

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

**NIA RC No. 20/2017/NIA/DLI**

**NIA v. Shaikh Abdul Naeem @ Sohel @ Sonu @ Sohel Khan  
@ Shehzad and Others.**

**ORDER ON CHARGE**

**Brief Facts as per Charge Sheet.**

1.1 The brief facts of the case as per the charge sheet are, that on 27.11.2017 in compliance of order no. I-11011/46/2017-IS-IV of Ministry of Home Affairs, the present case was registered.

1.2 It is alleged that on 28.11.2017, accused Shaikh Abdul Naeem @ Sohel Khan (A-1) was arrested at Charbagh, Lucknow, Uttar Pradesh. He was arrested for his involvement in raising funds from the main operatives of Lashkar-e-Taiba (LeT) based Pakistan for terrorist activities in India. Some incriminating documents and articles i.e. mobile phones and SIM cards, paper slips with incriminating contents, mobile numbers of associates, fake identity documents, bank cheques belonging to different bank accounts of different persons, bank deposit slips, debit cards, travel tickets etc. were recovered from his possession.

During investigation, it was revealed that accused Bedar Bakht @ Dhannu Raja (A-2), Towseef Ahmad Malik @ Tipu, Mafooz Alam, Habib Ur Rehnem and Amzad @ Rehan @ Abdullah Rashid @ Abdul Aziz @ Wali had provided shelter, logistics, mobile phones to accused Shaikh Abdul Naeem @ Sohel Khan, raised funds for the accused no. 1 and had also facilitated him in engaging fake identity as Sonu/ Sohel Khan. It was further revealed during investigation that Abdul Samad, accused Dinesh Garg and accused Adish Kumar Jain were involved in receiving, collecting and delivering funds received from Saudi Arabia. It was further revealed during investigation that accused Javed was involved in raising and sending funds amounting Rs.3.5 lacs for accused no. 1 from Saudi Arabia through hawala network and on failing to deliver it to accused Shaikh Abdul Naeem, delivered it through accused Abdul Samad to his father accused Mohd. Imran.

### **Case against each of the accused**

#### **Accused Shaikh Abdul Naeem (A-1)**

2.1 The allegations against accused Shaikh Abdul Naeem @ Sohel Khan (A-1) are that he is an active member/terrorist of the proscribed terrorist organization Lashkar-e-Taiba [LeT]. It is further alleged that in pursuance of the larger

conspiracy, accused Shaikh Abdul Naeem along with his three associates namely i) Muzaffar Ahmed Rather @ Abu Rafa, (ii) Md Abdulla @ Asgar Ali @ Ahmed Ali and (iii) Md Yunus @ Bilal, had infiltrated into India from Bangladesh border to carry out the subversive activities and an FIR no. 179/2007 was registered against them. On 21 January 2017, Additional District and Sessions Judge, Fast track Court-1, Bongaon, convicted Muzaffar Ahmed Rather @ Abu Rafa, Md Abdulla @ Asgar Ali @ Ahmed Ali and Md Yunus @ Bilal for the offences punishable u/s 121, 121A, 122, 120B of the IPC.

2.2 During a transport of this accused, he escaped from the custody of Kolkata Police near Raigarh, Chattisgarh Railway Station.

2.3 After his escape, he reached Ram Nagar UP where he remained for some time.

2.4 It is further alleged that accused Shaikh Abdul Naeem @ Sohel Khan [A-1], continued his activities as an active member of LeT, a proscribed terrorist organization in India. As such he remained in telephonic and internet contact with his handlers. Accused Shaikh Abdul Naeem @ Sohel Khan [A-1] shifted his base from Ramnagar, Varanasi, UP to Gopalganj, Bihar

in October-November 2014. It is further alleged that with the active connivance of his handlers and associates including accused Bedar Bakht, accused no. 1 obtained fake identity documents in the name of Soheli Khan and received, raised and collected money 'terror fund' from UAE through Western Union Services Pvt. Ltd. In pursuance of the aforesaid larger criminal conspiracy, accused Shaikh Abdul Naeem @ Soheli Khan visited and carried reconnaissance of various places in India to recruit persons for terrorist organization namely LeT and also to find the soft targets including foreign nationals / tourists. It is further alleged that in pursuance of the aforesaid larger criminal conspiracy, accused Shaikh Abdul Naeem @ Soheli Khan (A-1) had recruited some persons for terrorist organization LeT and raised, collected and received terror funds from his associates in the Kingdom of Saudi Arabia and the UAE through different channels including hawala channel and International Money Transfer Services such as Western Union Money Transfer for carrying out the terrorist activities.

2.5 It is further alleged that in furtherance of the aforesaid larger criminal conspiracy, accused Shaikh Abdul Naeem @ Soheli Khan [A-1] managed to procure and obtain all

relevant identity documents in his assumed fake identity as Mohd Soheli Khan son of Mohd Ali. In connivance with his associates, accused Shaikh Abdul Naeem @ Soheli Khan [A-1], had fraudulently subscribed mobile numbers. He also had his Indian Passport prepared by using his original photograph but wrong particulars including his name as Md Soheli Khan, father's name as Md Ali, mother's name as Asha, date of birth as born on 15.2.1990 at Gopal Ganj, Bihar with residential address as near Kali Mandir Ward No. 19, Jangalia, PS Town, Gopal Ganj 841428. The aforesaid passport had been seized on 09.12.2017.

2.6 It is further alleged that accused Shaikh Abdul Naeem @ Soheli Khan [A-1] also occasionally used identity card No. MXR48201A in the name of Rajeev Sharma son of Nepal Singh resident of H.No. 418 Gali No. 01, Kishanpura, New Multanagar Bhola road, Meerut, UP 250002, as his identity document for staying at the hotel and also for making deposits in bank account. It is further alleged that accused Shaikh Abdul Naeem had used two bank accounts i.e. account no. 6373214947 of India Bank, Gopalganj Branch and account no. 20560100033504 at Federal Bank, Gopalganj Branch to receive, collect and raise money/ terror funds for furtherance of his

terrorist activities and acts preparatory thereto. During analysis of these accounts, it was found that both the accounts were opened by accused no. 1 in his fake name Md. Sohel Khan. It is further alleged that he used the accounts of two persons. It is further alleged that during the period between 14.10.2015 to 11.09.2017, an amount of Rs.6,05,545/- had been deposited including cash deposit of Rs.40,000/- and Rs.4,29,000/-. This amount of Rs.4,29,000/- is the part of Rs.4,60,000/- received by accused Shaikh Abdul through Hawala channel at Aurangabad.

