



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MS JUSTICE J.M.KHAZI

CRIMINAL APPEAL NO. 669 OF 2023

C/W

CRIMINAL APPEAL NO. 1220 OF 2023

IN CRL.A No. 669/2023

Between:

1. Sri Syed Abdul Rehaman
@ Abdul Rehaman
S/o Syed Ibrahim,
Aged about 36 years,
R/at No 8, 1st Cross,
Tippu Nagar,
Mysuru Road,
Bengaluru
2. Apsarpasha @ Khushiruddin
S/o Noor Ahmed,
Aged about 43 years,
R/at 15th Cross,
Lakasandra,
Bengaluru,
Home Town : Chintamani,
(UTP No 19040, Gulbarga Jail)

...Appellants

(By Sri Mohammed Tahir, Advocate)

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



NC: 2024:KHC:39826-DB
CRL.A No. 669 of 2023
C/W CRL.A No. 1220 of 2023

And:

State by
Adugodi Police Station (CCB),
Organized Crime Wing
Represented by
State Public Prosecutor
Advocate General Office
High Court Complex,
Opposite to Vidhana Soudha
Bengaluru - 560001

...Respondent

(By Sri Vijayakumar Majage, SPP-II)

This Crl.A is filed u/s.21(1) of NIA Act of Cr.P.C praying to set aside the impugned judgment dated 23.02.2023 and sentence dated 03.03.2023 passed by the Hon'ble 49th Additional City Civil and Sessions Judge, (Spl.Court for trial of NIA cases) at Bengaluru (CCH-50) in S.C.No.297/2013 for the offence p/u/s 120B, 122 of IPC and sections 13, 17, 18 of UA(P) Act and sections 25, 26 of Arms Act, sections 4, 5, 6 of Explosive Substances Act in respect of appellant No.1/accused No.1 and for the offence p/u/s 120B, 122 of IPC and sections 13, 17, 18, 18(B) of UA(P) Act and sections 4, 5, 6 of Explosive Substances Act in respect of appellant No.2/accused No.3 at Annexure-A and allow this appeal.

In Crl.A No. 1220/2023

Between:

Sri Mohammed Fahad Hi
@ Mohammed Koya
S/o Abdul Hi @ Abdul Koya
Aged about 30 years,
No. 2108717948-5,



NC: 2024:KHC:39826-DB
CRL.A No. 669 of 2023
C/W CRL.A No. 1220 of 2023

Citizen of Pakistan
No.K-366, Block-F, North Nizamabad
Karachi, Pakistan, (UTP No. 11473)
Gulbarga Jail.

...Appellant

(By Sri S.Balakrishnan, Advocate)

And:

State of Karnataka
By Adugodi Police Station
CCB (Organized Crime Wing)
Represented by Special Public Prosecutor,
High Court Building, Bengaluru – 560001

...Respondent

(By Sri Vijayakumar Majage SPP-II)

This Crl.A is filed under section 374(2) of Cr.P.C. read with section 21 of NIA Act praying to set aside the impugned judgment dated 23.02.2023 and sentence dated 03.03.2023 passed by the Hon'ble XLIX Additional City Civil and Sessions Judge, (Spl. Court for trial of NIA cases) at (CCH-50) Bengaluru in S.C.No.297/2013 for the offence p/u/s 120B, 122 of IPC and sections 4, 5, 6 of Explosive Substances Act, 1980.

Date on which the appeals were reserved for judgment	18.07.2024
Date on which the judgment was pronounced	25.09.2024

These appeals, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MS JUSTICE J.M.KHAZI

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

These two appeals arise from the judgment dated 23.02.2023 in S.C.No.297/2013 tried by XLIX Additional City Civil and Sessions Judge (Special Court for Trial of NIA Cases) (CCH-50), Bengaluru.

