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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 21st October, 2024

Date of Decision: 23rd December, 2024

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CRL.A. 280/2023

MOHD ABDUL REHMAN

.....Appellant

Through: Mr. Harsh Kumar, Advocate (M-6205536862).

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the State with Mr. Lalit Luthra and Ms. Divya Yadav, Advocates (M-9910645959).

Insp. Alok Kumar and SI Rahul Khokher, Special Cell, Lodhi Colony.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

JUDGMENT

1. The present appeal filed by the Appellant-Mohd. Abdul Rehman under Section 21(1) and (2) of the National Investigation Agency Act, 2008 (hereinafter, '*NIA Act*') seeks the following prayers:

“(i) Setting aside the Judgement dated 10.02.2023 and order on conviction dated 14.02.2023 passed by the Special NIA Court, Ld. ASJ-02, Patiala House Courts, New Delhi in Sessions Case No. 9378/ 2016 – State vs Mohd. Asif and Ors. in FIR No. 67/2015 P.S. Special Cell originally under sections 18, 18B and 20 of the UAPA, 1967, New Delhi whereby convicted the Appellant under Section 18 and 18B of the Unlawful Activities (Prevention) Act, 1967 to undergo RI for a period of



Seven years and five months each Section 18 and 18B, running concurrently with a fine of Rs. 25000/- each and (ii) Pass any other order as this Hon'ble Court may deem fit, just and proper in the present facts and circumstances of the case; ”

2. The appeal has been filed assailing the impugned judgment of conviction dated 10th February, 2023 and order on sentence dated 14th February, 2023 passed by Ld. ASJ-02, Patiala House Courts, New Delhi in Sessions Case No. 9378/ 2016 arising out of FIR No. 67/2015 P.S. Special Cell under Sections 18, 18B and 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter, '**UAPA**'), whereby the Appellant was convicted under Section 18 and 18B of the UAPA and was sentenced to undergo rigorous imprisonment for a period of seven years and five months for the offences punishable under Section 18 and 18B of the UAPA, running concurrently with a fine of Rs. 25000/- each in default of payment of fine to undergo simple imprisonment for a period of three months.

BRIEF BACKGROUND

3. Brief facts which are necessary for the disposal of the present appeal are as follows: -

- i. It is alleged that the Special Cell had received specific intelligence regarding a militant organization named Al-Qaida in Indian Subcontinent (hereinafter '**AQIS**') being active in Sambhal District of Uttar Pradesh. On the basis of the aforesaid information, sources were deployed to find out information regarding people from Sambhal District who had visited foreign countries particularly Iran, Turkey and Pakistan.
- ii. On 14th December, 2015 at around 1:30 PM a specific intelligence was



received by the Special Cell regarding the presence of one Mr. Mohd. Asif (hereinafter '**Co-Convict No.1**') at Welcome Bus Stand, near Seelampur flyover, New Delhi. On the basis of the aforesaid intelligence a raiding team was constituted. At about 3:30 PM one person was seen coming with a black shoulder bag and upon identification by the secret informer Co-Convict No.1 was apprehended by the raiding team of the Special Cell.

- iii. Co-Convict No.1 in his disclosure statements (Ex.PW 30/E to 30/G) revealed that he had joined the terrorist organisation Al-Qaeda (hereinafter '**AQ**') and the group to which he belonged was called Al-Qaeda in the Indian Subcontinent (AQIS).
- iv. Co-Convict No.1 in his disclosure statements also revealed that on 23rd June, 2013 he had left India for Pakistan illegally *via* Iran along with one Mohd. Rehan and Mr. Mohd. Sharjeel Akhtar for getting arms training.
- v. During investigation, the travel details of Co-Convict No.1 were collected from Minar Travels (India) Pvt. Ltd, Connaught Place, New Delhi, (Ex. PW 6/H and Ex. PW 6/I) as per which, Co-Convict No.1, Mr. Mohd Sharjeel Akhtar and Mr. Mohd Rehan had booked air tickets (Ex. PW 6/E1 to E3) by Mahan Airlines for departure from Delhi to Tehran on 23rd June, 2013 and arrival from Tehran to Delhi on 10th July, 2013. However, it is alleged that neither Co-Convict No.1 nor Mr. Mohd Sharjeel Akhtar and Mr. Mohd Rehan returned to India on these tickets.
- vi. During investigation information regarding arrival of Co-Convict No.1 was sought from the Ministry of External Affairs. *Vide* reply dated 23rd



February, 2016 (Ex.D-5 and Ex.PW- 56/G) it was informed by the Ministry of External Affairs that Co-Convict No.1 had come to India through Turkey, as he had submitted a false application before Consulate General of India, Istanbul, Turkey on 26th August, 2014 stating that he had come to Istanbul, Turkey on a tour and lost his passport. The Consulate General verified his citizenship and issued an Emergency Certificate on 29th September, 2014 with remarks as “Illegally living in Turkey” which facilitated his return to India.

- vii. In the aforementioned disclosure statements Co-Convict No.1 also revealed vital information regarding other members of AQIS operating in India and on the basis of the information provided by him one Mr. Zafar Masood @ Guddu (hereinafter ‘**Co-Convict No.2**’), Appellant and Mr. Syed Anzar Shah were apprehended.
- viii. Co-Convict No.2 in his disclosure statements (Ex.PW 33/D and Ex.PW 33 H to L) revealed that he had relations with various members of AQIS and on their directions he had visited Pakistan in November-December 1999 and had also received arms training. He also revealed that one Mr. Usman @ Asad in March 2001, had arranged for the stay of two Pakistani militants namely Mr. Syed Mohd @ Hamja and Mr. Maqsood Ahmed @ Ali in Delhi but they were apprehended by the police. Co-Convict No.2 further revealed that he started living at various places in Gujarat and during his stay in Gujarat, he obtained another passport with fake identity in the name of Zafar Masood Shaikh S/o Shaikh Masood Hasan. Upon verification during investigation, the said passport (Ex. PW 45/B) was found to be forged.
- ix. During investigation it was also revealed that Co-Convict No.2 was



instructed by one Syed Akhtar @ Qasim to pay Rs. 1 lakh to Co-Convict No.1 for purchasing air tickets from Delhi to Iran.

- x. The Appellant in his disclosure statements (Ex.PW 18/H to 18M, Ex.PW 18T to 18 U and Ex. PW 18/Z1) revealed that that in the year 1999, he had met one Jaish-e- Mohammad militant (hereinafter '**JeM**') Salim r/o Pakistan in Deoband, Uttar Pradesh, who was involved in hijacking of IC-814 Indian Airlines flight. He further revealed that he provided safe hideouts to militants belonging to terrorist organization JeM, and the head of AQIS Mr. Sanaul Haq @ Maulana Asim Umar had studied with him in Darul-uloom, Deoband.
- xi. It is alleged that the Appellant was responsible for sending wanted accused Mr. Mohd Umar @ Umar Hyderabad, Mr. Abu Sufiyan and Mr. Abdul Sami (hereinafter '**Co-Convict No.3**') to Pakistan for training through other wanted accused Mr. Syed Mohd Arshiyan, Dr. Sabeel Ahmad and Mr. Shahid Faisal @ Yusuf.
- xii. It is alleged that between 08th January, 2015 to 28th February, 2015 the Appellant had visited Pakistan through Saudi Arabia. During investigation a Notice dated 05th January, 2016 (Ex.PW 29/B) under Section 91 Cr.P.C was issued to Emirates Airlines for seeking information regarding the Appellant's travel details. *Vide* reply dated 06th January, 2016 (Ex. PW 29/C) Emirates Airlines informed that the Appellant had travelled from Karachi to Dammam *via* Dubai on 15/16 February, 2015. During investigation, passport of the Appellant was seized but no arrival/departure visit stamps or visa of Pakistan were found.
- xiii. It is alleged that the Appellant during his visit to Pakistan met most



wanted militants Mr. Zakiur Rehman Lakhwi, Chief of Lashker-e-Taiba (hereinafter '*LeT*'), Mr. Hafiz Saeed Chief of Jamat-ud-Dawa (hereinafter '*JuD*') Kasim Bhai @ Sajid Mir who is wanted for being involved in the 26/11 Mumbai attacks and wanted accused Faratullah Gauri @ Chacha for planning to carry out more terrorist activities in India.

- xiv. It is alleged that in September 2015, the Appellant visited Bangalore and met Co-Convict No.1 and they discussed about the planning and objectives of AQIS and Co-Convict No.1 informed the Appellant that he requires more youth for strengthening its base in India.
- xv. During investigation in the year 2018 it was revealed that the Appellant had procured a passport bearing no. F1233600 (Ex.PW 43/J2) in the year 2004 with a fake name and identity. It is pertinent to note that the Appellant has also been found to be involved in (i) FIR No. 21/2016 (Ex. PW 56/O) dated 25th January, 2016 at P.S. Bistupur East Singbhum District Jamshedpur, Jharkhand and (ii) Case No.3 dated 25th February 2016 of P.S. Special Task Force, Bhubaneshwar Odisha.
- xvi. Pursuant to the aforesaid disclosure statements of the Appellant, Co-Convict No. 3 was arrested. Co-Convict No.3 in his disclosure statements (Ex.PW 20/E to Ex.PW 20/I) revealed that he had met the Appellant in Jamshedpur, Jharkhand for a discussion on Islam and religion. He further stated that he was interested in studying at a *Madrasa* and wanted to become a *Hafiz*. Initially his family members did not agree to send him to a *Madrasa* to study. However, his brothers convinced his father to send him to a *Madrasa*. Co-Convict No.3 also revealed that he used to watch video/speeches of most wanted militant



Mr. Maulana Masood Azhar of JeM and Mr. Hafiz Saeed of JuD on internet and due to the same he got inclined towards Jihad and asked the Appellant to send him to Pakistan for arms training. Co-Convict No.3 also stated that in June 2012, he met one Mr. Abu Sufiyan, who was also interested to go to Pakistan for arms training. Pursuant to the same Co-Convict No.3 set up a meeting with the Appellant and the Appellant assisted Co-Convict No.3 and the aforesaid Mr. Abu Sufiyan to go to Pakistan *via* Dubai.

- xvii.** Co-Convict No.3 further stated that he received arms training in Pakistan and pursuant to the same in January 2015 he returned to Dubai and continued residing there till March 2015 when he returned to India *via* Nepal and met the Appellant who allegedly told him to remain in touch so that further terrorist activities could be co-ordinated .
- xviii.** It is alleged that during investigation upon verifying the passport, it was found that no arrival/departure entry of Pakistan was reflecting on the passport of Co-Convict No.3. The travel details of Co-Convict No.3 were also verified and a Notice dated 31st December, 2015 (Ex.PW 29/I) under Section 91 Cr.P.C was issued to Emirates Airlines for seeking information regarding Co-Convict No.3 and the aforesaid Abu Sufiyan. *Vide* reply dated 04th January, 2016 (Ex.PW 29/J) Emirates Airlines informed that both of them travelled from Kolkata to Dubai on 27th January, 2014. After further verification it was also established that Co-Convict No.3 had returned to Dubai on 05th January, 2015 and later returned to India *via* Nepal in March. It is pertinent to note that Co-Convict No.3 is a co-accused with the Appellant in FIR No. 21/2016 (Ex. PW 56/O) dated 25th January, 2016 at P.S. Bistupur East Singbhum



District Jamshedpur.

