



2024:DHC:4113-DB



- * **IN THE HIGH COURT OF DELHI AT NEW DELHI**
- % Judgment reserved on: 08.05.2024
Judgment delivered on: 20.05.2024
- + **CRL.A. 53/2023**
BILAL AHMAD MIR ALIAS BILAL MIR ALIAS BILLA
..... Appellant
- versus
NATIONAL INVESTIGATING AGENCY NEW DELHI
..... Respondent
- + **CRL.A. 54/2023**
SAJAD AHMAD KHAN ALIAS SAJJAD AHMED KHAN
ALIAS SAJJAD AHMAD KHAN SAJJAD Appellant
- versus
NATIONAL INVESTIGATING AGENCY NEW DELHI &
ANR. Respondents
- + **CRL.A. 56/2023**
MUZAFFAR AHMAD BHAT ALIAS MUZAFFAR BHAT
..... Appellant
- versus
NATIONAL INVESTIGATING AGENCY NEW DELHI
..... Respondent
- + **CRL.A. 57/2023**
MEHRAJ UD DIN CHOPAN ALIAS MEHRAJ Appellant
- versus
NATIONAL INVESTIGATING AGENCY NEW DELHI &
ANR. Respondents
- + **CRL.A. 181/2023**
ISHFAQ AHMAD BHAT ISHFAQ BHAT ISHFAQ
..... Appellant
- versus
NATIONAL INVESTIGATION AGENCY NEW DELHI
..... Respondent

**Memo of Appearance**

For the Appellants: Ms. Nitya Ramakrishnan, Senior Advocate with Mr. Ashwath Sitaraman, Ms. Bedotroyi Gupta and Ms. Stuti Rai, Advocates in CRL.A. 53/2023, 54/2023, 56/2023 & 57/2023
Mr. Kunal Malik, Advocate in CRL.A.181/2023

For the Respondents: Mr. Gautam Narayan, SPP with Ms. Asmita Singh, Advocate and Ms. Zeenat Malik, PP, Mr. Harshit Goel, Mr. K.V. Vibhu Prasad, Advocates and Insp. Rakesh Rohan, for NIA.

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE MANOJ JAIN****MANOJ JAIN, J**

1. "Just Deserts" is the question posed to us.
2. There are five appeals before us.
3. All the appellants were arraigned as accused in case RC No.08/2019/NIA/DLI. When the learned Trial Court heard arguments and ascertained the charges, they all pleaded guilty.
4. They were accordingly convicted for various offences under IPC¹ and UAPA².
5. Arguments on sentence were heard and they all were sentenced vide order dated 28.11.2022.
6. Such order, related to quantum of sentence, is under challenge before us.
7. We may highlight right here that in four appeals³, the appellants

¹ Indian Penal Code, 1860

² Unlawful Activities (Prevention) Act, 1967

³ CRL.A. 53/2023, 54/2023, 56/2023 & 57/2023



have challenged the extent of the sentence and have no grievance or concern with respect to the fact that they had voluntarily pleaded guilty before the learned Trial Court.

8. However, with respect to appellant Ishfaq Ahmad Bhat (A-7), when the appeal was filed under Section 21 of the National Investigation Agency Act (NIA Act), he challenged the legality of conviction as well, contending that the Trial Court had proceeded on the alleged plea of guilt in a mechanical manner. He asserted that when application under Section 229 of Cr.P.C. was moved before the learned Trial Court, it was, in essence a plea of guilt by way of plea bargaining. According to him, the conviction was not sustainable on the basis of such plea of guilt. Fact, however, remains that during course of consideration of the appeal, additional affidavit was filed stating therein that the appellant was no longer desirous of challenging his plea of guilt and consequent conviction and that he was confining his appeal to the extent of sentence qua those offences for which he had been given life sentence.

9. The present appeals are under Section 21 of National Investigation Agency Act (NIA Act) and are in the nature akin to one mentioned in Section 375 Cr.P.C. which specifies that if any accused pleads guilty and is convicted on the basis of such plea of guilt, there shall be no appeal, except as to the extent or legality of the sentence.

10. Thus, the scope of all the aforesaid appeals is very limited in sphere and only the aspect related to the extent or legality of the sentence is required to be seen, the prayer being that they be given



minimum sentence for offence under Section 121A IPC and in relation to appellant Muzzafar Ahmed Bhat, for offence under Section 23 UAPA as well. In other words, it needs to be seen whether the sentence for said offences is unduly harsh, as contended by the appellants.