2.7 It is further alleged that accused Shaikh Abdul Naeem @ Sohel Khan [A-1] had attempted to receive and collect funds from his handler in Saudi Arabia through hawala operators including accused Adish Kumar Jain @ Tittu [A-7] and accused Dinesh Garg @ Ankit Garg [A-6]. The hawala operators including A-6 and A-7 used to receive cash through hawala channels and also the gold smuggled into India from the Saudi Arabia through gold smugglers. This hawala channel had been used by LeT to send money to their members/ cadres, active in India. It is further alleged that accused Amzad @ Abdulla Rashid (A-8) and accused Habib-ur-Rehman (A-9), who are handlers of accused no. 1, had given money to accused Javed (A-11). The

said Javed in connivance with accused Gul Nawaz (A-10) had sent Rs.3.5 lacs from Saudi Arabia to accused no. 1 through hawala channel.

2.8 It is further alleged that on 17.11.2017, Abdul Samad [AW-2], on the directions of accused Gul Nawaz (A-10), collected Rs 5 Lakh from accused Dinesh Garg @ Ankit Garg [A-6]. Accused Javed Ahmed [A-11] had sent Rs. 3.50 lacs through accused Gul Nawaz (A-10) to be delivered to accused Shaikh Abdul Naeem @ Soheli Khan [A-1]. On the direction of accused Gul Nawaz [A-10], Abdul Samad [AW-2] collected Rs. 3.50 lacs from accused Ankit Garg @ Dinesh Garg [A-4] on 17.11.2017 and had asked the accused Shaikh Abdul Naeem @ Soheli Khan [A-1] to arrive at Roorkee Roadways [bus stand] to collect the aforesaid amount from him. Rupees Three Lakh Fifty Thousand, which Abdul Samad [AW-2] had received from accused Dinesh Garg @ Ankit Garg [A-6], had originally come from his handler in the Saudi Arabia and it was actually to be delivered to accused Shaikh Abdul Naeem @ Soheli Khan [A-1], an active operative of LeT.

2.9 It is further alleged that on 16.11.2017 and 17.11.2017, accused Shaikh Abdul Naeem @ Soheli Khan [A-1]

had been in telephonic communication with accused Javed Ahmed [A-11]. Accused Shaikh Abdul Naeem @ Sohel Khan [A-1] has also been found in communication with the accused Abdul Samad [AW-2]. At the same time, accused Shaikh Abdul Naeem @ Sohel Khan [A-1] was also in contact with Akhtar Hussain Khan and accused Habib-ur-Rehman [A-9].

2.10 It is further alleged that accused Shaikh Abdul Naeem @ Sohel Khan (A-1) in connivance with accused Bedar Bakht @ Dhannu Raja (A-2) had obtained / got subscribed mobile number 8227018552 on 25.1.2017, using his fake identity documents. Investigation further established that accused Shaikh Abdul Naeem had used multiple mobile numbers and those numbers were obtained by the accused in connivance with his associates including accused Bedar Bakht.

2.11 It is further submitted that the investigation done on the basis of tower locations of mobile phones has established that a meeting of accused Shaikh Abdul Naeem @ Sohel Khan [A-1], Towseef Ahmad Malik [A-3] and Shahnawaz [PW] was held at Banda in which Shaikh Abdul Naeem @ Sohel Khan [A-1] motivated, influenced, formally recruited and convinced Shahnawaz to join and accompany him in furtherance of the



terrorist activities of LeT and, on 04.10.2017, on the instructions of accused Shaikh Abdul Naeem @ Soheli Khan [A-1], Towseef Ahmad Malik [A-3] had deposited Rs.10,000/- in the bank account of Shahnawaz in lieu of his consent to join and accompany accused Shaikh Abdul Naeem @ Soheli Khan (A-1).

2.12 It is further alleged that in furtherance of the larger criminal conspiracy, accused Shaikh Abdul Naeem @ Soheli Khan [A-1] had carried out reconnaissance of several sensitive places like Kasol and Tosh in Kullu, crowded places in Manali and Kasauli in Himachal Pradesh; India Gate, Red Fort, etc in Delhi in Chandigarh and Arti Pooja at Ghats in Varanasi. Accused Shaikh Abdul Naeem @ Soheli Khan [A-1] had recorded the videos and photographs to share it with his handler to plan the terrorist acts at such places.

**Accused Bedar Bakht @ Dhannu Raja (A-2)**

3.1 The allegations against accused Bedar Bakht @ Dhannu Raja are that, he helped accused Shaikh Abdul Naeem in getting a shelter at Gopal Ganj, Bihar to hide. Accused Bedar Bakht @ Dhannu Raja also facilitated accused Shaikh Abdul Naeem @ Soheli Khan [A-1] in establishing/assuming fake identity as Soheli Khan @ Sonu, thus enabling him to hide his real

identity as Shaikh Abdul Naeem. Accused Bedar Bakht @ Dhannu Raja A-2 had willfully helped and facilitated accused Shaikh Abdul Naeem @ Sohel Khan [A-1] in procuring the SIMs of mobile number 8227018552 on fake document at Gopalganj, Bihar, which the accused Shaikh Abdul Naeem @ Sohel Khan [A-1] later used in his application for passport and also to communicate with his associates. Bedar Bakht had also facilitated the receipt of terror funds by A-1.

**Accused Towseef Ahmad Malik @ Tipu (A-3)**

4.1 The allegations against accused Towseef Ahmad Malik are that in May-June 2017, he first came in contact with accused Shaikh Abdul Naeem. It is further alleged that during the month of June-July 2017, accused Shaikh Abdul Naeem @ Sohel Khan had come and stayed at the home of accused Towseef Ahmad Malik [A-3] and he introduced himself to accused Towseef Ahmad Malik [A-3] as Hamid. It is alleged that accused Towseef Ahmad Malik [A-3], as an active member of LeT, had willfully shared his mobile numbers and provided shelter and food to the accused Shaikh Abdul Naeem @ Sohel Khan [A-1] at his hostel in July-August 2017, knowingly fully well that accused Shaikh Abdul Naeem @ Sohel Khan [A-1] was a terrorist of LeT.

It is further alleged that accused Towseef Ahmad Malik [A-3] had arranged and participated in the meeting of accused Shaikh Abdul Naeem @ Soheli Khan [A-1], and Shahnawaz, held at Banda, Uttar Pradesh and recruited him. Accused Towseef Ahmad Malik [A-3] was very well aware that accused Shaikh Abdul Naeem @ Soheli Khan [A-1] had come to Jamia Arabia Madrassa at Banda to recruit the like minded persons as members of LeT for furtherance of its activities. It is further alleged that accused Towseef Ahmad Malik, in pursuance of the criminal conspiracy, had received Rs 12000/- as 'terror funds' from accused Shaikh Abdul Naeem @ Soheli Khan [A-1], and on 04.10.2017, he had transferred Rs.10,000/- to the account of Shahnawaz. Investigation has further established that accused Towseef Ahmad Malik [A-3] assisted accused Shaikh Abdul Naeem @ Soheli Khan [A-1] in raising and transferring funds and recruiting persons for furtherance of the activities of LeT. It is further alleged that on coming to know that Shahnawaz is no more interested to be associated with them, Shaikh Abdul Naeem @ Soheli Khan [A-1] asked accused Towseef Ahmed Malik [A-3] to get the amount of Rs.10,000/- back from him. Shahnawaz had returned the amount of Rs.7,000/- in the bank account of one Kashif which was given to him by the accused Towseef Ahmed

Malik (A-3) and assured to return the remaining Rs.3,000/- soon. It is thus established that accused Shaikh Abdul Naeem @ Sohel Khan (A-1) and accused Towseef Ahmed Malik (A-3) have recruited persons and provided them financial assistance in furtherance of terrorist activities of LeT, a proscribed terrorist organization.

