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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 8th October, 2024
Pronounced on: 14th November, 2024*

+ **CRL.A. 517/2024 & CRL.M.(BAIL) 934/2024**

HINA BASHIR BEIGHAppellant

Through: Mr R K Thakur, Ms Kanishka
Dhoundiyal and Mr Anoop Khanna,
Advocates (M: 9810267916).

versus

NATIONAL INVESTIGATION AGENCYRespondent

Through: Mr Rahul Tyagi, SPP (NIA) with Mr
Sangeet Sibou, Mr Jatin, APP, Mr
Vikas Walia, APP, Ms Priya Rai, Mr
Abhishek Tomar, Advocates with
Insp. Ajay Parmar CIO (NIA).

AND

+ **CRL.A. 784/2024**

SADIYA ANWAR SHAIKHAppellant

Through: Mr Rajat Kumar, Adv. (M:
9810532203)

versus

NATIONAL INVESTIGATION AGENCYRespondent

Through: Mr Rahul Tyagi, SPP (NIA) with Mr
Sangeet Sibou, Mr Jatin, APP, Mr
Vikas Walia, APP, Ms Priya Rai, Mr
Abhishek Tomar, Advocates with
Insp. Ajay Parmar CIO (NIA).



**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA
JUDGMENT**

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present two appeals have been filed by Hina Bashir Beigh (A-2) and Sadiya Anwar Shaikh (A-4) seeking reduction of their respective sentences imposed by the Id. ASJ-3, NDD, Patiala House Courts, New Delhi *vide* the order on sentence dated 6th May, 2024.

BRIEF BACKGROUND

3. A First Information Report (hereinafter '*FIR*') bearing no. 85/2020 was registered by the Special Cell against accused no. 1 ('A-1') and accused no. 2 ('A-2') upon which they were arrested on 8th March, 2020. The allegation was that they were affiliated with the proscribed terrorist organisation Islamic State Khorasan Province (hereinafter '*ISKP*'). The said ISKP is stated to be a part of the ISIS. The FIR alleged that they were carrying out anti-national activities in India.
4. Based on the disclosures made by A-2 upon arrest, certain materials such as an incriminating anti-nationalist magazine named '*Voice of Hind*' *etc.*, were seized from the house and car of A-2 in support of the above-mentioned allegations. The disclosure also led to the arrest of accused no. 3 ('A-3'), on 17th March, 2020. In the meantime, the Ministry of Home Affairs (MHA) issued an order on 8th March, 2020 entrusting the said investigation to the National Investigation Agency (hereinafter '*N.I.A*') and the latter registered RC.no-11/2020/NIA/DLI.



5. In the said Registered Case (hereinafter ‘RC’), among other allegations, the specific allegations against accused A-2 were of propagating/circulating objectionable ISIS materials which were used in the anti-CAA protests for inciting Muslims to take up violence in the name of jihad and spreading hatred against Non-Muslims. Further, as per the RC, the accused created several anonymous IDs on social media platforms such as Twitter, Facebook, Telegram, Instagram, Threema etc with the intention of concealing their identity while engaging in the above-mentioned anti-national activities. The RC also alleged that they had conspired with various persons from ISIS and ISKP to carry out terrorist activities in India to spread terror and to propagate their ideology. During the investigation further arrests were made of A-4/Appellant -Sadiya Anwar Shaikh and A-5. Seizure of further electronic evidence including pen drive, hard drive, phones, sim cards and other documents was made. A-3, A-4 & A-5 were also found to have created fake and anonymous IDs on social media platforms like A-1 and A-2.

