statement D-86 of A-1 was recorded before ld. MM in accordance with provisions of Section 164 Cr.P.C. Perusal of same would show that A-1 Danish Ansari had disclosed specific facts that while he was studying in 12th standard in 2010, he used to go to Reham Khan Library in

Darbhanga where he came in contact with Tahseen (A-12). A-1 in his confessional statement further stated that it is Tahseen who in the name of atrocities on Muslim community incited him to participate in violent Jihad, to which A-1 agreed and thereafter as per his statement Tahseen remained in contact with him and kept on persuading him for participating in violent Jihad. Without going into details of statement, A-1 in his confessional statement stated that in November 2010 accused Tahseen brought him to one locality where he met with one person by name Imran. Accused has stated that Imran and Tahseen had taken him to Sara Mohanpur, Darbhanga in a room where A-1 was told that his name has been kept as Abdullah where he also met with accused Danial, Wakas as well as Farookh.

50. It further came in D-86 that he noticed that Wakas (Zia Ur Rehman A-24) was preparing electronic circuits connecting it with mobile, wrist watch. A-1 also stated in his confession that Wakas gave him training in that room for firing air gun. A-1 further stated in D-86 that he was thereafter taken to Delhi in April 2011 and in Delhi he was taken to Meer Vihar, Nangloi in a factory, where he noticed that machines were not working and he was told that he would to take training in that factory. Later when he came to know about killing of Osama Bin Laden, A-1 stated to have dropped the idea of participating in the activities of those persons.

51. Without commenting much on the veracity of D-86, on prima facie going through this document it clearly show that A-1 made inculpatory statement of joining the violent Jihad on the provoking of Tahseen and one Imran. A-1 has further

admitted going to different mosques reciting different portion of Quran, and thereafter going to the room of Imran and Tahsin in Sara Mohanpur where he also met with Wakas and Farookh. A-1 further admitted having gone to Delhi where he stayed in a factory at Meer Vihar. Some of the facts stated in such confessional statement of A-1 get corroboration from the statement of PW-10 Shahjahan Khatoon who was owner of the room at Sara Mohanpur, Darbhanga, where A-1 was brought by Tahseen and Imran and others were staying in that room.

52. Argument of ld. Counsel for A-1 that such confession of accused D-86 cannot be admitted into consideration because as per its content itself A-1 himself left the conspiracy of those acts. Such argument to my mind does not sustain at this stage of charge because this evidence is to be considered prima facie at this stage. Veracity of this evidence can be well examined only during its assessment. Moreover even if contents of confession of A-1 taken on the face of it, clearly show sufficient evidence regarding alleged conspiracy hatched to commit or preparation for some terrorist activities.

53. Witness PW-10 beside giving statement u/s 161 as well as u/s 164 Cr.P.C., identified the photograph of all the above said accused persons who were staying in that room, including A-1 Danish Ansari vide memo D-18. Similarly there is also statements of other witnesses Ajmat Ansari (PW-11), Hamdi Ansari (PW-24) and Mohd. Naseem (PW-30), who have also identified the photographs of accused persons including A-1. In this context it is important to note that A-1 in his confessional statement, above said witnesses PW-10, PW24 and PW-30 are

referring one person as Imran, who has been identified in memo of photo identification D-18, D-23 and D-25 that Imran is none else than A-6 Mohd. Ahmad Siddibappa @ Yasin Bhatkal.

54. Confession of A-1 also get corroboration from CDR of the mobile phone no.9905324189 of the accused being used by him which was otherwise in the name of his mother. In pursuance to confession statement given by A-1, A-1 has also pointed out the room at Sara Mohanpur, Darbhanga where other co-accused including A-6, A-24 had taken hideout along with A-1 as well as other places including factory of Meer Vihar, Nangloi, Delhi during the investigation of this case vide pointing out memos D-6 and D-7. **This court find that above discussed evidence prima facie reflect offence u/s 18 of UA(P) Act as against A-1 and he is liable to be charged for said offence**.

55. Charge sheet against A-1 has also been filed for offence u/s 20 of UA(P) Act. Necessary ingredients of section 20 have already been discussed above. In this case this court find that disclosure statement of A-1 (D-86) only show that he was associated with A-6 and A-24 who were prime members of banned terrorist organization Indian Mujahideen and had already been involved in terrorist activities. However this court is of the view that A-1 cannot be charged u/s 20 of Act because in present case no terrorist activity actually happened. As such for want of requisite ingredients as discussed above for section 20 of Act, **A-1 stands discharged for offence u/s 20 of UA(P) Act**.

56. Charge sheet has also been filed against A-1 for offence under section 38(2) and 39(2) of UA(P) Act. In the facts of the present case, since A-1 was not only associated with

certain members of Indian Mujahideen, but was also acting to further the cause of such organization and also supported it. **As such this court finds that there is sufficient evidence for framing of charge u/s 38(2) and 39(2) of the Act.**

Accused No.2 Aftab Alam @ Farooq

57. As per prosecution case it is when A-6 Yasin Bhatkal @ Mohd. Ahmad Siddibappa Zarar visited Darbhanga with Qateel Ahmad Siddiqui (deceased IM operative) to find out new hideouts and new recruits into IM, at Sara Mohanpur, Darbhanga. As per prosecution case A-6 motivated A-2 to carry out terrorist attacks for IM and therefore A-2 left his native place and studies and allegedly joined IM. A-2 Aftab Alam allegedly stayed with A-6 in Sara Mohanpur, Darbhanga during 2010-11, and alleged assisted him in maintaining the hideout. As per prosecution allegations A-2 was involved in heinous crimes including blasts at Chinnaswamy Stadium Bengaluru. Moreover in FIR No.54/2011 of PS Special Cell, A-2 was arrested and charge sheeted by Special Cell. NIA has filed the charge sheet in present case against A-2 for alleged offence u/s 18, 19, 20, 38(2) and 39(2) of UA(P) Act (as amended in 2008).

58. Ld. SPP for NIA submitted that allegations of A-2 Aftab Alam @ Farooq having been motivated by accused Yasin Bhatkal (A-6) for carrying out terrorist activities for IM. In pursuance to conspiracy, A-2 stayed together at the hideouts located at Sara Mohanpur, Darbhanga with A-6 get corroboration from confessional statement of A-1 recorded u/s 164 Cr.P.C. (D-86). Ld. SPP for the NIA further submits that A-2 has also been

involved in FIR No.54/2011 of Special Cell and A-2 was also involved in blasts at Chinnaswamy Stadium Bangalore regarding FIR No.92/2010 was arrested and said accused was charge sheeted in that case.

59. Ld. SPP for NIA submitted that there is sufficient evidence to show that A-2 has been member of banned organization IM and part of larger conspiracy to execute terrorist activities. She submits that statements of witnesses Naukej Alam (PW-8), Shahjahan Khatoon (PW-10), PW-11 Ajmat Ansari as well as PW-24 Mohd. Hamdi Ansari, clearly establish that A-2 stayed along with A-6 as well as others as a tenant in the house at Samastipur as well as at Sara Mohanpur, Darbhanga. Ld. SPP for NIA specifically referred to statement of Mohd. Hamdi Ansari to show that in statement of that witness it has come that A-2 had also role in Sheetla Ghat blast in Varanasi.

60. Ld. SPP for NIA further referred to photo identification of A-2 and A-6 in the house of the witness which is D-6, D-18, D-19 and D-23. Beside the above said evidence ld. SPP for NIA further stated that name of A-2 also came in the confession of A-1 which is D-86. She also referred to D-73 CDR of two mobile phones of A-2.

61. It is argued by Sh.M.S. Khan, ld. Counsel for accused no.2 that even if taking the allegations of prosecution on the face of it, there is no evidence at all against A-2 for commission of any of the offences as alleged by the prosecution. It is contended that even there is no evidence that A-2 was in any manner part of any larger conspiracy as alleged in the present case. Ld. counsel submits that it is matter of record that accused

has been prosecuted in Bangalore blast case but he submits that evidence of that case cannot be used here as it would cause double jeopardy to A-2. He submits that evidence of another case, for which accused has already faced the prosecution, cannot be used here in this case.

62. Having considered the submissions at bar and going through the statements of different witnesses, documents as relied upon, it appears that only allegation against A-2 is that said accused stayed with A-6 at Samastipur, Sara Mohanpur Darbhanga and assisted A-6 to stay in his hideouts. This has been sought to be proved from the statement of PW-8, PW-10, PW-11 and PW-24 as well as PW-15 and PW-19. Out of these witnesses, PW-10, PW-8 and PW-24 also identified the photograph of accused persons including A-2 regarding which photo identification memo has been prepared which are D-4, D-18, D-19, D-23.

63. Taking these statements and the evidence into consideration, this court does not find that any case for offence u/s 18 of UA(P) Act is made out. As noted above Section 18 contemplates conspiracy, attempt to commit, advocating, abetting, inciting, facilitating commission of terrorist act or any act preparatory to commission of terrorist act. Thus, the main ingredient of charge u/s 18 is evidence of conspiracy. The offence of criminal conspiracy involves when two or more persons agree to do an illegal act or legal act by illegal means. No doubt there can hardly be any direct evidence of conspiracy as it is generally hatched in discreet manner but its objects have to be inferred from circumstances or conduct of the accused. In

other words there must be some evidence of concert/ prior meeting of mind towards the object of the conspiracy and some reflection by words, conduct towards the achieving that object of conspiracy. In the present case merely that A-2 Aftab Alam stayed with A-6 at certain places, ipso facto cannot be a reason to infer conspiracy even for the purpose of framing of charge. Statement of PW-8, PW-10, PW-11, PW-15 and PW-24 only show that they had seen A-6 along with A-2 and other accused persons. These statements in itself when same are not being supplemented by any other connecting evidence, are not to my mind sufficient for the purpose of charge u/s 18 of UA(P) Act.

64. Identification of photograph of A-2 by different witnesses by memos D-4, D-19, D-23 is also of no consequence in the absence of any other connecting evidence. These documents merely show presence of A-2 with A-6 at one place which by itself cannot be sufficient for framing of charge. Prosecution has further referred to pointing out memo of A-1 (D-6) wherein A-1 has pointed out hideouts of A-6 with other accused persons including A-2 as well as the place where test blasts, arms training were imparted by A-6. This document first of all does not pertain to A-2. Moreover pointing out memo of A-1 does not in any manner implicate A-2 atleast for charge u/s 18 of Act. There is no doubt reference of A-2 in the statement ofPW-24 Mohd. Hamdi Ansari who was in fact witness in Varanasi blast case and his statement has also been recorded in the present case. In his statement there is a reference that after the blast at Varanasi, when he went to the room where the accused Imran, Wakas, Haddi and Aftab were staying on rent, he

found that house to be locked and those have gone to Darbhanga.

65. Such indirect reference in the statement of PW-24, to my mind does not lead anywhere so far as against A-2. It has already been noted above that mere staying with A-6 or any other accused persons, ipso facto cannot be a reason to infer that A-2 was part of conspiracy, when there is no other direct or indirect evidence to substantiate about A-2 being part of any conspiracy. Prosecution also put forth TIP of A-2 in Chinnaswamy blast case (D-42), that document to my mind cannot be taken into consideration. The fact that A-2 has faced the prosecution of terrorist activity/ Chinnaswamy stadium blast case, where he has already been convicted, that fact in itself cannot be a basis for framing of charge against the accused in this case. Therefore this court finds that **A-2 is liable to be discharged for offence u/s 18 of UA(P) Act** in the present case.

66. Prosecution has also put forth charge u/s 19 of UA(P) Act against the accused. Section 19 gets attracted when (i) accused voluntarily harbors, conceals or attempt to harbor or conceals; (ii) any person, knowing that such person is terrorist. Thus section 19 require two fold aspects. Firstly evidence of harboring or concealing anyone. Secondly such harboring and concealing has been done by the accused knowingly that the one whom he is voluntarily harboring or concealing is a terrorist.

67. In this case it is matter of record that incidence of Chinnaswamy stadium bomb blast Bangalore took place on 17.04.2010, it is thereafter it has come in the statement of different witnesses that A-2 stayed with A-6 and other accused persons at Samastipur as well as Darbhanga. Those statements of

witnesses coupled with identification of photograph of A-6, A-2 and others atleast show that A-2 beside himself involved in Chinnaswamy stadium bomb blast case, A-6 was also involved in that case, still they were not only escaping the judicial process, in that escape A-2 admittedly having knowledge about him as well as other accused A-6 etc. involved in terrorist activities, concealed himself as well as A-6 and others in the hideouts of Samastipur and Darbhanga. In view of that statements of witnesses and documents this court finds that **there is prima facie evidence for framing of charge against A-2 u/s 19 of UA(P) Act**.

68. Accused no.2 has also been charge sheeted for offence u/s 20 of the Act. However this court is of the view that since in respect of incidence of Chinnaswamy stadium blast case A-2 has already faced the charge u/s 20 of UA(P) Act. He cannot be charged again in respect of that terrorist act. Whereas in the present case there is also no terrorist activity actually happened. As such A-2 cannot be charged for offence u/s 20 of UA(P) Act in the present case in view of requisite ingredients as discussed above for section 20 of Act. **Accordingly A-2 stands discharged for offence u/s 20 of UA(P) Act**.

69. So far as charge for offence u/s 38(2) and 39(2) of UA(P) Act are concerned, even if there may not be requisite material available on the record for proving the charge of conspiracy u/s 18 of the Act against A-2 as concluded above, however the fact that A-2 knowingly after the bomb blast of Bengaluru harbored A-6 and others in their hideouts at Samastipur and Darbhanga, also prima facie indicate that A-2

was doing acts in furtherance of activities of a terrorist organization and was supporting the terrorist organization. **Therefore to my mind there is sufficient evidence for framing of charge against A-2 for offence u/s 38(2) and 39(2) of UA(P) Act.**

<u>Accused No.3 Imran Khan @ Zakaria @ Salim @ Fazal & Accused No.4 Sayed Maqbool @ Zuber</u>

70. It is the prosecution case that a larger conspiracy to commit different terrorist activities at different parts of India was hatched by accused Riyaz Bhatkal (A-10) and Iqbal Bhatkal and others. They conspired to form different modules of Indian Mujahideen and in pursuance to such conspiracy they inducted A-3 Imran Khan @ Zakaria and A-4 Sayed Maqbool to further the activities of proscribed organization IM. As per prosecution case A-3 and A-4 carried out reconnaissance at different places at Hyderabad under the directions of absconding accused Riyaz Bhatkal and Iqbal Bhatkal, to select target places for serial bomb blasts in Hyderabad.

71. Both A-3 Imran Khan and A-4 Syed Maqbool had already been arrested and were in judicial custody of Special Cell Delhi Police in case FIR No.16/2012, when they were arrested by NIA in the present case. NIA filed the charge sheet against both A-3 and A-4 for offence u/s 18, 18B 20, 38(2) and 39(2) of UA(P) Act (as amended in 2008). Beside above said offences charge sheet against A-4 has also been filed u/s 18A of UA(P) Act (as amended in 2008).

72. Ld. SPP for NIA submitted that A-3 Imran Khan and

A-4 Sayed Maqbool, in May/June 2012 convened a meeting at Hotel Sohail Hyderabad which was attended by other persons including A-5 Obaid Ur Rehman, wherein these accused persons incited other persons to be inducted/to come in the fold of IM. Ld. SPP for NIA submitted that accused persons both A-3 and A-4 have pointed out the places on which they had carried out the recee at Hyderabad. Ld. SPP for NIA further submitted that A-3 Imran Khan was also part of conspiracy and execution of serial bomb blasts in Pune City in August 2012 and has been charge sheeted by ATS Maharashtra in that case being CR No.09/2012.

73. It is submitted that analysis of calls details of mobile no.8657620950 of A-3 Imran Khan also established that during the period from 09th to 11th May, 2012 he was located in Hyderabad and during that period he received phone calls from A-4 from his mobile no.9849006710. It is submitted that similarly A-4 was using different mobile numbers as mentioned in para 17.37 of main charge sheet to communicate with other IM operatives. Ld. SPP for NIA has relied upon documents D-66, D-27, witnesses being PW-12 to 14, 25 to 28 as well as also referred to D-9 and D-10 against accused no.4 beside D-87, D-76, D-75 which is statement of witnesses recorded u/s 164 Cr.P.C. i.e. PW-12, PW-13 and PW-14.

74. It is argued by Mr.M.S. Khan, ld. Counsel for accused no.3 that that prosecution as against A-3 as well as A-4 and A-5 is largely asserting a case of larger criminal conspiracy of committing terrorist activity. It is submitted that though it is in the allegations that A-3 as well as other accused carried out reconnaissance at different places of Hyderabad, tried to induct

youths into IM fold and for that purpose organized an alleged camp at Sohail Hotel in the guise of a birthday function, whereas there is no evidence or material on the record to substantiate such prosecution allegations. Ld. counsel submitted that allegation of carrying out recee at different places of Hyderabad has not been proved in statements of any of prosecution witness. He submits that mere pointing out memo in itself has no evidentiary value. It is submitted that for establishing the charge of conspiracy the existence of conspiracy and its objective are to be inferred from concrete evidence of surrounding circumstances and conduct of the accused. It is submitted while referring to the judgment of **Kehar Singh** (1998) 3 SCC 609 as well as case of **Navjot Sandhu** (2005) 11 SCC 600, it is submitted that there must be some incriminating and admissible evidence which form a chain of event from which irrestible conclusion of involvement of accused can be drawn. In the absence of same accused may not be charged for offence of conspiracy.