- xix.** On 09th August, 2017 one Mr. Syed Mohd. Zishan Ali was apprehended at the Indira Gandhi International Airport, Delhi and it is alleged that Mr. Syed Mohd. Zishan Ali was found providing logistics/financial aid to the members of AQIS in India and abroad. It is further alleged that on 16th October, 2015, Mr. Syed Mohd. Zishan Ali came to Bengaluru by air from Saudi Arabia to attend a *Walima* on 26th October, 2015. On the basis of a transcript of an intercepted call (Ex.PW 43/G) between the Appellant and Mr. Syed Mohd. Zeeshan Ali, it is alleged that he had also invited the Appellant for the *Walima*.
- xx.** On 28th August, 2020 one Mr. Sabeel Ahmed was arrested at the Indira Gandhi International Airport, Delhi. It is pertinent to note that Mr. Sabeel Ahmed was declared a Proclaimed Offender *vide* order 12th July, 2016 by the Id. ASJ. It is alleged that Mr. Sabeel Ahmed used to send an amount of Rs.25000/- from his rental income to the Appellant from Saudi Arabia through one Tajir Pasha (PW-51) and Amr Syed.
- xxi.** Mr. Sabeel Ahmed was also found to be involved in case ***RC No. 04/2012/NIA/Hyd*** dated 25th November, 2012 for allegedly hatching conspiracy to kill prominent politicians, police officers and journalists in Bengaluru, Hubli, Hyderabad and Nanded in collusion with members of LeT based in Saudi Arabia.
- xxii.** After the completion of investigation on 10th June, 2016 chargesheet under Sections 18, 18-B and 20 of the UAPA was filed against the Appellant and other co-convicts/co-accused persons before the Id. Trial Court. On 18th March, 2019 a supplementary chargesheet was filed against the Appellant and Sections 464, 465, 468, 471, 174A, 120B,



174A of the IPC and Section 12(1)B of the Passports Act, 1967 were added.

xxiii. *Vide* Order dated 17th October, 2017 passed by the Id. Trial Court charges were framed against the Appellant and other co-convicts under Sections 18, 18-B and 20 of the UAPA. The relevant portion of the said order on charge *qua* the Appellant is reproduced hereinbelow:

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“14. Accused Mohd. Abdul Rehman (accused no. 3)

a) *On disclosure dated 14.12.2015 of accused Mohd. Asif, on 16.12.2015, accused Mohd. Abdul Rehman was apprehended from Cuttack, Odisha u/s 41.1 Cr.PC along with mobile phone, Tab, Passport, SO card, voice recorder, compact disks, PAN card, Trust Deed, paper slips having lots of mobile phone numbers, etc. and on 17.12.2015, he was arrested in this case.*

b) *During investigation, he admitted that in 1999, he had met one Jaish-e-Mohd. (JeM) militant Salim r/o Pakistan, in Deoband, UP who was involved in hijacking of IC-814 Indian Airlines flight from Nepal and release of JeM militant Mulana Masood Azhar by Govt. of India.*

c) *He also provide safer hideouts to militants Salim, Mansoor & Sajjad, all r/o Pakistan of terrorist outfit JeM for terrorist activities in India but they were killed in shootout at Gomti Nagar, Lucknow, UP in April 2001.*

d) *During investigation, accused Mohd. Asif Rehman admitted that in the year 2009, in Bangalore, he had met wanted accused Dr. Sabeel Ahmed [accused no. 11 (xiv)] who had come in India from London after releasing from jail as his brother Kafil Ahmad had committed suicidal attack in Glasgow airport, London in year 2007.*

e) *This accused disclosed that wanted accused Sanaul Haq @ Maulana Asim Umar (head of AQIS) had also*



studied with him at Darul-uloom, Deoband.

f) During investigation, it revealed that that accused Mohd. Abdul Rehman had sent accused Mohd. Umar @ Umar Hyderabad (wanted), Abu Sufyan (wanted) and accused Abdul Sami (arrested) Pakistan for training through other wanted accused Syed Mohd. Arshiyah, Dr. Sabeel Ahmad and Sahid Faisal @ Yusuf. Report of AD/CFB, MHA, Govt. of India showing their departure from India is placed on record.

g) During investigation, it is revealed that between 08.01.2015 to 28.02.2015, he visited Saudi Arab and during this period, he illegally travelled Pakistan for meeting various outfit members. As per report of 'Emirates Airlines, Dubai, UAE', he had travelled from Karachi to Dammam via Dubai on 15/16 February, 2015. His passport does not have any arrival/departure visit stamps or Visa of Pakistan. Report of Emirates Airlines showing his illegal Karachi visit is placed on record.

h). During investigation, accused Mohd. Abdul Rehman admitted that during his illegal visit to Pakistan. he met militant Zakir-ur-Rehman Lakhwi, Chief of Lashkar-e-Toiba in Rawalpindi Jail, militant Hafiz Syed, Chief of Jamiat-ul-Dawa in Lahore, militant Kasim Bhai @ Sajid Mir (wanted in 26.11.2008 Mumbai attack) and accused Faratullah Gauri @ Chacha [accused no. 11 (xvi)] for planning to carry out more terrorist activities in India.

i) Besides above, accused Mohd. Abdul Rehman is found in contact with a criminal namely Raju r/o Tata Jamshedpur, having Jihadi mindset, who used to run an arms factory. In the year 2012, Raju and his associates gave the delivery of arms in Bangalore but before any terrorist outcome, this huge quantity of arms was seized by the police.

j) During investigation, it is revealed that in September 2015, accused Mohd. Abdul Rehman visited Bangalore and received a call of accused Mohd. Asif on mobile



phone of PW Tajir Pasha @ Athar r/o Bangalore and then met him there. Mohd. Asif gave him the message of wanted accused Mohd. Umar @ Umar Hyderabad [accused no. 11 (xvii)] by introducing himself as India's head of AQIS and wanted accused Sanaul Haq @ Maulana Asim Umar (head of AQIS). Mohd. Asif discussed with him about the planning and objectives of AQIS and he requested for more youths for strengthening its base in India. Intercepted call and statement of witness Tajir Pasha @ Athar is placed on record in this connection.

k) There is also another intercepted call dated 11.09.2015 between accused Mohd. Asif and Maulana Abdul Rehman, which proves the linkage among these arrested and wanted accused persons. In this intercepted call, they are also talking about wanted accused Mohd. Umar @ Umar Hyderabad [accused no. 11 (xvii)]. Said intercepted call is placed on record.

l) He is also found involved in the following cases:-

i. FIR No. 21/2016, u/s 121, 121A, 120-B, 341PC, 25(1b)A, 26, 35 Arms Act, 1 CLA Act-1908, 6,8,19,20,23 Unlawful Activities (Prevention) Act-1967, PS Bistupur, East Singhbhum, District Jamshedpur, Jharkhand.

ii. Case No. 244/20015, u/s 17,18, 18-Bb,20 Unlawful Activities (Prevention) Act, PS Jagatpur, Cuttack, Odisha and Case No. 3, dated 25.02.2016, PS Special Task Force, Bhubaneshwar, Odisha.

m) There are also statement of witnesses namely Dil Nawaj and Khalid Pasha showing that accused Maulana Abdul Rehman used to give jihadi speeches and cultivating them to go Pakistani Afghanistan for jihadi trainings.

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19. Let charge for offence u/s 18, 18-8 and 20 of UA(P) Act be framed against accused Mohd. Asif, Zafar Masood, Mohd. Abdul Rehman and Abdul Sami (accused no. 1 to 4 respectively)."



- xxiv. In order to prove its case the prosecution has examined as many as 60 witnesses to prove the guilt of the Appellant and other co-convicts. After the conclusion of the prosecution evidence, statements of all the accused persons was recorded under Section 313 Cr.P.C wherein they all had refuted the case of the prosecution. All the accused persons had opted not to lead any evidence in their defence.
- xxv. After the conclusion of the trial, Id. Trial Court, *vide* the Impugned judgment of conviction dated 10th February, 2023 has held the Appellant and other co-convicts guilty for offences punishable under Sections 18/18B of UAPA.
4. Hence, the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

5. Learned Counsel appearing on behalf of the Appellant submitted that on the basis of the evidence which has been adduced, no act has been committed by the Appellant which can be termed as a “Terrorist Act” under Section 15 of the UAPA. He had pointed out the following paragraph of the impugned judgment to argue as under:

“PREPARATORY ACT TO THE COMMISSION OF TERRORIST ACT :-

77. Accused Maulana Abdul Rehman has also been projected as one of the main accused in this case. There are allegation that he was collecting fund for terror activities in India as well as in abroad. His role is also of recruiting accused Syed Mohd. Zishan Ali, Mohd. Abdul Sami, Mohd. Umar @ Umar Hyderabad (P.O) and Syed Mohammad Arshiyah @ Haider (P.O). It is also alleged against him that he was found visiting Pakistan illegally for obtaining arms and ammunitions and also for obtaining training where he also met top wanted militants. Accused Maulana Abdul Rehman was also



found obtaining financial assistance from co-accused Dr. Sabeel Ahmed and accused Syed Mohd. Zishan Ali for running terror activities.”

The various heads under which the Id. Trial Court had convicted the Appellant are that:

- (i) Appellant had committed preparatory acts for the commission of a terrorist act;
- (ii) Appellant had links with one Mohd. Asif *i.e.*, Co-Convict No.1 from whom substantial incriminating material was retrieved;
- (iii) Appellant had also made speeches against the interest of the nation;
- (iv) Appellant had visited Pakistan in a covert manner, with Co-Convict No.1;
- (v) Appellant was involved in radicalisation of youth and collection of funds for a terrorist organization;
- (vi) Hate videos were recovered from his mobile phone apart from other anti-national material.

6. Ld. Counsel for the Appellant submitted that there is in fact no evidence to prove any of the above, inasmuch in the evidence given by the witnesses, they do not implicate the Appellant for any terrorist activity. It was further submitted that reliance was placed on the testimony of Mohd. Saquib Khan (PW-46), who merely stated that the speeches of the Appellant did not reflect true Islam and this cannot be inferred to mean that the Appellant was promoting terrorism in any manner. It is further submitted that reliance was placed upon mere pictures or hate speeches, none of which have been exhibited in the prosecution evidence.