2. Crl.A.No.669/2023 has been filed by accused Nos.1 and 3 and Crl.A.No.1220/2023 is by accused No.2. While acquitting all the three accused for the offences punishable under sections 121, 121A, 153A and 153B of IPC, and sections 3, 11 and 16 of Unlawful Activities (Prevention) Act, 1967 ('UA(P)A' for short), the trial court convicted accused Nos.1, 2 and 3 for the offences punishable under sections 120B and 122 of IPC, sections 13,



17, 18 of UA(P)A and sections 4, 5 and 6 of the Explosive Substances Act, 1908. In addition, the trial court recorded conviction also for the offences under sections 25 and 26 of the Arms Act against accused No.1, and for the offences punishable under section 18B of UA(P)A against accused Nos.2 and 3. Hence these appeals challenging their conviction and sentence imposed thereon.

3. The prosecution case emanated in this way. About 4.00 pm on 07.05.2012, PW2-K.C.Ashokan, Inspector of Police, CCB, Bengaluru, received a credible information that Abdul Rehman, accused No.1, had in his possession illegal fire arm suspectedly supplied to him by Lasker-e-Toiba (LeT) operatives from Pakistan. PW2 was informed that accused No.1 would be found moving around Jumma Masjid Area at Nanjappa Layout and was a notorious criminal having record of two or three criminal cases registered at Chandra Layout and



Kengeri police stations in relation to offences of theft and supplying fire arms to another criminal by name Ikram @ Akram who was killed in a police encounter. It was further informed to him that while accused No.1 was in jail, came in contact with two prisoners, namely Fahad, a Pakistani National (accused No.2), Afsar (accused No.3) and inside the jail the latter two persons indoctrinated accused No.1 in religious fundamentalism and in developing hatred towards Hindu religion, and introduced him to LeT operatives at Pakistan and UAE. Accused No.1 was released on bail and thereafter he continued his contact with LeT operatives who used to frequently supply him money for the purpose of recruiting Muslim youths to LeT and acted in accordance with directions of LeT to carryout blasts at important places in Bengaluru city and kill Hindu activists.



4. PW2 then passed on the information that he received to his superior officer who constituted a team including PW2 to apprehend accused No.1. On the same day around 6.15 p.m, the team located accused No.1 at a place called Venkob Chicken Center at Nanjappa Layout and apprehended him. Accused No.1 was subjected to search at that place and he was found in possession of 0.32 caliber loaded revolver, two Nokia mobile phones with dual sim facility and cash of Rs.540/-. All these articles were seized in the presence of panchas. The team then handed over accused No.1 and the seized articles with mahazar, Ex.P1 to PW20, the Inspector of Police, Adugodi police station who recorded FIR as per Ex.P2 on a report made by PW2. PW21 conducted investigation and filed charge sheet for the offences punishable under sections 120B, 121, 122, 124A, 153A, 153B read with section 34 of IPC, sections 3, 25 and 26 of the Arms Act,



sections 3, 11, 13, 16, 17, 18 and 18B of the UA(P)A and sections 4, 5 and 6 of the Explosive Substances Act, 1908.

5. The prosecution examined 26 witnesses and got marked the documents as per Exs.P1 to P124. MOs1 to 18 are the material objects produced by the prosecution. Exs.D1 to D5 were got marked on behalf of the accused. After assessing evidence the trial court gave a judgment acquitting the accused for some of the offences and convicting them for the rest of the offences as aforementioned. The State has not preferred any appeal against the acquittal recorded by the trial court and therefore all that we need to examine now is whether the trial court is justified in recording conviction for the offences punishable under sections 120B, 122 of IPC, sections 13, 17, 18, 18B of UA(P)A, sections 4, 5 and 6 of the Explosive Substances Act and sections 25 and 26



of the Arms Act. Before taking up discussion, the scope of each of the sections for which conviction has been recorded is to be mentioned here for better appreciation of evidence.

6. Section 120B is a penal section for criminal conspiracy. Section 120A of IPC defines 'criminal conspiracy'. To constitute criminal conspiracy the prosecution has to establish involvement of two or more persons, that means at least the involvement of two persons must be forthcoming, and there must be agreement between two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The proviso makes it further clear that no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act besides the agreement is done by one or more parties to such an agreement in pursuance thereof.