**Mahfooz Alam [AW-1]**

5.1 The allegations against Mahfooz Alam are, that he had facilitated in providing the shelter to the accused Shaikh Abdul Naeem @ Sohel Khan at Gopalganj. During personal search of Mahfooz Alam, two mobile phones and SIM cards were recovered. Investigation has established that Mahfooz Alam [AW-1] was the user of mobile numbers 7117793565 and 8507405028 and was in contact with accused Shaikh Abdul Naeem @ Sohel Khan [A-1] on his mobile phone 9128438996. It is further alleged in the charge-sheet that Mahfooz Alam [AW-1] had received Rs. 1.80 lacs in four installments from one Naeem Din Muhammad for its use. Investigation has further revealed that accused Shaikh Abdul Naeem @ Sohel Khan had fraudulently used Aadhaar card of Mahfooz Alam [AW-1] and received Rs 49999 on 28.1.2017 from Naeem Din Muhammad. Further during the investigation, it

has revealed that Mahfooz Alam had also received the amount of Rs 10000/- from his brother Mohammad Wasim Alam. Further Mohammad Wasim Alam, brother of Mahfooz Alam had also sent money to Jitender Chaudhary, Mokhtar Ahmad, his brother's father in law, and Sajan Ali. On 16.05.2018, Mahfooz Alam was granted conditional pardon by the court as he had filed an application under section 306 Cr.P.C. before the court for grant of pardon.

**Abdul Samad [AW-2]**

6.1 The allegations against Abdul Samad are, that in pursuance of larger criminal conspiracy, accused Abdul Samad [AW-2], acted as the conduit of the LeT financier based in the Saudi Arabia, and collected Rs.3.50 lacs from the accused Dinesh Garg @ Ankit Garg [A-4], hawala operator in Muzaffarnagar, UP and attempted to deliver it to accused Shaikh Abdul Naeem @ Sohel Khan [A-1], who is an active member of LeT, a proscribed terrorist organization. Accused Abdul Samad [AW-2] in furtherance of the larger criminal conspiracy, had facilitated in raising, receiving and collecting funds by accused Shaikh Abdul Naeem @ Sohel Khan [A-1] through *hawala* operator by receiving money to be used for carrying out the terrorist activities.

During investigation, it was revealed that in total Abdul Samad had used six mobile numbers including 9639448468, 9675962626, 9837386282, 8868993856, one SIM of Idea and one SIM of Telenor. It is further submitted that in pursuance of the disclosure made by the accused Abdul Samad [AW-2], search was conducted at the house of accused Abdul Samad [AW-2] and one executive diary, one bunch of general Railway Tickets, Bank pass book of SBI Landhaura in the name of accused Abdul Samad [AW-2], Bank pass book Uttrakhand Gramin Bank in the name of the accused Abdul Samad [AW-2], Bank passbook of Punjab National Bank in the name of the accused Abdul Samad, a paper slip written as 'January ka Tel', a bunch of bus tickets and filling station slips, a bunch of paper containing visiting cards, old insurance policy of motor cycle and PAN card letter, EPIC in the name of the accused Abdul Samad [AW-2] were seized. The scrutiny of the aforesaid documents and items seized, revealed that the accused Abdul Samad [AW-2] had maintained the record pertaining to the source of money received and the recipients of money distributed by him in the executive diary in his own handwriting. The scrutiny of the aforesaid diary of the accused Abdul Samad [AW-2] revealed that Abdul Samad [AW-2] had received and distributed around Rs. 7,09,50,220/-. The details of

the money distributed has been given in a tabular form in charge-sheet. Investigation has further revealed that during the period from 05.09.2017 to 31.01.2018, Abdul Samad [AW-2] had received Rs. 1,14,30,915/- from accused Dinesh Garg. The details of the same have been given in the charge-sheet. Further it has been revealed during investigation that during the period from 13.10.2017 to 18.01.2018, on the directions of accused Adish Kumar, Abdul Samad had received Rs. 32,35,500/- from Sushant @ Shushank Jain son of Adish Kumar Jain @ Tittu. Thereafter, on 16.05.2018 Abdul Samad was granted conditional pardon by the court as he had filed an application under section 306 Cr.P.C. before the court for grant of pardon.

**Accused Dinesh Garg @ Ankit Garg (A-6)**

7.1 It is alleged in the charge-sheet that on 08.02.2018, accused Dinesh Garg @ Ankit Garg [A-6] was arrested in this case. Investigation has revealed that the accused Dinesh Garg @ Ankit Garg [A-4] in connivance with his associates in Saudi Arabia and India had received, raised, and collected 'terror fund' through illegally received smuggled gold, foreign currencies of different countries and cash in Indian currency. He facilitated the hawala channel through which 'terror funds' were delivered to

accused Shaikh Abdul Naeem @ Sohel Khan [A-1], a LeT terrorist. It is further alleged that this accused had supplied Rs.3.50 lacs to Abdul Samad [AW-2], who in turn attempted to deliver it to the accused Shaikh Abdul Naeem @ Sohel Khan [A-1]. It is further alleged that during investigation, scrutiny of the register produced by Mohd Azam was done and it has revealed that Mohd Azam had received around Rs. 24 lacs from Dinesh Garg @ Ankit Garg [A-4] during the period from 31.10.2017 to 19.01.2018. Investigation has further established that Azam had distributed Rs.4,68,46,645/- received through *hawala* channel from the Saudi Arabia. It is further alleged that one country made pistol of 032 bore with filled up magazine of 09 live cartridges and 32 spare live cartridges were recovered from his house.

**Accused Adish Kumar Jain (A-7)**

8.1 The allegations against accused Adish Kumar Jain is, that he in connivance with his associates in the Saudi Arabia and India had received, raised, and collected money (terror fund) through illegally received smuggled gold, foreign currencies of different countries and cash in Indian currency through *hawala* channel. It is further alleged that he facilitated the *hawala* channel through which 'terror funds' were delivered to accused Shaikh



Abdul Naeem. It is further submitted that during investigation, the involvement of accused Adish Kumar Jain has surfaced as hawala operator, who supplied money to Abdul Samad (AW-2) and hawala courier Mohd. Azam. It is further alleged that accused Adish Kumar Jain acted as hawala operator for his associates in the Saudi Arabia to transfer money from the Saudi Arabia to India. It is further submitted that the same channel was used by the terror financier to pump the terror fund from the Saudi Arabia to India to further the terror activities. It is further submitted that during the investigation, search was conducted at the house and shop of the accused and various incriminating materials were seized which includes a bunch of papers of a small diary having various ISD mobile numbers saved against the code names of his associates and a small pocket diary having various Indian mobile numbers of different persons. It is further alleged that one black colour King cobra pistol made in China by NORINCO, alongwith one magazine and 07 ball ammunition were recovered from his house.