7. Ld. Counsel for the Appellant further submitted that insofar as visit to



Pakistan was concerned, Sh. R. Ramanathan (PW-29), who was the security supervisor in the Emirates Airline, has merely alleged that a journey was undertaken from Karachi to Dammam *via* Dubai on 15/16th February, 2015 by the Appellant. It is further submitted that though the tickets dated 13th February, 2015 and 15th February, 2015 have been produced, the passport number is not mentioned on the same. The covering letter did mention the passport number, however the said letter had not been proved before the Id. Trial Court in accordance with law. It was further submitted that the signature of Dr. Abdulla Al Hashimi (who was heading the group security Emirates Airlines) and who had signed the letter is attempted to be proved by Sh. R. Ramanathan (PW-29) before the Ld. Trial Court. However, the said evidence is not sufficient and cannot conclusively establish that the Appellant had travelled to Pakistan.

8. Ld. Counsel for the Appellant submitted that Sh. R. Ramanathan (PW-29), the Security Supervisor from Emirates Airlines, produced the verification report as well as the information regarding the journey undertaken by the Appellant, showing the two tickets with journey details of 13th February, 2015 and 15th February, 2015. It was argued that Sh. R. Ramanathan PW-29 during cross examination admitted that the passport number is not mentioned in the tickets (Ex.29C/D/H and J) and therefore the same is not conclusive and does not clearly establish that the Appellant had undertaken a journey to Pakistan.

9. Ld. Counsel for the Appellant submitted that with regard to the allegation of radicalisation of youth is concerned, Mr. Md. Saquib Khan (PW-46) and Mr. Sayed Dil Nawaz (PW-4) had given evidence which merely showed that two persons were to be given a job abroad and that the Appellant



would have helped in the same. Ld. Counsel for the Appellant further submitted that the evidence given by the aforesaid witnesses would show that there was no discussion of anything linked to terrorism or any form of violence. Ld. Counsel for the Appellant submitted that Mr. Md. Saquib Khan (PW-46) merely stated that he was asked by the Appellant whether he would be willing to train students in basketball or karate as he was a national player. The said witness in fact stated that he could not decipher the intention of the Appellant properly and therefore he had not made any complaint to the police. In view of above Ld. Counsel for the Appellant submitted that in the present case there is insufficient evidence against the Appellant and the Ld. Trial Court has reversed the burden of proof to show the negative.

10. Ld. Counsel for the Appellant submitted that with regard to the recovery of objectionable material from the Appellant's phone is concerned, in paragraph 135 of the impugned judgment, the recovery of some objectionable material in connection with Al Qaeda from Co-Convict No.1 is discussed, however, the direct connection between the Appellant and Co-Convict No.1 has not been established.

11. Ld. Counsel for the Petitioner submitted that it has been alleged that the Appellant used to criticise the BJP and RSS in his speeches and the same is far from being inculpatory in any way whatsoever, as these were mere opinions held by a person against an organization. In fact, this kind of opinion about various organisations is held by many persons throughout the country including public personalities, and cannot be made the basis for any inference as to membership of a terrorist organization, or any conspiracy to hurt any person by the commission of a terrorist act. It is pertinent to mention that Khalid Pasha (PW-3), in his statement clearly mentioned that the Appellant



never did or said anything illegal. Thus, the allegations are frivolous in nature as there is no act committed by the Appellant which suggested any planning, or recruitment towards commitment, abetment or even instigation towards any terrorist activity. Ld. Counsel for the Appellant also highlighted that in the deposition of Mr. Syed Dil Nawaz (PW-4), there is no indication that the Appellant called for violence or recruited for a terrorist organisation or had any connection with any terror organisation.

12. Ld. Counsel for the Appellant submitted that as far as Sh. Imitiaz Ahmed (PW-49), is concerned, he merely stated that he was working as an attendant in Lal Masjid, Shivaji Nagar, Bengaluru area and after seeing the photograph, he recognised the Appellant and stated that he was involved in collection of *chanda* and donation about 15 years back. He identified the Appellant in Court as the person who used to come for collecting *chanda*. This cannot be construed as something which reflects the Appellant's involvement in collection of funds for terrorist activity.

13. Ld. Counsel for the Appellant submitted that as far as the intercepted phone call with Co-Convict No.1 is concerned, the same took place on the mobile phone of Mr. Tajir Pasha (PW-51). Also, the transcript only reflected that the Appellant had no idea who co-convict No,1 was. Furthermore, no sanction under Section 46 of the UAPA was taken for the same and there is absolutely nothing incriminating in this conversation.

14. Reliance has been placed on the following judgments by Ld. Counsel for the Appellant:



(i) Ranvir Yadav vs State of Bihar; (2009) 6 SCC 595

(ii) Vernon vs State of Maharashtra and Anr; 2023 SCCOnLineSC 885

(iii) Hitendra Vishnu Thakur vs State Of Maharashtra (1994) 4 SCC 602

SUBMISSIONS ON BEHALF OF THE RESPONDENT/STATE

15. Ld. APP for the State had submitted that Section 2(o) of the UAPA which defines ‘unlawful activities’, specifically mentions acts of an individual spoken or written or any visible representation which causes or intends to cause any disaffection towards the country or is disrupting or intends to disrupt the territorial integrity or sovereignty of the country.

16. Ld. APP for the State further submitted that the transcription which has been placed on record of the audio files which were traced from the mobile phone of the Appellant would show the kind of ideology that he professes and also the manner in which he professes violence against the country as also the Prime Minister. It was further pointed out that there were several references regarding taking revenge in Gujarat, Orissa and other States and the Appellant is stated to have also been involved in collection of donation and recruitment. Ld. APP for the State further submitted that the Appellant had visited Pakistan illegally to obtain arms and ammunitions and the same fact has been elaborated in paragraph 77 of the impugned judgment.

17. Ld. APP for the State submitted that Mr. Syed Dil Nawaz (PW-4) and Mr. Md. Saquib Khan (PW-46) have established the conspiratorial nature of the Appellant’s activities while visiting Lal Masjid in Karnataka. The sum and substance of the evidence given by Mr. Syed Dil Nawaz (PW-4) and Mr. Md. Saquib Khan (PW-46) reflects that there was a clear attempt to recruit persons for terrorist activity to damage the sovereignty and integrity of India. Further



it has also been confirmed that the Appellant had come to collect donations from the Masjid area.

18. Ld. APP for the State pointed out that in Paragraphs 82 to 84, 85 and 88 of the impugned judgment, the Id. Trial Court has appreciated that the Appellant was involved in radicalising youth to perform *jihad* against the country. To establish the conspiracy alleged under Section 18 of UAPA, reliance is placed upon the connectivity/connection between the other co-convicts and the sequence of inflammatory speeches as also the deposition of Mr. Syed Dil Nawaz (PW-4) and Mr. Md. Saquib Khan (PW-46).

19. Ld. APP for the State submitted that the Appellant had a direct link with Co-Convict No.1 and Mr. Tajir Pasha (PW-51). It is submitted that FSL of the intercepted call was conducted and the report clearly stated that the voice in the intercepted call matched with that of the Appellant, Co-Convict No.1 and Mr. Tajir Pasha (PW-51). Further the location of all the three people was found to be in Bangalore. Hence, it is established that there is a direct link between the Appellant and the other co-accused/co-convict mentioned above.

ANALYSIS & FINDINGS

20. Heard the Id. Counsel for the parties and perused the record.

21. After the completion of investigation, chargesheet under Sections 18, 18-B and 20 of the UAPA was filed against the Appellant and other co-convicts. On 18th March, 2019 a supplementary chargesheet was filed against the Appellant under Sections 464, 465, 468, 471, 174A, 120B, 174A of the IPC and Section 12 (1)(b) of Passport Act 1967. *Vide* order on charge dated 17th October, 2017 and 19th April, 2022 respectively the Appellant was charged under Section 18, 18-B and 20 of UAPA, Section 467, 471 of IPC



and Section 12 (1)(b) of the Indian Passport Act by the Id. Trial Court.

22. *Vide* the impugned judgment the Appellant was convicted for the offences punishable under Sections 18 and 18-B of the UAPA and was acquitted for the offences punishable under Section 20 of UAPA, Section 467 and Section 471 of IPC and Section 12 (1)(b) of the Indian Passport Act. The relevant portion of the impugned judgment is reproduced hereinunder:

“134. *In the present case, firstly, accused Mohd. Asif was arrested. His connection with accused Abdul Rehman through Call Detail Records, matching of their voice samples has already been established. The conduct of accused Mohd. Asif with accused Zafar Masood in withdrawal from the bank account of his wife and corresponding booking the travel tickets by giving cash and travelling with accused Mohd. Sharjeel Akhtar and Mohd. Rehan shows their connectivity with each other. Similarly, accused Abdul Rehman is found connected with accused Mohd. Asif through the telephonic calls and matching of voice samples. Accused Abdul Rehman is also found connected with accused Abdul Sami in view of the testimony of Mohd. Saquib Khan (PW46). In this manner, accused Mohd. Asif, Maulana Abdul Rehman, Zafar Masood and Abdul Sami are found to be connected with each other directly or indirectly.*

135. *Merely having contact with each other will not be sufficient in order to prove the existence of conspiracy between them. Common object is also required to be established from the conduct of the accused persons. So far as accused Mohd. Asif is concerned, from his possession objectionable material of his connection with Al-Qaida and also material of procedure to prepare explosives with the help of various methods etc, as discussed above were recovered. recovery has been effected of inflammatory material i.e. a video folder MP4 file containing hatred video with pics of political*



leaders including Sh. Narendra Modi, Prime Minister of India. There are two more video MP4 files found to be containing hatred speech by a Maulvi and antinational/ hatred video of Kashmiri people. Accused Mohd. Asif and Abdul Rehman were following the same design which indicates towards such an act of threatening the unity, integrity, security of the country. This belief from the conduct of the accused and recovery from accused persons further finds support from the fact that accused Mohd. Asif went to Pakistan along with Mohd. Sharjeel Akhtar and Mohd. Rehan. Mohd. Asif himself came back to India but whereabouts of Mohd. Sharjeel Akhtar and Mohd. Rehan are still not known and the amount of their tickets still remained unutilized as per the statement of witnesses. The conduct of accused Mohd. Asif however indicates towards his involvement in illegal activity when he got issued an emergency certificate Ex. PW 56/G from Consulate General of India, Istanbul on the basis of false submissions/representations. Accused Mohd. Asif has not been able to justify his absence for such a long period from the country and his existence is registered during that period neither in India nor in Iran for which he got issued the tickets for travelling. Moreover visit of accused Abdul Rehman, Abdul Sami, Zafar Masood to Pakistan and their direct or indirect inter-se connection further strengthens the belief that accused Mohd. Asif had also visited Pakistan during the abovesaid period. In these circumstances, direct evidence qua his visit to Pakistan has not come out but his conduct and recoveries from his possession and his unexplained absence shows that he went to Pakistan for the purpose of executing some preparatory act for terrorism in India. This belief further finds support from the fact that when he was trying to contact PW5 Mohd. Zeeshan, brother of accused Mohd. Rehan to hand over the letter kept in an envelope. It is established that the said envelope bears the handwriting of accused Mohd. Asif



which further strengthens the belief of existence of some conspiracy against the interest of the nation.