75. This court has gone through the written submissions filed on behalf of A-4 Syed Maqbool and heard Sh.Rajat Kumar, ld. counsel for A-4, who submitted that prosecution is putting forth charges against A-4 on allegation that A-4 being member of Indian Mujahideen, whereas A-4 has already been tried for related terror conspiracy u/s 18 and membership of terrorist organization u/s 20 of UA(P) Act in case FIR No.16/2012 of PS Special Cell. It is submitted that in that case A-4 was arrested on 28.02.2013 and since then he was in judicial custody. It is submitted that no new evidence has been put forth by prosecution in the present case for charge of section 18 and 20 of the Act and

this can be reflected from D-164 which is charge sheet of above mentioned FIR No.16/2012. Reference has been given of **Amit Bhai Anil Chandra Shah vs. CBI** (2013) 6 SCC 348, **Swaminathan vs. State of Madras** 1957 SC 340.

76. It is submitted by counsel for A-4 that allegations are that A-4 conducted recee in Hyderabad for bomb blast there but statements of PW-26 to PW-28 do not indicate in any manner that A-4 had conducted any recee in Hyderabad at the behest of A-6 or any other senior member of IM. It is submitted that these witnesses have simply stated about a party organized by A-4 on the occasion of his daughter's birthday, which was attended by several persons. Ld. Counsel submits that there is no evidence even for charge for section 18A, 18B and 38, 39 or 19 of UA(P) Act.

77. Having considered the submissions, first of all while this court would examine the material on the judicial record for the charge of section 18 as put forth by the prosecution. As discussed above Section 18 penalize whoever conspire or attempt to conspire, advocate or advises or incites or facilitates the commission of terrorist act or an act preparatory to commission of terrorist act. So for the purpose of section 18 even at the stage of charge, there must be some material or specific evidence available on the record showing an act of conspiracy, advocacy, abetment, inciting or any act of facilitation towards the commission of a terrorist act or some act which is preparatory in nature for commission of terrorist act.

78. If we go through the statement of different witnesses, this court finds that some of the witnesses including

PW-12 Syed Adnan Ahmad, PW-13 Moti Ur Rahman Zaid, PW-14 Mohd. Abrar Hossain have stated in their statements that accused Maqbool met with PW-12 and asked him to take the path of Jihad and also introduced PW-12 with Zakaria @ Imran Khan (A-3) and one other Adil @ Asad Khan who was stated to be working for the cause of Islam, when they came to Hyderabad. It further came in the statement of PW-12 that Maqbool and his friend including Zakaria (A-3), Obaid (A-4), Adhil were explaining him about the atrocities against the Muslims in different parts of India as well as abroad etc.

79. Similarly, PW-13 who happens to be real brother of A-5 Obaid Ur Rehman had stated that accused Maqbool used to come to Hyderabad and stayed in a room taken on rent by his brother. PW-13 also stated that Maqbool asked him to sacrifice (PW-13) for the cause of Allah and gave him a link to chat with him on a email ID. PW-13 also stated that he once tried to chat with him on email ID. Similarly, PW-14 has stated that accused Maqbool and one person took bike bearing registration no. AP 11 C 7247 at night for taking a round in the city of Hyderabad, later they returned and had a breakfast with that witness in a hotel and thereafter he went back to his home.

80. There is also a statement of PW-48 Abdul Mujeeb, who in his statement u/s 161 Cr.P.C. stated that Maqbool used to have different mobile phones, accused Imran was very close friend of Maqbool and that witness also stated that Maqbool and Akram wanted to do ‘a major jihadi activity’ and that Akram, Maqbool and Obaid always used to talk about “gift, books and bride” but he could not understand their theme. PW-48 further

stated that he came to know that something secret activity they were doing and accused Akram used to tell his friends regarding terrorist activity and training at Palestine and used to show jihadi clips on his mobile phone. There is also one 164 Cr.P.C. statement of PW-12 which is D-87 as well as of PW-14 which is D-75 and of PW-13 which is D-76.

81. Perusal of statement of these witnesses recorded u/s 164 Cr.P.C. would rather show that they have stated certain different facts than what has been mentioned in their statement u/s 161 Cr.P.C. This court without going into the details of contradictions etc. in statement u/s 161 or u/s 164 Cr.P.C, however can observe that perusal of statements of above mentioned witnesses either recorded u/s 161 Cr.P.C. or under section 164 Cr.P.C., do not prima facie establish about any "terrorist act" committed subsequent to the period when they were already arrested in FIR No.16/2012 of PS Special Cell. As noted above A-3 & A-4 were arrested in the investigation of present case, while they were already in judicial custody in a case for which they were already facing the charge u/s 18 beside other offences.

82. Moreover statements of the witnesses recorded in the present case do not point out towards any terrorist activity or preparation towards it. It be noted that charge for offence u/s 18 cannot be framed only on the basis of inferences or assumptions. There must be specific material on record showing prima facie ingredients of section 18 i.e. there must be evidence showing conspiracy, advocacy, abetment, facilitation towards the commission of a particular terrorist activity. In the absence of

same, mere general statement of the witness that a particular accused was interested in jihad or motivated any witness to take the path of ‘Allah’ or ‘jihad’ is still general and devoid of any specific act or conspiracy.

83. Though from the statement of witnesses as discussed above one can find that the witnesses pointed towards A-3 and A-4 to be those who were into fundamentalist thought of their religion and therefore were talking about the alleged atrocities on Muslims. One may find from reading statements of witnesses that A-3 and A-4 to be on the untoward or abnormal bent of mind which is more towards fascist thoughts but that to my mind not be sufficient to attract criminal penalty for offence u/s 18 of the Act. This court finds that such assertions of different witnesses, may not be sufficient for the purpose of charge of conspiracy for any terrorist activity.

84. Prosecution has further alleged that A-3 and A-4 were carrying out certain recee and thus conspiring in commission of terrorist activity in the City of Hyderabad. In this regard there is also statement of witnesses PW-25, PW-26, PW-27, PW-28 and PW-45 who have stated that they had seen accused persons attending meeting at Sohail Hotel organized by A-4 Maqbool and that PW-45 saw A-3 Imran purchasing bicycle ball bearing in Nanded, Pune. Again these statements are more general in nature and do not lead conclusively towards any of the ingredients of Section 18 of the Act as required under the law.

85. In this regard as stated above for the purpose of offence of conspiracy there may not be direct evidence but even if it is indirect evidence reflected by circumstances or conduct of

the accused, such indirect evidence must also be conclusive in nature to point out towards crime or concert among the accused for doing something illegal. Moreover there must be clarity about the object/ purpose of such conspiracy if there is no evidence to establish any prior meeting of mind or agreement or particular purpose for any such alleged conspiracy.

86. In **State of Kerala V P. Sugathan, 2000(4) Recent Criminal Reporter 369** Supreme Court while discussing the scope of offence of criminal conspiracy observed as:

> "….to prove criminal conspiracy, there must be evidence direct or circumstantial to prove that there was an agreement between two or more persons to commit an offence, there must be the meeting of mind resulting in ultimate decision taken by conspirator regarding commission of an offence and where factum of conspiracy is sought to be inferred from circumstances, prosecution has to show that circumstances giving rise to conclusive and irresistible inference of an agreement between two or more persons to commit an offence.... A few hits here and few hits from there, on which prosecution relies cannot be held to be adequate for connecting the accused with commission of crime of criminal conspiracy. The circumstances relied for drawing an inference should be prior in time than actual commission offences in furtherance of alleged conspiracy.... Law of conspiracy in India is in line with the English law by making an overt act inessential when conspiracy is to commit any punishable offence"

87. In **State through Central Bureau of Investigation** v. **Dr. Anup Kumar Srivastava AIR 2017 SC 3698.** Apex Court has explained offence of criminal conspiracy by observing as: "Conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means.

Object behind conspiracy is to achieve ultimate aim of conspiracy. For a charge of conspiracy means knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from knowledge itself. This apart, prosecution has not to establish that a particular unlawful use was intended, so long as goods or service in question could not be put to any lawful use. Finally, when ultimate offence consists of a claim of actions, it would not be necessary for prosecution to establish, to bring home charge of conspiracy, that each of conspirators had knowledge of what collaborator would do.

88. In this case the statements of above mentioned witnesses do not establish the factum of conspiracy even prima facie as there is lack of evidence of particular purpose/object as well as prior meeting of mind/concert. Though above noted witnesses stated about gathering in Sohail Hotel. But witnesses stated that it was a birthday function. None of witnesses have stated A-3 or A-4 asked any witness or others to join for any terrorist activity.

89. Prosecution further relied upon disclosure statement of A-3 and A-4 (D-10, D-12). These disclosure statements are not coupled with consequent discovery of any incriminating article, therefore are not admissible in law. Although there is recovery memo in the shape of D-14 which is only with regard to entering of password of email ID 'universalmortal@nimbuzz". Such recovery in itself is not sufficient when nothing incriminating has been extracted from such email ID.

Prosecution has also relied upon photo identification memo D-22, D-33, D-38, D-39 as well as D-41 but photo identification in itself is not specific evidence, rather it has a little bit of corroborative value. In the absence of any specific evidence, such evidence is not sufficient in the view of this court for framing of charge u/s 18 of the Act atleast.

90. Prosecution further relied upon CDRs D-70 and D-71 to establish that at the relevant time accused persons were in Hyderabad. This fact even if taken on the face of it, goes to show that these accused persons visited Hyderabad. Ld. SPP for the NIA has also submitted in her submissions that A-3 was found visiting Hyderabad in the month of May 2012 along with other accused persons and later in August 2012 A-3 was found involved in the bomb blasts took place in Pune. This fact clearly show that A-3 was part of larger conspiracy to commit terrorist activities at different places.

91. Fact that CDR D-70 and D-71 indicate that at relevant time of May 2012 location of A-3 and A-4 was found to be in Hyderabad. This fact in itself, to my mind may not be sufficient to conclude for the purpose of framing the charge of conspiracy u/s 18. Mere establishing location of anyone at particular place, may not be sufficient for the charge of conspiracy unless there is certain other connecting evidence to indicate the conspiracy. The arguments that at the relevant time when A-3 and A-4 were at Hyderabad, they were carrying out reconnaissance, is more based on assumption than any direct/specific evidence.

92. None of the witnesses have specifically stated about

any reconnaissance carried out by A-3 and A-4, merely witness states that they had seen accused persons going on motorcycle to the market area of Hyderabad, cannot be sufficient to conclude on this aspect. The fact that A-3 was found to be present in Hyderabad around May 2012 and later was found involved in Pune bomb blast in August 2012, though give rise to some suspicion towards A-3 but that suspicion in the absence of other connecting evidence is grave suspicion, required for the purpose of framing charge of conspiracy.

93. Thus, on the objective assessment of different statements, evidence as put forth by the prosecution, this court is of the considered view that prosecution has not been able to establish necessary ingredients of Section 18 of UA(P) Act. **Therefore A-3 and A-4 are discharged for offence u/s 18 of the Act**.

94. Prosecution has also alleged charge for offence under Section 18B of the Act against A-3 and A-4. Section 18B of UA(P) Act lays down "**Punishment for recruiting any person or persons for terrorist act**.—*Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine*." Thus, on bare reading of Section 18B of the Act there must be evidence of recruiting any person and then there must be evidence that such recruiting/ inducting anyone is for the object of committing terrorist act.

95. In the present case the statements of different

witnesses as mentioned above do not specifically mention that any of the witness or any of the accused was specifically inducted or recruited in the fold of Indian Mujahideen or any organization. Moreover it is nowhere in the statement of any witness that anyone was inducted or recruited for committing any terrorist activity or act. In the absence of any specific evidence/ statement of any witness for proving the necessary ingredients of offence u/s 18B of the Act, **A-3 and A-4 are also liable to be discharged for offence u/s 18B of the UA(P) Act**.

96. A-4 Syed Maqbool has also been charge sheeted for offence u/s 18A of the Act. Apparently such charge is premised on the allegation that A-4 organized a meeting in Sohail Hotel wherein many persons gathered and in that meeting those persons were motivated and called upon to join Jihad. In this context let us read Section 18A of the Act. Section 18A of UA(P) Act reads as under :

> "**Punishment for organizing of terrorist camps**.—Whoever organizes or causes to be organized any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

97. In the present above said necessary ingredients of Section 18A of the Act have not been established, firstly because whoever witnesses have either participated in the meeting/ function at Sohail Hotel have stated that such function was ostensibly on the occasion of birthday of daughter of accused no.4. Though it has come in the statement of different witnesses including PW-12, PW-14, PW-25, PW-26, PW-27, PW-28 that

they had attended the meeting hosted at Sohail Hotel by none of these witnesses have stated that in that meeting there was any imparting of any training for terrorism or there was any agreement for inducting into terrorist activities. Mere assembling of certain persons at the call of A-4 in a hotel apparently on the occasion of birthday ceremony, does not establish organizing of camp or training camp for terrorist activity. As such this court finds that there is no evidence at all for framing of charge for offence u/s 18A of the UA(P) Act as against A-4. **Consequently, A-4 stands discharged for offence u/s 18A of UA(P) Act**.

98. Charge sheet against A-3 & A-4 has also been filed for offence u/s 20 of UA(P) Act. In the present case however there has been no specific incidence of any terrorist act. Investigation in the present matter by NIA was to probe the larger conspiracy. As such this court finds that all ingredients of section 20 of the Act as discussed above have not been existing. **As such A-3 & A-4 cannot be charged for offence u/s 20 of UA(P) Act**.

99. Necessary ingredients of offence u/s 38(2) and 39(2) of UA(P) Act have already been discussed above. It be noted that these penal sections essentially do not require any specific evidence with regard to 'any terrorist activity'. The core requirement of section 38(2) and 39(2) is an act of the accused indicating his association with any terrorist organization or act of professing to be associated with any such terrorist organization which is with the intention to further its activities. There is no requirement of law for section 38(2) and 39(2) that the activities must be towards a particular terrorist activity. It would be enough if there is evidence to show that accused were making

efforts or doing an act in furtherance of cause/object of any such terrorist organization or towards the support, assisting, arranging meetings for the purpose of support or furthering the activities of such organization without there being evidence of any particular terrorist activity.

100. In the present case this court finds that evidence of different witnesses as noted above atleast indicate that A-3 and A-4 were pursuing the objects of Indian Mujahideen, a proscribed organization by inciting religious feelings of Muslim youths, to go for Jihad and take violent steps for the sake of religion. It came in the statement of PW-12 that there was even suggestion to the witness of going for suicide bomber. Similarly, in the statement of PW-12 it also came that A-3 Imran @ Zakaria told the witness that Bhatkal brothers i.e. Riyaz Bhatkal, Iqbal Bhatkal and Yasin Bhatkal are their top men and handler in their link. Such statement of PW-12 coupled with statements of other witnesses atleast show that activities of A-3 and A-4, prima facie attract provision of Section 38(2) and 39(2) for the purpose of charge. **Accordingly they are ordered to be charged for offences u/s 38(2) and 39(2) of UA(P) Act.**

Accused No.5 Obaid Ur Rehman

101. As per prosecution case role of A-5 Obaid Ur Rehman emerged during investigation at Hyderabad. A-5 was arrested by Bangalore police in FIR No.384/2012 of PS Basvesvara Nagar, Bangalore City. That case was later re-registered by NIA being RC No.04/2012/NIA/Hyd (A-5 stood convicted in that case). While being in judicial custody in that

case in Bangalore, NIA arrested him in present case. As per prosecution case that like A-3 Imran Khan, A-5 Obaid Ur Rehman was also in communication with Riyaz Bhatkal and Iqbal Bhatkal through email/chat forums. NIA has filed the charge sheet as against A-5 for offence u/s 18, 18B, 19, 20, 38(2) and 39(2) of UA(P) Act (as amended in 2008).

102. Ld. SPP for the NIA submitted that A-5 Obaid Ur Rehman had conspired along with Syed Maqbool (A-4) as well as other IM operatives to form another module of IM in Hyderabad. He was involved in recruiting young persons to IM and also planned to attack Budhist sites. It is submitted that A-5 travelled to Nanded Maharashtra to meet his co-conspirator and contacted A-3 and A-4 as well as others. Ld. SPP for NIA referred to statements of PW-25 to PW-28 and submitted that those witnesses would prove association of A-4 & A-5 in Hyderabad and further that those witnesses attended the meeting at Sohail Hotel organized by A-4 and that in that meeting A-5 was also present. Ld. SPP for NIA further stated that from statement of witness PW-48 Abdul Mujeeb would prove that A-5 visited Nanded to meet A-3 & A-4 as well as other IM operatives for meeting/conspiracy. Ld. SPP also referred to statement of PW-13 Moti ur Rehman for establishing Hyderabad hideout.

103. Ld. SPP for NIA further submitted that documents D-38, D-39 establish photo identification of A-5 by witnesses PW-32 and PW-12. She further referred to recovery of Yahoo email ID of A-5 vide D-67 and D-68 as well as CDR of A-5 (D-72).

104. Sh.M.S. Khan, ld. Counsel for A-5 submitted that

there is no evidence worth the name establishing in any manner that A-5 was part of any larger conspiracy as alleged in the present case. It is submitted that statement of different witnesses as referred to by ld. SPP for NIA, against A-5 does not establish any offence for framing of charge under any section.