11. The question of plea of guilt, not being voluntary, is not tenable even otherwise.

12. When arguments on charge were heard, all the appellants conceded to such charges. Eventually, when the charges were ascertained vide order dated 03.09.2022, the learned defence counsel informed the court that they all wanted to plead guilty.

13. A specific application in terms of Section 229 Cr.P.C. was also moved seeking to plead guilty, stating therein, that the accused were remorseful for the alleged acts and voluntarily seek to plead guilty, without any pressure or coercion and that they had also duly understood the consequences of their pleading guilty to the different charges. Learned Trial Court, vide order dated 24.09.2022 apprised them that they were under no obligation to plead guilty and could still claim trial, as per law. They were also made aware in vernacular that if they insisted for pleading guilty, they could be straightaway held guilty and could be sentenced to the maximum of the punishment prescribed under offences for which they had been charged. However, they remained firm.

14. Learned Trial Court, and rightfully so, gave them time for reflection and when the matter was taken up on 01.10.2022, they,



again, persisted in their such plea.

15. The charges were framed on 01.10.2022 and the contents thereof were duly explained, separately to all of them, with the prescribed sentences under the law. After understanding such accusation, contents of charges and the sentence prescribed for such offences, the appellants pleaded guilty to all such charges. Their such plea of guilt was recorded in the presence of their counsel, who also countersigned on the charges, in token of the fact that all the appellants had pleaded guilty voluntarily and had understood the consequences arising therefrom.

16. It was in the aforesaid backdrop that all the appellants have been convicted and sentenced.

17. Since the contentions raised before us are identical in nature and since all these appeals emanate from same case, we intend to dispose of all these appeals by this common judgment.

18. The Appellants, who have spent almost four years in prison, challenge the legality and extent of the sentence with respect to those offences for which they have been given maximum sentence i.e. imprisonment for life. Ms. Nitya Ramakrishnan, Learned Senior Counsel and Sh. Kunal Malik, learned Counsel for appellants have, very fairly, confirmed the same.

19. We do appreciate that the learned Trial Court had, in the best possible manner, made the appellants aware about the accusation, consequences of plea of guilt and about the extent of sentence. They were also told that they were under no legal obligation to plead guilty.



They were also given time for reflection and since they were, all along, represented by counsel, before the learned Trial Court, there is no possibility of raising any grievance or resentment qua aspect related to conviction.

20. The prime contentions of the appellants are as under: -

- a. *Sentencing requires application of mind to several factors, including possibility of reform, family circumstances etc. The impugned order of sentence shows no reasoning, except for the seriousness of the offence. It, nowhere, talks about any possibility of reform.*
- b. *It does not take into consideration their young age, their antecedents, their background and have been sentenced to life, thereby jeopardizing any chance of their rehabilitation and joining mainstream.*
- c. *The impugned order on sentencing merely refers to, but does not analyse, the nature of conduct in jail or socio-economic factors.*
- d. *The grant of maximum punishment, given under Section 121A of the IPC, is nothing but perverse and absurd.*
- e. *Even in terror cases, a distinction needs to be drawn between a mastermind and a mere follower, and the latter should be dealt with more leniently. Even as a gesture of normalisation in Kashmir affairs, it would have been just and proper to have awarded less than the maximum, particularly when no actual violence had occurred and it remained a case of mere conspiracy, with no terror act committed for which they could have been made liable.*

21. Reliance has been placed by the appellants on *Mohd. Maqbool*



*Tantray vs. State of Jammu and Kashmir*⁴; *Bishnu Prasad Sinha and Another vs. State of Assam*⁵; *Gurdeep Singh Alias Deep vs. State (Delhi Admn.)*⁶.