6. Upon completion of the said investigations, the chargesheet was filed u/s 120B/124A, 153A, 201 of Indian Penal Code (hereinafter ‘IPC’) 13/18/38/39 of Unlawful Activities Prevention Act (hereinafter ‘UAPA’) on 28th July, 2023. Further, a supplementary chargesheet was filed by the N.I.A where A-6 Abdul Rehman@ Dr Brave, an MBBS student, was also arrayed as an accused. He was alleged to have come into contact with A-1 and had made plans to go to Syria via Turkey to join ISIS. The overall allegations in the chargesheet concerning A-2 and A-4 are as under -

- They were allegedly affiliated with the proscribed terrorist organisation *i.e.*, ISKP;
- They had allegedly entered into a conspiracy to propagate the ideology



of ISIS and ISKP, and to excite disaffection towards the Government of India and that such actions of the accused were meant to threaten the unity, integrity and sovereignty of India;

- A-2 along with A-1 and A-5 had allegedly executed a preparatory/trial blast at their rented accommodation in Pune;
- A-3 had allegedly asked for suicide jackets from A-1.

Subsequently, upon taking cognizance, the learned ASJ passed the order on charge dated 28th July, 2024.

Role of Jahanzaib Sami (A-1)

7. Though the present two appeals are concerned with A-2 and A-4, A-1 is the primary accused in the case as also the husband of A-2. The electronic devices which were found were commonly used by A-1 and A-2. Thus, the charges against A-1 would also be relevant for the present purposes of discussion. In the order of charge, insofar as A-1 is concerned, the Trial Court discussed the role of A-1 as under:

7.1 Affiliation with a terrorist organisation

- There were various radicalised chats retrieved from A-1's mobile phone which were between A-1 and unknown entities based in India as well as Syria;
- A-1 has been in continuous touch with the other co-accused and he is also discussing motivating Muslim youth to join ISIS;
- A-1 also had chats with one Hammad @ Abu Usman Al Kashmiri who was based in Afghanistan and was made chief of ISKP after the killing of the earlier chief, Huzaifa al Bakistani;



- A-1 was also in touch with the entity called '*Caged Pearls*' residing in Syria.

7.2 Conspiracy to hatch terrorist activities and execution of other illegal activities

- The chats from A-1's mobile showed conscious efforts and acts were being contemplated for executing terrorist activities at different places including at RSS Sakha in Nasik, Pune and Khandwa. There were exchanges of messages and videos with an entity by the name of Abu Hindi who had instructed A-1 to collect various materials required for preparing IED/explosives substances;
- Chats were also found between A-1 and A-4 where A-4 was found inquiring from A-1 about someone who could supply suicide jackets which were required in Pune. A-4 also informed A-1 that she had connections with different terrorist organisations AGH, AQ and individual terrorists such as Zakir Moosa, and Burhan Koka. A-1 is stated to have admitted in the chats that he has various fake identity documents.
- The chats also reveal that A-3 has informed them of a raid in jail where he dumped his mobile phone.

7.3 Preparation and Propagation of Terrorist Materials

- The chats revealed that the anti-national book named '*Voice of Hind*' was prepared by A-1 and A-3, softcopy and hard copies of which were retrieved from the house of A-1 and A-2. The said book was also shared with various persons. The said book contains various details of operatives of ISIS, activities, plans as well as the ideology of ISIS to have an Islamic



califate. The book also has material for radicalization of Muslims to pick up weapons in the name of religion.

7.4 Financial Transactions

- A Bitcoin wallet address was shared by the entity 'Caged Pearls' and A-1 was asked for funding. Bitcoin deposits were also discussed in the chat and the said money from the Bitcoin wallets was being used for the purchase of weapons. Chats were found with an entity named 'Sec Tech' in Libya to whom the Bitcoin wallet address was shared.
- A chat was also found between A-1 and A-5 regarding sending Rs. 1,10,000/- to the account of A-1 which was credited to the A-1 ICICI Bank account. The same was meant towards terrorist activity.