136. Similarly, accused Abdul Rehman was also following the same objective as that of accused Mohd. Asif which is evident from the testimony of PW4 Syed Dil Nawaj and PW46 Mohd. Saquib Khan who have proved that the speeches of accused Abdul Rehman were inflammatory and were against the interest of the nation. Witnesses have also established his journey to Pakistan. There is no explanation about the reason of his journey to Pakistan.

137. It is has been held by Hon'ble Supreme Court in the case of Navjot Sandhu (supra) that in most of the cases of conspiracy, there may not be direct evidence of agreement amounting to criminal conspiracy but if the circumstance is considered together, it would establish beyond reasonable doubt that accused was party to the conspiracy and had played active part in various acts done in furtherance of conspiracy and such circumstance cannot be viewed in isolation. From the conduct and action of the accused persons, the Court can draw a presumption u/s 114 of Indian Evidence Act having regarding to the natural course of events and human conduct to show the nexus between the accused persons. From the conduct of accused Mohd. Asif, articles recovered from his possession, his booking of the tickets by obtaining money from accused Zafar Masood, his contact with accused Abdul Rehman, further his visit to Bangalore, staying in Blue Star Lodge, Bangalore, having telephonic conversation with accused Abdul Rehman through the phone of PW51 Tajir Pasha shows the connection between them. Despite that the contents of their intercepted conversation is inadmissible piece of evidence but still the evidence available on record is sufficient to show their connection. Moreover accused Mohd. Asif obtained a sum of Rs.2 lacs from PW 44 Bhagirath Dass who has identified accused Mohd. Asif being the same person and unexplained source of money



and its use and failure of the accused to show the purpose for which the same was received by him along with his visit to Pakistan and furnishing false information to the Consulate General of India are sufficient to show the existence of conspiracy.

138. Similarly, from the conduct of accused Abdul Rehman, articles recovered from his possession, testimony of PW4 Syed Dil Nawaj and PW46 Mohd. Saquib Khan, his travel to Pakistan, his contacts with accused Mohd. Asif and also the testimony of PW46 Mohd. Saquib Khan who has deposed about accused Abdul Sami and his recruitment abroad and also allurement of PW46 Mohd. Saquib Khan for an overseas job also indicates towards the existence of conspiracy.

139. The conduct of accused Zafar Masood in which he gave money to accused Mohd. Asif amounting to Rs.1 lakh, his visit to Pakistan and also obtaining four Passports of deceptive similarities in his name and parentage. The recovery of forged School Leaving Certificate which is also proved by the relevant witnesses. It has also come on record that he got issued four Passports. When someone is getting issued the Passport in such a manner, the possibility of its use to hide his travel more specifically for the purpose of illegal travel to Pakistan in view of his conduct and facts and circumstance of this case cannot be ruled out. There has been recovery of some international numbers of Saudi Arabia but keeping the international numbers is not an offence but accused has not been to justify the existence of these numbers in his mobile phone. Keeping in view the totality of circumstances, the prosecution has been able to establish the involvement of accused Zafar Masood alongwith co-accused in achieving a common object in furtherance of conspiracy.

140. In the similar manner, the conduct of accused Abdul Sami and his connection with accused Abdul Rehman is not far from indicating him also as one of the



constituents for conspiracy alongwith other accused persons. As per the evidence produced by the prosecution, he travelled to Pakistan illegally hiding his travel by creating forged and fabricated departure/arrival stamps of Immigration on his passport. His direct contact and recruitment by accused Abdul Rehman is also established by witnesses more specifically PW46 Mohd. Saquib Khan. His conduct and overt act also is indicating towards the existence of conspiracy and his involvement in the same.

Therefore, from the facts and circumstances, conduct of the accused persons, it is established beyond reasonable doubt that accused Mohd. Asif and Abdul Rehman were indulged in carrying out such acts to disturb the unity and integrity, peace and tranquillity of India and for that purpose, they not only travelled to Pakistan illegally but also roped in accused Abdul Sami, Zafar Masood in their common design. Although the present case is not about committing of a specific terrorist act but act of accused persons is indicating towards preparation of some terrorist act. Preparatory act is being indicated by the conduct of the accused persons and the prevailing circumstances as no person normally would be indulged in such kind of activities. The activities of each accused persons are not to be seen in isolation. The evidence available on record clearly indicate towards the existence of conspiracy to commit a terrorist act but when the interse link of the accused persons, their illegal travel to Pakistan , recruitment of young persons in their terror outfit, inflammatory speeches, objectionable articles, obtainment of emergency certificate on false representation, obtainment of various passports by creating false and fabricated documents, if taken up as a whole and weighed, it gives a cumulative effect of existence of some common design or object to achieve something which is not in the interest of the country. The act of the accused persons shows that their conduct was conscious and



clearly enough to infer their concurrence as to their common design and its execution. The evidence produced by the prosecution considering the surrounding circumstances and the conduct of the accused persons to show that the same is a relevant material which is required to complete the offence of conspiracy and also to show an agreement between the accused persons. Such agreement of doing a preparatory act to commit a terrorist act can never be a disclosed agreement which is required to be inferred from the circumstances and the conduct of the accused persons. Therefore, in the totality of circumstances, it is proved beyond reasonable doubt that act of accused persons was preparatory in nature with the intention to disturb the peace, tranquillity, unit, integrity and security of the country within the meaning of Section 15 and Section 18 of UAPA.

141. So far as recruitment for the purpose of terrorist act is concerned, the evidence in the form of PW46 Mohd. Saquib Khan is there who has deposed about his association with accused Abdul Rehman, Abdul Sami and his recruitment for the overseas job and also attempt of influencing Mohd. Saquib Khan (PW46) by accused Abdul Rehman to join his outfit under the garb of overseas job within the meaning of Section 18 and Section 18B of UAPA.

So far as accused Mohd. Asif is concerned, there is evidence against him that alongwith him, he also took Mohd. Sharjeel Akhtar and Mohd. Rehan to Pakistan after obtaining money from Zafar Masood. Accused Mohd. Asif travelled alongwith them by booking the travel tickets also shows his involvement in the recruitment of young persons for the purpose of commission of terrorist activities within the meaning of Section 18 and Section 18B of UAPA.

142. It has been alleged against the accused persons that they were members of the banned terrorist organisation Al- Qaeda and more specifically its Indian outfit i.e. AQIS. The evidence already come on record



establishes the existence of conspiracy between accused Mohd. Asif, Abdul Rehman, Abdul Sami and Zafar Masood having common objective of disturbing the peace and tranquillity of India for which they joined hand together. From the possession of accused Mohd. Asif, incriminating material has been recovered which is connected with Al-Qaeda. The connection between accused Abdul Rehman, Zafar Masood, Mohd. Asif and Abdul Sami has already been established and it is also established that all the accused persons were acting towards the achievement of common object, therefore, their direct and indirect association with each other and inclination towards Al-Qaeda, which has been declared a terrorist organisation under Schedule-I of UAPA, shows that they were associated with Al-Qaeda only. Being the members of the such terrorist organisation, seldom be an open affair, anyone who is joining such terror outfit would be concealing his identity and acts. It cannot be expected that such membership would be offered in public. It is only from the conduct, facts and circumstances and their association, inference can be drawn about their association or involvement with a terrorist organisation. Although direct evidence to show that they were members of terrorist organisation 'Al-Qaeda' are missing but facts and circumstantial evidence produced by the prosecution shows their association with the terrorist organisation. Therefore, the ingredients of membership of terrorist organisation within the meaning of Section 20 of UAPA are not proved. Despite that, there is no bar to prove the charges u/s 18, 18B of UAPA for which membership is not required.

143. As a cumulative effect of the above detailed discussions, accused Mohd. Asif, Zafar Masood, Mohd. Abdul Rehman and Abdul Sami @ Uzair @ Hasan are held guilty for commission of offence punishable u/s 18 and 18B of UAPA and are convicted thereunder. Accused Mohd. Abdul Rehman is acquitted of the offences punishable u/s 467/471 IPC and also under Section 12



(1) (b) of the Indian Passport Act.”

xxx

xxx

xxx

(emphasis supplied)

23. The order on Sentence was pronounced on 14th February 2023 in FIR No. 67/2015 P.S. Special Cell passed by the Id. ASJ, Patiala House Court, New Delhi whereby the Appellant was convicted under Sections 18 and 18B of the UAPA and the Appellant was sentenced to undergo rigorous imprisonment for a period of seven years and five months and fine of Rs.25,000/- each for the offence punishable under Section 18 UAPA. In default of payment of fine, SI for a period of three months each was also directed. Similar sentence was also awarded under Section 18B. The operative portion of the order on sentence reads:

“Vide separate order, the convicts, namely, Mohd. Asif, Zafar Masood, Mohd. Abdul Rehman and Abdul Sami are sentenced to undergo Rigorous Imprisonment for period of seven years and five months and fine of Rs.25,000/each for the offence punishable under Section 18 UAPA. In default of payment of fine, SI for a period of three months each.

For the offence punishable u/s 18B UAPA, all the four convicts are sentenced to undergo to undergo Rigorous Imprisonment for period of seven years and five months and fine of Rs.25,000/each for the offence punishable under Section 18 UAPA. In default of payment of fine, SI for a period of three months each.”

24. The appellant has already undergone more than 7 years the sentence awarded in this case, but is stated to be in custody in Giridih Jail in Jharkhand. The Appellant was transferred from Mandoli Jail, Delhi to Giridih Jail on 17th September, 2023. An FIR No. 21/2016 was registered against the Appellant at P.S. Bistupur, East Singhbhum District Jamshedpur, Jharkhand, under



Sections 121, 121A, 120B, Sections 25(1)(b), 26, 35 of Arms Act and 34 of IPC and Sections 6, 8, 19, 20, 23 of the UAPA.

25. It can be seen that the Id. Trial Court convicted the Appellant and other co-convicts for conspiracy to commit acts which constituted preparation towards commission of some terrorist act. The Id. Trial Court came to the aforesaid conclusion on the basis of evidence indicating existence of a conspiracy to commit a terrorist act which included, their illegal travel to Pakistan, recruitment of persons to their terrorist outfit, inflammatory speeches, objectionable articles, obtainment of emergency certificate on false representation, and and obtainment of various passports by creating false and fabricated documents. As per the Id. Trial Court these circumstances if considered together “*gives a cumulative effect of existence of some common design or object to achieve something which is not in the interest of the country*”. The evidence which was the basis of the aforesaid finding is discussed hereinafter.

26. One of the witnesses, whose testimony is considered by the Id. Trial Court to conclude that the Appellant had given inflammatory speeches is, Mr. Syed Dil Nawaz (PW-4). The said testimony is reproduced hereinbelow for the sake of completeness:

“PW- 4: Sh. Sayed Dil Nawaz S/o Sayed Abdul Rahim, aged about 23 years,r/o Village Gujarpur, P.O. Bhairpur, District Cuttack, Odisha.