22. NIA has, whereas, refuted the above contentions. Sh. Gautam Narayan, learned SPP has vehemently asserted as under: -

- i. *The limited scope of the present appeal is the reduction of sentence but there is no ground to interfere as the Ld. Special Judge has taken into account all the relevant factors at the stage of sentencing*
- ii. *Appellants were highly radicalised Over Ground Worker (OGW) of Jaish-e-Mohammed (“JeM”), a proscribed terrorist organisation under the First Schedule of the UAPA which had carried out several terrorist acts in India.*
- iii. *Ld. Special Judge had requisitioned the socio-economic impact report pertaining to the appellants and noted both mitigating factors, namely, their age and their family background and gravity and enormity of the accusation. Apart from Section 121A, IPC, the Ld. Special Judge has not imposed maximum sentence for any other offence.*
- iv. *It was not a case for showing any undue sympathy which would have rather sent a wrong signal.*
- v. *Keeping in view the twin-objectives of deterrence and correction, the reduction of the sentence might result in their joining militancy, once again, after being released.*

23. Sh. Gautam Narayan, learned SPP has relied on *Mohd. Jamiludin Nasir vs. State of West Bengal*⁷; *State of Madhya Pradesh*

⁴ (2010) 12 SCC 421,

⁵ (2007) 11 SCC 467

⁶ (2000) 1 SCC 498

⁷ (2014) 7 SCC 443



*vs. Udham & Ors.*⁸; *State (Govt. of NCT of Delhi) vs. Sonu*⁹; *State of MP vs. Saleem*¹⁰; *Soman vs. State of Kerela*¹¹; *State of Rajasthan vs. Mohan Lal & Anr.*¹²; *X vs. State of Maharashtra*¹³.

24. Before appreciating the rival contentions, let us note the sentences meted out to them. The following chart shall depict the same.

S.No.	Accused	Conviction under section	Maximum sentence	Sentence imposed
1.	A3-Bilal Ahmad Mir (CrI A No. 53/2023)	18, UAPA	Life with fine	5 years RI with Rs. 1,000 fine (SI for 1 year in case of default)
		38, UAPA	10 years or fine or both	5 years RI
		39, UAPA	10 years or fine or both	5 years RI
		120 B IPC and 4, Explosive Substances Act 1908 (ESA) r/w 120B, IPC	Life with fine	5 years RI and fine of Rs. 1,000 (SI of 1 year in case of default in payment)
		5 ESA r/w 120B, IPC	10 years with fine	
		121A, IPC	Life with fine	Life with fine of 2,000 (SI of 2 years in case of default in payment)
2.	A1-Sajjad Ahmad Khan (CrI.A.No.54 /2023)	18, UAPA	Life with fine	5 years, RI with Rs.1,000 fine (SI for 1 year in case of default)
		18B, UAPA	Life with fine	5 years, RI with Rs. 1,000 fine (SI for 1 year in case of default)
		38, UAPA	10 years or	5 years RI

⁸ (2019) 10 SCC 300

⁹ 2019 SCC OLine Del 11259

¹⁰ (2005) 5 SCC 554

¹¹ (2013) 11 SCC 382

¹² (2018) 18 SCC 535

¹³ (2019) 7 SCC 1



			fine or both	
		39, UAPA	10 years or fine or both	5 years RI
		120 B IPC and 4, ESA r/w 120B, IPC	Life with fine	5 years RI and fine of Rs. 1,000 fine (SI for 1 year in case of default in payment)
		5 ESA r/w 120B, IPC	10 years with fine	
		121A, IPC	Life with fine	Life with fine of 2,000 (SI of 2 years in case of default in payment)
3.	A4-Muzzaffar Ahmad Bhat (Crl. A No. 56/2023)	18, UAPA	Life with Fine	5 years RI and fine of Rs. 1,000 (SI for 1 year in case of default in payment)
		23, UAPA	Life with fine	Life and fine of Rs. 2,000 (2 years SI in case of default)
		38, UAPA	10 years or fine or both	5 years RI
		39, UAPA	10 years or fine or both	5 years RI
		4, ESA	Life with fine	10 years RI and fine of Rs. 2,000 (SI for 2 years in case of default)
		121 A, IPC	Life with fine	Life with fine of Rs. 2,000 (SI for 2 years in case of default)
		122, IPC	Life with fine	10 years RI and fine of Rs. 1,000 (SI for 1 year in case of default)
		120 B IPC	Same as for abetment of the offence which is the object of the conspiracy	5 years RI and fine of Rs.1,000 (SI for 1 year in case of default)
4.	A11-Mehraj-ud-Din Chopan (Crl. A. No. 57/2023)	18, UAPA	Life with fine	5 years and fine of Rs. 1,000 (SI for 1 year in case of default)
		38, UAPA	10 years or fine or both	5 years RI
		39, UAPA	10 years or fine or both	5 years RI
		4, ESA	Life with fine	10 years RI and fine of Rs. 2,000 (SI of 2 years in case