8. From the above-mentioned findings, the learned Trial Court came to a *prima facie* conclusion that A-1 has associated with ISKP as also ISIS and that he has made preparations for the execution of terrorist activities. Hence, the Special Court framed charges under Section 13 of the Unlawful Activities (Prevention) Act, 1967 (UAPA) against A-1. The Special Court also charged A-1 under Section 18 of the UAPA Act. Based on the evidence, A-1 was also charged under Sections 38 and 39 of the UAPA as also 120B and 124A of IPC.

Role of Hina Bashir Beigh (A-2)

9. With respect to the role of A-2, the discussion in the order of charge is as under:



9.1 Propagation of Terrorist Materials

- Upon being arrested, recovery of one pen drive was made from A-2's car in which a soft copy of the magazine 'Voice of Hind' was found which contained literature related to ISIS. As mentioned above the magazine advocated violent Jihaad by Muslims against non-Muslims.
- Further, a physical copy of the said magazine which was prepared by A-1 was found in A-1 and A-2's house.

9.2 Affiliation with Terrorist Organisation

- The mobile phone and other electronic devices revealed that A-2, under various anonymous/fake identities, was advocating attacks on non-Muslims. The said chats had highly radicalised content. Further using the said fake identities, A-2 had also associated herself with the terrorist organisation ISIS.

10. Even though the chargesheet had other allegations with respect to conducting preparatory blasts, the court found that there was no material to show that A-2 was part of any conspiracy to commit any terrorist activity. A-2 was, therefore, charged only under Section 38(2) and Section 39(2) of the UAPA. She is discharged under Section 13 and Section 18 of the UAPA Act as also under Section 120B and Section 124A.

Role of Sadiya Anwar Shaikh A-4

11. A-4 was arrested on 12th July, 2020. She is also alleged to have joined various Islamic groups in the FIR. With respect to the role of A-4, the allegations in the order of charge are as under:



11.1 Affiliation with Terrorist Organisation

- The chats recovered from her mobile phone also showed chats with various operatives of ISIS, AQ, AGH;
- A-1's mobile phone had messages with A-4 in which, she had made enquiries regarding the procurement of suicide jackets. The voice messages were also retrieved and the CFSL report matched the same with A-4.
- Lastly, some witnesses (PW-23) stated that A-4 had instigated them to join the CAA/NRC protest and take violent steps.

12. A-4 was, thus, charged under Section 38(2) and Section 39(2) of the UAPA and she was discharged on the remaining offences namely Sections 13 and 18 of UAPA and Sections 120, 124A, 153A and 201 IPC.

13. Thus, the charges framed against A-1, 2 and 4 are as under:

1. Jahanzaib Sami (A-1)	U/s 13,17,18,38,39 of UA(P) Act and u/s 120B, 124A IPC.
2. Hina Bashir Beigh (A-2)	U/s 38(2), 39(2) of UA(P) Act
3. Sadiya Anwar Shaikh (A-4)	U/s 38(2), 39(2) of UA(P) Act

14. After framing of the charges on 26th February, 2024, all the accused, except A-6, had submitted before the Special Court that they wanted to plead guilty. The Trial Court then explained the maximum sentence that could be awarded. After following all the required procedures another opportunity was given to the accused for taking a stand. Statements of each of the accused were recorded by the Trial Court and the Special Court held the accused guilty of the following offences.



Offences for which the accused persons are held guilty

Sl. No.	Name of the Accused	Offence (s) for which the accused is held guilty/convicted.
1.	Jahanzaib Sami (A-1)	U/s 13,17,18,38,39 of UA(P) Act and u/s 120B, 124A IPC.
2.	Hina Bashir Beigh (A-2)	U/s 38(2), 39(2) of UA(P) Act
3.	Sadiya Anwar Shaikh (A-4)	U/s 38(2), 39(2) of UA(P) Act

15. The order of sentence was then passed. The Special Court notes that in the judgment of *Parmod Kumar Mishra v. State of Uttar Pradesh*¹, the Supreme Court observed **the absence of a sentencing policy in India**. Upon discussing various other judgments of the Supreme Court, the Trial Court awarded the following sentences:

16. Insofar as A-2 is concerned, the sentences awarded are as under:

“6.1. Convict Hina Bashir Beg is facing conviction for offences under Section 38(2) and 39(2) of UA(P) Act. These offences pertain to membership of a terrorist organization and offences relating to extending support to terrorist organizations. It is a matter of common knowledge that an organization cannot exist and flourish without efficient and dedicated members who provide continuous support and impetus to it. Therefore, considering all the circumstances of the case and the close association of convict Hina Bashir Beg (A-2) with

¹ SLP (CRL.)No. 2190/2023



*convict Jahanzaib(A-1), aggravating and mitigating factors, convict **Hina Bashir Beg (A-2) is sentenced to imprisonment for a period of 8 years u/s 38(2) of UA(P) Act and punishment for a period of 8 years u/s 39(2) of UA(P) Act. No fine is imposed for either of the offences.***

17. Insofar as A-4 is concerned, the sentences awarded are as under:

“8.1 Convict Sadiya Anwar Shaikh Sadiya is also facing charges of being a member of a terrorist organization and extending her support to the terrorist organization. However, a distinguishing point of her role is that she was not engaged in identifying or radicalizing other persons and convincing or brainwashing them to be part of any terrorist organization. Though, at first blush, the allegations against her for procuring suicide jackets may seem extremely grave, which they actually are, the act of the convict having pleaded guilty shows her bonafide and to undergo the punishment despite knowing the maximum extent of punishment being extended to life period reflects that still there is a probability of reformation in the convict Sadiya Anwar Shaikh Sadiya.

8.2 Therefore, considering the facts and circumstances of the case, the role of the accused, and aggravating and mitigating factors, convict Sadiya Anwar Shaikh Sadiya (A-4) is sentenced to imprisonment for a period of 7 years each for offences u/s 38 & 39 of UA(P) Act. No fine is imposed for either of the offences.”

18. For ease of reference, Sections 38 and 39 of UAPA are reproduced hereunder:-

“38. Offence relating to membership of a terrorist organisation. —A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an



offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

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

39. Offence relating to support given to a terrorist organisation. —(1) A person commits the offence relating to support given to a terrorist organisation,—

(a) who, with intention to further the activity of a terrorist organisation,—

(i) invites support for the terrorist organization; and

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

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

(i) to support the terrorist organization; or

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

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

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



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

As can be seen from the above, A-2 is awarded sentence of eight years under Section 38(2) of UAPA and eight years under Section 39(2) of UAPA with no fine. A-4 was awarded a sentence of seven years under Section 38 of UAPA and seven years under Section 39 of UAPA. All the sentences were to run concurrently. The imprisonment was also simple imprisonment. It is these orders on sentences that are under challenge in the present Appeals.

SUBMISSIONS MADE BY THE PARTIES

19. The main submission on behalf of the Appellants is that A-3, who according to them played a role similar to that of the Appellants and was also convicted under the same provisions, was sentenced for the period already undergone. But the same benefit was not extended to A-2 and A-4. Submission of the N.I.A., however, in this regard is that A-3 was already in jail when the incidents alleged in the FIR occurred. Further, at the time of registering the FIR, he was in prison for more than six years in relation to another case and, therefore, he was sentenced to the period already undergone. The N.I.A had also submitted that it has preferred an appeal against the order of charge dated 28th July 2023 by which the Appellants were partially discharged from the offences under sections 13, 17 and 18 of UAPA. In order to deal with the submission of parity with A-3, the role of A-3, as per the order on charge, deserves to be noticed.