**Accused Amzad @ Rehan @ Abdullah Rashid (A-8)**

9.1 The allegations against accused Amzad @ Rehan (A-8) are, that he was the handler of accused Shaikh Abdul Naeem

@ Sohel Khan and in-charge of operations in India, Bangladesh, Nepal and Maldives. It is further submitted that the investigation has revealed that accused Shaikh Abdul Naeem @ Sohel Khan [A-1], continued his activities as an active member of LeT, a proscribed terrorist organization in India and as such he remained in telephonic and Internet contact with his handlers but not limited to Abdullah Rashid @ Amzad @ Rehan @ Abdul Aziz @Wali (A-6), while lodged in the Jail in Kolkata. Investigation has further established that accused Abdullah Rashid @Abdul Aziz @Wali @ Rehan @ Amzad [A-6] had been involved in many terrorists acts in India.

**Accused Habib-ur-Rehman (A-9)**

10.1 The allegations against accused Habib-Ur-Rehman (A-9) are, that he was actual user of ISD numbers 966553997172, 966596159826 and 966536503432. It is further alleged that during September-October 2017, accused Habib-Ur-Rehman using his number 966553997172 had contacted Atta-Ur-Rehman and asked him to receive terror fund through hawala channel and arrange the stay of accused Shaikh Abdul Naeem. It is further alleged that accused Shaikh Abdul Naeem with his mobile numbers 7609831582 and 7437858231 was in contact with the

said Atta-Ur-Rehman during the relevant period. It is further alleged that accused Habib-ur-Rehman, in connivance with accused Abdullah Rashid @ Abdul Aziz @ Wali (A-8), had directed accused Shaikh Abdul Naeem to go to Cuttack, Odisha and stayed with Akhtar Hussain. It is further alleged that accused Habib-ur-Rehman was user of ISD numbers 966553997172, 966596159826 and 966536503432 and that accused Shaikh Abdul Naeem was in telephonic contact with all these three ISD numbers. It is also alleged that this accused had arranged and directed the delivery of Rs.3.50 lacs to accused Shaikh Abdul Naeem, which was attempted to be delivered by approver Abdul Samad.

**Accused Gul Nawaz (A-10)**

11.1 The allegations against this accused are, that he had sent / shared the name, mobile number and amount to be given to the accused Shaikh Abdul Naeem @ Sohel Khan, through WhatsApp with Abdul Samad, his hawala conduit / courier operating in the Districts of Saharanpur, Muzaffarnagar and Bijnour (U.P). Investigation has further established that this hawala channel had been used by LeT, the Proscribed terrorist organization in India, to send money (terror fund) to their

members / cadres, active in India. In this case, accused Amzad and accused Habib-ur Rehman, the handlers of accused Shaikh Abdul Naeem, gave money to accused Javed. The aforesaid Javed Ahmed in connivance with accused Gul Nawaz sent Rs.3.5 lacs from Saudi Arabia through the aforesaid hawala channel to Shaikh Abdul Naeem @ Sohel Khan, which was attempted to be delivered to accused Shaikh Abdul Naeem.

**Accused Javed (A-11)**

12.1 The allegations against accused Javed are, accused Javed (A-11), son of accused Mohd. Imran, had sent Rs.3.5 lacs through the accused Gul Nawaz to be delivered to accused Shaikh Abdul Naeem. On the directions of accused Gul Nawaz, Abdul Samad collected Rs.3.5 Lakhs from Ankit Garg @ Dinesh Garg on 17.11.2017 and asked accused Shaikh Abdul Naeem @ Sohel Khan to arrive at Roorkee to collect the aforesaid amount from him. The name 'Sohel' and mobile number '7609831582' of accused Shaikh Abdul Naeem @ Sohel Khan and amount to be given '350' meaning 3.5 Lakh, was given to the accused Abdul Samad by the accused Gul Nawaz from the Saudi Arabia. It is further submitted that during investigation, one audio file numbered as +5492403-20171116170012.aac was retrieved from

the data of mobile phone seized from accused Shaikh Abdul Naeem and the same has established that on 16.11.2017 and 17.11.2017, accused Shaikh Abdul Naeem @ Sohel Khan was in telephonic communication with accused Javed.

12.2 It is thus alleged that Abdul Samad in furtherance of the larger criminal conspiracy and in connivance with accused Dinesh Garg, Adish Kumar Jain, Gul Nawaz, Javed and Mohd. Imran formed a gang, network of hawala channel and facilitated the transfer of money (terror fund) from Saudi Arabia to India for its use by accused Shaikh Abdul Naeem @ Sohel, an active cadre of LeT.

12.3 It is alleged that the investigation has disclosed that in furtherance of larger conspiracy, accused Shaikh Abdul Naeem (A-1), Bedar Bakht (A-2), Towseef Ahmad Malik (A-3), Dinesh Garg (A-6), Adish Kumar Jain (A-7), Amzad @ Rehan (A-8), Habib-ur-Rehman (A-9), Gul Nawaz (A-10), Javed Ahmed (A-11) and Mohd. Imran (A-12) formed and acted as a terrorist gang and facilitated, arranged and provided him the fake identity documents, used by him as genuine, provided shelter and arranged, raised and supplied terror fund to accused Shaikh Abdul Naeem, active terrorist of LeT.

13. It is further alleged that during the investigation, sanction for prosecution u/s 45(1) UAPA was obtained and charge-sheet for offences punishable u/s 120B IPC, 468 and 471 IPC and sections 17, 18, 18B, 19, 20, 21, 38, 39, 40 UAPA, section 12 of Passport Act, section 34 of Aadhar Act and sections 7 and 25 of Arms Act was filed against accused persons.

14. Thereafter, during further investigation, accused Habib-ur-Rehman and Javed were arrested and first supplementary charge-sheet was filed.