				of default in payment)
		5, ESA	10 years with fine	10 years RI and fine of Rs. 2,000 (SI of 2 years in case of default in payment)
		121A, IPC	Life with fine	Life and fine of Rs. 2,000 (SI for 2 years in case of default in payment)
		120B, IPC	Same as for abetment of the offence which is the object of the conspiracy	5 years RI and fine of Rs. 1,000 (SI for 1 year in case of default)
5.	A7-Ishfaq Ahmad Bhatt (Crl. A. No. 181/2023)	18, UAPA	Life with Fine	5 years RI and fine of Rs. 1,000 (SI for 1 year in case of default)
		19, UAPA	Life with Fine	5 years RI and fine of Rs. 1,000 (SI for 1 year in case of default)
		38, UAPA	10 years or fine or both	5 years RI
		39, UAPA	10 years or fine or both	5 years RI
		121 A, IPC	Life with Fine	Life with fine of Rs. 2,000 (SI for 2 years in case of default)
		120 B, IPC	Same as for abetment of the offence which is the object of the conspiracy	5 years RI and fine of Rs. 1,000 (SI of 1 year in case of default)

25. A bare perusal of the aforesaid chart would, distinctly, reveal that there were many offences which attracted life sentence but despite that learned Trial Court awarded sentence of rigorous imprisonment of five years for most such offences. Reference be made to sentences imposed for commission of offences under Section 18, 18B, 19 of UAPA and Section 4 of ESA. As regards Section 122 IPC, though the maximum sentence was life, the concerned appellant has been awarded



RI for 10 years, besides fine.

26. Obviously, the issue seems to be concerning Section 121A IPC and Section 23 UAPA.

27. All the appellants have been held guilty for offence under Section 121A IPC. Said penal Section reads as under: -

“121A. Conspiracy to commit offences punishable by Section 121-
“Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

28. As far as Section 23 UAPA is concerned, only appellant Muzaffar Ahmad Bhat (A-4) has been held guilty and sentenced to life imprisonment. Section 23 UAPA reads as under: -

“23. Enhanced penalties.- (1) *If any person with intent to aid any terrorist or terrorist organisation or a terrorist gang contravenes any provision of, or any rule made under the Explosives Act, 1884(4 of 1884) or the Explosive Substances Act, 1908(6 of 1908) or the Inflammable Substances Act, 1952(20 of 1952) or the Arms Act, 1959(54 of 1959), or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, 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.*

(2) *Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in*



sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to “imprisonment for life” therein shall be construed as a reference to “imprisonment for ten years”.

29. Ms. Nitya Ramakrishnan, learned Senior Counsel has contended that the appellants never attempted to strike any kind of bargain, which even otherwise was not permissible in law. They all were, actually speaking, utmost remorseful and repentant for the alleged acts attributed to them and without any expectation, they had pleaded guilty before the Court. They were made aware about the fact that they can be meted out maximum sentence, i.e. life sentence. But despite knowing fully well the aforesaid maximum sentence, they chose to plead guilty.

30. It is also contended that though the plea of guilt was without any bargain or expectation, nonetheless, the learned Trial Court did not give due weightage to the mitigating circumstances and handed out life, merely on the basis of the gravity of few such offences i.e. offences under Section 121A IPC and Section 23 UAPA. She contends that if the allegations are considered *in toto*, it would become very apparent that the crux of the allegations, with respect to all offences together, remained virtually the same. It is argued that Section 18 of UAPA also penalizes conspiracy of a terrorist act or any act preparatory to a commission of a terrorist act. A ‘terrorist act’ has been defined under Section 15 of UAPA which is almost akin to what is contained under Section 121A IPC. As per Section 15 of UAPA,



‘terrorist act’ is one which is done with the intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India and while learned Trial Court chose to give sentence of mere five years with respect to similar kind of offence under UAPA, it, for totally inexplicable reasons, awarded life sentence under Section 121A IPC.

31. It is, thus, contended that the gravity of the matter should not have been and could not have been the ‘sole governing circumstance’.