On SA: C

My father is serving as He in Odisha Police and he is posted at PS Bhushan, District Dhenkanal. In the month of July 2014 I was pursuing B.Sc. In July 2014 I had gone to mosque of my village to listen the speech of Maulana Abdul Rehman for the first time. The speech pertains to Quran and Ahadis so I liked it. On the



following day of the Idh I had gone to village of Maulana Abdul Rehman i.e. Satwatia for hearing his speech. After the speech I met him and I asked him that I was not well conversant with Quran so I asked him to get me corrected. Maulana Abdul Rehman asked me to come to his Madarsa i.e. Jamiat Ul Harmain at Terwa Village, Tangi, Cuttack. After 2/3 days I went to his Madarsa for the purpose of studying Quran. In the Madarsa Maulana Abdul Rehman used to send me for buying eatables/ration for the Madarsa. On many occasion I went to hear the speech of Maulana Abdul Rehrtlan, he used to start the speech with Quaran however, thereafter, he used to start addressing on the contentious issues like Dadri pertaining to lynching of Akhlaq and of Jagatpur. He also used to deliver the provocative speech to the effect that RSS, the BJP and VHP conspire against the Muslims and that Muslims should also unite. He also used to deliver speech regarding Jihad. Since I did not find his speeches in the interest of the Nation so I discontinued meeting him since the month of November 2014. The atmosphere in Odisha in peaceful so he used to bring the issue of other States to Odisha which had absolutely no concern with Odisha,. From the TV news I came to know that accused Abdul Rehman was having association with terrorist organization i.e. AI Qaida. The police recorded my statement to this effect. I had also made a statement before the Magistrate to this effect.

At this stage, one sealed envelope sealed with the seal of SKS (Sh. Sunil Kumar Sharma) is taken off from the judicial record. Same is opened from which the proceedings u/s 164 CrPC including the statement of this witness is taken out. The statement is shown to the witness which the witness admits to have made before the L Magistrate. The statement consisting of five pages is now EX.PW4/A bearing my signature at point A.

I can identify accused Abdul Rehman if shown to me



as he is resident of my nearby village.

Further examination in chief is deferred for identity of the accused

Abdul Rehman who is not produced from JC (Cuttack Jail, disha) today.

XXXXX by Sh. Sarim Naved, Ld. Counsel for accused persons namely Mohd. Asif, Zafar Masood, Abdul Sami and Abdul Rehman.

It is correct that my father is a retired police official from the post of HC. My father retired on 3rd of July, 2022. In the year, 2013-14, he was posted as a Constable. I met accused Abdul Rehman for the first time on Eid in the year, 2014. I learnt Quran from him for about 7-8 months. During these 7-8 months, I have not made any complaints with my father against accused Abdul Rehman. Vol. I went to learn Quran in Madarsa despite reluctance of my father and I told him after my return that everything is not fine there in Madarsa. After leaving the Madarsa, neither myself nor my father made any complaint with the authorities against accused Abdul Rehman. I do not have any documentary proof regarding my enrollment in the Madarsa of accused Abdul Rehman. I was called once by police to Delhi to get my statement recorded. I was served a notice by Delhi Police through local police. I was served with a copy of the notice but I have not brought the same today. I came to Delhi by train. The train ticket was booked by local police. I came to Delhi all alone but one person by the name of Zainul has also come from Odisha to Delhi. Zainul has come for his statement in this case.

It is wrong to suggest that I have neither studied under accused Abdul Rehman nor I can identify him. It is further wrong to suggest that I have never heard any speech delivered by accused Abdul Rehman. Vol. He came to deliver the speech in my village only and I have heard him in the local Masjid also. It is further wrong to suggest that I am deposing falsely at the instance of police.



XXXXX by Sh. M.S. Khan, Ld. Counsel for accused persons namely Dr. Sabeel Ahmed and Syed Mohd. Zishan Ali”.

(emphasis supplied)

27. A perusal of PW-4’s evidence, confirms that the Appellant used to give provocative speeches and that he used to give speeches relating to *jihad* to conspire against the political leaders of other communities. PW-4 has also come on record to say that the speeches of the Appellant were inconsistent with true *Islam* and that the Appellant was not in fact teaching true *Islam*. PW-4 clearly states that the speeches of the Appellant were not in the interest of the country. The testimony given before the Court was also in line with his statement under Section 164 Cr.P.C., which was exhibited as Ex.PW-4/A.

28. As per PW-4 the Appellant who used to give religious speeches at the mosque – used to deviate from religious preaching to address on contentious issues as mentioned hereinabove and also used to deliver provocative speeches to the effect that the RSS, BJP and VHP have conspired against Muslims and that Muslims should also unite. He used to radicalize youth by giving such inflammatory speeches in order to recruit them for commission of terrorist acts. It is pertinent to note that the said witness in his testimony before the Id. Trial Court has clearly stated that the Appellant used to propagate *Jihad* in his speeches at the mosque. From a plain reading of the aforesaid testimony, it can be clearly said that the Appellant’s speeches were inflammatory and against the interest of the nation. Further, PW-4 in his statement under Section 164 Cr.P.C specifically describes Appellant’s speeches as -

“byaan bhi bhadkane wale hote the.”

The above statement leaves no manner of doubt that the speeches of the



Appellant were instigating and exhorting to indulge in acts against the Country and against the people of a particular community.

29. As per the Id. Trial Court the aforesaid testimony of (PW-4) read with testimony Mr. Md. Saquib Khan (PW-46) would indicate that the Appellant was also trying to recruit persons in furtherance of conspiracy to commit a terrorist act. The testimony of Mr. Md. Saquib Khan (PW-46) is reproduced hereinbelow for the sake of completeness:

*“PW-46:Statement of Sh. Md. Saquib Khan, Sh.Md. Sharrlsher Khan, Aged about 28 years, Rio TOP Kapali, Sarakaila, Kharwarshan, Jamshedpur, Jharkhand.
On SA.*

*In the year 2015, I was about 16-17 years old. At that time, I met with a person named Abdul Rehman in a new mosque namely Sarffuddin Masjid near my home. In an inauguration ceremony of mosque and madarsa, local people invited Abdul Rehman. At that point of time, I also met one Abdul Sami in the mosque, along with another person, who was staying in Murda Maidan Madarsa, along with his son. Name of that person was Kaleem and his son was known by the name of Ujeffa. Kaleem and Ujeffa introduced me to Abdul Sami and Abdul Rehman. After 1-2 days of the inauguration, Ujeffa called me up and **informed me that Abdul Rehman is coming and he wants to meet me.** Accordingly, i met Abdul Rehman in Ujeffa's home. When I met him, he asked me to introduce myself, my education, family background and what I was doing that point of time and what I was studying. After that, returned back to my home. After few days, again, Ujeffa called me and informed me that they are going to organized Islamic speeches at Ranchi and in case, if I am interested they can make my boarding and lodging arrangements. I accompanied Ujeffa to Ranchi and after attending the speech, we returned back to Jamshedpur on the next day. After sometime, about a month or so, Abdul Rehman inquired from me about my future study plans. I*



informed him that after completing my 10th class, I intend to go abroad and work there. I also informed him that I have got my passport prepared on my own. **He informed me that Abdul Sami has also got a job abroad and in case, if I interested he can help me arrange a job abroad.** Ujeffa, thereafter, called me up one day and asked me to open a Skype ID so that an interview can be arranged. I accordingly, opened an account on Skype. I received a voice call on Skype from one Zishan, who inquired from me as to what I was doing, whereupon I informed him that I am pursuing my one year Diploma course in aviation course from APT, Institute from Calcutta. I was constrained leave my aviation course mid-way due to depression of my mother. After that I came back from Calcutta to Jamshedpur and took my mother to the doctor for treatment. At that point of time also, one speech of Abdul Rehman was scheduled. **I also came to know that they intend to recruit young boys for education.** During that period, Ujeffa also called me and inquired as to why I was not calling him. I informed him that my mother is ill. **I also met Abdul Sami, at that point of time, in Jama Masjid, Sanchi, Jamshedpur, who told me that he is going for the job to Dubai. I went back to my home.** Ujeffa again called me and asked as to why I am not responding his calls? I informed him that the situation of my family is really bad and we are all dependent upon meagre income of my elder brother and my father is not able to work and my mother is ill. **He asked me to wait for some time so that he can arrange a job for me.** After sometime, I got an interview call from International Trade link, Mumbai to work as salesman in Saudi Arabia. Meanwhile, Abdul Rehman has once again got back to Jamshedpur. I was again contacted by Ujeffa, who inquired about my intentions and informed me that Abdul Sami has already left for his overseas job. I told him that I am not able to arrange money and I already have a job offer from International Trade link and I shall crave for Saudi Arabia very soon. **Meanwhile, I also**



realised that the speeches of Abdul Rehman are inconsistent with true islam and true islam is infact not what Abdul Rehman was teaching. I accordingly, opted to detach from these guys. Since I am a national level basketball and karate player, on one or two occasions, Abdul Rehman has requested me to teach madrasa kids saying that since I know English, I am the best person to teach these poor kids but I flatly refused the offer and told him that I will only act as per the Government's directions in this regard. In the end of year, 2015, I went to Saudi Arabia. I was not aware about the activities of these guys. Upon my return after two years, on 25th or 26th December, 2017, I got a notice that I am required to come to Delhi in Special Cell's Branch. I accordingly, came down to Delhi in January 2018, probably on 11 or 12 January. I went to Special cell office and shared my entire credentials with them and once the inquiry was over, I returned back to Jamshedpur after two days. Witness correctly identifies the accused Abdul Rehman and Abdul Sami, who are present in the court today.

At this stage, Ld. seeks permission of the court to put leading question to the witness regarding the date of the incident as quite some time has passed.

Heard and allowed on account of lapse of time.

It is correct that it all began in the year 2013 when I was about 16-17 years old. Vol. Its an old incident.

It is correct that I was summoned in the Spl. Cell where my statement was recorded wherein I narrated the entire facts to the IO. The statement recorded in the Spl. Cell is available on record and the same is Ex. PW46/A (objected to by Ld. Defence counsel that statement recorded u/s 161 CrPC cannot be used for corroboration purposes by the prosecution and cannot be exhibited.

XXXXX by Sh. Qausar Khan, Ld. Counsel for accused persons namely Dr. Sabeel Ahmed and Syed Mohd. Zishan Ali.

It is wrong to suggest that I never came into contact with Zishan at any point of time. It is further wrong to



suggest that he never offered me any job nor conducted any interview. It is further wrong to suggest that I am deposing falsely at the instance of the 10.

XXXXX by Sh. Sarim Naved, d. Counsel for accused persons namely Mohd. Asif, Zafar Masood, Abdul Sami and Abdul Rehman.