105. Having heard the submissions, this court has already given findings so far as against accused no.3 Imran Khan as well as accused no.4 Syed Maqbool that there is no sufficient evidence for framing the charge against them for offence u/s 18 of UA(P) Act. So far as against A-5 Obaid ur Rehman, more or less similar are the allegations against him as are against A-3 and A-4. Rather the witnesses are also similar who have stated regarding A-3, A-4 as well as A-5. Examining the case of A-5 for offence u/s 18 of the Act, much emphasis has been given to the facts stated by PW-13 Moti ur Rehman, who happens to be brother of A-5, to the effect that during the Bakrid season of 2011 he along with Maqbool (A-4) and A-5 started goat business and took a room on rent. PW-13 stated that whenever he used to visit that room beside A-5, Maqbool used to also stay in that room, whenever he used to come to Hyderabad. Thus, upon reading the entire statement of PW-13, one may say that this witness at the most has stated that A-3, A-4 and A-5 used to stay in the room taken on rent in Hyderabad by A-5. Statement of Moti ur Rehman was also recorded u/s 164 Cr.P.C. (D-76). Even in that statement that witness has rather made certain new facts and certain facts as stated in his statement u/s 161 Cr.P.C. Taking those two statements of PW-13, on the face of it this court finds that same is not sufficient for framing the charge of conspiracy.

This court has already noted necessary ingredients of offence of conspiracy.

106. Prosecution further referred to statement of PW-25 to PW-28. Perusal of statement of these witnesses also show regarding A-5 participating in the meeting at Sohail Hotel, organized by A-4 ostensibly on the occasion of birthday of his daughter. Now whatever facts these witnesses have stated are taken to be true, still do not establish any element of offence of conspiracy.

107. This court has also gone through statement of PW-48 Abdul Mujeeb. This witness states meeting with A-3 Imran and his friend Maqbool and also stated that Maqbool and Akram wanted to do major jihadi activity and they along with Ubaid (A-5) used to talk about “gift, books and bride”, regarding which witness could not understand their theme.

108. Again the statement of PW-48 does not lead any specific or direct aspect to establish any conspiracy. As noted above the statement of above discussed witnesses may indicate upto an extent certain facts to be inferred that there was some way or other unusual and abnormal behavior of accused persons including A-5 but such facts are only based on inferences and cannot be made basis for framing of charges. A charge for any offence can be framed only on the basis of specific and direct evidence. Thus, this court finds that statement of PW-48 as referred to be ld. SPP for NIA does not establish that A-5, in any manner was part of any larger conspiracy. No denial to the fact that A-5 had been arrested, put on trial and convicted (on plea of guilt) in RC No. 04/2012/NIA/Hyd (original FIR No.384/2012)

which was a case of conspiracy for target killing. That fact in itself cannot be used by prosecution as an evidence for charge of section 18 of the Act. **As such this court concludes that A-5 is liable to be discharged u/s 18 of UA(P) Act**.

109. Accused A-5 has also been charged u/s 18B of UA(P) Act. This court already discussed above the provision of Section 18B and necessary ingredients of the same. As noted above for invoking offence u/s 18B of the Act, there must be evidence of recruiting any person and then there must be evidence that such recruiting/ inducting anyone is for the object of committing terrorist act.

110. As against A-5, this court finds that there is no evidence at all firstly to establish that A-5 has been in any manner recruiting any person to the fold of Indian Mujahideen and that it was being done for any terrorist activity. In the absence of same **A-5 is also liable to be discharged for offence u/s 18B of the UA(P) Act**.

111. Prosecution has also put forth the charge u/s 19 of UA(P) Act against A-5. Section 19 of the Act requires voluntary harboring, concealing any person knowing that such person who is terrorist.

112. This court already discussed above the statement of PW-13 Moti ur Rehman who happens to be brother of A-5. PW-13 has stated regarding taking of a room on rent in the season of Bakrid in 2011 in Hyderabad in which Imran and Maqbool used to stay. However to my mind that fact is not sufficient enough for invoking Section 19 of the Act. There is nothing on the record to establish that A-5 was aware or in any manner had knowledge of

accused Maqbool or Imran being involved as terrorist or in terrorist activities. Though from the statement of PW-12 it came that in the month of February/March 2012 in the presence of Obaid, A-3 Imran @ Zakari told that Bhatkal brothers i.e. Riyaz Bhatka, Iqbal Bhatkal and Yasin Bhatkal are top men/handlers by ling of Indian Mujahideen.

113. Now even if statement of PW-12 and PW-13 are taken together, statements of these witnesses do not establish specific knowledge attributable to A-5 regarding involvement of A-3 and A-4 in any terrorist activity or fact that they are terrorists, which his required for framing charge u/s 19 of the UA(P) Act. Though on meaningful reading of statement of PW-12 and PW-13 one may get an idea that activities of Imran and Maqbool as well as of Obaid (A-5) were towards going into violent/unlawful activity in the name of Jihad, but these facts coming in the statement of PW-12 and PW-13, do not establish the charge for offence u/s 19 of the Act as against A-5. **Therefore A-5 is discharged for offence u/s 19 of UA(P) Act**.

114. Charge sheet against A-5 has also been filed for offence u/s 20 of UA(P) Act. It is matter of record that A-5 was earlier arrested by Bangalore Police in FIR No.384/2012 of PS Basvesvara Nagar, Bangalore City and said case was later re-registered by NIA being RC No.04/2012/NIA/Hyd in which he was convicted. Though it is alleged that A-5 has been involved in earlier incidence of terrorist activities, for which he has already been convicted. In the present case however there has been no specific incidence of terrorist act. Investigation in the present matter by NIA was to probe the larger conspiracy. As

such this court finds that ingredients of section 20 of the Act as discussed above have not been existing. **As such A-5 cannot be charged for offence u/s 20 of UA(P) Act**.

115. Prosecution has filed charge sheet as against A-5 for offence u/s 38(2) and 39(2) of the UA(P) Act. Necessary ingredients of above said offences have already been discussed above. In the present case as against A-5, this court finds that statements of PW-12 and PW-13 as well as PW-48 may not be specific for proving the charge u/s 18, 19 of the Act, however their statements atleast show that A-5 along with A-3 and A-4 was doing certain acts to further objects of terrorist organization regarding which it has come in the statement of PW-12 that atleast in the month of March 2012 Obaid was well aware through Maqbool regarding their affiliation with Indian Mujahideen. Therefore, it is observed that there is sufficient material prima facie on the record for framing charge u/s 38(2) and 39(2) of the Act against A-5. **Therefore, A-5 is liable to be charged for offences u/s 38(2) and 39(2) of the UA(P) Act**.

<u>Accused No.6 Mohd. Ahmad Siddibappa @ Yasin Bhatkal @ Imran @ Asif @ Shahrukh @ Dr. Arzoo</u>

116. As per prosecution case accused Mohd. Ahmad Siddibappa @ Yasin Bhatkal is principal conspirator and operative of IM. A-6 hatched larger conspiracy with other IM operatives as per the facts enumerated qua each of the accused persons in which, A-6 has been also attached. As per prosecution case A-6 made extensive efforts for recruitment of new cadres for IM in Bhatkal and later in Darbhanga. A-6 was earlier associated

with SIMI. After banning of SIMI, breakaway faction of that banned organization including A-6 founded Indian Mujahideen for carrying out terrorist activities in India which included highly radicalized person who were earlier member of SIMI.

117. It is also the case of prosecution that A-6 in or around December 2005 with the support of absconding accused Amir Reza Khan, who is based in Pakistan went to Pakistan via Dubai and took training for use of weapon and explosives. A-6 code name in Pakistan was Mustafa. In May 2006 he came back to India. A-6 along with Riyaz Bhatkal (A-10) and Iqbal Bhatkal and others being members of IM conspired to cause bomb blasts at different places in India. After coming to India, A-6 conspired and executed Hyderabad twin blast in August 2007, in association with Riyaz Bhatkal. A-6 was also involved in serial bomb blasts in Ahmedabad and planting of bombs in Surat, in year 2007. A-6 was also involved in preparing of boat shaped IED for causing bomb blast at Jaipur Rajasthan in year 2008.

118. A-6 was further involved in serial blasts in Delhi including at Sarojini Nagar Market, in September 2008 in which IEDs were allegedly supplied by A-6. A-6 has been deeply involved in recruiting new cadre in IM fold and also developing new modules for committing terrorist activities in other parts of India. Accused no.6 was also involved in Pune German Bakery blast in February 2010, later in the same year he was also involved in Chinnaswamy stadium bomb blast Bengaluru. A-6 also allegedly executed bomb blast near Jama Masjid Delhi as well as in Sheetla Ghat Varanasi, UP blast in year 2010 itself. Thereafter A-6 was also allegedly involved in Mumbai serial

blast of July 2011 as well as another blast in August 2012 in Pune. A-6 was also allegedly involved in twin blasts in Dilsukh Nagar, Hyderabad in February 2013.

119. During the aforesaid period A-6 allegedly kept on hiding in different hideouts including in Shaheen Bagh New Delhi. He allegedly visited Darbhanga and other places including Kolkata, for attending meetings of IM operatives and for developing new modules of IM. Accused Mohd. Ahmad Siddibappa @ Yasin Bhatkal (A-6) and accused Asaudullah Akhtar @ Haddi @ Daniel @ Tabrez @ Asad (A-7) were arrested from Raxaul on 29.08.2013 by NIA. When NIA received the source information regarding a planned meeting of A-6, and A-7 and other unknown IM operatives, A-6 and A-7 were arrested in Raxaul near Indo-Nepal border. NIA has filed the charge sheet as against A-6 for offence u/s 120B r/w 121, 121A, 122 IPC and section 18, 18A, 18B, 20, 21 and 40(2) of UA(P) Act (as amended in 2008).

120. Details of involvements of A-6 as well as A-7 in different cases has been given in the charge sheet, which need not to be repeated herein.

121. Ld. SPP for NIA submitted that A-6 has already been convicted and sentenced to capital punishment in Hyderabad twin blast case. Ld. SPP for the NIA submitted that at the time of arrest of accused no.6 many incriminating digital devices like two laptops, mobile phones etc. were recovered beside a pocket diary as per the details given in para 17.6 of the charge sheet. Ld. SPP for NIA submitted that A-6 has been involved almost in every terrorist activity executed by IM and

was involved in larger conspiracy for future terrorist activities. The data contained in digital devices recovered from A-6 was extracted when those devices were forwarded to CERT-in and analysis report is on the record establishing the involvement of accused in different terrorist activities as well as in larger conspiracy. Ld. SPP for NIA further submitted that disclosure about different emails and chats as well as code names being used in those chats also establish the modus operandi in which all the operatives of IM were in touch with each other including A-10 who is based in Pakistan.

122. Ld. SPP for NIA submitted that from the statement of PW10, PW11, PW15 it is established that A-6 was staying at the hideout at Sara Mohanpur Darbhanga with other IM operatives. Similarly recovered chat vide email/chat messenger (D-92, D-97 and D-98) as well as disclosure statements, explanation memo as well as confessional statement of A-1 Danish Ansari (D-86) establish the larger conspiracy hatched by A-6 along with A-7 and others to not only carry out terrorist activities but also to wage war against India. Ld. SPP for NIA further submitted that statement of different witnesses PW137 and PW124 also establish the role of A-6 in collecting arms etc. It is further submitted that there is also evidence of different witnesses showing that other persons (PW163) were instigated on the line of religion for recruiting in the IM fold. It is further submitted that there is also evidence showing that proceeds of terrorism were being raised and circulated by different modes. Document D-147, D-148, D-163, pointing out memo D-112 have also been referred to.

123. It is argued by Sh.M.S. Khan, ld. Counsel for A-6 that it is matter of record that A-6 has faced prosecution in other cases of bomb blast and has also been convicted in one of the matter. Ld. Counsel however submits that evidence in those cases cannot be relied upon in the present case as it would tantamount to trial of A-6 on second occasion, based on the same evidence. It is further argued that mere involvement of A-6 in previous incidence, ipso facto cannot be considered as an evidence for charge of conspiracy, more particularly when A-6 has already faced trial for different offences inter alia charge of conspiracy. It is vehemently argued by ld. Counsel for A-6 that the chat primarily relied upon in the present case as against A-6 as well as A-7 is not evidence collected in the investigation of present case and therefore same cannot be admitted I evidence. It is submitted that if court comes to the conclusion that said evidence cannot be taken in consideration, in that situation there is no sufficient evidence on the record of this case for framing the charge. It is submitted that admittedly prosecution allegation in the present case is not in respect of any particular terrorist activity, in the absence of any evidence of terrorist activity, he submits that charges cannot be framed against A-6.

124. Having considered the submissions, in the facts of the present case important to note the statement of PW-8 (including his statement u/s 164 Cr.P.C. D-81), PW-10 (including her statement u/s 164 Cr.P.C. D-80), PW-11 and PW-15, who have stated that A-6 along with A-24, A-12, A-1 and others had taken hideout in a house as tenant at Samastipur, Darbhanga. PW-15 Mohd. Arman Khan is brother in law of A-6 who in his

statement has stated regarding association of A-6 with A-7, A-12 as well as A-1 and A-2. Beside above mentioned witnesses PW-16 and PW-17 have also proved that A-6 had visited Calcutta. Beside these witnesses PW-22 and PW-23 who are residents of Bhatkal have stated that A-6 was earlier part of SIMI and later founded Indian Mujahideen and has been always spreading violent activity in the name of jihad in association with A-10, A-11. It came in the investigation that A-10 had escaped to Pakistan.

125. PW-9 Mohd. Kadir, PW-24 Hamdi Ansari have also stated that A-6 has always been involved in preparation of IED. Witness PW-24 has also given the statement u/s 164 Cr.P.C. (D-185) who had stated not only regarding A-6 and A-7 meeting with other accused persons in their hideout in Darbhanga but also about preparing of IEDs for carrying out bomb blast as well as also going to carry out recee for bomb blast in Varanasi.

126. Above referred statements of witnesses, clearly give specific accusation attributable to A-6 being involved continuously since beginning in larger conspiracy of committing different terrorist activities to create terror and destabilize the society as a whole. In this regard it be noted that these statements get corroboration by confessional statement of A-1 recorded during investigation of this case which is D-86. Beside statement of above mentioned witnesses as well as other witnesses, it be noted herein that A-6 along with A-7 was arrested during the investigation of the present case near Indo Nepal border at Raxaul.

127. After the arrest of A-6 certain digital devices were

recovered. Extraction report of the data in digital devices seized from A-6, as per the report of CERT-In show that many folders containing video clips of jihadi literature including writings for justifying killing of non-Muslims, in the name of jihad. Videos of Talib and Al Qaida on necessity of violent jihad as well as documents, images, videos containing literature regarding making of explosives, IED clearly show that A-6 was involved not only in larger conspiracy for committing terrorist activities but also instrumental in preparing of IEDs and explosives. There were certain files in the devices seized from A-6 which were password protected. CERT-In experts opened those files and found certain incriminating material as per the report on the judicial record which clearly show that A-6 was involved in executing certain more terrorist activities in future, beside the terrorist activities in which he was already involved. All the details of those files are in CERT-In report dated 23.09.2013 which is D-127.

128. Statements of different witnesses, extracted data as reflected in CERT-In report get further corroboration from the chat between A-6 and A-7 filed as Annexure D with the charge sheet filed on 20.02.2014. Perusal of the said Annexure D would show at page no.12-16 that A-6 and A-10 are talking about A-12 regarding recruiting of A-12 and carrying out recee in Hyderabad and other places, and thereafter planning to bomb blast. Similarly at page no.235 to 239 A-6 and A-10 are discussing on 01.06.2013 about Maoist attack on Congress leader in Chhattisgarh and also planning to kill leaders instead of general public for shaking government. Similarly at page no.241 to 244

of Chat Annexure-D, a chat between A-6 and A-10 reflect IM planning for planting nuclear bomb in Surat town and evacuating Muslims from Surat town before executing such terrorist act.

129. This court need not to go into elaboration of contents of the said chat, however on minute analysis of the chat running into many pages would clearly show that A-6 was not only involved with other accused for carrying out earlier terrorist activities but also involved in conspiracy of future terrorist activities with the assistance of Maoist in Nepal to collect arms, ammunition etc. These chats again get corroboration by confessional statement of A-6 recorded in the present case itself which is D-147 as well as disclosure statement of A-6 (D-92 and D-94) vide which email chats from the email IDs mentioned in those statements were extracted at the instance of A-6 which is D-97. All these material coupled with other evidence on the record gives absolutely no doubt for coming to the conclusion that **A-6 is liable for framing of charge for offence u/s 18 of UA(P) Act**. In view of finding on framing charge for offence u/s 18 of the Act, this court finds that no case is made out for framing charge u/s 120B IPC separately or alternatively.

130. A-6 has also been charge sheeted for offence u/s 18A of UA(P) Act which penalize for organizing a terrorist camp as well as u/s 18B which penalize for recruiting any person for terrorist act. Section 18A provides that whoever organizes camp for imparting training in terrorism is liable to be punished u/s 18A of the Act whereas section 18B provides punishment for recruiting any person for commission of a terrorist act.

131. In the present case in view of confessional statement

of A-1 Danish Ansari (D-86) who states in specific terms that he was asked by A-6 to join the violent path of jihad, to become martyr, A-6 and A-12 came to him and they had a meeting. A-1 also stated that he was taken by A-6 to a room at Sara Mohanpur where other accused persons were also present and in his presence A-6 tested the IED prepared by A-24 being operated through mobile. A-1 also stated that on the asking of A-6, accused A-12 brought acid from Calcutta and that A-12 was made Amir of Darbhanga IM module by A-6. A-1 in his confessional statement also stated that A-6 called him to Delhi, he was picked up by A-6 on railway station from where he was taken to Mir Vihar, Nangloi for manufacturing arms and ammunition. Beside the confessional statement of A-1, there is also confessional statement (D-147) of A-6 himself wherein he stated regarding taking of training in Pakistan, he also stated that he trained two boys at Koppa for 15 days. He further stated that he participated in different incidence of terrorist activities and prepared IED.