32. During the course of the arguments, learned counsel for the appellants, in all fairness, contended that their sole contention is that with respect to offences under Section 121A IPC and Section 23 UAPA, any other sentence, instead of maximum sentence may be awarded, while considering the obvious special reasons existing in favour of appellants.

33. Sh. Gautam Narayan, learned SPP for NIA has, on the other hand, justified the quantum of sentence.

34. It is argued that the learned Trial Court has taken into consideration all the relevant factors which were germane for deciding the quantum of sentence and since the appellants had, without any expectancy, pleaded guilty before the Court, it does not lie in their mouth to now raise any grudge with respect to the extent of the sentence. It is argued that the appeals are totally misplaced and there is no reason to interfere with the sentence awarded by the learned Trial Court. It is also argued that the appellants were highly radicalized workers of a proscribed terrorist organization which had carried out



several terrorist acts in India and the learned Trial Court had shown enough of compassion as it did not award maximum sentence for various other offences. During course of arguments, Sh. Narayan also made reference to the allegations against the appellants and contended that the allegations were actually enormous and merely because the appellants had chosen to plead guilty, it does not automatically follow that they had become entitled to lesser sentence. It is claimed that undue sympathy would rather do more harm than good and reliance in this regard has been placed upon *Mohd. Jamiludin Nasir* (supra).

35. We have given our thoughtful consideration to the rival contentions.

36. As noted, NIA has strongly relied upon *Mohd. Jamiludin Nasir* (supra) wherein it has been observed that sentence to be awarded should achieve twin objectives. The relevant paras read as under :-

“

175.1. The sentence to be awarded should achieve twin objectives:

(a) Deterrence

(b) Correction

175.2. The court should consider social interest and consciousness of the society for awarding appropriate punishment.

175.3. Seriousness of the crime and the criminal history of the accused is yet another factor.

175.4. Graver the offence longer the criminal record should result severity in the punishment.

175.5. Undue sympathy to impose inadequate sentence would do more harm to the public.

175.6. Imposition of inadequate sentence would undermine the public confidence in the efficacy of law and society cannot endure such threats.



176. In cases of this nature where charges under Sections 121, 122, 121-A read with Section 120-B IPC as well as Section 302 IPC are involved, other principles should also be kept in mind, namely:

176.1. Most important factor should be the intention and purpose behind the waging of war against the State should be ascertained.

176.2. The modus operandi adopted which involved mobilisation of men and materials such as arms and ammunition indulging in serious conspiracy over a period of time is another relevant factor.

176.3. It will not depend upon the number of persons—even limited persons can indulge in more harmful crime than large crowd of persons could do.

176.4. There need not be pomp and pageantry like a battlefield.

176.5. Not all violent behaviour would fall within the prescription of waging war as stipulated under Sections 121, 121-A, 122 read with Section 120-B.

176.6. The object sought to be achieved should be directed against the sovereignty of the State and not merely commission of crime even if it is of higher velocity.

176.7. The concept of “waging war” should not be stretched too far.

176.8. A balanced and realistic approach should be maintained while construing the offence committed and find out whether it would amount to waging of war against the State.

176.9. Mere organised movement with violence without any intention of acting against the interest of the nation has to be examined.

176.10. Neither the number engaged nor the power employed nor the arms used can be the criteria.

176.11. It should be seen as to what is the purpose behind the choosing of a target of attack.

176.12. When a planned operation is executed, what was the extent of disaster which resulted, is to be seen.

176.13. It is to be seen whether it is a mere desperate act of a small group of persons who indulged in the crime.

176.14. It must be seen whether the undoubted objective and determination of the offender was to impinge on the sovereignty of the nation.



176.15. In this context the expansive definition of the Government of India should be understood.”

37. There cannot be qualm with respect to the above proposition but fact remains that the factual matrix of that case was entirely different. The charges therein were also for commission of offences under Section 121 IPC and Section 302 IPC, which attracted death sentence. The incident, narrated therein, resulted in loss of life of five police personnel apart from injuring thirteen police personnel and civilians. However, Hon’ble Supreme Court, taking into consideration the facts and circumstances of that case, came to the conclusion that it was not a case warranting extreme penalty of death. Moreover, in the present case, the charge is with respect to the conspiracy i.e. Section 121A IPC and not any actual act as contemplated under Section 121 IPC. It was also observed in the aforesaid case that *sentencing is a delicate task requiring an interdisciplinary approach and calls for special skills and talents. A proper sentence is the amalgam of many factors, such as, the nature of offence, circumstances—extenuating or aggravating—of the offence, prior criminal record of the offender, age and background of the offender with reference to education, home life, sobriety, social adjustment, emotional and mental condition, the prospects for his rehabilitation, etc.*