7. Section 122 of IPC is in Chapter VI of IPC and it deals with collection of arms, men or ammunition or making preparation with intention to wage war against Government of India. Therefore the collection of arms, men or ammunition must indicate a preparation or intention to wage war against Government of India.

8. Sub-section (1) of section 13 of UA(P)A has got two clauses. Clause (a) deals with taking part or committing an unlawful act, and clause (b) envisages advocating, abetting, advising or inciting the commission of unlawful activity. Sub-section (2) states that after declaration of any association by a notification under section 3(3) of UA(P)A as unlawful becomes effective, if any person in any way assists any unlawful activity of that unlawful association it becomes punishable. The subtle distinction between sub-sections (1) and (2) is



that, in sub-section (1) taking part of an individual in any way as mentioned in clauses (a) and (b) is made punishable and sub-section (2) states that if an individual assists the unlawful activity of an unlawful association, he may be punished.

9. If a person is to be punished for the offence under section 17 of UA(P)A the prosecution must prove that such person, being in India or in a foreign country, has directly or indirectly collected or provided or raised funds with a knowledge that the funds are likely to be used by a person or a terrorist organization or a terrorist gang for committing a terrorist act.

10. Section 18 of UA(P)A prescribes punishment for conspiracy to committing or advocating or abetting or advising or inciting or knowingly facilitating commission of a terrorist act or any act preparatory to the commission of a terrorist act. Section 18B prescribes punishment



for recruiting or causing to be recruited any person for commission of a terrorist act.

11. Section 4 of the Explosive Substances Act provides punishment for making attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property. Section 5 of the said Act states that if a person makes or knowingly possesses with him or under his control any explosive substance or special category of explosive substance giving rise to a reasonable suspicion that he is not making it or does not possess it with him or his control for a lawful object is liable to punishment unless he is able to show that his possession of the explosive substance is for lawful object. Section 6 of the said Act is to punish a person who procures, counsels, aids, abets, the commission of any offence under this Act by supply of the materials



or by solicitation for money or by providing the premises.

12. According to section 25 of the Arms Act various acts would amount to an offence and a person found involved in any of such acts can be punished. Possessing or carrying a fire arm in contravention of section 7 amounts to an offence and he is punishable. And section 26 of the said Act contains three sub-sections. Sub-section (1) prescribes punishment for doing an act contravening the provisions of sections 3, 4, 10 or 12 in such manner giving an indication of intention that the act likely to be committed may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance. Likewise sub-section (2) prescribes punishment for doing anything in contravention of sections 5, 6, 7 or 11. And sub-section (3) envisages punishment



for concealing or attempting to conceal any arm or ammunition when a search under section 22 is undertaken.

13. Keeping in mind the scope of each of the above sections, the entire evidence is to be reassessed. It is not in dispute that accused No.1 was in jail and released on bail before he was arrested in connection with the present case. The other two accused remained in jail even after release of the first accused and they were shifted to other jails.

14. If the impugned judgment is read, it becomes clear that, the meeting of all the three accused when they were in jail, recovery of revolver, mobile phones and cash, and recovery of explosive substances at the instance of accused No.1, analysis of CDR and recovery of two books from accused No.2 are the main reasons for the



trial court to hold that there was conspiracy among accused Nos. 1 to 3.

15. Assailing these findings, it was the argument of Sri Mohammed Tahir and Sri Balakrishnan, learned counsel for the appellants, that no inference as to existence of conspiracy among accused 1 to 3 could be drawn merely for the reason that they used to meet while being in jail. There is no evidence that all the three knew each other before they were jailed; meeting at a place after getting to know each other is not unusual; the jail warden has simply stated that accused used to disperse seeing him, and this statement cannot be held basis for holding that the accused used to conspire for committing an illegal act. It was his sheer suspicion which does not take the form of legal proof.

15.1. They further argued that recoveries at the instance of accused No.1 are not proved in



accordance with law. It is the clear evidence of the jailor that no prisoner was permitted to use mobile phone, so it was highly impossible that accused 2 and 3 were contacting accused No.1 after the latter came out of jail on bail. They argued that many penal provisions were wrongly invoked, and to substantiate this point they pointed out that waging war against country from inside the jail cannot be imagined at all. Therefore they deplored the findings of the trial court.