132. No denial to the legal proposition that confessional statement is a weak piece of evidence and cannot be considered to be a substantive evidence. However D-86 and D-147 do get corroboration from statement of different witnesses, circumstances and extracted data from the devices seized from A-6 including chat (Annexure D). Moreover at the stage of charge such confessional statement can be considered for taking a prima facie view for framing of charge or not. **As such A-6 is also liable to be charged u/s 18A and 18B of the Act.**

133. Charge sheet against A-6 has also been filed for

offence u/s 20 of UA(P) Act. There is lot of evidence on the record to establish that A-6 is member of banned terrorist organization Indian Mujahideen. It is matter of record that he has been involved in numerous earlier incidents of terrorist activities, for which he has already been charged inter alia for section 20 of the Act in prosecution for those incidents. In the present case however there has been no specific incidence of terrorist act. Investigation in the present matter by NIA was to probe the larger conspiracy. As such this court finds that another ingredient of section 20 of the Act as discussed above has not been existing. **As such accused no.6 cannot be charged for offence u/s 20 of UA(P) Act**. However **I find that there is enough material available on the record for framing of charge u/s 38(2) and 39(2) of UA(P) Act**.

134. A-6 has also been charged for offence u/s 21 of UA(P) Act for holding proceeds of terrorism. As per the prosecution case at the instance of A-6, A-12 Tehseen Akhtar @ Monu went to wife of A-6 namely Zahida Khanam (PW-135), who lived with A-6 in Sara Mohanpur and out of terror proceeds A-6 gave Rs.10,000/-, Rs.30,000/-, Rs.99,500/- to his wife through A-12. This fact has been stated by none else than the wife of A-6 herself in her statement recorded u/s 161 Cr.P.C. Statement of PW-135 gets corroboration by seizure of Rs.99,500/- (D-104) seized from the wife of A-6, during investigation of this case. This seizure was effected in pursuance to disclosure given by A-6. As such without going into much details of the evidence, prima facie **there is sufficient on record for framing of charge u/s 21 of UA(P) Act.**

135. From the above said evidence, more particularly chats (Annexure D), there is specific reference regarding raising of funds for terrorist organization. **That chat in itself indicate, prima facie commission of offence u/s 40(2) of UA(P) Act**.

136. In view of the evidence as discussed above since A-6 has been repeatedly involved in different incidence of terrorist activities carried out to wage war against Government of India. Evidence has also been collected regarding collecting of ammunition, explosives etc. for terrorist activities, **therefore A-6 is liable to be charged u/s 121 and 122 of IPC**.

Accused No.7 Asaudullah Akhtar @ Haddi @ Daniel @ Tabrez @ Asad

137. As per prosecution case A-7 Asaudullah Akhtar @ Haddi @ Daniel was arrested on 29.08.2013 by NIA in this case along with A-6 Yasin Bhatkal in Raxaul, East Champaran, Bihar. As per prosecution case at the time of arrest, many digital devices like Samsung mobile phone, Kingston 4GB pen drive and video game port was recovered from A-7. NIA has filed the charge sheet as against A-7 for offence u/s 120B r/w 121, 121A, 122 IPC and section 18, 18A, 18B, 20, 21 and 40(2) of UA(P) Act (as amended in 2008).

138. Ld. SPP for the NIA submitted that after arrest A-7 disclosed about his email chats from email IDs as per details given in para 17.4 of the charge sheet and submitted that A-7 was in contact with Mirza Shadab Beg and Riyaz Bhatkal as reflected from chats D-94 and D-95. It is submitted that those chats clearly indicate that A-7 was involved in larger conspiracy to

execute terrorist activities and to make arrangement/logistics for the same. Ld. SPP for the NIA further submitted that in the chat of A-6 or of A-7 certain code words were being used, these accused persons given details/real names of those codes as enumerated in para 17.15 of the first supplementary charge sheet.

139. Ld. SPP for the NIA while taking this court through different paras of the charge sheet, submitted that different witnesses including PW8, PW10, PW24, PW32 and PW42 would establish that A-7 along with other co-accused stayed together with A-6 in Darbhanga in a hideout. Moreover from the statements of those witnesses it would also be reflected that A-7 would make preparation of IED in the hideouts at Sara Mohanpur. It is submitted that A-7 was instrumental in causing the blast in Varanasi. Ld. SPP further referred to statement u/s 164 Cr.P.C. of PW24 which is D-185.

140. Ld. SPP for the NIA further referred to confessional statement of A-7 recorded in Hyderabad blast case which is D-148, CERT-in report (D-127) as well as statement of A-6 recorded u/ 164 Cr.P.C. (D-147), explanation of A-7 regarding incriminating files extracted from his laptop (D-121), seizure memo of incriminating material seized from Goa which was the hideout of A-6, A-7 and A-24 (D-117) as well as pointing out memo of A-7 (D-116). Ld. SPP for the NIA also referred to confession of A-1 Danish Ansari (D-86) implicating A-7 also.

141. Having gone through the written arguments filed on behalf of A-7. Ms.Warisha Farasat, ld. counsel appeared on behalf of A-7 and submitted that A-7 has already been tried and acquitted for alleged charge u/s 20 of UA(P) Act on the

allegation of being member of IM, in Hyderabad blast case. It is submitted by ld. Counsel for A-7 that since the allegations in the charge sheet are that accused being part of several conspiracies being member of terrorist organization IM, accused cannot be prosecuted again once he has already faced the charge for offence u/s 20 of UA(P) Act in respect of period from year 2008 to 2013. As such accused cannot be tried again for the same offence in this case.

142. Ld. defence counsel further submitted that alleged chats relied upon against A-7 do not implicate the accused for offence u/s 15 and 18 of UA(P) Act. Explanation memo based on the confessional statement cannot be read in evidence. It is submitted that offence u/s 18 of UA(P) Act has also not attracted for alleged conspiracy because for the purpose of section 18 there must be evidence of any terrorist act as defined u/s 15 of the Act, for which conspiracy was allegedly hatched. In the absence of the same, charge u/s 18 of the Act does not sustain.

143. Ms.Warisha Farasat, ld. counsel appearing for A-7 put much emphasis on provisions of section 300 Cr.P.C. by submitting that accused cannot be tried again in the present case on the basis of evidence already used against him and therefore same cannot be used on account of bar of double jeopardy. Counsel has relied upon judgment of Apex Court in **State of Bihar vs. Murad Ali Khan** AIR 1989 SC 1. Ld. Counsel for the accused further relied upon judgment of Apex court in **State vs. Nalini** (1999) 5 SCC 253. It is further argued that provisions of section 18A and 18B of the Act do not make out as there is no allegation of conducting of any terrorist camp or recruiting

anyone for the purpose of terrorism.

144. Having considered the submissions and going through the record, at the outset it be noted that accused no.7 was involved in Varanasi blast happened in year 2007, thereafter was also involved in Delhi serial blast in 2008 in which the accused is still facing the prosecution for that incidents. Beside those accused has also been involved and convicted in Hyderabad blast case happened in February 2013. In that case accused has already been sentenced for capital punishment. In the sequence of different incidents in which A-7 has been involved if we examine the evidence put forth by the prosecution in the present case, firstly for section 18 of UA(P) Act, all those witnesses which have been referred to while considering the case of A-6 i.e. PW-8, PW-10, PW-11, PW-15 in their statements recorded u/s 161 or u/s 164 Cr.P.C. have specifically stated that during 2010, A-7 along with A-6, A-24, A-12 and others were in staying in a hideout/room taken on rent in Darbhanga while A-7, A-6 and others were running away to escape from investigating agency/ judicial process after being involved in incidence of Delhi serial blast, Varanasi blast in year 2007 and 2008.

145. Beside above referred witnesses PW-24 Mohd. Hamdi Ansari had specifically stated regarding A-7 and other co-accused being involved in preparation of IED fabrication while in hideout at Sara Mohanpur. PW-24 in his statement u/s 164 Cr.P.C. (D-185) had also stated the same facts. Similarly, PW-32 Yusuf Baba Miyan Sheikh as well as PW-42 Sultan Khan and PW-162 Dhaneshwar Chari have also stated that A-7 along with A-6 were in hideout in Pune, Mumbai as well as Goa. These

witnesses not only mentioned about the fact that A-7 was escaping from investigating agency and staying in a hideout but are also establishing that A-7 was in coordination with A-6, A-24, A-12 and other accused persons.

146. Statement of above mentioned witnesses get corroboration from search and seizure dated 06.09.2013 and 07.09.2013 carried out in the investigation of the present case which is D-101 and D-100 respectively. From the perusal of those documents it would show that IED material was seized from the hideout of A-7, A-6 and others at Hyderabad and Mangalore.

147. Counsel for the accused argued that for the purpose of section 18 of the Act there must be an evidence of commission of a terrorist act as defined u/s 15. This court had already made clear above at the initial part of this order that section 18 is not to be construed in a very restrictive manner. Section 18 requires conspiracy, advocacy towards any terrorist act or any act of preparation towards any terrorist activity. Now it cannot be stated that intention of the legislature even for the purpose of offence of conspiracy u/s 18 of UA(P) Act require that it is only when a terrorist act would be committed, then only charge of section 18 can be invoked. This court has already noted above that in its view the offence of a conspiracy is a substantive offence itself and if there is evidence showing prior meeting of mind or concert and an act towards advocacy, preparation of terrorist act under a conspiracy, this section would still be invoked if there is accused showing not only conspiracy as well as the object of the conspiracy. In this case admittedly when

accused was arrested he was having one Samsung GTC mobile phone as well as one Kingston 4GB pen drive and one video game port. D-127 is the CERT-In report regarding the data contained in digital devices recovered from A-6 and A-7. That CERT-In report clearly shows that digital devices of A-7 contained incriminating material (extracted data/Q-9 & Q-10) which include a letter written by absconding accused Afeef (A-22), presently in Pakistan to A-6, letter written by A-6 to his father in law sent through A-7, a letter written by A-7 to Baba Sajid wherein A-7 is asking him to do some operation/attack in India, another scanned document taken by accused Yasin Bhatkal (A-6) and A-10 from cyber café in Nepal, file exchanged between A-10, A-6 and other cadre of IM for giving important codes and other messages.

148. Beside that accused after arrest gave a disclosure statement disclosing about different email/chat IDs by which he was in contact with A-10, A-16 (both based in Pakistan). Those disclosure statements of A-7 are D-91 and D-95. In pursuance to those disclosure statements contents of email/ chat IDs were extracted as A-7 also gave the passwords in his disclosure statements. As such there is a recovery of chat pursuant to the disclosure given by A-7 which is Annexure D. Perusal of that chat would show that A-7 was not only referred but there is also chat regarding future terrorist act of Fidayeen act, kidnapping of prominent persons for ransom, collecting of arms/ ammunition etc.

149. Thus, statement of above mentioned witnesses, recovery of incriminating contents in the digital device of

accused as well as recovery of chat involving A-7, clearly establish that there was a pre-planned/concerted acts under a conspiracy towards executing future terrorist activities. Even if for the time being the confession of A-7 given by him during the investigation of Hyderabad blast case which is D-148, is excluded. Still there is confession of A-1 (D-86) and A-6 (D-147), wherein also there is specific reference of involvement of A-7 in larger conspiracy as well as in executing of future terrorist activities. **Thus above referred evidence in my mind is sufficient for framing charge u/s 18 of UA(P) Act as against A-7**. In view of finding on framing charge for offence u/s 18 of the Act, this court finds that no case is made out for framing charge u/s 120B IPC separately or alternatively.

150. A-7 has also been charge sheeted for offence u/s 18A and 18B of UA(P) Act. However it is found that there is no specific evidence pointing towards A-7 for organizing any camp to impart training for terrorist activities. Although there may be statements of different witnesses stating about A-7 stayed in the hideouts at different places including Darbhanga, Sara Mohanpur, Mumbai, Goa etc. It also came that A-7 was in contact with A-1 and A-12, however beside this there is nothing. **Therefore accused no.7 is liable to be discharged for offence u/s 18A and 18B of UA(P) Act for want of requisite evidence**.

151. This court has already concluded with regard to Section 20 of UA(P) Act that despite the fact that there may be evidence showing that accused no.7 was affiliated with other cadre of Indian Mujahideen and also executed, different terrorist activities. It is pointed out by ld. Counsel for accused that in

Hyderabad blast case in which A-7 though stood convicted and sentenced for capital punishment, however has not been convicted u/s 20 of UA(P) Act. By going through para 703 of judgment in Hyderabad blast case, one can easily state that court in that case acquitted A-7 for offence u/s 20, 38(2) and 39(2) for want of filing the notification u/s 3 of the Act, whereby the said organization was declared to be a terrorist organization.

152. Be that as it may, in the present case still accused cannot be charged u/s 20 of the Act as there is no evidence of this accused or any other accused being involved in commission of any terrorist activity. **Therefore A-7 stands discharged for offence u/s 20 of UA(P) Act**. However in view of the evidence available on the record, **this court finds that A-7 can be charged for offence u/s 38(2) and 39(2) of UA(P) Act**.

153. A-7 has also been charge sheeted for offence u/s 21 of UA(P) Act, which require knowingly holding any property derived or obtained from commission of any terrorist act or acquiring any property through terrorist funds. In the present case even if there is some reference in the extracted data of digital device of A-7 (Q-10) as per CERT-In report as well as in chat regarding sending, receiving of money etc. However these references are not conclusive enough to prima facie establish all requisite ingredients of Section 21. **Consequently, A-7 stands discharged for offence u/s 21 of UA(P) Act**.

154. A-7 has also been charge sheeted for offence u/s 40(2) of UA(P) Act. For the reasons as stated above there is no conclusive evidence attributing specifically A-7 for raising of funds for committing terrorist activity or to further the activities

of terrorist fund. **In the absence of same, A-7 cannot be charged u/s 40(2) of UA(P) Act and discharged for said offence**.

155. In view of the evidence as discussed above since A-7 has been repeatedly involved in different incidence of terrorist activities carried out to wage war against Government of India. Evidence has also been collected regarding collecting of ammunition, explosives etc. for terrorist activities, **therefore A-7 is liable to be charged u/s 121 and 122 of IPC**.

Accused No.8 Manzar Imam

156. As per prosecution case in pursuance to the larger conspiracy in or around December 2012, IM operatives including A-6 and A-7 started contacting several old SIMI operatives to take their assistance at national level and some of the operatives of SIMI like Manzar Imam (A-8) became one of the conspirator as he started personally motivating several persons to include in IM fold. As per prosecution case A-8 Manzar Imam motivated Haider Ali (A-20) on religious lines to wage war against India. It is also in the allegations that absconding accused Tehseen Akhtar (A-12) found shelter with associates of Manzar Imam in Ranchi. A-8 was arrested by Kerala police in RC No.4/2010 (Kerala case), wherein he was convicted. Manzar Imam A-8 arrested in the present case on 01.10.2013. Charge sheet as against A-8 has been filed for offences u/s 18, 38(2) and 39(2) of UA(P) Act.

157. Ld. SPP for NIA submitted that A-8 Manzar Imam was old SIMI operative and was principal conspirator and motivated many persons including Haider Ali (A-20). It is

submitted that at the time when accused Tehsin Akhtar (A-12) was absconding to avoid his arrest, he was given shelter with associates of Manzar Imam in Ranchi, Jharkhand. It is further submitted that A-8 was having knowledge about the hideouts of Hasan @ Monu. Reference to evidence of witnesses PW-181, 187, 192, 196, 200, 202 to 207 has been given regarding the role played by A-8 Manzar Imam beside documents i.e. chats between A-6 and Riyaz Bhatkal (D-97). Reliance has also been placed on statement of A-8 recorded u/s 164 Cr.P.C. earlier in RC No.04/2010/NIA at Kochi regarding SIMI training camp held in Kerala.

158. Having gone through the written submissions filed on behalf of A-8 as well as heard Mr.Abu Bakr Sabbaq, ld. counsel for A-8 who submitted that material relied upon by the prosecution, in any manner does not connect A-8 with offences under 18, 38 and 39 of UA(P) Act. He submits that there is no material available on judicial record to show that A-8 Manzar Imam was in any manner connected with Indian Mujahideen. He submits that it is matter of record that accused no.8 Manzar Imam was earlier associated with SIMI, as it was one of the huge Muslim students organization, he submits that accused no.8 has already been convicted on account of being associated with SIMI in Kerala case by judgment dated 14.05.2018, whereas A-8 stood acquitted in Ahmedabad cases of 35 clubbed FIRs. Even by reading of statements of different witnesses in present case, none of the witness have stated anything incriminating about A-8 having associated with IM, at the most witnesses have stated pertaining to period when A-8 was associated with SIMI.

159. Ld counsel for A-8 further submits that offence u/s 18 of UA(P) Act is not made out as there is no evidence that accused (A-8) was in any manner connected with any criminal conspiracy of IM. D-97 which is purportedly a chat between A-6 and A-10, rather show that A-6 and A-10 both were not aware exactly about accused Manzar Imam and perusal of relevant portion of D-97, does not show that accused Manzar Imam was in manner connected with conspiracy. He submits that A-8 having already been charged for offence of conspiracy in Kerala case, cannot be charged in the present case for the offence of conspiracy. It is further argued that there is no material on the record to substantiate the allegations of recruitment by A-8. Similarly, there is no material on the record showing that A-8 was in manner harboured A-12. Ld. counsel submits that D-97 rather expressed mentioned that A-8 did not provide shelter to A-12.