14.1 It is alleged in the charge-sheet that accused Javed Ali went to Riyad on work permit and came into contact with accused Gul Nawaz. Investigation has further revealed that accused Gul Nawaz (A-10) was raising, receiving, collecting and sending funds from Saudi Arabia to India through illegal channel and at Indian end Abdul Samad was collecting it from A-6 and A-7 and distributing it. It is further alleged that in the year 2017, A-11 came into contact with one Zakir. Zakir requested accused no. 11 that he wanted to send Rs.3.50 lacs to India to a person at Muzzafarnagar, U.P. Thereafter, accused no. 11 contacted accused no. 10 who was willing to do so. Then accused no. 11 took an amount of 20,425 Riyal from Zakir and a slip containing mobile

number of recipient. Accused no. 11 then gave the above said amount to accused no. 10 Gul Nawaz who further sent it to India to accused Sohail through illegal *hawala* channel with active connivance of A-5, A-6, A-7 and A-12. It is further submitted that during the investigation, from the mobile phone of accused Shaikh Abdul Naeem, one audio file numbered as +5492403-20171116170012.aac was retrieved. The said audio file has established that on 16.11.2017 and 17.11.2017, accused Shaikh Abdul Naeem was in contact with accused Javed Ali (A-11). During investigation, the questioned voice in the calls dated 16 and 17 November 2017 and the intercepted voice of accused were sent to CFSL for forensic examination. It is alleged that Javed, (A-11) approached accused Gul Nawaz to deliver Rs.3.5 lacs at his home to his father Mohammad Imran who received the terror fund of Rs.3.50 lacs which was sent by handlers of A-1 through one Zakir. Accused Imran has been made an accused in the present case for holding proceeds of terrorism. From the personal search of accused no. 11, one photograph was seized and accused no. 11 disclosed and identified him as Zakir from whom A-11 received Rs.3.50 lacs to further deliver it to accused no. 1.

15. Thereafter, second supplementary charge-sheet was filed whereby certain additional articles recovered during the further investigation were submitted.

**Arguments**

16.1 I have heard Id. Spl. PP for NIA as well as Id. Counsels for accused and gone through the record as well as the written submissions carefully.

16.2 In the written submissions filed by NIA, it is submitted that accused Shaikh Abdul Naeem @ Sohel Khan [A-1], after escaping from the custody of Kolkata Police, had stayed at Gopalganj and established a fake identity with the help of co-accused persons. Shaikh Abdul Naeem (A-1) had prepared the fake identity proofs (referred documents are D-202, D-212, D-222, D-16, D-17, D-18, D-19, D-20, D-21, D-22 and D-23) on the basis of fake Voter Id. It is further submitted that accused No.1 had received funds from different sources. Approver Mahfooz Alam in his statement (D-151) had stated that accused No. 1 used to receive funds from Saudi Arabia through accused No. 2 Dhannu Raja and later through him. Accused No. 9, a member of LeT had also sent funds to accused No.1 through PW-5 and PW-28. In this regard, refence has been made to documents D-43, D-



213, D-214, D-218 and D-219. It is further submitted that accused Shaikh Abdul Naeem (A-1) visited Himachal Pradesh, Chandigarh and Delhi in order to carry out reconnaissance of crowded and tourist places. The videos of all these places were recorded by the accused Shaikh Abdul Naeem and had been recovered from his mobile phone. Reference is made to scrutiny report of data extracted from mobile phone of accused which is D-195. It is further submitted that one document D-38 seized during the personal search of the accused Shaikh Abdul Naeem included "One Hand written page containing Alphabetic codes and decodes. This document clearly reflects the ill intent of the accused Shaikh Abdul Naeem. Accused No.1 visited Banda and Kashmir to recruit like-minded persons for LeT in order to carry out its activities. In Kashmir, he met Accused no.3 and shared his contact details with him. PW-2, Shehnawaz Khan was brainwashed and recruited by accused No.1 with the help of accused No. 3. Accused no.1 called PW-2 to Delhi to meet him and even gave Rs. 10,000/- through accused no.3 to lure him, accordingly PW-2 went to Delhi as stated by him in his statement. The CDR analysis shows location of accused No.1, accused No. 3 and PW-2 at Banda at the same time period. Moreover, accused No.1 visited Madrasa of accused No.3 and stayed there for some

time. PW-42 in his statement had revealed that accused No.3 had told him that accused No.1 had come there to recruit like-minded persons as members of LeT for furtherance of its activities. Reference has been made to documents D-56 and D-237.

16.3 With regard to accused no.2, it is submitted that accused no. 1 met accused no. 2 at Gopalganj. A bare reading of statements of PW- 8, PW-16, PW- 43 and PW- 67 shows that accused no. 02 deliberately hid the identity of accused no. 01. Accused no.2 introduced accused no.1 as his close friend to PW-67, PW-8 and PW-16 in order to provide him shelter. Accused No.2 knew the real identity of accused no.1 and therefore provided him shelter and logistic support (sim cards) from the moment accused no.1 arrived in Gopalganj. This prima facie shows that he was aware of the criminal/terrorist antecedents of accused no.1. Reference has been made to the statement of witnesses PW43. It is further submitted that accused no. 02 facilitated the accused no. 01 in establishing a fake identity as Soheli Khan. Accused no.2 made a fake Voter id card in the name of Soheli Khan with A-1's photograph on it. (Referred to documents D-18 and D-19). It is further submitted that statements of Mahfooz Alam (D-155) and PW-08 showed that accused No.2

used to receive money in his account from unknown sources in Saudi Arabia for accused no.1. The scrutiny of extracted data of digital items seized from accused no.2 has revealed incriminating data such as inflammatory speeches of Masood Azhar, wherein he is provoking people for waging war and Jihad against India and Hindus, photographs of weapons, etc. (referred to D-195).

16.4 With regard to accused no. 3, it is submitted that in May June 2017, accused no. 3 first came in contact with accused no. 1. He had provided accused no. 1 shelter at his home in Chandigarh, Pulwama. Accused no. 1 introduced himself as Hamid and he was accompanied by two active terrorists and were equipped with prohibited arms and ammunition. It is further submitted that accused no.3 had arranged and participated in the meeting of the accused no.1 with Shehnawaz (PW-2), held at Banda, by motivating him to accompany and paid him Rs.10,000/- on the direction of accused no.1. The Deposit slip of the same was recovered from accused no.3. It is further submitted that accused no.3 knew that accused no.1 had come to Madrasa at Banda to recruit like minded persons as members of LeT for furtherance of its activities and helped him in doing so and accused no. 3 also shared this information with Bilal Ahmed

(PW-42). Accused no.3 had actively participated in the activities of A-1, that is to recruit like-minded persons as members of LeT, which not only shows his affiliation with A-1 but also with LeT. Moreover, accused no.3 provided accused no.1 two SIM cards having calling number 7054890719 and 8795611440. (Referred to documents D-237, D-56 and statements of witnesses PW36, 37, 38, 39, 40, 41, 42, 49 and PW2).