16. Sri Vijaykumar Majage, SPP-II, for the State argued that all the three accused were meeting at the time of having breakfast, lunch and dinner. Their movements were suspicious. Even after accused No.1 was released on bail and two other accused were shifted to other jails from Bengaluru jail, they were in touch with each other, as evidenced by call details and tower locations. Recovery was at the instance of accused No.1, but



the revolver and explosives were sent to him from LeT, which is a banned terrorist organization. It cannot be said that there is no evidence for conspiracy. The trial court has rightly drawn conclusions.

17. On re-assessment of evidence in the light of points of arguments of the learned counsel, what is found is that the prosecution has made an attempt to build its case about conspiracy among the accused based on the evidence of PW5, the Chief Warden at Central Jail, Parappana Agrahara and the telephonic conversations. The prosecution seeks to establish link between this evidence and recoveries effected thereafter. All that PW5 has stated is that he used to see all the three accused meeting during breakfast, lunch and dinner time, and they were moving away if they happened to see him. Therefore PW5 stated that the movements of the accused appeared suspicious.



18. PW11 provided call details of the mobile phone with sim No. 9060729118 and also the particulars of the application made by the person who obtained the sim card. PW14 while working as Nodal Officer at Vodafone provided call details of a mobile phone to PW21. Exs.P17 and P18 are the documents in this regard. PW22, being the Nodal Officer of Bharati Airtel furnished to CCB police the call details of mobile phones with numbers 9535656581, 9632168474, 9880979347, 8220120820, 9741696016 and 9632144042 for the period 01.06.2011 to 07.05.2012. PW23 was working as Head Nodal and Regulatory for TATA Teleservices and on a request made by CCB Police Inspector, he furnished information of the subscribers of mobile numbers 9035698554, 8976057645, 9241372337 and 9241097534.

19. The oral testimony of PW16 shows that the ACP i.e., PW21 gave him a CD containing call



details of ten mobile phone numbers and asked him to filter in excel format the communications made from one number to the other and prepare a chart of communications. He took out the call history of each number, segregated them and prepared the charts as per Exs.P112 to P117.

20. The credible information received by PW2 led to arrest of accused No.1 and recovery of MO1 to MO6 at his instance. Accused No.2 and accused No.3 were inculpated at a later stage. Now itself one point may be clarified. Sri Balakrishnan argued that accused No.1 was arrested without registration of FIR. In this regard it is to be stated that there was nothing wrong in it. What PW2 received on 07.05.2012 was information about accused No.1, it was not an information that a cognizable offence had already been committed which warranted registration of FIR. Giving information to a police officer either telephonically



or in any other mode does not require registration of FIR immediately; FIR can be registered thereafter if the police officer comes to know that a cognizable offence is committed. Telephonic information alerts the police who are expected to take immediate measures to avert a crime from happening. And if the crime is already committed, they have to set the law into motion.

21. In this case PW2 accompanied by a team of police personnel, including PW10, and PW12 and panchas spotted the accused No.1 near Venkob Chicken Centre and then nabbed him. He was found possessing a revolver (MO1), four bullets (MO2), red colour Nokia mobile phone (MO3), black colour Nokia mobile phone (MO4) and a belt wrist watch (MO6). Ex.P1 is the mahazar drawn seizing these articles. The testimony of PW2 is corroborated by PW10 and PW12, and also PW1- the independent witness to Ex.P1. These



witnesses have not been discredited in the cross-examination.

22. After the arrest of accused No.1, involvement of accused 2 and 3 was suspected on the basis of voluntary statement given by accused No.1. Here assumes the relevancy of testimony of PW5 who has stated that he used to see all the three accused meeting and conversing when they would meet for breakfast, lunch and dinner. To this evidence of PW5, PW21-the investigating officer tries to connect the telephonic conversations among them after accused was released from jail on bail, on 31.12.2011. The evidence given by PW21 is more about these telephonic conversations. He might have collected the details of calls as spoken to by PW11, PW14, PW22 and PW23, and he might have got those conversations analyzed with the help of PW16, but the question is whether with the help of these



telephonic conversations, conspiracy among three accused can be held to have been proved.