Role of Abdullah Basith A-3

20. A-3 was stated to be an active member of ISIS and was already lodged in jail since August, 2018 on the allegation that he was connected to ISIS through social media platforms. The order on charge dated 28th July, 2024 clearly records the main allegations levied against A-3 in the chargesheet as follows:

- A-3 was alleged to have procured certain communication devices in jail and been in touch with ISIS officials through Telegram. Mobile phones had been detected and seized from A-3 on two occasions when he was in jail.
- It was further alleged that the anti-CAA protests were utilized by A-1 and A-3 to promote ISIS's ideology. A group named '*Tom and Jerry*' was created on Signal in this regard. Certain vulnerable youths were also being recruited to create seditious graffiti during the CAA/NRC protests.
- The magazine '*Voice of Hind*' was alleged to have been drafted by A-1 and A-3 along with help from certain other entities from ISIS.
- It was also alleged that the A-1 and A-3 were planning to radicalise Muslim youth to join ISIS and raise funds and carry out lone-wolf attacks in India.

21. On the other hand, the order also clearly records that from A-3, no recovery of mobile phones was effected and the said allegations were completely denied. The Special Court noticed the statement of PW-15 *i.e.*, then Superintendent of Prison, Central Jail No.3, Tihar. Though, he confirmed



that the said phone was used by A-3, the same was an unclaimed phone and it was not physically recovered from A-3. Additionally, neither was any data recovered from the mobile phone nor was the CDR of the same placed on record. Therefore, in the absence of sufficient evidence to corroborate the allegation, the Special Court came to the conclusion that the allegation that he was using the mobile phone, is not proved. The Special Court merely records that there was evidence to show that the A-3 was in contact with A-1 and there were chats which were shown between A-1 and A-3. The Special Court also found that there was no overt act committed by the A-3 for raising and receiving funds for terrorist activities.

22. Thus, upon making all the above-mentioned observations, the Court concluded that there was no ground was made out for framing the charges against A-3 under Sections 13 & 17 of UAPA. The Special Court notes that there were chats between A-3 and A-1 where A-3 was sending messages under the name 'Khattab' but the same was not sufficient to charge him under Section 18 or 120B, 124A, 153A. However, due to the chats reflected in D84 and D111 documents, the Special Court held that he was pursuing and furthering the cause of a proscribed terrorist organization and thus, charges were framed under Sections 38 & 39 of the UAPA.

ANALYSIS

23. From the submissions and the discussion above, it is clear that the challenge is limited to the quantum of sentences. Therefore, there are broadly two aspects to be considered.

- Whether the sentence awarded against A-2 and A-4 is justified?
- Whether A-2 and A-4 can claim parity with A-3?



24. As captured herein above, the sentence awarded to A-2 is eight years under sections 38 and 39 to run concurrently and in the case of A-4, the sentence is seven years under both sections to run concurrently. Insofar as A-2 is concerned, she has been in custody since 23th March, 2020 and the period of sentence undergone is four years and nine months approximately. Similarly, A-4 has been in custody since 29th July, 2020 and the period of sentence undergone is four years and four months approximately.

25. Insofar as sentencing is concerned, specifically in respect of terrorism and similar/related offences, no guidelines have been framed in India at a policy level. In some foreign jurisdictions such as the UK, US, Sweden, *etc.*, specific guidelines have been framed for the purpose of sentencing in the case of terrorist acts etc. Further, in certain jurisdictions, there are also general guidelines that are to be followed for awarding sentences in the absence of guidelines specific to the offence at hand. Some of the guidelines on sentencing, especially in the context of terrorist activities, deserve to be discussed in this context.