My date of birth is 11.05.1994. It is correct that in the year 2013, I was about 19 years old. I have studied in Govind Vidyalaya, Tamolia, CBSE Board. I completed my 10th in the year, 2012. I have not pursued my 12th class education as I got enrolled for an Aviation diploma. In they year, 2013-2014, I have not applied for any job. In the year, 2014, I worked for three months in a call centre in Jamshedpur. I have not formally pursued any diploma in Islamic / Quranic studies. Since, I was not able to discern the true intent of these guys, therefore, I have not made any complaints against them with any authorities. I had never gone to the Madrasa of Abdul Rehman in Cuttack. Before coming to the court, I read my statement twice. I have informed the police that I am a national level player of karate and basketball.

At this stage, attention of the witness is drawn to the statement recorded u/s 161 CrPC Ex. PW46/A wherein it is not so recorded.

It is wrong to suggest that I am deposing falsely under pressure of Spl. Cell.”

(emphasis supplied)

30. Witness-PW46 stated that the Appellant had offered him a job in the same manner as the Appellant had secured job for Co-Convict No.3. The said co-convict, Abdul Sami is alleged to have been sent by the Appellant to Pakistan to get weapons training. The Appellant had encouraged PW-46 also to follow the footsteps of Abdul Saami as is clear from PW-46's testimony. The Appellant was quite closely associated with Abdul Saami to the extent that the Appellant had started introducing Abdul Saami to other



persons including PW-46 as per PW46's testimony. The said testimony is sought to be used by the prosecution to demonstrate that the Appellant in furtherance of conspiracy for committing a terrorist act was trying to recruit persons like Mr. Md. Saquib Khan (PW-46).

31. It is pertinent to note that from the aforesaid testimony that the link between the Appellant and Co-Convict No.3 can be established because the witness PW-46 clearly states that the Appellant had told him, that he had got Co-Convict No.3 a job abroad. The travel tickets of Abdul Sami from Calcutta to Dubai are exhibited as Ex-PW 29/J. The testimony of PW-46 and establishes a direct link between the Appellant and Co-Convict No.3.

32. The next circumstance relied upon by the prosecution as well as by the Id. Trial Court in the impugned judgment is the evidence of Mr. Mohd. Sadiq (PW-48). The testimony of Mr. Mohd. Sadiq (PW-48) is reproduced hereinbelow for the sake of completeness:

“PW-48:Statement Sh. Mohd. Sadiq, Aged about 70 years, S/o Sh. Abdul Latif, R/o 151, Lal Masjid Building, Jumma Masjid Road, Shivaji Nagar, Bengaluru. On SA.

I am engaged as a Khidmatgar (service attendant) in Lat Masjid for past about 20-22 years. I am residing in the same Mosque (Lal Masjid). Police inquired from me about one Imdadulla Khan whereupon I informed them that no body by the said name is residing in the Lal Masjid-The Police had shown me a photocopy of the photograph already Ex.PW43/J2. After seeing the photograph, I had told the police that the person in the photograph had come for the collection of the Chanda / donations in Lal Masjid about 15 years back. The police had also inquired from me regarding two persons by the name of Mohd. Syed and Mr. Munir as to if they also reside in the vicinity of the Lal Masjid whereupon i



told them that even no one by the Lesides name of either Mohd. Syed or Mr. Munir Jesides in the al tal Masjid or its neighborhood. The police recorded my statement which on record is already Ex.PW43/O, bearing my signature at point B. I do not want to say anything else. The witness identifies accused Abdul Rehman as the person, who is present in the court today, as the man who came to Lal Masjid to collect donations/chanda.

XXXXX by Sh. Rahul Sahani, Id. Counsel for accused persons namely Dr. Sabeel Ahmed and Syed Mohd. Zishan Ali.

Nil. Opportunity is given.

XXXXX by Sh. Sarim Naved, L.d. Counsel for accused persons namely Mohd. Asif, Zafar Masood, Abdul Sami and Abdul Rehman.

In the Lal Masjid on a daily basis around 400-500 devotees come to offer Namaz / prayer. Except for the service attendant, there are no rooms for anybody in the said Masjid. If anybody comes to collect donations, he makes a request with the Masjid management whereupon, the management persons makes a public announcement of the same. It is not my task to make such announcements. Vol. My only job is to sweep in the Masjid. It is also not my job to accord permissions to collect donations. It is wrong to suggest that I am deposing falsely."

(emphasis supplied)

The aforesaid testimony is relied upon by the prosecution to show that the Appellant was collecting funds in order to commit terrorist acts

33. Another circumstance relied upon by the prosecution is with regard to the illegal travel of the Appellant to Pakistan. It is the case of the prosecution that the Appellant had travelled from Karachi (Pakistan) to Dammam (Saudi Arabia) via Dubai (United Arab Emirates) on 15/16th February, 2015 and to establish the same, the prosecution proved the certified copies of the tickets



Ex.PW-29/D and PW-29/E through R. Ramanathan, Security Supervisor, Emirates Airlines (PW-29) before the Id. Trial Court. It is the case of the prosecution that in the period between 08th January, 2015 to 28th February, 2015, the Appellant had visited Saudi Arabia and he had travelled illegally to Pakistan to meet various terrorists.

34. It is also the case of the prosecution that the passport of the Appellant did not reflect any arrival/departure visit stamp or visa of Pakistan and therefore he had travelled to Pakistan on some fake documents. This according to the prosecution as well as the Id. Trial Court is a highly incriminating circumstance, inasmuch as the Appellant ought to have explained the purpose of his visit to Pakistan. According to the Id. Trial Court the fact that he travelled to Pakistan in such a clandestine manner, indicates towards the existence of a conspiracy to commit a terrorist act. As per the Id. Trial Court this circumstance of his illegal travel to Pakistan along with the aforementioned circumstances of his alleged attempt to recruit Mr. Md. Saquib Khan (PW-46) and the testimony of Mr. Syed Dil Nawaz (PW-4) regarding his inflammatory speeches cumulatively establish on record that the Appellant along with other co-convicts had conspired to commit a terrorist act and in furtherance of the same, were committing acts which were preparatory, thus within the meaning of Section 18 of the UAPA.

35. Id. Counsel for the Appellant had countered the said assertion of prosecution and argued that the tickets and documents, though proved by the officials of Emirates Airlines, cannot prove that the Appellant travelled to Pakistan. It is argued that in the said documents, passport number of the Appellant is not mentioned and therefore, it cannot be established that the tickets which have been proved on record belonged to the Appellant. The



testimony of Sh. R. Ramanathan (PW-29), the Security Supervisor from Emirates Airlines is reproduced hereinbelow for the sake of completeness:

*“I have been serving Emirates Airlines since July, 2003 in different positions. During my employment with Emirates Airlines, I initially served as Security Warden in Dubai office during the period from 2003 to 2006 where I worked with Dr. Abdulla Al Hashimi, who is now heading the group security Emirates Airlines and Sh. Zack Zainal who is second in command. I have been authorized to testify in this matter by the vice president Sh. Mohd. Sarhan, who is looking after the operation of Emirates in India and Nepal. I have brought the letter of authority authorizing me to depose in this matter which is retained on record and the same is now **Ex.PW29/A** bearing the signature and seal of Sh. Mohd Sarhan at point A. I identify the signature of Sh. Mohd. Sarhan as he is serving in India these days and I am subordinate to him.*

On 05.01.2016, a notice u/s 91 Cr.PC authored by Sh. Manish Chandra, Additional DCP, Special Cell and addressed to the Manager of Emirates was received at our Connaught Place office. The said notice was forwarded to our Head Office located at Dubai for the purpose of authenticating/verifying the information sought in the said notice pertaining to accused Mohd. Abdul Rehman. Pursuant thereto, a detailed verification report/reply pertaining to the passport as well as journey information of accused Mohd. Abdul Rehman from Karachi to Dammam via Dubai with Annexures i.e. two tickets showing the journey details dt. 13.02.2015 & 15.02.2015 were received at our Delhi Office which were further sent to Sh. Manishi Chandra, Additional DCP, Special Cell. As per record, the passenger/accused Mohd. Abdul Rehman had initially booked the ticket on 09.02.2015 for the journey to be taken on 13/14.02.2015 and



subsequently, he got the journey date rescheduled on 11.02.2015 for the journey to be taken on 15/16.02.2015 from Karachi to Dammam via Dubai.

The notice u/s 91 Cr.PC received at our office in Delhi is now Ex.PW29/B bearing the receipt stamp of our office at point A. The original verification report/letter received from Dubai authored by Dr. Abdula Al Hashimi to the concerned official of Special Cell is now Ex.PW29LC. The printouts of the tickets in the name of passenger Mohd. Abdul Rehman for the journeys date above are now Ex.PW29/D & Ex.EW29/E bearing the stamp of our head office Dubai at point A on both the tickets. Although the verification report/letter has been authored in the name of Dr. Abdulla Al Hashimi, but since he was not available on the day of making the said letter so the letter was signed on his behalf by second in command officer in Group Security Office namely Sh. Zack Zainal at point A.

Similarly, on 22.02.2016, a notice u/s 91 Cr.PC authored by Sh. Manishi Chandra, Additional DCP, Special Cell and addressed to the Manager of Emirates was received at our Connaught Place office. The said notice was forwarded to our Head Office located at Dubai for the purpose of authenticating/verifying the information sought in the said notice pertaining to accused Abdul Sami. Pursuant thereto, a detailed verification report/reply pertaining to the passport as well as journey information of accused Abdul Sami with Annexure i.e. one ticket showing the journey details dt. 27.01.2014 was received at our Delhi Office which was further sent to Sh. Manish Chandra, Additional DCP, Special Cell. As per record, the passenger/accused Abdul Sami booked the ticket on 25.01.2014 for the journey to be taken on 27.01.2014 from Kolkata to Dubai.

The notice u/s 91 Cr.PC is now **Ex.PW29/F** bearing the receipt stamp of our office at point A. The original verification report/letter received from Dubai authored



by Dr. Abdulla Al Hashimi to the concerned official of Special Cell is now **Ex.PW29/G** bearing the signature of Dr. Abdulla Al Hashimi at point A. The printout of the ticket in the name of passenger/accused Abdul Sami is now **Ex.PW29/H** bearing the stamp of our Dubai office at point A.

Again on 31.12.2015, a notice u/s 91 Cr.PC now **Ex.PW29/I** from Sh. Manishi Chandra, Additional DCP was received at our Connaught Place Office and the receipt was duly endorsed by one Ms. Sonia of our office bearing her signature and seal of the office at point A. Ms. Sonia has now left the services of Emirates and I identify her signature at point A in the course of my official office as we worked together. The said notice was again forwarded to our Dubai Office from where a detailed reply authored by Dr. Abdulla Al Hashimi was received which on record is now **Ex.PW29/J** bearing the signature of Dr. Abdulla Al Hashimi at point A. As per record, the tickets in the name of passengers Abu Sufian and Abdul Sami were booked for the journeys as detailed in Ex.PW29/ J. The record further reveals that the payment of the tickets appeared to have been made in cash. Both the tickets in the name of Abu Sufian and Abdul Sami are on record and now **Ex.PW22/K** & **Ex.PW29/L** bearing the stamp of our Dubai office at point A. I am familiar with the signatures of Sh. Zack Zainal as well as Dr. Abdulla Al Hashimi in the course of my official duty as I worked with both of them since the year 2003 to 2006 and also I am familiar with their signatures and handwriting on the strength of our correspondence with our office at Dubai. I have brought my office records pertaining to the documents exhibited above. Same are seen and returned.