160. Ld. counsel for accused no.8 has relied upon judgments of **Iqbal Ahmad Kabir Ahmad vs. State of Maharashtra** 2021 SCC OnLine Bom. 1805, **Amitbhai Anilchandra Shah vs. CBI** (2013) 6 SCC 348, **S. Swamirathnam and ors. vs. State of Madras** AIR 1957 SC 340, **State of Jharkhand vs. Lalu Prasad Yadav and Ors.** (2017) 8 SCC 1. I have also gone through the written arguments filed on behalf of A-8.

161. Having considered the submissions if we examine the accusation and the evidence as against A-8. First of all there is no dispute to the fact that A-8 was earlier connected with banned organization SIMI. It is also not disputed that on account of his association with SIMI, A-8 faced trial in RC

No.04/2010/NIA (Kerala case), wherein he was convicted for some offences. A-8 also faced trial of certain clubbed FIRs in Ahmedabad, wherein he was discharged. In the present case allegation against the accused no.8 is that he being old SIMI operative came in larger conspiracy of Indian Mujahideen in or around December 2012 and started working with some operatives of Indian Mujahideen at national level.

162. Prosecution has heavily relied upon statement of certain witnesses including Aftab Alam (PW-181), Hidaytullah (PW-200) beside Muzamil Shadab (PW-187), Mohd. Ashraf (PW-192) and PW-196 and PW-201 to PW-206. Now if we go through statements of these witnesses. PW-181 Aftab Alam was associated with SIMI and stated that he used to attend SIMI programmes. Witness states that later when he started his ITI, he could not spare some time for SIMI activities. PW-181 states that in year 2010 Manzar Imam visited Mujaffarpur where all SIMI friends met and in that meeting Manzar Imam insisted to join and restart SIMI organization in Mujaffarpur. PW-181 further says that in year 2010 he visited Ranchi where he met with Manzar Imam when he was suffering from spinal cord disease where A-8 introduced him with Abdullah @ Haider (A-20). PW-181 in his statement also stated that prior to the arrest of A-8 he called him on his mobile phone and then PW-181 told him that Haider (A-20) want to know about his hideout/ mobile number and trying to meet him.

163. Before discussing other witnesses, it is appropriate to discuss here evidence of PW-200 Hidaytullah. This witness was himself associated with SIMI and stated that he continued

working for culture of SIMI at his native place Chittarpur without giving any specific identity. PW-200 stated that he formed Muslim Students Federation (MSF) and met with Manzar Imam who was also running a parallel organization by name SIO (Student Islamic Organization) and Manzar Imam expressed his inclination towards MSF. PW-200 further stated that in year 2010 when he returned India from Oman during some period he met with Manzar Imam who told that a big meeting of SIMI was conducted in year 2008 and further told him that strength of 20 to 24 Ansar discarded from SIMI are joining. PW-200 stated to have enquired as to which group he has got associated with but Manzar Imam avoided to answer the question and left away. Supplementary statement of PW-200 was also recorded.

164. Now perusal of these statements of PW-181 and PW-200 do not in any manner indicate any association of A-8 Manzar Imam with Indian Mujahideen. Witnesses PW-181 and PW-200 themselves were old SIMI operatives and have stated only pertaining to old SIMI operatives assembled together at one point during 2008 or 2010. Whereas in the present case as per prosecution case the allegations are regarding Indian Mujahideen entering into a larger conspiracy in or around 2012. These witnesses have not at all stated even a word regarding Indian Mujahideen. Now if we go through the statement of other witnesses including PW-187, PW-192, PW-196 and PW-201 to PW-206, perusal of statements of these witnesses only show that in or around 2006 onward 'darsh' programmes were being organized which were being attended by Manzar, Haider, Ujjair and certain other persons, wherein participants used to agitate

alleged atrocities, discrimination on Muslims. Some of the witnesses have stated that they later realized that in fact it was not 'darsh' programme rather was SIMI operatives meeting.

165. Now even if the facts stated by above mentioned witnesses in their statements is taken on the face of it, same does not in any manner establish any association of A-8 with Indian Mujahideen, either directly or by any circumstantial or indirect manner. In the absence of anything coming in the statements of above referred witnesses, there is hardly any evidence to show that A-8 was part of any alleged larger conspiracy of any organization let alone Indian Mujahideen. Among aforesaid witnesses, statement u/s 164 Cr.P.C. of some of above mentioned witnesses were recorded during investigation of this case including PW-200 which is D-150, Saifuddin PW-207 (D-160), Mujammil Sadab PW-187 (D-137). Although statement of PW-181, PW-200, PW-187, PW-192, PW-202 etc. do establish association of Manzar Imam with old SIMI operatives which was declared to be a banned organization but that fact can hardly be of any help for prosecution for proving the allegations against A-8 for charge of Section 18 in this case.

166. One must not forget that A-8 has already been prosecuted and convicted in RC No.04.2020 (Kerala case) in which he has been convicted for offence u/s 10, 20, 38 of UA(P) Act and section 4 of Explosive Substance Act. Even in that case also A-8 has not been convicted for offence of conspiracy u/s 18 of the Act despite being charged against him. Similarly, there was also charge u/s 18 against A-8 in Ahmedabad case (clubbed FIRs of bomb blast related incidents), however as a matter of

record A-8 has been discharged in that case. Perusal of the judgment in Kerala case as well as order in Ahmedabad case show that although accused Manzar Imam was found involved in participating in terrorist camp in Kerala while being associated with SIMI but beside that nothing proved on the record of those cases.

167. Prosecution in the present case has also relied upon confessional statement of A-8 recorded u/s 164 Cr.P.C. in RC No.04/2010 (D-153), which certainly cannot be used in the present proceedings, firstly because as noted above that was the evidence of RC No.04/2010 for which accused has already faced the trial and convicted for certain offences however not for offence of conspiracy.

168. Another incriminating evidence sought to be put forward against A-8 is D-97 which is a chat between A-6 and A-10. Even perusal of relevant portion of that chat D-97 does not connect accused Manzar Imam with IM or in any manner with alleged larger conspiracy because even in the extract of that chat A-10 stated about his non-familiarity with A-8 and enquired as to who that person is. No specific association, attribution has been made against A-8 in that D-97. Thus, taking into consideration the necessary ingredients as required for offence u/s 18 of UA(P) Act, discussed above, prosecution has miserably failed to show any evidence connecting A-8 for that charge. **Consequently A-8 is liable to be discharged u/s 18 of UA(P) Act**.

169. Accused no.8 has also been charge sheeted for offence u/s 38(2) and 39(2) of UA(P) Act. Taking the entire facts, statements of witnesses and other material on the face of it,

as this court has already concluded above that there is nothing on the record to establish that A-8 was in any manner was connected with Indian Mujahideen, therefore this court finds that necessary ingredients as discussed above for offence u/s 38(2) and 39(2) of Act does not prima facie establish even by remote assessment, because there is no evidence or statement of any witness showing that A-8 was in any manner doing any act to further the cause, object or in any manner supporting, assisting the objectives of Indian Mujahideen. **Consequently, accused no.8 stands discharged for offences u/s 38(2) and 39(2) of the UA(P) Act**.

Accused No.9 Ujjair Ahmad @ Ozair

170. As per prosecution case Manzar Imam (A-8) established contact with Ujjair Ahmad (A-9), who was associated with MSF activities in Jharkhand. A-9 allegedly started conducting religious program called 'darsh' and started motivating members for terrorist activities in the name of Jihad. As per prosecution case Ujjair had a strong bonding with Haider @ Abdullah and Muzammil. They used to arrange darsh program at Millat Urdu Library at Daronda. In those programs Muslim youths used to be incited on the ground of alleged atrocities on Muslim community, Babri Masjid demolition, Gujarat riots etc. In those programs accused Haider was more expressive about his violent ideas of Jihad. In the present case accused Ujjair Ahmad was arrested on 30.10.2013. A-9 Ujjair Ahmad has been charge sheeted for offence u/s 17, 18, 19, 38(2), 39(2) and 40(2) of UA(P) Act.

171. Ld. SPP for NIA submitted that Manzar Imam (A-8)

established contact with A-9 Ujjair Ahmad, who was already associated with MSF activities in Jharkhand. Ld. SPP for NIA submits that there were certain overlapping of evidence as against A-8 Manzar Imam, A-9 Ujjair Ahmad and A-20 Haider Ali @ Abdullah. It is submitted that it came in the investigation that A-20 Haider Ali who was a highly radicalized became close associate of accused Manzar Imam (A-8). It is submitted that A-20 Haider Ali also known as Black Beauty. It is submitted that around December 2012/ January 2013 absconding accused Haider Ali with Tehseen Akhtar met with A-9 for getting associated with activities of IM, for which A-9 agreed to support terrorist activities of IM morally and financially. This fact is reflected from evidence of chats (D-96) between A-6 and Riyaz Bhatkal, wherein A-20 Haider Ali described as Black Beauty and A-9 Ujjair Ahmad described as "*dadhi wala*".

172. Ld. SPP for NIA submitted that Ujjair Ahmad (A-9) was closely associated with the activities of accused Haider Ali (A-20) and he supported him financially for execution of his terrorist activities including in Patna bomb blast. Ld. SPP for NIA submitted that there is statement of witnesses to show that A-9 Ujjair Ahmad supported Haider Ali (A-20) by providing sum of Rs.30,000/- via Muzammil to further the activities of IM and said fund was collected from Zakt. It is further submitted that documents D-138, D-144 established this fact. Moreover PW-185, PW-187, PW-193, PW-200 to PW-202 also deposed in this regard.

173. Sh.Rajat Kumar, ld. counsel appearing for A-9 submitted that A-9 has never been involved in any criminal or

terrorist activity as his name has not been given in any previous cases of SIMI or IM. It is submitted that at the most accused Ujjair Ahmad has been associated with activities of MSF which is not a banned organization and nor connected in any manner with IM. Ld. counsel for A-9 further submitted that all the witnesses as relied upon by the prosecution against A-9, only mention the name of Ujjair Ahmad being part of '*Darsh*' which was essentially a religious function. He submitted that none of the witnesses have stated that Ujjair Ahmad in any manner asked or recruited anyone into IM fold or in any manner was connected with IM. Ld. counsel for A-9 further submitted that reference of '*dadhi wala*' in the chat (D-96) also does not connect him. He submitted that there is no evidence at all on the record to show that expression '*dadhi wala*' has been used for none else than accused Ujjair Ahmad. He submits that even otherwise such description being general in nature cannot be sufficient to implicate him to be in any manner being part of SIMI or IM. Ld. counsel further submitted that reading the statements of witnesses like PW-200, PW-187, PW-201, at the most establish that accused Ujjair Ahmad supported the philosophy/speech of A-20 Haider Ali. He submitted that such evidence of support in itself does not establish that A-9 was part of conspiracy. Similarly, regarding giving payment of Rs.30,000/-, ld. counsel submitted that such amount was taken out from Zakt fund which was meant for poor and needy persons. He submitted that nothing has come from the statement of any of the witnesses to show that such financial help was given for furthering the terrorist activities of A-20. Ld. Counsel submitted that no

evidence establish that A-9 was in any manner aware about any activities of A-20. As such charge of Section 17, 18, 38 and 39 of UA(P) Act is not made out. Ld. counsel for accused also submitted that most of the evidence including chat (D-96) has already been made evidence in other cases against other accused persons and therefore such evidence is hit by Section 300 Cr.P.C.

174. Taking the evidence of prosecution as against A-9, on the face of it, it is admitted case that A-9 has not been involved in any unlawful activity or terrorist activity previously. He has been arrested for the first time in this case. Now if we examine the material on record for the purpose of section 17 of UA(P) Act. Before we go into factual aspects essential requirement of invoking section 17 of the Act is that there must be evidence of raising, collecting or providing of funds knowingly that such funds are to be used or likely to be used by terrorist organization or by any individual terrorist for committing terrorist act. It is however also be noted that there need not to be any evidence to show that funds were actually used or not for commission of any such terrorist act. As such there must be raising, collecting and providing of funds with specific knowledge attributable to accused that such funds are used or likely to be used for terrorist organization or by individual terrorist for committing terrorist act.

175. In this context if we examine the statement of witnesses. PW-185 Tariq Khan stated that in 2009-10 Uzair has formed a Zakat committee in the name of “Jamayat Ah-Le-Hadis” at Daronda, Ranchi. Objective of that formation was to raise funds by collecting subscription from Muslim community

in the form of Zakat and to help poor and deprive among Muslim community. PW-185 states that Ujjair Ahmad was elected President of that committee. That committee had a bank account in Union Bank, Daronda. PW-185 states that in July 2013 he took charge as Treasurer of Zakat committee. PW-185 says that he remembered that during same time Ujjair Ahmad withdrew Rs.30,000/- from Zakat fund and gave money to Haider. He filled the application ostensibly to show that he paid money to help poor person from community. The idea forecasted by Ujjair for funding Haider was to extend support to him. PW-185 states that he cannot say if for any covert reason funding to Haider was there.

176. Here it is important to note that it is around July 2013 itself Bodh Gaya bomb blast committed and for that incidence accused Haider (A-20) had faced the prosecution and stood convicted. Then in October 2013 Patna bomb blast took place in BJP rally at Gandhi Maidan. In that incidence also accused Haider (A-20) was involved and faced the prosecution and convicted. It appears that prosecution has alleged that A-9 Ujjair Ahmad supported above mentioned Haider Ali (A-20) by giving funds to him for terrorist activities which took place immediately after his giving of funds.

177. In this factual context there is also statement of PW-187 Muzammil who inter alia stated that during the year 2013 one Shahbaz told him (PW-187) to collect money for Haider who met them in a bus. PW-187 stated that he collected Rs.10,000/- from different persons named in the statement and gave the money to Haider (A-20). PW-187 also stated that Ujjair told him

to arrange money for Haider. Similarly, PW-190 Samiur Rehman Ansari also stated about Zakat fund and stated that some of the cash amount from Zakat fund was lying with Ujjair (A-9) for emergency situation. There is also statement of PW-191 Mohd. Naqeeb Shamim who stated that in August 2013 Ujjair came to his residence and asked for authentication from him and his father about withdrawing of Rs.30,000/- from bank account of Zakat fund. PW-191 says that since it was the request from Ujjair considering his reputation and the fact that others had already put signatures, he also put his signatures on it and Ujjair withdrew Rs.30,000/-.

178. Sh.Rajat Kumar, Ld. Counsel for accused submitted that statement of witnesses do not establish giving of Rs.30,000/- by A-9 to A-20 for terrorist activity.

179. From the discussion of different statements above, it is prima facie indicative that A-9 while being incharge of a Zakat fund which was meant for helping poor among Muslim community, withdrew Rs.30,000/- and gave to A-20 Haider Ali. It has come in the statement of many witnesses that A-9 had deep association with A-20. The fact that A-20 was involved in the incidence of bomb blast happened in July 2013 as well as in October 2013 is matter of record. Certain witnesses have stated about the period after July 2013, when A-20 Haider Ali was absconding to escape his arrest in respect of Bodh Gaya bomb blast incidence. It is around that period of time before his arrest, some amount was given to Haider Ali as stated by PW-187.

180. Argument that there is no evidence if such funds were actually used for terrorist act or not. Such argument at the

stage of charge does not sustain, firstly because there can hardly be any evidence to directly establish that funds were actually used for purchase of bomb, explosives etc. As discussed above giving of funds to one who is known to be a terrorist, in itself attract the provision of Section 17 of UA(P) Act. Moreover section 17 itself provides that it is not necessary to give evidence that whether such funds were actually used or not in commission of terrorist act. Documents D-138 to D-143, statements of certain witnesses recorded u/s 164 Cr.P.C. including D-149 to D-152 and D-160 establish withdrawing of Rs.30,000/- by A-9 from Zakat fund as well as giving the same to A-20.

181. If there is evidence to show that financial help has been given to one with the knowledge that whom the funds have been given is terrorist or to terrorist gang or organization. In this case it is proved that around July 2013 till October 2013 terrorist act as defined u/s 15 of the Act actually took place in which A-20 was involved being principal accused. These facts to my mind are prima facie sufficient for framing of charge u/s 17 as against A-9. **It is therefore held that A-9 is liable for charge u/s 17 of UA(P) Act**.

182. Now coming to the question of charge u/s 18 of UA(P) Act. There are statement of different witnesses who stated that 'darsh' program used to be organized by Manzar Imam (A-8) or by Ujjair Ahmad (A-9) in which participants used to raise issue of alleged atrocities on Muslims. Among the participants A-20 Haider Ali being one of the most aggressive used to incite participants for violent Jihad in the name of religion. Admittedly A-9 used to be participant of such programs and as per those

statements of witnesses, A-9 never objected for such incitement by A-20. That fact coupled with the fact that A-9 financially helped A-20 as A-9 has already been charged for offence u/s 17 of the Act. This court is of the view that these facts taken cumulatively go to show that A-9 was part of conspiracy, advocacy, abetting or supporting for terrorist activity or any act of preparation for terrorist activity and **therefore is liable to be charged for offence u/s 18 of UA(P) Act as well**.

183. Accused no.9 has also been charge sheeted for offence u/s 19 of UA(P) Act. This court already discussed the necessary ingredients of Section 19 above which requires harbouring, concealing any person with the knowledge that such person is terrorist. However in the facts of the present case it is find that prosecution has failed to establish direct evidence to show that A-9 in any manner harbored, concealed or gave A-20 any hideout for escaping from the judicial process, knowing that he was involved in any terrorist activity. Even as per the statement of different witnesses all 'darsh' programs were organized prior to July 2013 and not thereafter. Therefore, mere association of A-9 with A-20, may raise inferences but are not sufficient for framing of charge u/s 19 of the Act. **Consequently A-9 stands discharged for offence u/s 19 of UA(P) Act**.