23. To connect the conversations to existence of conspiracy, PW21 refers to other transaction about which he has stated in his examination-in-chief. He has stated in this way : Accused 1, 2 and 3 were staying in neighbouring cells at the jail for about seven months. Accused No.1 disclosed in his voluntary statement that he was receiving calls from a foreign country and the person who contacted him had told that he would send money, revolver and bullets to accused No.1 [Ex.P26(c)]. Accused No.1 went to Srirangapattana on 17.03.2012 and received a revolver, Rs.40,000/- and four bullets. Accused 2 and 3 had made three calls to accused No.1 on 17.03.2012 [Ex.P75(b)], location of accused No.1 at Srirangapattana had been traced on 17.03.2012 and accused No.1 himself showed the place at Srirangapattana where



he received the revolver and cash. Accused No.1 revealed that a person from foreign country, namely Bhai had told him about supplying the materials required for manufacturing bombs [Ex.P30). The locations of accused No.1 at Adugodi were traced on 30.04.2012 and 04.05.2012 and on that day he had received MO11-a plastic box containing ammonium nitrate and MO13-a plastic box containing gel explosives, and the calls that accused No.1 has received as mentioned in Ex.P45, were from Gulf country. Accused No.1 also disclosed in his statement of the plan made at the instance of a person called Bhai from Pakistan to attack the police who would escort accused Nos. 2 and 3 to court.

24. PW21 has, in his evidence in examination-in-chief, made an attempt to show the involvement of accused Nos. 2 and 3, based on their voluntary statements. If the entire evidence



of PW21 is read, it becomes amply clear that except recovery of explosive substances in the premises of Gnana Bharati Campus of Bengaluru University under panchanama-Ex.P27, the rest of his evidence is nothing but reiteration of statements given by all three accused while they were interrogated. His evidence with reference to confessions of the three accused cannot be proved against them. Assuming that the defence has failed to discredit PW21 in the cross-examination, still major part of his evidence becomes unworthy of acceptance because of prohibition contained in section 25 of the Indian Evidence Act. Merely for the reason that accused 1 to 3 were together in jail for a few months and they were meeting at that time no inference can be drawn that they were conspiring to commit a crime. Even though evidence of PW5 is acceptable, he only says that the accused 1 to 3 used to meet. If he stated that all the three were dispersing if they happened to



see him, it leads to no inference that they might be planning to hatch conspiracy. The conduct of the accused in moving apart may lead to a kind suspicion, but it does not amount to proof according to law.

25. It is true that CDR analysis made by PW16 shows telephonic communication among themselves. As deposed by PW26, there is certificates issued under section 65B of the Indian Evidence Act in respect of CDRs. But by considering the CDRs, no inference as to conspiracy can be drawn. Accused No.1 came out of jail on 31.12.2011, and the other two remained in the jail. This is not disputed. If accused Nos.2 and 3 remained in jail, an obvious doubt as to how they could communicate with accused No.1 would arise.

26. It has been elicited from PW21 in the cross-examination that the Chief Superintendent,



Central Jail, Gulbarga, has given a report as per Ex.P34 that there is no mention of using of mobile phones by accused 2 and 3. This portion is marked as Ex.D1. If this was the report of Chief Superintendent of Jail, making of calls by accused Nos.2 and 3 to accused No.1 as deposed by PW21 becomes difficult to be accepted, and if there were to be any telephonic conversations as stated by PW21, they must be illegal conversations from which inference as to existence of conspiracy is difficult to be drawn, because PW21 has also stated that accused No.1 had received a call from Gulf country and also from a person called 'Bhai' from Pakistan.