(emphasis supplied)

36. The said witness (PW-29) in his testimony clearly states that pursuant to a detailed verification of the Appellant's passport as well as journey



verification of the Appellant it was found that the Appellant had initially booked the ticket from Karachi to Dammam *via* Dubai for 13/14th February, 2015 and later rescheduled it for 15/16th February, 2015 (Ex.PW-29/D and PW-29/E). Further in the reply dated 06th January, 2016 (Ex. PW 29/C) Dr. Abdullah Al- Hashmi, Div. Sr. Vice President – Group Security, Emirates Airlines, clearly states that “***Abdul Raheman/Mahammad Mr declared to be holding an Indian Passport J2431458 (DOB: 15-AUG-1977) had travelled from Karachi to Dammam via Dubai on flights EK503/15-FEB-2015 & EK823/16-FEB-2015 respectively using a one-way re-issued ticket 176 8914316088 (PNR: JQQVK2)***”. Also, the fact that the Appellant had no arrival/departure visit stamps or visa of Pakistan on his passport, makes the purpose of the Appellant’s travel to Pakistan highly suspicious. From the aforesaid testimony and the evidence on record it can be clearly established that the Appellant had travelled to Pakistan.

37. Further, circumstances relied by the prosecution as well as by the Id. Trial Court is the alleged connection between the Appellant and Co-Convict No.1- Mohd. Asif. For the said purpose, reliance was placed on the testimony of Mr. Tajir Pasha (PW-51), who as per the case of the prosecution on 11th September, 2015 had made the Appellant speak with Co-Convict No.1 on his phone. The conversation had been recorded, however, the same was discarded by the Id. Trial Court in absence of sanction under Section 46 of the UAPA. However, the fact that the call was made is being relied upon to establish that the Appellant was in touch with Co-Convict No.1. This witness when examined before the Id. Trial Court was declared hostile as he failed to identify the voice of the Appellant on the phone or that of Co-Convict No.1. The said witness also failed to identify the Co-Convict No.1 before the Id.



Trial Court.

38. A perusal of the testimony of Mr. Tajir Pasha (PW-51) shows that he denied the case of the prosecution. However, the case of prosecution is proved on the basis of the FSL Report (**Ex PW-34/A**) which confirms the voices of the Appellant and Co-Convict No.1 in the call recording of 11th September, 2015. It establishes that Appellant and Co-Convict No.1 were connected and had communication as stated by PW-51 in his witness statement.

39. The final circumstance which has been sought to be read against the Appellant is the data recovered from the mobile phones and other electronic devices seized from him. As per the case of the prosecution there were many audio files containing hate speeches/anti-national speeches, hate videos and pictures of political leaders including the Prime Minister of India and other anti-national/hate videos of Kashmiri people. During the course of the hearing the prosecution placed on record a status report dated 24th September, 2024 with regard to the data recovered from the aforesaid devices along with their transcripts. Amongst the transcripts of audio files placed on record, a perusal of the same would reflect that they are inflammatory in nature. Admittedly, these speeches are not made by the present Appellant.

40. In the present case the Id. Trial Court has convicted the Appellant for commission of preparatory acts within the meaning under Section 18 of the UAPA.

41. It is now relevant to set out Section 18 and 18-B of the UAPA. The said provisions read as under:

“18. Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or 3[incites, directly 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.

xxx

xxx

xxx

18B. Punishment for recruiting of 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.”*

42. Section 15 of the UAPA which provides the definition of a ‘Terrorist act’ is reproduced hereinbelow:

“[15. Terrorist act.— 4[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security 5], economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

*(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or **by any other means of whatever nature to cause or likely to cause—***

*(i) death of, or injuries to, any person or persons;
or*

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or



[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or 6[an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.

[Explanation.—For the purpose of this subsection,—

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.]

[(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.]”

43. The definition of ‘Terrorist act’ under Section 15 of UAPA clearly includes the expressions “*with intent to strike terror*”, “*by any other means*



of whatever nature to cause or likely to cause”. Such an expression would not be linked only to an immediate Terrorist act but the same would even include acts, which could be under contemplation for years together and may be given effect to after several years. The planning to give effect to terrorist acts could also extend over years and under Section 18 of the UAPA, the law aims to address such preparation for terrorist acts, even in cases where a specific terrorist act has not been identified. It is common knowledge that terrorist organizations like AQIS function in an extremely secretive manner and persons who are part of AQIS on most occasions, do not leave any trail of the evidence linking them to the organization.

44. As per the case of the prosecution, the aforesaid circumstances show that the Appellant along with the other co-convicts were committing acts which were preparatory in nature in order to commit a terrorist act. Although, there is nothing on record to show that any particular act or object was in contemplation, however, it is the case of the prosecution that these circumstances if taken cumulatively would demonstrate that the Appellant was preparing to commit an act, which would otherwise disturb the unity, integrity, peace and tranquility of India.

45. It was argued that the aforesaid circumstances especially the material seized from the Appellant would show that he professed a kind of ideology which would come within the meaning of unlawful activity as it causes or intends to cause any dissatisfaction towards the country or disrupting or intent to disrupt the territorial integrity and sovereignty of the Country. Suffice to say that the Appellant in the present case has not been tried or convicted for commission of unlawful activities but for offences punishable under Sections 18 and 18B of the UAPA, which provides for punishment for conspiracy and



for recruitment for commission of terrorist act, which stands established from the evidence on record.

46. An analysis of the evidence on record including the testimony of witnesses, speeches given by the Appellant and the material which was found on his digital devices establishes the following facts:

- i. The Appellant was associated with the Al-Qaida-specifically the AQIS. He had close connections with Mohd. Asif the -Co-Convict No. 1 who had enabled withdrawal of money from bank accounts and booking of tickets for other co-convicts for travel to Dubai and, thereafter, to Pakistan. Both co-accused Mohd. Sharjeel Akhtar and Mohd. Rehan have in fact absconded.
- ii. The Appellant was also closely associated with Abdul Saami, Co-Convict No.3, which has been proved by one of the witnesses (PW-4). The Appellant had attempted to recruit PW-4 also on the lines of Abdul Saami to go to Saudi Arabia.
- iii. The telephone calls between the Appellant and Mohd. Asif have been established through the CDR records. The Appellant had a direct link with Mohd. Asif.
- iv. The speeches which were inciting hatred including against political leaders such as the Prime Minister were recovered from his mobile devices. The data recovered from the devices of the Appellant include speeches for taking revenge in Gujarat and Orissa and other places. The material which has been found is venomous towards the Country, its politicians in general and specifically certain political leaders.
- v. The evidence given by PW-4 clearly shows that the Appellant's speeches were provocative and would exhort people toward *Jihad*.



Evidence has come on record that the Appellant was also collecting funds from Masjid and other religious places.

- vi. The Appellant was recruiting young boys under the garb of education and sending them to foreign countries including Saudia Arabia and Dubai.
- vii. The testimony of the witnesses from Emirates Airlines proves beyond any doubt that the Appellant had covertly travelled to Karachi. There was no stamp on the Appellant's passport of either arrival or departure in Pakistan which shows that either the visit was to be kept under wraps as part of the larger conspiracy or he had travelled to Pakistan on fake documents.

47. It is the settled position in law that conspiracies are not easily detectable as they are hatched in the dark and not in the open. The evidence could come in trickles but in proving conspiracy such evidence forms part of a large jigsaw puzzle. This position has been settled by the Supreme Court in ***Nazir Khan & Ors. v. State of Delhi [(2003) 8 SCC 461]*** where the Supreme Court has observed as under:

“20. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any



overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in Section 120-B. (See: Suresh Chandra Bahri V. State of Bihar.)

21. Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. (See: E.K. Chandrasenan V. State of Kerala.) 22. In Kehar Singh v. State (Delhi Admn.)® (AIR at p. 1954) this Court observed: (SCC pp. 732-33, para 275)

“275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.”

Conspiracy can be proved by circumstances and other



materials (See: *State of Bihar v. Paramhans Yadav*, PatLRJ p.709, para 35.)

[To establish a charge of conspiracy 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 the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use. (emphasis in original) (See: State of Maharashtra v. Som Nath Thapa, SCC p. 668, para 24.)”

48. Moreover, speeches which are given to brainwash innocent youth coupled with attempts to recruit them for committing unlawful and illegal acts against the Country cannot be completely washed away on the ground that no specific terrorist act has been committed. The Hon’ble Supreme Court in *State of Karnataka v. Dr. Praveen Bhai Thogadia* [2004 SCC OnLine SC 411], had observed as under:

“8. The High Court in our view should not have glossed over these basic requirements, by saying that the people of the locality where the meeting was to be organised were sensible and not fickle minded to be swayed by the presence of any person in their midst or by his speeches. Such presumptive and wishful approaches at times may do greater damage than any real benefit to individual rights as also the need to protect and preserve law and order. The Court was not acting as an appellate authority over the decision of the



official concerned. Unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimisation of those in power, normally interference should be the exception and not the rule. The Court cannot in such matters substitute its view for that of the competent authority.

9. Our country is the world's most heterogeneous society, with rich heritage and our Constitution is committed to high ideas of socialism, secularism and the integrity of the nation. As is well known, several races have converged in this sub-continent and they carried with them their own cultures, languages, religions and customs affording positive recognition to the noble and ideal way of life - 'Unity in Diversity'. Though these diversities created problems, in early days, they were mostly solved on the basis of human approaches and harmonious reconciliation of differences, usefully and peacefully. That is how secularism has come to be treated as a part of fundamental law, and an unalignable segment of the basic structure of the country's political system. As noted in S.R. Bommai v. Union of India etc. (1994 (3) SCC 1) freedom of religion is granted to all persons of India. Therefore, from the point of view of the State, religion, faith or belief of a particular person has no place and given no scope for imposition on individual citizen. Unfortunately, of late vested interests fanning religious fundamentalism of all kinds vying with each other are attempting to subject the constitutional machineries of the State to great stress and strain with certain quaint ideas of religious priorities, to promote their own selfish ends, undeterred and unmindful of the disharmony it may ultimately bring about and even undermine national integration achieved with much difficulties and laudable determination of those strong spirited savants of yester years. Religion cannot be mixed with secular activities of the State and fundamentalism of any kind cannot be



*permitted to masquerade as political philosophies to the detriment of the larger interest of society and basic requirement of a welfare State. Religion sans spiritual values may even be perilous and bring about chaos and anarchy all around. **It is, therefore, imperative that if any individual or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seed of mutual hatred, and their proposed activities are likely to create disharmony and disturb equilibrium, sacrificing public peace and tranquility, strong action, and more so preventive actions are essentially and vitally needed to be taken. Any speech or action which would result in ostracization of communal harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution.** They have one common object, that is to promote well being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well being without communal harmony, love for each other and hatred for none. The chore of religion based upon spiritual values, which the Vedas, Upanishad and Puranas were said to reveal to mankind seem to be - "Love others, serve others, help ever, hurt never" and "Sarvae Jana Sukhino Bhavantoo". Oneupship in the name of religion, whichever it be or at whomsoever's instance it be, would render constitutional designs countermanded and chaos, claiming its heavy toll on society and humanity as a whole, may be the inevitable evil consequences, whereof.*

(emphasis supplied)

49. It is a matter of public knowledge that terrorist organizations do not operate merely through established channels but most of the operations of such organizations are covert, stealthy, and secretive. Investigating agencies



always find it challenging to unearth evidence. In the present case there is sufficient evidence to show and link the Appellant with the main accused Mohd. Asif who was clearly also found to obtain four passports and visited Pakistan. The Appellant was also in close connection with Co-Convict No. 3. The various Co-Accused/Co-Convicts are clearly a part of a larger network involved in giving inflammatory speeches, disseminating material, having links with Pakistan based organizations, travelling to Pakistan for secretive meetings, recruiting persons for terrorist acts, collecting funds to help such travels and other activities instigating hatred against the Country and its political leaders etc.