16.5 With regard to accused no. 6, it is submitted that accused no. 6 facilitated the funds which were delivered to accused no.1. The scrutiny of the diary (D-91) of accused turned approver witness Abdul Samad (AW-2/A-5) has revealed that he has received around Rs. 1,14,30,915/- from accused no.6. The funds (Rs 3,50,000/-), the transaction in question which Abdul Samad attempted to deliver to accused no.1 was collected from accused no.6. It is further submitted that PW33 Md. Azam had stated that he was in hawala work and used to collect money from accused no. 6, accused no. 7 and one Babloo. One diary (D-125) recovered from PW33 mentioned of accused no. 6 and 7. This proves that all the jewellers were doing hawala business. PW33 further stated that he used to receive details of persons to whom money is to be delivered on WhatsApp. It is further submitted

that the claim of the defence is that accused no.6 was a Hawala operator and the transaction in question was hawala in nature. But the evidence shows that accused no.6 provided funds to approver Abdul Samad to which were to be delivered to accused no.1 on the instructions of accused no.10, who was member of LeT. During the search (D-100), illegal arms and ammunition had been seized from the residence of accused no.6, which include “One country made pistol of .32 bore with filled up magazine, nine live cartridges and 32 spare live cartridges. Reliance has been made to document D-91 and D-156 to D-158.

16.6 With regard to accused no. 7, it is submitted that the scrutiny of diary of approver Abdul Samad had revealed that he had received and distributed around Rs. 7,09,50,220/- received through hawala channel from his handlers based in Saudi Arabia. Abdul Samad had received around Rs. 32,35,500/- from Sushant, son of Accused No.7, on the direction of the accused Adish Kumar Jain, during the period from 13.10.2017 to 18.01.2018. During the search, illegally arms and ammunition had been seized from the residence of accused no.7, which include one black colour King cobra Pistol, made in china by “NORINCO”, bearing SL No. RK314356 along with one Magazine and 07 Ball

ammunition. (Referred to D- 119 : Search list of Shop of A-7 and D- 194 : Firearm examination report.). It is further submitted that accused No.7 had supplied huge quantities of money to approver Abdul Samad acted as hawala operator for his associates in Saudi Arabia to transfer money from Saudi Arabia to India. The same channel had been exploited by the terror financiers to pump terror fund from Saudi Arabia to India to further the terror activities. It is further submitted that the prosecution has established the connection of accused no.6 and accused no. 7 to terror funding when Abdul Samad tried to deliver funds to accused No.1. Reliance has been drawn on the judgment of Murlidhar and Ors. Vs. State of Rajasthan.

16.7 With regard to accused no. 9, it is submitted that accused no. 9 was based in Saudi Arabia and is a member of LeT, the actual handler of accused no.1. Accused No.9 had also helped one Mohammed, a member of Indian Mujahideen wanted in many criminal cases in India to get to Pakistan. Referred to document D-256/3 and statements of PW188, PW208 and PW209.

16.8 It is further submitted that accused no. 9 provided shelter to accused no.1 at the house of PW-5. Also, provided him

funds through PW-5 and PW-28. Referred to document D-219 and statements of witnesses PW5 and PW28. It is further submitted that accused no.9 had received one memory card and sent it to Pakistan, which he played in the mobile of Farzana Sheikh (PW-184) in the presence of Sameena (PW-185). The contents of the memory card as stated by both the witnesses were, “*tum jaha bologe main vaha bomb fodunga*”. The voice in the said memory card is the same as of accused no.1 as per disclosure of A-9.

16.9 With regard to accused no.10 and accused no. 11, it is submitted that accused no.11 had sent Rs. 3.5 lakh through Accused No. 10, Gulnawaz to be delivered to the Accused No.1. On the instructions of Gulnawaz (A-10), approver Abdul Samad had collected Rs 3.5 Lakh from the Accused No. 6 and asked the accused No.1 to arrive at Roorkee to collect the aforesaid amount from him. The name “Sohel” and mobile number of accused No.1 and amount to be given, was given to approver Abdul Samad by the Accused No. 10, Gulnawaz from Saudi Arabia. (referred to D-156 to 158). It is further submitted that accused no.11 had contacted accused no.1 on his mobile phone for sending him Rs 3.5 Lakhs and the call recording of the said call has been retracted

from the phone of accused no.1, in which accused no.11 can be heard talking to one “Zakir”, who has instructed him to send money to accused no.1. Later that money was delivered to accused no.12 (father of accused no.11) on the instructions of accused no.11. (Reference is made to D-308 : CFSL report identifying the voice of A-11 in conversation with A-1).

17.1 In the written submissions filed on behalf of accused Shaikh Abdul Naeem (A-1), it is submitted that the allegations made against the accused are not supported by the material filed by the prosecution. It is further submitted that the statements of AW1/A-4 Mahfooz Alam and AW-2/ A-5 Abdul Samad are exculpatory in nature and are inadmissible. It is further submitted that the alleged proceeds of terrorism amounting Rs.1,69,697/- from PW1 was an amount which he raised after selling furniture and other infrastructure of Smart Learner’s Academy and PW1 being the partner of the Academy had balance in favour of accused no. 1. Similarly Rs.15,000/- which was recovered from PW3 was in fact an amount of loan allegedly given by accused no. 1 to PW3 for personal use. Similarly, Rs.25,697/- was the remaining balance in the bank account of PW-7 which was allegedly belonged to accused no. 1. There is nothing to show that



this entire money was used for any illegal or unlawful activity which can be covered u/s 17/21/40 UAPA. It is further submitted that the prosecution has failed to submit any evidence to prove that the accused no. 1 was involved in any act of raising, collecting or receiving any funds for any terror activity while the facts mentioned in the charge-sheet can only elaborate that accused no. 1 had used the money in English Coaching Centre at Gopalganj or used only in business activities at Gopalganj with PW8 or had plan for business in Cuttack, Odisha with PW-5 or in Aurangabad Maharashtra with PW-49. There was no plan for terror activity or conspiracy discussed with anyone. It is further submitted that the prosecution as well as the investigating agency failed to establish any conspiracy for any terror activity at any place or time against the accused and thus, charges u/s 120B IPC or u/s 18 UAPA are not made out. It is further submitted that there is no evidence that accused no. 1 was involved in any conspiracy or was busy in any planning for any anti national activity. There are around 30 prosecution witnesses from Gopal Ganj but none of their statements establish the allegation of anti national or subversive activities done by accused no. 1. The prosecution has failed to establish that Shaikh Abdul Naeem was an active member of LeT. Thus, no case u/s 20/38 & 39 UAPA is made out.