27. Then PW21 has stated in cross-examination that the voluntary statement of accused No.1 contains a reference to visits made by accused No.1 to Bengaluru and Gulbarga jail to meet accused 2 and 3. And he has further stated



that in Ex.P34, there is no mention of anybody giving visit to meet accused 2 and 3. The prosecution case inhere these doubts which cannot be explained away at all. PW21 has spoken about seizure of two books from accused No.2. He has stated that when accused No.2 was secured under body warrant, the latter was found possessing the books written in Urdu language. According to PW21, the books were about Jihad. The English translation of the books are also produced. No doubt there are a few sentences against India and non-Muslims. First of all this seizure is difficult to be believed, for accused No.2 was in jail, and he was brought under body warrant. His possessing books is difficult to be accepted. Therefore attending circumstances do not establish offence of conspiracy.

28. Section 120B of IPC and section 18 of UA(P)A is sought to be proved by the same



evidence. Now that it is held that evidence is lacking, conviction for both the offences cannot be recorded. The trial court has failed to notice that the evidence given by PW21, especially in regard to confessions given by accused 1, 2 and 3 cannot be proved against them. Having obtained confession statements, PW21 should have made effort to collect independent evidence in the sense that de hors the confessions there must be available other independent evidence indicating proof for the charges for the offence of conspiracy under section 120B of IPC and section 18 of UA(P)A. Despite certain recoveries from accused No.1, these two offences do not get established.

29. So far as offence under section 18B of UA(P)A is concerned, the allegation is that accused No.1 intended to recruit persons for commission of terrorist act. This allegation was pursuant to alleged conspiracy. Since offence under section 18



does not get established, the offence under section 18B also does not get established. Likewise evidence does not disclose commission of offences under sections 13 and 17 of the UA(P)A. Even for these two offences, PW21 refers to the voluntary statements of the accused and nothing more. Hence these two offences are also not proved.

30. Above all, according to section 45 of UA(P)A, no court can take cognizance of the offences under Chapters III, IV and VI without previous sanction from the State Government or the Central Government as the case may be. Here sanction from State Government was obtained. PW25 has given evidence in regard to passing of sanction order as per Ex.P92. PW25 was the Principal Secretary to Home Department, Government of Karnataka, and he was the sanctioning authority. His evidence is that he went through charge sheet materials and the



report of the Director of Prosecution and having found existence of prima facie materials, he passed sanction order. But what is not forthcoming from his evidence is that the matter was not referred to independent review authority as required under sub-section (2) of section 45 of UA(P)A. Sub-section (2) mandates to consider the report of independent review authority. PW25 has deposed that he was aware that the review committee had to recommend for sanction based on investigation materials, and the government must consider the review committee report. His further answer in the cross-examination is that he could not remember whether review committee was there or not when he passed the sanction order. His evidence makes two aspects abundantly clear, either the materials collected during investigation might not have been referred to the review committee or if referred, the report might not have been placed before the sanctioning



authority. Thus seen the sanction order loses its sanctity, and it is vitiated. The trial court has missed this aspect. Therefore conviction of all the accused for the offences under sections 13, 17, 18 and 18B of UA(P)A cannot be sustained.

31. Then there remains the offences under sections 4, 5 and 6 of the Explosive Substances Act and sections 25 and 26 of the Arms Act, this is against accused No.1 only. The evidence given by PW1, PW2, PW10 and PW12 in regard to recovery of revolver and bullets from accused No.1 on 07.05.2012 has remained unassailed. The revolver is a fire arm and accused No.1 possessed it without licence. He was found carrying the revolver concealingly. The trial court has held that accused No.1 possessed 0.32 caliber revolver without licence and it was a prohibited fire arm and thereby offence under section 25 would get attracted. It is further finding of the trial court



that accused No.1 carried the prohibited fire arm which was found in his waist with an intention that it should not become known to public servant, i.e., PW2 and therefore the offence under section 26 of the Arms Act would stand proved. These findings cannot be said to be incorrect.