50. A perusal of the definition of the “*Terrorist act*” under UAPA shows that the said definition includes any acts which intend to threaten or are likely to threaten the unity, integrity, security, or sovereignty of India. The definition is wide enough to include indulging in conspiracy with terrorist organizations and associated with persons who are rendering support to terrorist organization. This position has been clearly established in the decision of ***People’s Union For Civil Liberties and Anr. vs. Union of India [(2004) 9 SCC 580]***, where the Hon’ble Supreme Court of India held us under:

“4. In deciding the point of legislative competence, it is necessary to understand the contextual backdrop that led to the enactment of POTA, which aims to combat terrorism. Terrorism has become the most worrying feature of contemporary life. Though violent behaviour is not new, the present-day “terrorism” in its full incarnation has obtained a different character and poses extraordinary challenges to the civilised world. The basic edifices of a modern State, like democracy, State security, rule of law, sovereignty and integrity, basic human rights etc. are under the attack of terrorism. Though the phenomenon of terrorism is complex,



a “terrorist act” is easily identifiable when it does occur. The core meaning of the term is clear even if its exact frontiers are not. That is why the anti-terrorist statutes — the earlier Terrorism and Disruptive Activities (Prevention) Act, 1987 (TADA) and now POTA do not define “terrorism” but only “terrorist acts”. (See Hitendra Vishnu Thakur v. State of Maharashtra [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] .)

This extract is taken from People's Union for Civil

5. Paul Wilkinson, an authority on terrorism-related works, culled out five major characteristics of terrorism. They are:

- 1. It is premeditated and aims to create a climate of extreme fear or terror.*
 - 2. It is directed at a wider audience or target than the immediate victims of violence.*
 - 3. It inherently involves attacks on random and symbolic targets, including civilians.*
 - 4. The acts of violence committed are seen by the society in which they occur as extra-normal, in literal sense, that they breach the social norms, thus causing a sense of outrage.*
 - 5. Terrorism is used to influence political behaviour in some way — for example to force opponents into conceding some or all of the perpetrators' demands, to provoke an overreaction, to serve as a catalyst for more general conflict, or to publicise a political cause.*
- 6. In all acts of terrorism, it is mainly the psychological element that distinguishes it from other political offences, which are invariably accompanied with violence and disorder. Fear is induced not merely by making civilians the direct targets of violence but also by exposing them to a sense of insecurity. It is in this context that this Court held in Mohd. Iqbal M. Shaikh v. State of Maharashtra [(1998) 4 SCC 494 : 1998 SCC (Cri) 1064] that: (SCC p. 504, para 7)***

“[I]t is not possible to give a precise definition of terrorism or to lay down what constitutes terrorism. But it may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the



prolonged psychological effect it produces or has the potential of producing on the society as a whole if the object of the activity is to disturb harmony of the society or to terrorize people and the society with a view to disturb the even tempo, tranquillity of the society, and a sense of fear and insecurity is created in the minds of a section of the society at large, then it will, undoubtedly, be held to be a terrorist act.”

7. Our country has been the victim of an undeclared war by the epicentres of terrorism with the aid of well-knit and resourceful terrorist organisations engaged in terrorist activities in different States such as Jammu & Kashmir, North-East States, Delhi, West Bengal, Maharashtra, Gujarat, Tamil Nadu and Andhra Pradesh. The learned Attorney General placed material to point out that the year 2002 witnessed 4038 terrorist-related violent incidents in J&K in which 1008 civilians and 453 security personnel were killed. The number of terrorists killed in 2002 was 1707 out of which 508 were foreigners. In the year 2001 there were as many as 28 suicide attacks while there were over 10 suicide attacks in 2002 in which innocent persons and a large number of women and children were killed. The major terrorist incidents in the recent past includes attack on the Indian Parliament on 13-12-2001, attack on Jammu & Kashmir Assembly on 1-10-2001, attack on Akshardham Temple on 24-9-2002, attack on US Information Center at Kolkata on 22-1-2002, Srinagar CRPF Camp attack on 22-11-2002, IED blast near Jawahar Tunnel on 23-11-2002, attack on Raghunath Mandir on 24-11-2002, bus bomb blast at Ghatkopar in Mumbai on 2-12-2002, attack on villagers in Nadimarg in Pulwama district in Jammu & Kashmir on the night of 23-3-2003/24-3-2003 etc. There were attacks in Red Fort and on several government installations, security forces' camps and in public places. Gujarat witnessed gruesome carnage of innocent people by unleashing unprecedented orgy of terror. People in Bihar, Andhra Pradesh and



Maharashtra etc. have also experienced the terror trauma. The latest addition to this long list of terror are the recent twin blasts at Mumbai that claimed about 50 lives. It is not necessary to swell this opinion by narrating all the sad episodes of terrorist activities that the country has witnessed.

8. All these terrorist strikes have certain common features. They could be very broadly grouped into three:

1. Attack on the institution of democracy, which is the very basis of our country (by attacking Parliament, Legislative Assembly etc.). And the attack on economic system by targeting economic nerve centres.

2. Attack on symbols of national pride and on security/strategic installations (e.g. Red Fort, military installations and camps, radio stations etc.).

3. Attack on civilians to generate terror and fear psychosis among the general populace. The attack at worshipping places to injure sentiments and to whip communal passions. These are designed to position the people against the Government by creating a feeling of insecurity.

9. Terrorist acts are meant to destabilise the nation by challenging its sovereignty and integrity, to raze the constitutional principles that we hold dear, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow democratically elected government, to promote prejudice and bigotry, to demoralise the security forces, to thwart the economic progress and development and so on. This cannot be equated with a usual law and order problem within a State. On the other hand, it is inter-State, international or cross-border in character. Fight against the overt and covert acts of terrorism is not a regular criminal justice endeavour. Rather, it is defence of our nation and its



citizens. It is a challenge to the whole nation and invisible force of Indianness that binds this great nation together. Therefore, terrorism is a new challenge for law enforcement. By indulging in terrorist activities organised groups or individuals, trained, inspired and supported by fundamentalists and anti-Indian elements are trying to destabilise the country. This new breed of menace was hitherto unheard of. Terrorism is definitely a criminal act, but it is much more than mere criminality. Today the Government is charged with the duty of protecting the unity, integrity, secularism and sovereignty of India from terrorists, both from outside and within the borders. To face terrorism we need new approaches, techniques, weapons, expertise and of course new laws. In the abovesaid circumstances Parliament felt that a new anti-terrorism law is necessary for a better future. This parliamentary resolve is epitomised in POTA.

10. The terrorist threat that we are facing is now on an unprecedented global scale. Terrorism has become a global threat with global effects. It has become a challenge to the whole community of civilised nations. Terrorist activities in one country may take on a transnational character, carrying out attacks across one border, receiving funding from private parties or a Government across another and procuring arms from multiple sources. Terrorism in a single country can readily become a threat to regional peace and security owing to its spillover effects. It is, therefore, difficult in the present context to draw sharp distinctions between domestic and international terrorism. Many happenings in the recent past caused the international community to focus on the issue of terrorism with renewed intensity. The Security Council unanimously passed Resolutions Nos. 1368 (2001) and 1373 (2001); the General Assembly adopted Resolution No. 56/1 by consensus, and convened a special session. All these resolutions and declarations inter alia call upon member States to



take necessary steps to “prevent and suppress terrorist acts” and also to “prevent and suppress the financing of terrorist acts”. India is a party to all these resolves. Anti-terrorism activities on the global level are mainly carried out through bilateral and multilateral cooperation among nations. It has thus become our international obligation also to pass necessary laws to fight terrorism.

11. The attempts by the State to prevent terrorism should be based on well-established legal principles. The “Report of the Policy Working Group of the United Nations on Terrorism” urged the global community to concentrate on a triple strategy to fight against terrorism. They are:

(a) dissuade disaffected groups from embracing terrorism;

(b) deny groups or individuals the means to carry out acts of terrorism; and

(c) sustain broad-based international cooperation in the struggle against terrorism.

12. Therefore, the anti-terrorism laws should be capable of dissuading individuals or groups from resorting to terrorism, denying the opportunities for the commission of acts of terrorism by creating inhospitable environments for terrorism and also leading the struggle against terrorism. Anti-terrorism law is not only a penal statute but also focuses on pre-emptive rather than defensive State action. At the same time, in the light of global terrorist threats, collective global action is necessary. Lord Woolf, C.J. in A, X and Y v. Secy. of the State for the Home Deptt. [2002 EWCA Civ 1502] has pointed out that:

“... Where international terrorists are operating globally and committing acts designed to terrorize the population in one country, that can have implications which threaten the life of another. This is why a collective approach to terrorism is important.”



51. The amendments to UAPA in the year 2008 to include Terrorist act has a wider ambit in light of the definition of terrorism. The same has been analysed by the Division Bench of this Court in *Asif Iqbal Tanha v. State of NCT of Delhi [(2021)SCC OnlineDel 3253]* where the Court has given a very wide and detailed interpretation of Section 15 of UAPA. In order to establish conspiracy for terrorist activity, identification or existence of a specific act of terror or a specific terrorist attack is not required for punishment under Section 18 of the UAPA.

52. In conspiracies of this nature specific covert acts would not be required but secretive and clandestine support to declared terrorist organisations would also be sufficient. The evidence and the testimonies which have been recorded in the present case clearly disclose association with terrorist organisations for commission of conspiracy for committing a terrorist act as defined under Section 15 of the UAPA.

53. The Trial Court has rightly convicted the Appellant. The said conviction does not warrant any interference.

54. The appeal is, accordingly, dismissed.

55. All pending applications, if any, are also disposed of, accordingly.

JUSTICE PRATHIBA M. SINGH
JUDGE

JUSTICE AMIT SHARMA
JUDGE

DECEMBER 23, 2024