184. Accused no.9 Ujjair Ahmad has also been charge sheeted for offence u/s 38(2) and 39(2) of UA(P) Act. As discussed above offences u/s 38(2) and 39(2) are relating to membership, association or support to any terrorist organization. Meaningful reading of these provisions, show that there must be specific knowledge attributable to accused that he knowingly

associates himself or profess to be associated with a terrorist organization and knowingly support a terrorist organization. In facts of the present case even if the statements of all the witnesses as relied upon qua A-9 are taken on the face of it, none of the witnesses have stated that A-9 being aware about Indian Mujahideen. Though these witnesses might have stated about support given by A-9 to A-20 in his individual capacity but none of the witness stated anything regarding knowledge of A-9 about Indian Mujahideen, being a terrorist/ banned organization. No doubt it is matter of fact that A-8 Manzar Imam and A-20 Haider Ali were earlier associated with SIMI which was also a banned organization, however prosecution in this case is with regard to association with banned organization Indian Mujahideen. Since none of the witness attribute against A-9 of his knowledge about Indian Mujahideen, **in my view there is not sufficient evidence for framing of charge u/s 38(2) and 39(2) of UA(P) Act against A-9, as such he stands discharged for those offences**.

185. A-9 has also been charged for offence u/s 40(2) of UA(P) Act which provides for penalty of raising funds for terrorist organization. This court has already concluded for framing of charge against A-9 for offence u/s 17 of the Act. However this court finds that A-9 cannot be charged u/s 40(2) for the same reasons as given above when it is concluded that there is no sufficient evidence for charge of section 38(2) and 39(2) of the Act. **As such A-9 stands discharged for offence u/s 40(2) of UA(P) Act as well**.

Prosecution case against A-10 Riyaz Ahmad Shah @ Riyaz Bhatkal and A-11 Iqbal Bhatkal (both since absconding)

186. In the second supplementary charge sheet, precise reference has been given about the evidence collected regarding A-10 Riyaz Bhatkal who was instrumental and formation of proscribed organization Indian Mujahideen along with others. It came in investigation that A-10 was involved in conspiracy and execution of terrorist activities i.e. Hyderabad twin blasts case (2007), Jaipur serial blast (2008), Delhi serial blast (2008), Ahmedabad and Surat blast case (2008), German Bakery Pune blast case (February 2010) and Chinnaswamy Stadium Bangalore blast case (February 2010). It also came in the investigation that A-10 met with other co-conspirators at several hideouts in India and abroad including at Shaheen Bagh, Delhi, where from he started developing a new module for IM. It also emerged in the investigation that around 2009, A-10 along with A-11 travelled to Pakistan with support of ISI, to evade arrest in India. It also came in the investigation that while A-10 stayed in Pakistan, he used different emails/chat accounts with fake identities, to communicate with other IM operatives like A-6 and A-7 in India and Nepal. It also came in the investigation that A-10 has been continuously hatching conspiracy to evolve new methods and targets for commission of terrorist activities in India.

A-12 Md. Tehsin Akhtar @ Monu @ Hasan

187. As per prosecution case A-12 who was student of Manu Polytechnique at Darbhanga was introduced to A-6 Yasin Bhatkal, who allegedly radicalized A-12 and motivated him to

find more recruits for the terrorist outfit. This fact is reflected from the statement u/s 164 Cr.P.C. of Asadullah (A-7) mentioning that Yasin Bhatkal motivated many persons including A-12. As per prosecution case in the communication, code name of A-12 was given as Huzi. A-12 was regularly in contact with A-10 based in Pakistan by medium of internet chat. A-10 established communication with A-12 as well as Wakas (A-24) beside A-6. A-10 gave email address of A-12 Tehsin Akhtar as ubhot4u@yahoo.com, which was saved by A-6 and later recovered in the digital device of A-6 at the time of his arrest. Prosecution relies upon a chat between A-6 and A-10 describing about A-12 also.

188. As per prosecution A-12 was involved in planning and execution of blast at Sheetla Ghat, Varanasi (December 2010), serial blast at Mumbai (July 2011) and twin blasts at Dilsukh Nagar, Hyderabad (February 2013). This fact is reflected from statements u/s 164 Cr.P.C. of A-6 and A-7. A-12 was arrested in this case on 05.05.2014. Prosecution has filed the charge sheet against him for offence u/s 120B, 121, 121A, 122 IPC as well as u/s 18, 18A, 18B, 19, 20, 21 and 39 of UA(P) Act.

189. It is submitted by ld. SPP for NIA that role of accused A-12 is very much reflected not only from chats between A-6 and A-10 based in Pakistan (Annexure D), but also established from disclosure statements of A-6 and A-7 (D-94 and D-95), wherein they disclosed about the email chat ID of A-12 beside others, wherein his name has been mentioned as Huzi. Ld. SPP for NIA further submits that even A-6 and A-7 in their explanation to extracts of their digital devices (D-120 and D-121)

referred to certain files pertaining to A-12 regarding preparation of IED. Beside there is a seizure of certain clothes of A-6 and A-12 from their hideout at Ranchi and that was proved by DNA report (D-209 and D-210) proving that those clothes were of A-12.

190. Ld. SPP for NIA further submitted that investigation has established that A-12 Tehsin Akhtar in pursuance to larger conspiracy while maintaining different names, maintained several hideouts with other operatives of IM including A-2, A-6 and A-24 at Darbhanga, Samastipur etc. It is submitted that evidence collected during investigation show that A-12 used to keep acids and other chemicals for experimentation about explosives, under the guise of practice of Unani medicine. It is submitted by ld. SPP for NIA that statement of different witnesses as well as photo identification by PW-10, PW-8 and PW-24 established that A-12 was staying at Darbhanga in the house of one Shahjahan Khatoon, where he was staying by keeping his Hindu name.

191. Ld. SPP for the NIA further submitted that role of accused in delivery of proceeds of crime is also reflected from the fact that A-12 on the directions of A-10 travelled to house of Mrs. Zahida Khanam, who is wife of A-6 (PW-135) where he delivered a mobile phone purchased by him from Jodhpur Rajasthan, for her communication with A-6 as well as proceeds of terrorism. D-104 has been referred to by ld. SPP for NIA which is seizure of Rs.99,500/- and a mobile phone from PW-135. It is submitted that role of A-12 has been established in larger conspiracy of plotting commission of more terrorist

activities for future attacks including visiting of A-12 in Rajasthan in June 2013 for carrying out recce to identify targets for terrorist activities and to recruit new cadre. Ld. SPP for NIA further relied upon disclosure statements of A-12 (D-188 and D-193) as well as pointing out memo (D-194 and D-201).

192. It is argued by Sh.M.S. Khan, ld. Counsel for A-12 that accused Tahseen Akhtar having already faced prosecution of Sheetla Ghat Varanasi bomb blast case and serial blast of Mumbai beside twin blast at Dilsukh Nagar Hyderabad, wherein charges inter alia for offense of conspiracy as well as being member of a terrorist organization, therefore accused cannot be tried again for similar offences based on similar evidence. It is argued that even otherwise there is no sufficient evidence to show ingredients of offence of conspiracy against A-12. It is also argued that as against A-12 most of the evidence, is confession, disclosure, pointing out memos of A-6 & A-7. Ld. Counsel submits that any confession given by a co-accused cannot be of any relevance as against another co-accused. Ld. Counsel also argued that confession of accused cannot be elevated to the status of substantive evidence and referred to judgment of Apex Court in **Navjot Sandhu's** case (supra), **Hari Charan Kurmi vs. State of Bihar** (1964) 6 SCR 623, **Kashmira Singh vs. State of MP** 1952 AIR 159. It is submitted that for admissible of admission of a co-accused there must be twin tests i.e. (a) accomplice should implicate himself; (b) his confession should prove guilt of accused beyond reasonable doubt. It is submitted that D-186 confession of A-1 as well as D-147 confession of A-6 does not satisfied the above said twin tests and therefore cannot be read

against the accused.

193. Having considered the submissions, A-12 was student of Manu Polytechnic at Darbhanga and as per prosecution case he was motivated and recruited to IM fold by A-6 Yasin Bhatkal. PW-3 Mohd. Abrar Hussain and PW-4 Riyazur Rehman in their statements u/s 161 Cr.P.C. have stated that A-12, during year 2010-11 was attending diploma course and was removed from the college being not studying and left out the studies. Beside those facts it has already come that accused no.12 was involved in bomb blast in Varanasi in December 2010 and serial blasts in Mumbai in July 2011 and thereafter A-12 was staying in a hideout at Darbhanga and Saran Mohanpur with other accused persons A-6 and A-24. This fact has come in the statement of PW-6 Abdur Rehman Sait who has stated that A-12 while staying in Darbhanga hideout had also stored certain acid bottles in the hideout. Beside PW-6, witnesses PW-5 Shakeel Anwar Hashmi, PW-8 Naukej Alam and PW-10 Shahjahan Khatoon have also stated that A-12 used to stay along with A-6, A-7, A-24 as well as others at Darbhanga hideout. There is statement of PW-5, PW-8, PW-10 recorded u/s 164 Cr.P.C. wherein also these witnesses have pointed out towards the accused no.12 and others and also identified the photograph of A-12 and others vide photo identification memo D-4, D-6, D-18 as well as D-19.

194. There is also statement of PW-15 Mohd. Arman Khan who is brother in law of A-6 who states about association of A-12 with A-6, A-7 and others. Similarly, witnesses PW-155 Vakil Marandi and PW-211 Aktal Hawari will prove hideout of

A-6 with A-12 in Ranchi. PW-24 Mohd. Hamdi Ansari in his statement u/s 164 Cr.P.C. has stated that A-6 was involved in preparation of IED and A-12 used to visit Sara Mohanpur hideout for meeting with A-6 and A-7 as well as others.

195. Beside the statements of above discussed witnesses, there are other witnesses also, including PW-277, PW-286, PW-287, PW-290 and PW-303. This court need not to go in detailed elaboration of facts stated by these witnesses, sufficient however it would be to say that perusal of statement of these witnesses would show that A-12 after committing incidents of terrorist activities remained with A-6, A-7 and others in different hideouts. This fact give prima facie indication being involved in larger conspiracy in committing many terrorist activities on behalf of Indian Mujahideen. There are certain important documentary evidence also proving that A-12 was part of larger conspiracy. First of all D-97 i.e. email chat messages panchnama and extracts of email chat (D-92 and D-94) between A-6 and A-10 (who is in Pakistan). In the said chat role and involvement of A-12 in conspiracy is very much reflected. A-12 has been referred as Huji. Beside these, there is confessional statement of A-6 (D-147), wherein A-6 has specifically pointed out the role of A-12 in causing several blasts. Beside this D-120 and D-121 explanation of A-6 and A-7 regarding incriminating files extracted from their digital devices which pertain to A-12 and other accused persons relating to preparation of IED also establish that A-12 being part of conspiracy.

196. Ld. Counsel for accused submitted that confession of co-accused cannot be taken into consideration. The judgments

relied upon by ld counsel for accused are regarding final assessment of evidence and on the question of conviction/ acquittal of the accused, whereas we are at the stage. The appreciation of evidence would be taken consideration later in the trial. At this stage this court is of the view that above evidence can be well taken into consideration and if this evidence is taken into consideration it is find that **there is sufficient evidence available on the record for framing charge u/s 18 of UA(P) Act against A-12**. In view of finding on framing charge for offence u/s 18 of the Act, this court finds that no case is made out for framing charge u/s 120B IPC separately or alternatively.

197. A-12 has been charge sheeted for offence u/s 18A of UA(P) Act which penalizes organizing of camp for imparting training for terrorism. However this court is of the view that there is no sufficient evidence for framing the charge under the said section. Although it came in the chat of A-6 and A-10 regarding sending A-12 for creating Rajasthan module. That indirect reference in the chat, to my mind is not sufficient for charge of section 18A. **Accordingly accused no.12 stands discharged for offence u/s 18A of UA(P) Act**.

198. So far as section 18B of UA(P) Act for which A-12 has also been charge sheeted, such offence require recruiting, causing to recruit a person for commission of terrorist act. In this context confession of A-1 Danish Ansari (D-86) clearly indicate that he repeatedly stated in his confession that it is A-12 Tehsin Akhtar @ Monu who motivated him to join violent jihad and also told him regarding alleged atrocities on Muslims. A-1 has stated in his confession that it is on the persuasion of A-12, he agreed

for joining jihad, initially for '*hizrat*'. Later A-1 joined A-12 and others and even took training from A-24, A-6 and others. Very veracity of such confession would of course would be examined at the stage of trial. But it is sufficient for framing of charge. **As such I find that there is evidence on the record for framing of charge u/s 18B of the Act as against the accused no.12**.

199. There is no evidence however on record regarding harboring, concealing any person known to be terrorist by A-12. Rather evidence is on the record to show that it is A-12 who was kept in hideout and concealed at the house of acquaintance of A-20 in Ranchi. Prosecution has relied upon D-209 and D-210 which is DNA report dated 01.04.2014 showing that clothes recovered from the room at Ranchi, had traces of DNA of A-12. Even if this evidence is taken on the face of it, at maximum it establishes A-12 stayed in the said room at Ranchi and used the clothes recovered from there. Such report of DNA has no much importance beyond that point, to establish charge of offence u/s 19 of the Act. **As such A-12 stands discharged for offence u/s 19 of U(P) Act**.

200. Accused has also been charge sheeted for offence u/s 20 of UA(P) Act. This court has already noted above that despite the fact that there is evidence showing that A-12 was affiliated with banned terrorist organization Indian Mujahideen and for individual incident of terrorist activities, for which A-12 has been involved, accused has also faced the trial for relevant offence including u/s 20 of the Act. However in the present case in the absence of any evidence regarding any separate terrorist activity, **charge u/s 20 of the Act cannot be framed against the**

A-12 in the present case.

201. Charge sheet has also been filed for offence u/s 21 of UA(P) Act. Section 21 of the Act requires (i) accused knowingly holding any property, derived or obtained from commission of any terrorist act; (ii) or acquired through terrorist funds. Thus, the gist of the offence u/s 21 requires a criminal intention/ knowledge of holding or deriving/ acquiring any property either by commission of terrorist act or through terrorist funds. In the present case, prosecution has alleged that A-12 on the directions of A-10 travelled to the house of Zahida Khanam (PW-135/ wife of A-6) and delivered her money which is stated to be proceeds of terrorism.

202. In this regard prosecution is relying upon statement of witness PW-135, chat (Annexure D). Even if these allegations are taken on the face of it, at the most the case of prosecution is that A-12 took the money and handed over the same to wife of A-6 as a courier. That fact in itself does not establish any intention/ knowledge attributable to A-12 that the funds so delivered were derived from commission of terrorist act or were acquired through terrorist funds. No doubt the said statement and other relevant documents were taken into consideration at the time when question of charge u/s 21 of the Act was being considered against A-6. At that time it was noted by this court that A-6 was the relevant person who derived the money from commission of terrorist act, and therefore charge u/s 21 was framed against A-6. However, the case of A-12 is different than that of A-6. No doubt prosecution has also relied upon D-182 seizure memo dated 23.04.2014 to show that a fake voter card by name Girish Chand

Joshi was used by A-6 for Western Union transaction but such document even if taken on the face of it, to my mind is not sufficient for charge u/s 21 against A-12. **Consequently, A-12 is liable to be discharged u/s 21 of the UA(P) Act**.

203. A-12 has also been charge sheeted for offence u/s 39 of UA(P) Act. Essential ingredients of section 39 have already been discussed above. It has already discussed above some of the relevant evidence while deciding the question of charge for different offences. Above discussed evidence to my mind beside other facts also show that A-12 was actively involved in support given to Indian Mujahideen which was terrorist organization, for furthering its activities. **As such accused no.12 is liable to be charged u/s 39 of UA(P) Act**.

204. In view of the evidence as discussed above since A-12 has been involved in different incidents of terrorist activities and has also been involved in conspiracy to commit further such terrorist activities, but for his arrest. **As such there is sufficient evidence showing commission of offence u/s 121 and 122 IPC and he is liable to be charged for said offences.**

A-13 Ariz Khan @ Junaid

205. As per prosecution case Ariz Khan (A-13) was one of the important operative of IM. As per the statement of A-7 Asadullah Akhtar recorded u/s 164 Cr.P.C., he mentioned that deceased IM operative Atif Amin radicalized A-13 and others. A-13 stayed at several hideouts including at Batla House, where encounter took place between Special Cell Delhi Police and IM operatives. As per prosecution case A-13 participated in several

terrorist activities including in bomb blast at Varanasi (at Sankat Mochan Mandir, Railway station and Ghat), bomb blast in three courts of UP, A-13 allegedly planted bombs at Lucknow, as revealed in the statement of A-7 recorded u/s 164 Cr.P.C. A-13 was also involved in Jaipur serial blasts with other IM operatives.

206. Charge sheet has been filed against A-13 while he was absconding (since 2008 after Batla House encounter), for offence u/s 20 of UA(P) Act. A-13 was charge sheeted in second supplementary charge sheet filed on 22.09.2014. However later when this accused was arrested in Batla House case in February 2018, he was arrested by NIA in this case as well. However as a matter of record no supplementary charge sheet was filed after his arrest in 2018.

207. It is matter of record that accused Ariz Khan @ Junaid has already been convicted u/s 302, 307, 174A, 186, 333 IPC u/s 27 Arms Act and sentenced inter alia for capital punishment in Batla House murder case and he is facing trial in bomb blast cases of other States like Rajasthan etc.