38. Obviously, the most important mitigating circumstance is the fact that all the appellants pleaded guilty at the first available opportunity, without any expectation. They were very much regretful for their acts. We have carefully perused the contents of the application moved by the appellants under Section 229 Cr.P.C. before the learned



Trial Court whereby they had expressed their wish to plead guilty. In such application, the appellants submitted as under:-

“4. It is submitted that the accused persons are facing incarceration for about 3 year 6 months and during every moment while undergoing custody they are remorseful for the charges levelled against them and they want to return to the mainstream and want to be productive for the nation.

5. It is submitted that being the accused, the applicants have seen that their families have been destroyed. It's not only the applicants but each and every person related to them has suffered a lot financially, mentally, socially, and psychologically.

6. It is submitted that the applicants voluntarily plead guilty for the offences alleged against them and they understand the consequences of their pleading guilty.

7. It is submitted that the applicants hail from the weaker section of the society and they were the sole bread earner for their families and in their absence their families are starving resulting into loss of their productivity for this nation.

8. It is further submitted that the applicants admit that they were misled, and they committed the offences alleged against them and with the passage of every single breath they feel ashamed and from the bottom of their heart they are seeking forgiveness for the act alleged against them and the applicants assure this Hon'ble court and the government that they will be productive or strengthening the unity and integrity of India.”

9. It is submitted that the accused person needs and deserves a chance of reforming themselves as submitted herein above and seeks lenient approach of this Hon'ble court in this regard.

39. The above submissions would go on to indicate that they admitted their guilt and realized their mistakes and were even ashamed of the same and were seeking clemency. They also pleaded that they



deserved a chance of reforming themselves.

40. We have also gone through the socio-economic reports of all the appellants.

41. Report pertaining to appellants Sajad Ahmad Khan, Bilal Ahmad Mir, Muzaffar Ahmad Bhat and Mehraj Ud Din Chopan has been sent by the Office of Senior Superintendent of Police, P.D. Awantipora, Government of Union Territory of Jammu & Kashmir. The socio-economic report pertaining to appellant Ishfaq Ahmad Bhat has been sent by the District Police Head Quarters, Anantnag.

42. These reports indicate the present economic conditions of their respective families, which seems to be very modest. There is nothing in these reports which may compel us to give them maximum of the punishment.

43. As already noticed above, all the appellants are very much desirous of reforming themselves and joining mainstream.

44. The allegations made in the charge-sheet and the order on charge dated 03.09.2022 would certainly give us a glimpse about the broad allegations against the appellants. These indicate that there was a *prima facie* case against appellants that they had conspired to strike terror in the minds of the people and the object of their such conspiracy was to commit terrorist acts in India. They were allegedly assisting *Jaish e Mohammad* (JeM) operatives and were involved in recruiting others for propagating and supporting the cause of JeM.



There is no doubt whatsoever that the nature of the allegations is indeed serious and alarming. But then precisely for the said reason, they all were directed to face trial for these serious offences. Thus, the gravity of the offences cannot be undermined. However, at the same time, there is no charge that they had committed any terror act. They have been held guilty, primarily, for conspiring, and not for committing any terror act as such.

45. Indubitably, while deciding the quantum, court is required to strike a balance.

46. The enormity of the allegations cannot be the sole determining factor for finalizing the quantum of sentence. Thus, when it comes to sentencing, the yardstick has to be somewhat different and a balanced one. The Court is required to take note of all the mitigating circumstances including the age and the previous antecedents of the appellants. Their candid and unconditional plea of guilt should also be in the reckoning. If the case had been put to trial, it would have taken years together in concluding the matter. Thus, in hindsight, there is significant saving of precious judicial time.

47. Late Justice V.R. Krishna Iyer had very aptly remarked, “*Guilt once established, the punitive dilemma begins*”¹⁴.

48. We need not touch upon various types of sentencing philosophies and theories. Though we still would be tempted to remark that the things have moved on considerably from the primitive stage

¹⁴ *Ediga Anamma Vs. State of Andhra Pradesh*: AIR 1974 SC 799



when retribution used to be the sole option. With the changing times, the punishment theories have evolved in big way though the unending debate continues- whether the punishment should be befitting the crime or the criminal?