UNITED KINGDOM (UK)

26. The Terrorism Act of 2000 deals with offences relating to terrorism in the UK. Specific Bench Books have been prepared in the UK to give guidance to Courts on the factors which could be considered for the purpose of awarding sentences. The various steps that are considered for the purpose of awarding sentences for the offences of Membership in a Proscribed Organisation u/s 11 of the Terrorism Act 2000 and Encouragement of



Terrorism u/s 1&2 of the Terrorism Act 2006² are as under:

Step 1	Determining the offence category – classified as Category A, B and C based on the level of Culpability of the offender and Harm caused by the offence;
Step 2	Starting point and category range – calculation of the range of punishment awardable; Upon reaching the starting point and range, to reach the initial sentence, various aggravating and mitigating factors are considered. The said factors are discussed in detail in the next section.
Step 3	Consider any factors which indicate a reduction for assistance to the prosecution – after reaching the initial sentence, the following mitigating factors are further considered as a part of public policy.
Step 4	Reduction for guilty pleas
Step 5	Dangerousness – the nature of the specific acts of the offender are considered.
Step 6	Required special sentence for certain offenders of particular concern
Step 7	Totality principles – If sentencing an offender for more than one offence, or where the offender is already serving a sentence, there is a duty to consider whether the total sentence is just and proportionate to the overall offending behaviour.
Step 8	Ancillary orders

² <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/proscribed-organisations-membership/>
<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/encouragement-of-terrorism/>



Step 9	Reasons – there is a duty on the judge to give reasons for and explain the effect of the sentence.
Step 10	Consideration for time spent on bail (tagged curfew)

27. As part of the above steps, some of the factors, which are considered, are-

- Whether the person is a prominent/active/dormant member of the terrorist organization?;
- Whether the sentence of imprisonment is necessary or not?;
- Consideration of statutorily prescribed aggravating factors (if any) including
 - previous convictions,
 - offences committed while on bail,
 - offences motivated by religion;
- Knowledge or ignorance of the nature of the proscribed organisation with which the association was shown;
- Any positive or exemplary conduct shown by the offender;
- Age or lack of maturity;
- Any duress, coercion, intimidation or exploitation of the offender
- Status of the offender in society as also within the family - such as the role of the offender as primary caregiver, dependent relatives, and children to be taken care of;
- The family (Socio-economical) background of the offender or any other personal circumstances;
- Educational qualifications could be considered as an aggravating or mitigating factor depending on the facts and circumstances of the case;



- Conduct of the offenders in pleading guilty;
- The seriousness of the offences;
- Special sentencing in case of terrorism and similar offences;
- Time spent on bail and conduct during bail;
- Whether the person is in a position to influence, encourage or assist others towards terrorism;
- Any reckless act carried out by the offender;
- Any evidence that shows the possibility of endangering the life of other people;
- Producing publications for encouraging support towards terrorist activities;
- Contact/Communication with known extremists;
- Dissemination of publication/s that support terrorism;
- Usage of social media platforms to reach a wider audience;
- Attempts to disguise identity and to prevent detection;
- Continued unlawful activity despite previous warnings;
- Offences committed in prison, etc.,

Some of the above factors could be aggravating factors, some of them could be mitigating and some could be both depending on the facts and circumstances of the case.

UNITED STATES OF AMERICA

28. Guidelines are published in the Sentencing Reform Act of 1984 which was also enacted as title II of the Comprehensive Criminal Control Act of 1984. In the US, terrorism related activities are separately dealt with and the question as to whether the role of the offender is an aggravating or mitigating



role is considered. The process of sentencing is quantified by the usage of numbers and mathematical formulae. To elaborate, each offence is assigned a numerical base offence level. Similarly, various factors both aggravating and mitigating are also given numerical values. Various factors are added or subtracted from the value of the base offence level to arrive at the final number. The general principle adopted is that each of the aggravating and mitigating factors increases or decreases the final levels of the sentence. The sentence is finally derived from the sentencing table in the guidelines manual published on 1st November, 2023 which converts the offence number to the exact sentence period. The table divides offences broadly into Zone A to Zone C. The sentencing is calculated in terms of months. The broad guidelines, which are followed include the nature and seriousness of the conduct, the purpose of the sentencing, and characteristics of the offenders among the other aggravating and mitigating factors.

29. A perusal of the sentencing guidelines manual and specifically the sentencing table would reveal that the same is extremely detailed in nature³.