208. Ld. SPP for the NIA submitted that statements of witnesses PW-98 P.G. Vaghela of Crime Branch Ahmedabad, PW-106 Shantanu Kumar Singh of ATS Rajasthan and PW-109 Rajesh Kumar Srivastava of ATS Lucknow would establish that accused no.13 has been associated with proscribed terrorist organization IM and committed various terrorist activities. It is further submitted th0at documents D-36, D-37 and D-61 are copy of email received by investigating agencies at Ahmedabad, ATS of Rajasthan and Lucknow respectively, during the investigation of bomb blast incidents in those States. Ld. SPP for the NIA

further referred to confessional statements of A-6 and A-7 (D-147 and D-148) establishing the role of A-13.

209. It is argued by Sh.M.S. Khan, ld. Counsel for A-13 that in case of A-13 Ariz Khan also since that accused has already been facing prosecution in different incidence of bomb blast case and has already been convicted in Batla house case, evidence of that case cannot be used in the present case which is separately registered. Ld. Counsel for accused submits that present case as reflect from charge sheet was registered for alleged larger conspiracy to commit terrorist activities in different parts of India. Therefore the evidence of cases in which accused is already facing prosecution or convicted, cannot be used in the present case even for the charge of conspiracy or any other offence under UA(P) Act. Reliance has been placed on the judgment of **Amitbhai Anilchandra Shah vs. CBI** (2013) 6 SCC 348.

210. Having considered the submissions, as noted above accused Ariz Khan though has been charge sheeted in 2014 but he was arrested later in 2018. NIA has filed the charge sheet against A-13 only for offence u/s 20 of UA(P) Act. As per prosecution case, present case has been registered regarding alleged larger conspiracy hatched by different operatives of Indian Mujahideen for committing terrorist activities other than already committed by them. However in the entire present case there is no evidence showing that there was a particular place on which terrorist activity was to be committed. Section 20 of the Act requires evidence to show accused has been 'active member' of terrorist organization, which is involved in a terrorist activity

as defined u/s 15 of the Act. It is matter of record that accused has faced different charges including u/s 20 of UA(P) Act, in other case. It is to be seen, what fresh evidence has been put forth by prosecution for charge u/s 20 of Act.

211. If we examine evidence put forth against A-13, witnesses PW-98, PW-106 and PW-109 are officers who investigated the individual bomb blasts in Gujarat, Ahmedabad, Jaipur Rajasthan and Lucknow. Their statements also reflect regarding the involvement of A-13 in the cases registered in those States. As such statements of these witnesses do not establish anything new, for the allegations in the present case.

212. Prosecution has also relied upon confessional statement of A-6 Yasin Bhatkal (D-147) recorded in the present case. Perusal of the same does not show direct involvement of A-13 by his name Ariz Khan. There is no reference at all of the name of A-13 in that confessional statement. In that confession statement A-6 referred about Batla House incidence and the facts that after that incidence some of the operatives of IM went underground to escape arrest and that some of the IM operatives celebrated that incidence. These facts, in the present case however does not have relevance or any specific attribution against A-13 to establish any connection of A-13 for present case.

213. Prosecution further relied upon confessional statement of A-7 (D-148), which is recorded in another case i.e. Hyderabad blast case, wherein A-7 is facing the prosecution. Though in that confessional statement name of accused Ariz Khan has been referred to repeatedly being involved in different offences but still this document cannot be taken into

consideration in alone for framing the charge of any offence under UA(P) Act. Confessional of a co-accused can hardly be considered to be a substantive evidence against another co-accused, specifically when same was not recorded in the case in which both those accused were facing the prosecution together. As such material on the record though establish the inculpability of A-13 Ariz Khan in many terrorist activities as well as his association with Indian Mujahideen in respect of incidences of terrorist activities. For which he has faced trial in on one case and facing trial in other, however for allegations in present case, there is no sufficient evidence on the record for framing the charge in this case. **As such accused no.13 is discharged for offence u/s 20 of UA(P) Act**.

A-20 Haider Ali @ Abdullah @ Black Beauty

214. As per prosecution case A-20 Haider Ali was close associate of A-8 Manzar Imam. It is alleged that accused Haider Ali has been most radicalized associate of A-8 Manzar Imam. Haider Ali was inducted in MSF by accused Manzar Imam. Accused Haider Ali was one of the main speaker of Darsh regularly organized by Ujjair Ahmad at Millat library. A-20 and A-9 allegedly used to incite sentiments of participants, on religious lines and used to motivate them to take revenge against Hindus and other communities. A-20 received funds from SIMI members for terrorist activities. After the escape of accused Abu Fazal, from Khandwa jail Madhya Pradesh, A-20 allegedly gave shelter to him at hideouts in Sethio Village and at Imam Lodge Ranchi.

215. As per prosecution case in December 2012 when IM operatives contacted several SIMI operatives, to obtain their assistance at national level, accused Haider Ali became close associate of IM operative Tehseen Akhtar @ Monu (A-12) and visited Darbhanga on several occasions to meet Tehseen Akhtar and interacted with other IM operatives in 2010-11. It established in the investigation that name of accused Haider Ali was also described at Black Beauty (BB) in the chats between A-6 and Riyaz Bhatkal. From the chats it reflected that SIMI operatives in Ranchi including accused Haider Ali and Ujjair Ahmad had sheltered accused Tehseen Akhtar @ Monu. It came in the investigation that accused Haider Ali went missing from his regular place of stay for about two years. This fact is also reflected from education documents of Doranda College showing that he secured 66% marks in MA-I but did not attend classes in MA-II.

216. As per prosecution case A-20 participated in conspiracy and execution of several terrorist incidents including serial blast at Bodh Gaya in July 2013 as well as on 27.10.2013 a bomb blast took place in BJP rally attended by the then CM of Gujarat at Gandhi Maidan in Patna, Bihar. During investigation of Patna blast case role of accused Haider Ali being main conspirator and executor emerged. It revealed that accused Haider Ali was absconding from his normal place of stay and created a new module for committing terrorist activities at Ranchi with one Imtiyaz Ansari @ Tariq (who died in Patna blast case while handling explosives in toilet with others). A-20 was arrested in this case on 02.07.2014. Charge sheet has been filed

against him for offence u/s 120B, 121, 121A, 122 IPC as well as u/s 17, 18, 18B, 19 and 20 of UA(P) Act.

217. Ld. SPP for the NIA submitted that from the statements of different witnesses including PW-181, PW-185 and PW-187 (including D-136, statement u/s 164 Cr.P.C. of PW-185) it would be established that A-20 while being active in SIMI had an association with A-8 Manzar Imam and A-9 and A-20 used to be active in organizing meeting for propagating Jihadi ideology. It is submitted that witnesses PW-189, PW-192 and A-193 would prove the association of A-20 with A-12 Tehseen Akhtar and the fact that A-20 visited Darbhanga to meet him. Ld. SPP for the NIA further referred to statement of Hidaytullah including his statement recorded u/s 164 Cr.P.C. (D-150) to show the objectives of A-8 and A-9 and their association with A-20. Similar is the statement of PW-201 and PW-223 including statements recorded u/s 164 Cr.P.C. (D-151 and D-152) beside statements u/s 161 Cr.P.C. of PW-202, PW-289. Ld. SPP for the NIA also referred to D-264.

218. It is argued by Sh.M.S. Khan, ld. Counsel for A-20 that there is no evidence at all proving A-20 has given shelter to anyone involved in terrorist activity. Ld. Counsel further submits that A-20 has already faced the trial in respect of individual incidence of Bodh Gaya and Patna blast, therefore evidence in those cases cannot be again considered against A-20 as it would be a case of 'double jeopardy'. Ld. Counsel further argued that there is no evidence of A-20 being part of any conspiracy let alone any larger conspiracy as alleged in the present case.

219. While this court take up the case of A-20 firstly for

offence u/s 17 of UA(P) Act. Since it is in the allegations that A-9 Ujjair Ahmad supported terrorist activities and was in touch with A-20 Haider Ali. A-9 while being Incharge of Zakat fund which was meant for helping poor among Muslim community, allegedly withdrew Rs.30,000/- and gave it to Haider Ali in/around July 2013. It is thereafter Bodh Gaya blast and Patna blast happened in July and October 2013, in which A-20 was involved. All the witnesses who have been discussed while considering the case of A-9 Ujjair Ahmd, are relevant herein. Statement of PW-185, PW-187 and others clearly show that it is A-20 Haider Ali collected the funds from A-9. It has already been noted that there is no requirement of law for charge u/s 17 of the Act to lead evidence to show that funds so collected were actually used for committing terrorist activities or not, if there is evidence showing raising/collecting of funds with the knowledge that such funds are likely to be used for commission of terrorist activity. **From the statements referred to above I find that there is prima facie evidence for framing of charge u/s 17 of UA(P) Act against A-20**.

220. A-20 has also been charge sheeted for offence u/s 18 of UA(P) Act. In view of the statement of PW-192 Mohd. Ashraf, PW-193 Mohd. Shahbaz and PW-200 Hidaytullah as well as PW-223 Munam Zahir wherein these witnesses have stated that A-8 and A-9 used to organize Darsh program, in which A-20 had most radical views and used to incite religious feelings on the ground of alleged atrocities on Muslims. These facts coupled with the fact of receiving of funds from A-9, **prima facie show that there is sufficient evidence for framing charge u/s 18 of**

UA(P) Act as against A-20. In view of finding on framing charge for offence u/s 18 of the Act, this court finds that no case is made out for framing charge u/s 120B IPC separately or alternatively.

221. There is also charge sheet u/s 18B of UA(P) Act against A-20, however in the absence of any direct or specific evidence showing A-20 recruiting any person for terrorist act, **A-20 is liable to be discharged u/s 18B of the Act**.

222. A-20 has also been charge sheeted for offence u/s 19 of UA(P) Act. However this court finds that there is no specific evidence to show that it is A-20 who harbored or concealed A-12 (Tehsin Akhtar) having knowledge about him being terrorist or involved in terrorist activities. Although there is one document D-201 which is pointing out memo of A-12 regarding Sethio village, Ranchi where both A-12 and A-20 allegedly stayed in a hideout. This fact however does not attribute anything against A-20 for offence u/s 19 of the Act. **As such for want of requisite evidence, A-20 stands discharged for offence u/s 19 of UA(P) Act**.

223. A-20 has also been charge sheeted for offence u/s 20 of UA(P) Act. However in the absence of any evidence as well as the fact that in the present case there is no evidence of commission of any terrorist activity, **accused no.20 stands discharged u/s 20 of UA(P) Act**.

224. A-20 has also been charge sheeted for offence u/s 121, 121A as well as u/s 122 IPC. It is matter of record that for individual incidents of Bodh Gaya and Patna blast, A-20 has already faced the trial. It is matter of record that A-20 has

already convicted and sentenced for capital punishment in Patna blast case and life imprisonment for Bodh Gaya blast case. Therefore, in the absence of any other evidence, this court finds that A-20 cannot be charged for above mentioned offences of IPC. **Accordingly, A-20 stands discharged for offence u/s 121, 121A, 122 IPC**.

<u>A-24 Zia Ur Rehman @ Wakas @ Javed</u>

225. As per prosecution case accused Zia Ur Rehman @ Wakas who is a Pakistani national, illegally entered in India with Asadullah Akhtar (A-7), when A-7 returned India after taking terrorist training from Pakistan. A-24 as per prosecution was part of larger conspiracy of IM to execute more terrorist activities and for that, he went at Kathmandu around September 2010 where he was received by A-7 and A-12. As per prosecution case A-24 being a Pakistani national, in order to conceal his identity, stayed at several hideouts including at Samastipur, Sara Mohanpur, Mumbai, Delhi, Goa, Belgaum and Mangalore. A-24 allegedly provided training to newly recruited operatives including A-1 Mohd. Danish Ansari.

226. The code name of A-24 was Jad or Wakas in the chats from email ID of A-6 and A-10. A-24 was allegedly in constant communication with other IM operatives and used to receive directions from A-10. Email ID of A-24 being “lahoO@yahoo.com” was revealed by A-6 from his digital device when he was arrested. A-24 was involved in conspiracy/ execution of terrorist activity including at Jama Masjid Delhi (2010), bomb blast at Sheetla Ghat Varananasi, Mumbai serial

blast (2011), Pune serial blast (2012), Hyderabad twin blast (2013). It is alleged that investigation revealed A-20 and A-7 planned for commission of Fidayeen attack and therefore A-24 was engaged in developing new, improvised explosive devices.

227. A-24 was arrested on 05.05.2014 and charge sheet has been filed against him for offence u/s 120B, 121, 121A, 122 IPC as well as u/s 18, 18A, 18B, 20 of UA(P) Act.

228. Ld. SPP for NIA submitted that statements of witnesses including PW-08, PW-10 (including their statements u/s 164 Cr.P.C. D-80 and D-81) and PW-11 would indicate that A-24 stayed with A-6, A-12 and A-1 at Samastipur, Darbhanga hideouts. It is submitted that statement of witness PW-24 would show that A-24 remained busy in preparation of IED and caused bomb blast in Varanasi. Similarly D-6 i.e. pointing out memo also establish the hideouts of A-24 with A-6, A-12, A-1 and A-2.

229. Ld. SPP for NIA further referred to D-86 confessional statement of A-1, implicating A-24. Similarly D-99 has also been referred to which is disclosure statement of A-7 leading to seizure of IED material from Mangalore hideout, where A-24 and A-6 were living. Ld. SPP for the NIA further referred to pointing out memos D-102, D103, explanation memos of A-6 and A-7 (D-120 and D-121), search and seizure memo prepared by SP NIA Hyderabad (D-101) beside confessional statement of A-7 (D-148) implicating A-24 in larger conspiracy. Reference has also been given of D-196 which is pointing out memo of hideouts in Delhi where A-24 stayed with A-7.

230. It is argued by Sh.M.S. Khan, ld. Counsel for A-24 that there is no evidence against the accused for any of the

offences alleged in the charge sheet. It is submitted that no evidence has been collected for proving any conspiracy or commission of a particular terrorist act as required for charge u/s 18 or 20 of UA(P) Act.

231. At the outset certain important aspects regarding A-24 need to be noted for proper assessment of evidence qua him, that A-24 is not citizen of India, he illegally entered in India and has been involved in different incidence of terrorist activities including bomb blast at Hyderabad in February 2013. Regarding that incidence of Hyderabad bomb blast A-24 herein has already been tried and convicted and sentenced for capital punishment.

232. Beside this A-24 has also been involved in Delhi Police Special Cell case FIR No.54/2011 dated 22.11.2011; Mumbai Opera House, Zaveri Bazar serial blast case; another case of Delhi Police Special Cell FIR No.65/2010, 66/2010 and 16/2012 as well as Jama Masjid case.

233. First of all if this court examine the evidence on the record, to see if the charge u/s 18 of UA(P) Act is made out or not, it be noted that as per prosecution allegations A-24 has been involved in larger conspiracy of IM to execute many terrorist activities beside the terrorist activities in which he had been already involved. He has been in Hyderabad bomb blast case in which he has already been convicted. As per prosecution almost in every terrorist activity it is A-24 who used to prepare IED (Improvised Explosive Device) for executing bomb blasts. It is came in confessional statement of A-1 (D-86) that he had seen accused Zia ur Rehman @ Wakas experimenting test blasts and firing with fire arms. A-1 further stated in D-86 that A-24 has

been preparing IED and had given training to him (A-1) with the help of air gun for carrying out terrorist activity.

234. Beside D-86 witness PW-24 Mohd. Hamdi Ansari in his statement has stated that during year 2010 while accused persons including A-24 were staying in the room at Sara Mohanpur, on one occasion when he went to the room he saw accused Wakas (A-24) was busy with some electronic circuit whereas Danial was busy in laptop. Witness further stated that he noticed that Wakas was doing something on the mother board like circuit with a LED light on it and was checking the passing of currents on said circuit.

235. It be noted that at the time when A-24 along with other co-accused including A-6 and A-1 etc. had taken hideout at Sara Mohanpur, A-24 had already been involved in Jama Masjid firing incidence of September 2010 when he along with A-7 Asadullah executed firing on foreign tourists near Jama Masjid mosque and was escaping from coming into the clutches of enforcement agencies. In year 2010 itself A-24 was also involved in the bomb blast of Sheetla Ghat Varanasi took place in December 2010. It is again matter of record that A-24 was also involved in Mumbai serial blast in July 2011 and then in Pune blast in August 2012.

236. In their statements witnesses PW-8 Naukhaj Alam, PW-10 Shahjahan Khatoon, PW-11 Ajmat Ansari have also stated that during 2010 accused Imran (A-6), Tehseen (A-12), Wakas (A-24) had taken room in Sara Mohanpur and stayed there. One can easily make out from the statement of witnesses as referred to above that A-24 along with other accused persons were staying

in the room as a hideout to escape from enforcement agencies. It is during their hideouts A-24 has been developing IEDs. It is also matter of record that later name of A-24 was also found involved in Hyderabad bomb blast committed in February 2013.

237. Above said facts get corroboration from document D-99 which is recovery of certain articles to be used for IED/ explosives like Ammonium Nitrate fuel oil, Ideal Power 90 Gel Explosive etc. recovered from the house of Dr.Umar N. in Mangalore, pursuant to disclosure statement of A-7 Asadullah Akhtar recorded during the investigation of this case. This document needs to be read along with witness PW-162 who along with NIA team had visited the house from where above said recovery of bottles containing fluids, explosives etc. was effected. As per PW-162 in that room A-24 was living by name Nabeel Ahmad along with Asadullah Akhtar @ Haddi during November 2011.