32. Then in regard to offences under sections 4, 5 and 6 of the Explosive Substances Act, the trial court has held all the three accused guilty, and its findings are found in para 243 of the impugned judgment. The conclusions drawn by the trial court appear to be based on the confessions of the accused, which do not stand in the eye of law. But there is other evidence in regard to recovery of explosive substances at a place inside Jnana Bharati premises, Bengaluru. MO11 is ammonium nitrate and MO13 is gel explosive, and of course this recovery was based on disclosure made by accused No.1 in his voluntary



statement. PW7 was the expert who confirmed that the seized substances were explosives. Though accused No.1 did not have actual physical possession of explosive substances, the very fact that he had hidden them at a secluded place amid plants and bushes in Jnana Bharati campus would indicate that he alone had the knowledge about the place of concealment and that he had control over the explosive substances. If he had not been arrested and those substances were not recovered at his instance, it can be stated unhesitatingly he would have made use of them or transferred them to some other place, and in these circumstances, it can be said that accused No.1 had control over the explosive substances and therefore offences under sections 4 and 5 of the Explosive Substances Act can be attracted against accused No.1 only. But there is no material for invoking offence under section 6, for the ingredients of that section are not forthcoming from the evidence.



33. PW24 has given evidence for according sanction to prosecute the accused under the Arms Act. He has stated about giving permission to file charge sheet for the offences under Explosive Substances Act. PW24 being the Commissioner of Police for Bengaluru City had the powers of District Magistrate. Section 39 of the Arms Act contemplates previous sanction by the District Magistrate, and section 7 of the Explosive Substances Act requires consent to be given by the District Magistrate for trial of a person for the offences under this Act. Both these requirements are met with. Ex.P32 is the sanction order under the Arms Act. PW24 has stated to have given permission to PW21 on 04.10.2012 to file charge sheet for the offences under Explosive Substances Act. The evidence of PW24 to this extent has not been assailed.



34. Therefore from the above discussion what transpires is that the conviction judgment requires to be modified. Accused Nos. 2 and 3 are to be acquitted in entirety. And accused No.1 can be convicted only for the offences under sections 25(1B) and 26 of the Arms Act and sections 4 and 5 of the Explosive Substances Act. He deserves to be acquitted of the offences under sections 120B and 122 of IPC and sections 13, 17, 18 of UA(P)A and section 6 of Explosive Substances Act. The sentence imposed on him also requires modification for the offence under section 25 of the Arms Act. Since his act would fall under section 25(1B) of the Arms Act, the maximum sentence that could be imposed in accordance with law as applicable on the date of incident was three years imprisonment and fine, not seven years as has been held by the trial court. The sentence imposed on him for the offence under section 26 of the Arms Act and section 4 and section 5 of the



Explosive Substances Act does not require modification.

35. With the above discussion, the following order is passed.

(i) Criminal Appeal 669/2023 stands allowed partly in so far as accused No.1 is concerned and it stands allowed in entirety concerning accused No.3.

(ii) Criminal Appeal 1220/2023 filed by accused No.2 is allowed.

(iii) Impugned judgment is modified as below:

(a) Accused No.1 is acquitted of the offences under sections 120B and 122 of IPC, offences under sections 13, 17 and 18 of UA(P)A and section 6 of the Explosive Substances Act.

(b) Conviction of accused No.1 for offences under sections 25 and 26 of the Arms Act and sections 4 and 5 of



the Explosive Substances Act is confirmed. But sentence under section 25 of the Arms Act is reduced to three years simple imprisonment from seven years, however fine amount and default imprisonment is not altered. Sentence on accused No.1 for the offences under section 26 of the Arms Act and sections 4 and 5 of the Explosive Substances Act is confirmed. And the imprisonment for these offences is made to run concurrently.

(c) Accused Nos. 2 and 3 are acquitted of all the offences with which they stood convicted by the trial court. They shall be set at liberty forthwith if their presence is not required in any other case.

(d) Accused No.2 shall be deported to Pakistan after his release from jail.

(e) Accused No.1 shall be set at liberty if he has completed



imprisonment period for the offences under sections 25 and 26 of the Arms Act and sections 4 and 5 of the Explosive Substances Act if his presence is not required in any other case.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(J.M.KHAZI)
JUDGE

CKL/
List No.: 19 SI No.: 1