SWEDEN

30. In Sweden, there are detailed guidelines and specific sentencing criteria to determine the type and length of punishment. The factors that are considered include personal circumstances, prior criminal history, conduct during probation, if any, *etc.*

³<https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2023/GLMFull.pdf>
https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2023/Sentencing_Table.pdf



INDIA

31. In India, though there are no specific sentencing guidelines, recommendations recording the need to introduce such guidelines were made way back in March, 2003. The **Committee on Reforms on Criminal Justice System (Malimath Committee)** was of the opinion that such guidelines would minimize the uncertainty in the awarding of sentences. Such a need has been reaffirmed by the **Draft National Policy on Criminal Justice (Madhava Menon Committee)**. Certain news reports also suggest that such a measure was under consideration to remove the uncertainty in sentencing.

32. On the judicial side, the following are the judgments, which discuss the factors in the awarding of sentences. In *Pramod Kumar Mishra v. State of UP*⁴ the Supreme Court upheld the general factors that are to be considered while sentencing, mentioned in *Santa Singh v. State of Punjab*⁵

- Prior Criminal Record
- Age of the Offender
- Employment Records
- Background of an offender with respect to Education, Homelife, Sobriety, and Social Adjustment.
- Emotional and mental conditions of the offender
- Prospects of rehabilitation
- Possibility of the sentence acting as a deterrence to the criminal and others.

⁴ (2023) 9 SCC 810

⁵ (1976) 4 SCC 190



33. In *Sunder Singh v. State of Uttaranchal*⁶ the Supreme Court listed out and classified various aggravating and mitigating factors. The Aggravating Factors include,

- Whether the offence involves extreme brutality,
- Whether the offence is targeted towards a large number of people of a particular caste, religion or locality, committed with previous planning

Similarly, the mitigating factors include,

- extreme mental/ emotional disturbance of the offender,
- young/old age of the offender,
- reduced probability of committing the crime again,
- offence committed under duress/ domination, mental impairment

34. The Supreme Court in the *State of Madhya Pradesh v. Udham Singh*⁷ laid down the basic principles in awarding sentences based on the fulcrum of three tests.

(i) **Crime test** - involves assessment of factors like the extent of planning, choice of weapon, modus of crime, disposal modus (if any), the role of the accused, antisocial or abhorrent character of the crime, and state of the victim.

(ii) **Criminal test** - involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions, or social background of the criminal, motivation of crime, availability of defence, state of mind, instigation by the deceased or anyone from the deceased group, adequately represented in the trial, disagreement by a judge in the appeal process, repentance, possibility of reformation, trial,

⁶ (2010) 10 SCC 611

⁷ (2019) 10 SCC 300



criminal record (not to take pending cases), and any other relevant factor (not an exhaustive list)

(iii) **Comparative Proportionality Test**

35. In terms of general principles, the Supreme Court in *Hazara Singh v. Raj Kumar & Ors*⁸, observed that sentencing should be proportional to the crime committed. Similarly, the Court also observed that the process of sentencing shall have to balance the rights of the victim and that of the society at large. Further, the Delhi High Court in *Bilal Ahmed & Ors v. NIA and Anr*⁹ while dismissing the case for not providing reasons in awarding the highest sentence, clearly observed that the enormity of the allegation cannot be the sole determinant factor for finalising the quantum of sentence. A balanced approach should be taken upon considering mitigating circumstances such as age, previous antecedents, and the candid act of pleading guilty.