238. Above said recovery must be read with search and seizure memo dated 06.09.2013 and 07.09.2013 as well as 16.09.2013 which are D-101, D-100 and D-117 respectively vide which certain IED material was seized from hideout of A-6, A-7 and A-24 in Hyderabad, Mangalore and Goa. Such recovery was effected during the investigation of this case itself. There is also photo identification memo D-119 wherein photos of A-7, A-6 and A-24 were identified by house owner of hideout in Goa. In Goa A-24 was staying in the hideout by his name as Nabeel Ahmad.

239. Beside the above said evidence, there is also a disclosure statement of A-24 Zia ur Rehman dated 15.05.2014 (D-195), wherein he has disclosed regarding his hideouts at

different places at Samastipur, Delhi, Goa, Mangalore etc. and in pursuance thereto pointed out the places of hideout in Delhi (D-196).

240. Above discussed evidence and continuous involvement of A-24 involved in different terrorist activities clearly show that A-24 was part of larger conspiracy of IM in executing more terrorist activities and was in preparation for the same. **As such, A-24 is liable to be charged u/s 18 of UA(P) Act**. In view of finding on framing charge for offence u/s 18 of the Act, this court finds that no case is made out for framing charge u/s 120B IPC separately or alternatively.

241. A-24 has also been charge sheeted for offence u/s 18A of UA(P) Act which penalize for organizing a terrorist camp. Section 18A provides that whoever organizes camp for imparting training in terrorism is liable to be punished u/s 18A of the Act. In the present case D-86, confessional statement of A-1 Danish Ansari states in specific terms that he was given training by A-24 for terrorist activities. **As such A-24 is also liable to be charged u/s 18A of the Act.**

242. A-24 has also been charge sheeted for offence u/s 18B of UA(P) Act which penalizes recruiting any person for commission of terrorist act. In the present case however there is no evidence at all showing that it is A-24 who recruited anyone either in the fold of IM or independently for carrying out terrorist activities. **As such A-24 cannot be charged u/s 18B of the Act**.

243. Prosecution has also put section 20 of UA(P) Act against A-24. Although there is sufficient evidence showing that accused was associated with Indian Mujahideen and therefore

has committed different terrorist activities along with other accused persons of IM. However admittedly in the investigation of the present case, there is no incidence of terrorist activity. As such this court finds that all the ingredients of section 20 of the Act are not fulfilled. Consequently **A-24 stands discharged u/s 20 of the Act**, however **I find that there is enough material available on the record for framing the charge u/s 38(2) and 39(2) of UA(P) Act**.

244. In view of the evidence as discussed above since A-24 has been repeatedly involved in different incidence of terrorist activities carried out to wage war against Government of India. Evidence has also been collected regarding collecting of ammunition, explosives etc. for terrorist activities, **therefore A-24 is liable to be charged u/s 121 and 122 of IPC**.

<u>A-30 Abdul Wahid Siddibappa @ Abdul Wahid @ Khan</u>

245. Name of A-30 Abdul Wahid Siddibappa came in third supplementary charge sheet. A-30 was arrested during the investigation of this case on 20.05.2016 at IGI Airport. As per prosecution case A-30 was channelizer of funds received from IM operatives in Pakistan via Dubai for use of IM operatives based in India for conducting terrorist activities. As per prosecution case investigation revealed that A-30 attended IM meeting in a flat at Sharjah, in that meeting absconding accused based in Pakistan or elsewhere namely Iqbal Bhatkal, (A-11), Atif @ Mota Bhai (A-22), Saleem Ishaqui (A-21), Sultan Armar (A-25), Mohd. Hussaini Farhan (A-27), Shafi Armar (A-26) and one Pakistani doctor were present. That meeting was aimed to

assign specific role to IM operatives. In that meeting A-30 was assigned the task of channelizing the funds received from Pakistan to India via Dubai, while A-30 was stationed at Dubai, UAE.

246. As per prosecution case A-30 used to propagate messages of violent jihad from his hometown Bhatkal. He is brother-in-law of A-10 and A-29. A-30 has been allegedly a highly radicalized. Role of A-30 regarding channelizing funds from Pakistan to India via Dubai, surfaced during the disclosure of A-6. Name of A-30 appeared in the chat between A-6 and A-10, where his name has been mentioned as 'Khan'. Charge sheet against this accused has been filed for offence u/s 120B IPC as well as u/s 17, 18, 20, 38(2) and 39(2) of UA(P) Act.

247. Ld. SPP for the NIA submitted that A-30 was most instrumental cadre of IM in channelizing terror funds through hawala transactions from Dubai and this fact is reflected from statement of PW-362 to PW-365. Ld. SPP for NIA further referred to email chat extract between A-6 and A-10 (D-97), where name of A-30 has been referred as Khan. Ld. SPP for NIA further referred to D-159, D-161, D-172 and D-173 which are Western Union letters to prove that funds from abroad were channelized.

248. Having gone through the written submission filed by counsel for A-30 as well as heard Sh.M.S. Khan, who submitted that A-30 was arrested when he landed in India from UAE. It is submitted that prosecution is relying upon disclosure statement of A-6 (D-279), pointing out memo D-280, D-281 identification memo and certain witnesses. It is argued that there is no

evidence at all, admissible in law which can be considered of charge for any of the offence against A-30. It is submitted that document D-279, D-280 and D-281 are not admissible document as a disclosure statement recorded while being in police custody, is not admissible u/s 27 of Evidence Act unless there is consequent discovery of some material fact. Whereas in the present case no material has been placed on record to substantiate the allegation against the accused either regarding alleged conspiracy or regarding transfer of funds etc. or regarding recruiting/ radicalizing anyone or forging and creating a fake identity.

249. Ld. Counsel further argued that D-230 is a pointing out memo of places on Google Earth Application regarding the places where meeting was conducted or money was transferred through hawala operators or places of rented house of co-accused etc. Such pointing out of Google Map, in itself is not a substantive evidence for even prima facie establishing any of the offence alleged. It is also argued that D-281 is photo identification, wherein A-30 was showing 20 photos out of which he identified 10 persons. Even such evidence, as per ld. Counsel is not admissible when such pointing out memo or identification of photographs is being done while being in police custody and not corroborated by any other material. It is submitted that it is also not case of prosecution that those photographs were got recovered at the instance of accused. Such photographs were already available with the agency, as such same can be of hardly any legal relevance or admissibility under Evidence Act.

250. Having considered the submissions since it is the

one of the accusation against the accused that A-30 being one of the important cadre of IM was given responsibility to channelize funds received from Pakistan and he used to send it to India through hawala for terrorist activities of IM. On the face of it accusation being serious. Let us see if prima facie offence u/s 17 of UA(P) Act have been made out or not. Necessary ingredients of section 17 have already been discussed above and need not to be repeated here.

251. If we examine the statement of different witnesses, first witness is PW-362 Javed Ahmad who stated that he knew accused Abdul Wahid Siddibappa since year 2002 when he told his father that he has done "hafiz" and also worked as Imam of a Masjid. PW-362 also stated that A-30 was very aggressive and ready to fight with others on petty issues. PW-362 has also stated that in year 2005-06 A-30 went to Dubai for earning his livelihood and used to visit Bhatkal on certain occasions. Witness stated that he had also visited Dubai and met with A-30 there when he was along with one Anwar Hussain @ Noor, Atif @ Mota and few other persons of Bhatkal town.

252. PW-362 went on to state that during his interaction A-30 was being described as Khan. Witness states that during his stay his brother Altaf told him that A-30 was member of a terrorist organization IM and adopted path of violent Jihad and that his brother Altaf scolded A-30 for radicalizing him for joining violent Jihad. Witness states that some of the mates of bachelor house also told him during his stay that A-30 developed close association with Ahmad Zarar Sidibappa (A-6), Anwar Husssain @ Noor (A-29) and Atif @ Mota (A-22) who were

members of terrorist organization IM.

253. If we consider such statement of PW-362, when he stated certain material aspects regarding A-30 involved in violent Jihad, and that he was associated with A-6, A-29, A-22, who were members of IM. All these facts stated by PW-362 are not of his first hand information as he in his statement stated that his brother told him or roommates of bachelor house told him. As such, such facts are hearsay for witness PW-362 and therefore cannot be taken as a substantive statement for the purpose of charge.

254. PW-362 then further states in his statement that during 2009-10 he had a telephonic conversation with A-20 and witness tried to convince him to appear before security agencies and get himself cleared. PW-362 says that instead of surrendering to security agencies, A-30 absconded from Bhatkal and went to Dubai. This court finds that such portion of statement of PW-362 may be direct statement but does not establish anything except that A-30 went to Dubai instead of joining the investigation.

255. There is also statement of two witnesses PW-365 Mohd. Obaid Kola who is stated to be owner of a firm/ company by name Muzaffar Kola Enterprises in Dubai which was involved in hawala business. PW-365 states that A-30 started working as driver for him and over the passage of time he observed that A-30 was heavy radicalized bent of mind and used to quote certain verses of Holy Quran relating to Jihad in Islam. PW-365 also stated that Anwar Hussain @ Noor was very much associated with A-30 who was member of Indian Mujahideen and A-30 used

to raise issue of Babri masjid, Gujarat riots and other atrocities on Muslims. PW-365 also stated that on few occasions Abdul Wahid sent money to his wife at Bhatkal through hawala channel and later in 2013 he came to know from open source that A-30 was cadre of IM and involved in channelizing funds from Dubai.

256. Similar is the statement of PW-363 Abdul Mateen who was also Manager in the above said firm involved in hawala business in Dubai.

257. Now taking the statement of above mentioned witnesses. First of all it be noted that these witnesses are based in Dubai. These witnesses themselves are involved in hawala business. If their statement is taken on the face of it, maximum what comes in the judicial cognizance from these statements is that name of A-30 was also used as "Khan" and that he was working as a driver with PW-365 who had a business of hawala transaction in Dubai and on certain occasions A-30 sent money through hawala to his wife at Bhatkal. This statement in itself does not establish the offence u/s 17 of the Act even prima facie because mere sending of money through hawala, may be illegal but does not establish commission of offence of Section 17 as it requires raising of funds with the knowledge that such funds are to be used or likely to be used by terrorist organization or for commission of terrorist act. From the reading of PW-365 he simply stated that A-30 sent money to his wife. That in itself does not show that money was sent for terrorist act or sent to any terrorist organization. Moreover PW-363 Abdul Mateen has not stated anything in this regard.

258. Both PW-365 and PW-363 although stated that A-30

was having a radicalized outlook and used to recite verses of Holy Quran referring of Jihad in Islam and that used to raise issues of atrocities on Muslims like Babri masjid demolition, Gujarat riots etc. There is another witness PW-364 Abdul Basit who also stated about A-30 that he was a radicalized person and used to raise issues of alleged Muslim atrocities and once seen the news of bomb blast on TV, A-30 stated to have told witness that those who committed bomb blast are real Muslims and that witness had seen A-30 with A-29, who is brother in law of A-30 as sister of A-30 was married with A-29 and PW-364 says that he came to know from open source that A-30 was member of IM.

259. Facts as stated by these witnesses, even if taken on the face of it, though show that thought, ideas and approach of A-30 was not on correct side of law and was fundamentalist. This however being an individual approach of a man, in the absence of any supporting material, to my mind are not sufficient for proving Section 17 of the Act.

260. Prosecution has further relied upon the chat (Annexure D) between A-6 and A-10 which has been reproduced in the third supplementary charge sheet filed against A-30. Now if we go through the contents of the chat, there is a reference regarding sending of Rs.40,000/- initially mentioned to have been sent by one Roshan. Later in the chat it is mentioned that "Khan bhejta hai" etc. These extracts of the chat even if taken on the face of it, does not connect sending of money to either IM or any terrorist or any terrorist organization and that sending of the money is for commission of any terrorist activity. Even if it is assumed that the person referred as 'Khan' in chat is none else

than A-30 though there is no connecting evidence except statement of certain witnesses saying that A-30 was also described as Khan. This fact in itself does not connect the chat with A-30. As expression 'Khan' is used very common.

261. **Thus for the reasons as noted above this court finds that there is no sufficient evidence for framing of charge u/s 17 of UA(P) Act**.

262. Now taking up the provisions of Section 18 of UA(P) Act agitated against him. As already discussed above necessary ingredients for proving the charge of conspiracy. In the discussion of evidence, prosecution has put forth against A-30 as above, taking that evidence on the face of it, it does not establish even by remote manner that there was any prior meeting of mind or any concert for commission of a terrorist activity or involvement of A-30 in preparatory acts to commit terrorist activity. Although it is in the allegations that at Sharjah in a rented room a meeting of many operatives/cadres of Indian Mujahideen had held, in which specific role was assigned to different IM operatives.

263. However for proving such meeting having been held in Sharjah, only evidence put forth is pointing out memo/Google Plotting (D-280). Although ld. SPP for NIA rightly stated that agency cannot collect any direct evidence of any such meeting held in a country like Sharjah except the evidence of Google Plotting. But this court is of the considered view that if specific accusation has been made in the charge sheet, it is required to be proved by substantive evidence and not only on the basis of an evidence which is of least evidentiary value and essentially based

on presumption. **As such there is insufficient evidence for framing the charge u/s 18 of UA(P) Act or u/s 120B IPC**.

264. Similarly this court also finds that necessary ingredients of Section 20 of UA(P) Act are not proved as against A-30 as there is no other involvement of A-30 in any incidence of terrorist activity and evidence against him in the present case as discussed above, does not by any stretch of imagination establish even prima facie ingredients of section 20. **As such A-30 stands discharged for that offence u/s 20 of UA(P) Act as well**.

265. In the facts and circumstances and the evidence as discussed above in the absence of any material proving sending of money, any act of association with IM or any act of supporting the activities of IM, even if certain witnesses having stated that they have come to know from "open source" that A-30 was associated with IM, is more hypothetical than based on any concrete material. Prosecution has also referred to in para 17.10 of third supplementary charge sheet wherein it is stated that from the data extracted from digital items of A-6, contact number of A-30 in encrypted form was recovered.

266. Although recovery of contact number of A-30 in the digital device of A-6, saved in encrypted manner though creates doubt towards the association of A-30 with IM. But that fact in my considered view in the absence of other direct evidence of association of A-30 with IM, **is not sufficient for proving the charge u/s 38(2) and 39(2) of the UA(P) Act. As such A-30 stands discharged for these offences as well**.

Conclusion

267. In view of discussion made above, accused are charged/discharged for the offences as under :

Name of accused with No.	Offencs for which charge framed	Offences for which charge not framed
A-1 Md. Danish Ansari @ Abdul Wahab @ Saleem @ Abdullah	U/s 18, 38(2), 39(2) UA(P) Act	U/s 20 UA(P) Act
A-2 Mohd. Aftab Alam @ Farooq @ Shaikhchilli @ Hafij Ji	U/s 19, 38(2), 39(2) UA(P) Act	U/s 18, 20 UA(P) Act
A-3 Imran Khan @ Zakaria @ Saleem @ Fazal @ Tabrez @ Raj @ Patel	U/s 38(2), 39(2) UA(P) Act	U/s 18, 18B, 20 UA(P) Act
A-4 Syed Maqbool @ Zuber	U/s 38(2), 39(2) UA(P) Act	U/s 18, 18B, 18A, 20 UA(P) Act
A-5 Obaid Ur Rehman	U/s 38(2), 39(2) UA(P) Act	U/s 18, 18B, 19, 20 UA(P) Act
A-6 Mohd. Ahmad Siddibappa @ Yasin Bhatkal @ Imran @ Asif @ Shahrukh	U/s 18, 18A, 18B, 21, 38(2), 39(2), 40(2) UA(P) Act & u/s 121, 122 IPC	U/s 20 UA(P) Act
A-7 Asaudullah Akhtar @ Haddi @ Daniel @ Tabrez @ Asad	U/s 18, 38(2), 39(2) UA(P) Act & u/s 121, 122 IPC	U/s 18A, 18B, 20, 21, 40(2) UA(P) Act
A-8 Manzar Imam @ Zamil @ Abbu Hanifa	**DISCHARGED**	**DISCHARGED**
A-9 Ujjair Ahmad	U/s 17, 18 UA(P)	U/s 19, 38(2), 39(2),

@ Ozair	Act	40(2) UA(P) Act
A-12 Md. Tehsin Akhtar @ Monu @ Hasan	U/s 18, 18B, 39 & u/s 121, 122 IPC	U/s 18A, 19, 20, 21 UA(P) Act
A-13 Ariz Khan @ Junaid	**DISCHARGED**	**DISCHARGED**
A-20 Haider Ali @ Abdullah @ Black Beauty	u/s 17, 18 UA(P) Act	u/s 18B, 19, 20 UA(P) Act & u/s 121, 121A, 122 IPC
A-24 Zia Ur Rehman @ Wakas @ Javed	U/s 18, 18A, 38(2), 39(2) UA(P) Act & u/s 121, 122 IPC	U/s 18B, 20 UA(P) Act
A-30 Abdul Wahid Siddibappa @ Abdul Wahid @ Khan	**DISCHARGED**	**DISCHARGED**

268. Since A-8 Manzar Imam, A-13 Ariz Khan and A-30 Abdul Wahid Siddibappa @ Abdul Wahid have been discharged for all the offences, they are directed to be released forthwith if not required in any other case. These accused are also directed to furnish bail bonds in the sum of Rs.50,000/- with one surety each in like amount in terms of Section 437A Cr.P.C.

269. Let charge for above said offences against concerned accused be framed.

Announced in open court
on 31.03.2023

(Shailender Malik)
ASJ-03, New Delhi Distt.
Patiala House Court, Delhi