49. Nonetheless, it will be hazardous to assume that these convicts, merely because of their despicable past, have no future. They do need to be given ‘a ray of hope’.

50. In the case in hand, we are fully cognizant of the fact that the appellants had pleaded guilty at the first available opportunity, without any expectation. There is nothing on record which may suggest that they are beyond redemption. India has shown enough of progression in all spheres and our justice delivery system is no exception. It also strongly believes that, more often than not, the eventual consequence of any penal sanction should be to reform any individual, instead of shutting him out by putting him inside for life.

51. One can always condemn the sin, but not the sinner, always.

52. Of course, there is no strait-jacket formula or universal rule or any divine mantra but the order on sentence has to show and maintain the requisite equipoise. It has to be fair to all the stakeholders- prosecution, victim, society and, not to forget, even to the convict.

53. It also needs to be observed that there are various offences in our code and other penal statutes, where the minimum as well as maximum punishment are prescribed but the gap between them is very



huge, giving wide discretion to the court. Unfortunately, there are no sentencing guidelines which may assist court in selecting the most appropriate sentence, minimum or maximum or one falling between the two. Therefore, at times, there is no uniformity. This is also because of the reason that the facts of any two cases would never be same and similar.

54. Be that as it may, keeping in mind the gravity of the matter, though, appellants did not deserve any unjustifiable leniency, at the same time, considering their candid confession at first opportunity, their relatively clean antecedents, inclination of reformation and their young age, the life sentence was not warranted either.

55. The man who has a conscience suffers whilst acknowledging his sin. We refer to a quote by Fyodor Dostoyevsky, the author of 'Crime and Punishment' and in chapter 19, Dostoevsky writes that *"if he has a conscience he will suffer for his mistake; that will be punishment — as well as the prison"*.

56. We have already noted that with respect to the various other offences, where the maximum sentence was life, learned Trial Court gave them five years or ten years of sentence. However, by awarding life for one offence, what was attempted to be given by one hand has been snatched by the other.

57. We also find that learned Trial Court has not given any specific reason as to why it was awarding maximum punishment for offence under Section 121A IPC and for Section 23 UAPA. It got swayed by



the enormity of allegations and somehow did not give due importance to the fact that the appellants were remorseful and had pleaded guilty at first available opportunity. Considering the same, coupled with their young age and the fact that they don't have any other conviction to their credit, the approach of the learned Trial Court should have been rather that of reforming them which it even noted in the impugned judgment, albeit, not translated into reality, and, therefore, it is a fit case where the sentence awarded under Section 121A IPC and Section 23 UAPA needs to be reduced.

58. We have extracted Section 121A IPC and the punishment awarded under Section 121A IPC can be life or imprisonment of either description which may extend to ten years, besides fine. We do feel that in the present case, ends of justice would be met if instead of maximum of life sentence, appellants are punished with rigorous imprisonment for ten years, *which punishment is just a step below*. Similarly, with respect to the Section 23 of UAPA, minimum sentence is five years which may extend to life and taking stock of the factual matrix presented before us and in view of foregoing discussion, ends of justice would be met if such sentence is also reduced to rigorous imprisonment for ten years.

59. Consequently, we hereby dispose of all the appeals with modification that for offence under Section 121A IPC, appellants are directed to serve sentence of rigorous imprisonment for ten years with fine of Rs. 2,000/- and to further undergo SI for a period of one year in case of default of payment of fine. In relation to Crl. A. No. 56/2023



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pertaining to appellant Muzaffar Ahmad Bhat, besides above modification, sentence with respect to Section 23 UAPA is also modified and is reduced to rigorous imprisonment for a period of ten years with fine of Rs. 2,000/- and to further undergo SI for a period of one year in case of default of payment of fine.

60. Other terms and monetary imposition of fine for other offences for all the appellants shall remain unaltered.

61. Appeals stand disposed of in aforesaid terms.

62. A copy of this order be sent to learned Trial Court and concerned Jail Authorities for information and compliance.

(MANOJ JAIN)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

MAY 20, 2024
st/dr