36. A perusal of the above factors and principles would show that though specific guidelines have not been introduced on a policy level in India, the factors to be seen in awarding sentences are similar to those of other jurisdictions. While awarding sentences for terrorism-related activities, the Courts will have to, not merely bear in mind the crime committed but also the impact of the same and the propensity of the person to indulge in a similar crime in future. The intent behind providing a range of punishment that could be awarded for an offence is to give the Courts sufficient discretion to consider various aggravating and mitigating factors while awarding sentences. Though there is no doubt that the discretion has to be exercised

⁸ (2013) 9 SCC 516

⁹ 2024:DHC:4113-DB



judiciously, it cannot be expected to be uniform. In a country like India, where there are possibilities of innocent persons being encouraged towards terrorism, it is not merely the rights of the convict that have to be considered but also the impact of the said convict being allowed to integrate back into society which has to be considered.

37. Considering the specific facts of the present cases, the proliferation of crime through the internet and social media platforms cannot be ignored. The fact that the Appellants used fake identities to conceal their original identity and avoid tracing also cannot be ignored. While encrypted platforms permit and encourage privacy and freedom of speech and expression, the misuse of the same by terrorists and banned organizations also would have to be borne in mind. The Appellants are technologically savvy persons who have made use of their educational qualifications to promote terrorism and incite offensive activities against the country. Such cases would have to be dealt with differently than cases involving innocent persons, who may have been pulled into crime without their knowledge. Factors such as funding through bitcoins, as also the use of journalistic credentials to publish and disseminate magazines to incite violence, also cannot be ignored.

38. In the case of A-2 and A-4, both have shown their active involvement with a proscribed terrorist organization. A-2 being the wife of A-1 had permitted her laptop to be used by A-1. Even the phones have been exchangeably used by A-1 and A-2. Reasonably, she cannot be said to have been ignorant. Insofar as A-4 is concerned, she was a student of journalism when she was arrested. As per N.I.A's submissions and other news reports, she was also suspected to have been earlier involved in the J&K blasts and



was let out with a warning considering her age at that time¹⁰.

39. While the fact that A-4 was only about 20 years of age and the fact that both the Appellants are ladies who may not be fully aware of the complete plans of A-1, could be mitigating factors, their association with the main accused as also the circumstances wherein they were seen inciting violence through publications during the CAA/NRC protests, would have to be borne in mind.

40. The Appellants cannot claim complete parity with A-3, on facts. The roles ascribed to them and the role of A-3 is also **not identical**. A-3 was in custody when the present FIR was registered. Bearing in mind all the above factors, this Court accordingly deems it appropriate to modify the sentences awarded to the A-2 and A-4 in the following terms.

41. **With respect to Hina Bashir Beigh (A-2)**

Upon considering the facts and circumstances of the case, the role of the accused, aggravating and mitigating factors, Appellant/Convict Hina Bashir Beigh's (A-2) sentence is modified from **imprisonment for a period of 8 years each** to **imprisonment for a period of 6 years each** for offences u/s 38 & 39 of UAPA. No fine is imposed for either of the offences. The sentences for the said offences are to run concurrently in both cases.

42. **With respect to Sadiya Anwar Shaikh (A-4)**

Upon considering the facts and circumstances of the case, role of the accused, aggravating and mitigating factors, Appellant/Convict Sadiya Anwar

¹⁰ <https://indianexpress.com/article/cities/pune/pune-crime-files-influenced-is-groups-social-media-teenaged-girl8913017-8913017/>
<https://www.hindustantimes.com/india-news/de-radicalised-twice-pune-woman-went-back-to-is-nya/story-soyni1wx8kNrbEyDEhFrOK.html>



Shaikh's (A-4) sentence is modified from **imprisonment for a period of 7 years each** to **imprisonment for a period of 6 years each** for offences u/s 38 & 39 of UAPA. No fine is imposed for either of the offences. The sentences for the said offences are to run concurrently in both cases.

43. The above appeals are disposed of. All pending applications are also disposed of.

44. The copy of this judgment be sent to the concerned Jail Superintendent for necessary compliance.

45. Needless to say, that the outcome of these appeals shall not impact the pending appeals against the order on charge dated 28th July 2024.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

NOVEMBER 14, 2024
dj/Arvind M