It is further submitted that the charge-sheet is silent on the allegations of terror activities if happened and investigated during this case, the concealing of identity or establishing a new identity with fake and forged documents and thus, no case u/s 468/471 IPC is made out. It is further submitted that there is no allegation in the entire charge-sheet that any arm or ammunition was recovered from, provided or used by accused no. 1 and thus, no charge u/s 7/25 Arms Act can be framed against this accused. It is further submitted that the accused is not an accused in any case of bomb blast or any terror activity where death or injury to human body occurred. It is further submitted that the powers of trial court at the time of consideration for charge are well settled. In this regard, reliance has been placed on the judgments of **State of Orissa v. Debendra Nath Padhi, AIR 2005 (SC) 359** and **State of Maharashtra v. Priya Sharan Maharaj & Ors (1997) 4 SCC 393**, wherein it has been held that the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

18.1 In the written submissions filed on behalf of Bedar Bakht @ Dhannu Raja (A-2), it is submitted that Hon'ble

Supreme Court in **Sajjan Kumar v. CBI (2010) 9 SCC 368** has held that the judge while considering the question of framing of charges u/s 227 Cr.P.C has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. It is further submitted that the Hon'ble Supreme Court has repeatedly emphasized that if the police report and the material produced with it give rise to "suspicion" of commission of offence, then the accused must be discharged. It is further submitted that the prosecution has relied upon the statements of PW8, PW14, PW15, PW16, PW43 and PW67 against this accused. However, a bare reading of the statements of the above said witnesses clearly shows that this accused was unaware about the real identity of accused no. 1 and being a student leader, this accused had extended helping hand to accused no. 1. There is no allegation in the statements of the above said witnesses that accused no. 2 had received any amount for helping accused no. 1. On the basis of the statements of above witnesses the prosecution has drawn an inference that accused no. 2 has helped accused no. 1 in establishing his identity as Suhel Khan, an assumed and fake name at Gopalganj. It is submitted that by no stretch of imagination, it can be inferred from the statements of PW8,

PW14, PW15, PW16, PW43 and PW67 that accused no. 2 has knowingly helped accused no. 1 in concealing his real identity at Gopalganj. It is further submitted that accused no. 2 is a student leader. His career will be jeopardized if he is put for the trial for the offences which have not been committed by him.

19.1 In the written submissions filed on behalf of accused Towseef Ahmad Malik (A-3), it is submitted that there is no material on record to connect the accused with any terror act or its conspiracy thereof as alleged by the prosecution. It is further submitted that the accused has been falsely implicated in this case. It is further submitted that there is no evidence to show that accused had any knowledge or involvement in any activity of the accused no. 1.

19.2 It is further submitted that the allegation against the accused is, that he is an active member of LeT and in furtherance of its activities, he provided food and shelter to accused no. 1 at his house at Pulwama. However, there is no material on record to show that accused no. 3 was a member of proscribed terrorist organization LeT or any other banned terrorist organization. It is further submitted that the recoveries made from accused no. 3 have not yielded any material to show that he was a member of

any proscribed terrorist organization or was involved in any terrorist activities. It is further submitted that there is no evidence to suggest that in May-June, 2017, accused no. 1 alongwith any other person stayed at the house of this accused at Pulwama. It is further submitted that the prosecution has relied upon two photographs D-195, which were allegedly recovered from one of the phones of accused no. 3. However, in none of the photographs, accused no. 3 is appearing with any of the alleged terrorists. Further, there is no evidence to show that these photographs were taken by accused no. 3 or that they were taken at the house of accused no. 3. It is further submitted that as per the allegations of the prosecution, accused no. 1 alongwith terrorists namely Abu Maaz and Abu Muslim had stayed at the house of accused no. 3. However, the photographs relied upon by the prosecution are of different individuals and the said photographs belong to one Irfan Ahmad Sheikh, Danish Ahmad, Zahid Ahmad and Irfan Abdullah Ganie. It is further submitted that there is no allegation to show that he was involved in any acts of violence or being a party to any conspiracy for committing any violent or terrorist act. It is further submitted that there is no material to establish any nexus between the applicant and any proscribed organization involved in terror related activity. In this

regard, reliance has been placed on the judgment of Hon'ble High Court of Bombay in **Jyoti Babasaheb Chorge v. State of Maharashtra, 2012 SCC Online Bom 1460** wherein Id. Single Judge had held that membership offences under section 20 and 38 UAPA cannot be a passive membership. The prosecution has failed to bring on record any evidence to show that accused no. 3 has participated in any terror activities.

19.3 The further allegation against the accused is, that he had provided food and shelter to accused no. 1 at Jamia Arabia Madrasa at Banda where accused no. 3 was studying. The prosecution has relied upon the witnesses PW36, PW37, PW38, PW39 and PW40. However, these witnesses have given cyclostyled manner of statement u/s 161 Cr.P.C. None of these witnesses have attributed any illegal/ subversive activity against accused no. 3. It is further submitted that even if it is assumed that accused no. 1 was planning a terrorist act, there is no evidence on record to show that accused no. 3 had any knowledge or any planning/ activity of accused no. 1. It is further submitted that except PW42, none of the witnesses had stated that accused no. 1 and accused no. 3 tried to influence them.

19.4 The prosecution has further alleged that accused no. 3 provided two SIM cards 7054890719 and 879561140 to accused no. 1. However, there is no evidence to show that the said SIM cards were supplied by accused no. 3 to accused no. 1. Even the CDR of number 7054890719 does not show that accused no. 3 was in contact with accused no. 1 through this mobile number.

19.5 The further allegation against the accused is, that on 22.08.2017, accused no. 3 in connivance with accused no. 1 held a meeting with PW2 at Banda and motivated, influenced, convinced and recruited PW2 to associate with them in furtherance of terrorist activities and transferred Rs.10,000/- in PW2's account. However, there is no record to show that accused no. 1 travelled to Banda on 22.08.2017. The travel report D-237/20 does not show that accused no. 1 was in Banda for a meeting with PW2. The prosecution has relied upon the CDR (D-242/778) of phone no. 8791939705, belonging to PW2, for the period between 01.09.2017 to 31.12.2017. However, there is no evidence to show that PW2 had met accused no. 1 or accused no. 3 in Banda on 22.08.2017. It is further submitted that the statements u/s 161 and 164 Cr.P.C of PW2 are contradictory to each other and cannot be relied upon in absence of any

corroboration of the same. It is further submitted that PW3 in his statement u/s 161 Cr.P.C had stated that in October 2017, he alongwith another friend Afzal came to Delhi. However, the said Afzal is neither a witness nor an accused in the present case. It is further submitted that there is nothing on record to show that PW2 or accused no. 3 had any clue about any conspiracy which allegedly hatched by accused no. 1. It is further submitted that one number i.e. 9554270176, which has been attributed to accused no. 3, has shown calls on 12.10.2017, 13.10.2017, 16.10.2017, 28.10.2017. However, there is no pattern or sequence of calls to suggest that PW2 and accused no. 3 were in contact with each other for the relevant period. As per the CDR D-239/53, no phone calls were exchanged between the parties. Further, there is no evidence to show that Rs.10,000/- were originated from accused no. 1 or any source which can be considered as terror fund. It is further submitted that as per the charge-sheet, PW2 had returned the said money to accused no. 3 through one Kashif. However, no investigation in this regard was done. Even the said Kashif is neither an accused nor a witness in the present case. Ld. Counsel has relied upon a judgment of Hon'ble Supreme Court in **State of Kerala v. P. Sugathan (2000) 8 SCC 203** wherein it has been held that a few bits here and a few bits there on which the



prosecution relies cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. It has to be shown that all means adopted, and illegal acts done were in furtherance of the object of conspiracy hatched. It is further submitted that the entire case is based on mere suspicion, surmises and inferences which are not supported by any cogent evidence. In this regard reliance has been placed on the judgment of Hon'ble Supreme Court in **Gulam Sarbar v. State of Bihar (2014) 3 SCC 401.**

20.1 In the written submissions filed on behalf of accused no. 6, it is submitted that the prosecution has relied upon the statements of PW-33, PW-34, two statements of accused no. 5 recorded u/s 164 Cr.P.C and his diary containing various amounts and accounts concerning A-6, A-7 and Imran. It is further submitted that to constitute alleged offences u/s 15-21, 39 of UAPA, knowledge and/ or intention of an accused are the essential ingredients. It is further submitted that even if all the evidence are admitted to be true for the sake of arguments, there is no whisper of knowledge/ intention on the part of accused no. 6 that he was aware of proceeds of terror. There is no allegation that he was a member of any organization mentioned in section 38 of

the Act. It is further submitted that there is not an iota of evidence pointing towards any single incident of gold smuggling and hawala operations. It is further submitted that section 2(39) r/w section 11 (A)(a) of Customs Act defines smuggling and illegal import. Section 111 of Customs Act further elaborates on the ingredients of smuggling. Nothing of that sort is even specified in the present case. It is further submitted that NIA failed in collecting the evidence of gold smuggling and hence, there is no question of dealing with any fund relating to smuggled gold/hawala. The money trail in relation to the funds allegedly acquired by accused no. 6 is not present on record. There is no evidence of acquiring any funds by accused no. 6 from any sources from Saudi Arabia. It is further submitted that statements of PW33 and PW34 do not attribute any knowledge or intention on the part of accused no. 6 that he was indulged in any activity which would damage the national unity, integrity, economic structure of the country. It is further submitted that composite reading of statements of PW33, PW34 and A-5 do not construe sufficient evidence to implicate accused no. 6 for the alleged offences under UAPA. It is further submitted that the diaries allegedly seized from accused no. 5 does not reflect the sum and total of the amounts received from accused no. 6. Even the

alleged delivery of Rs.3.50 lacs to Imran A-12 cannot be justified by accounting for all the entries. Even the placement of the entries on pages Q167, Q172, Q173, Q176, Q179, Q180, Q184, Q192, Q233, Q254 and Q260 show that these were manufactured to implicate accused no. 6. Thus, the said diary cannot be considered as a substantive piece of evidence even at the stage of charge. It is further submitted that the allegations in the charge-sheet are, that accused no. 5 was to deliver Rs.3.50 lacs to accused no. 1 and the said amount could not be delivered to Imran on 18.11.2017. If the figures mentioned on page Q199 are admitted to be true, even then accused no. 5 was not possessing Rs.3.50 lacs on 18.11.2017 to give it to Imran. It is further submitted that the prosecution failed to place any prima facie evidence on record to show that the said unaccounted Rs.3.50 lacs were proceeds of terrorism in terms of section 2 (g) of UAPA. It is further submitted that the receipt of the said amount by accused no. 6 through any source connected to the terror activities is completely missing and knowledge of accused no. 6 about the intended usage of the said fund is not even spelt out by the prosecution and hence, the accused is entitled to discharge. It is further submitted that it is an admitted case of prosecuting agency that the accused was not connected with accused no. 1 in any

manner. It is further submitted that one thing common in the statements of accused no. 4, accused no. 5 and PW33 is, that they used to receive messages on Whatsapp about the collection and remittance/ distribution of money collected from various people in Muzzafarnagar. However, the investigating agency failed to put on record any Whatsapp chat/ messages. Hence, the credible piece of evidence is withheld. Reliance has been placed on the judgments **Yakub Abdul Razak Memon v. State of Maharashtra (2013) 13 SCC 1**, **Ganesh Gogoi v. State of Assam, AIR 2009 SC 2955**, **Hitendra Vishnu Thakur & Ors. v. State of Maharashtra & Ors 1994 (4) SCC 602**, **CBI Hyderabad v. K. Narayana Rao (2012) 9 SCC 152**, **Kirtibhai Madhavlal Joshi v. State of Gujarat (2006) 4 SCC 680**, **Hari Charan Kurmi & Ors v. State of Bihar AIR 1964 SCC 1184** and **CBI v. VC Shukla (2013) 13 SCC 1**.

21.1 In the written submissions filed on behalf of Adish Jain (A-7), it is submitted that the prosecution has primarily relied on the statements of approver A-5 and two prosecution witnesses PW33 and PW34. As regards the statement of A-5, it is submitted that a bare perusal of the statement reveals that it is not inculpatory at all. In the said statement, Abdul Samad (A-5)

absolves himself of any wrong doing at any point of time. That being so, such a statement by an approver does not qualify as confession. It is a settled law that a confessor must admit in clear terms his guilt in the commission of crime whilst substantially admitting to all the ingredients of the offence. However, accused no. 5 Abdul Samad's statement does not qualify the said test. In this regard, reliance has been placed on the judgments of **State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600**, **Balbir Singh v. State of Punjab AIR 1957 SC 216** and **Yakub Abdul Razak Memon v. State of Maharashtra (2013) 13 SCC 1**. It is submitted that when the statement of approver A-5 does not fall into the category of a confession, no question arises of applying the rigour of section 30 of Indian Evidence Act. It is further submitted that the statement of PW34 Waseem Ahmed D-34/3 suffers from various flaws. It is further submitted that claim of PW34 of delivering Rs.20-25 lacs to Abdul Samad at the instance of accused no. 7 and on Babloo Jeweler has not been corroborated by Abdul Samad in his statement and Abdul Samad has never named Waseem Ahmed. Further a perusal of D-237 reveals that Waseem Ahmad has never been in touch with accused no. 1. Further, there is discrepancy between the statement u/s 161 Cr.P.C of PW34 wherein he claims to have used the phone no.

9760881786 to operate the Hundi work and D-237 wherein a different number has been attributed to him. It is further submitted that the claim of PW33 Mohd Azam of contacting accused no. 7 is negated and falsified by D-237 and D-238 wherein no contact of any kind has been established between them. It is unbelievable that PW33 and accused no. 7 could have been engaged in exchange of money without even contacting each other. Furthermore, the interconnection chart submitted by the prosecution proves that there was no contact between accused no. 7 and PW33. Therefore, statement of PW33 does not further the case of the prosecution. It is further submitted that the diary seized from A-7 (D-118) does not have the phone number of A-11 and A-12. Further no link whatsoever either through telephone calls or in any other manner has been established between accused no. 7 and accused no. 8, 9, 10, 11, 12 or accused no. 1, 2 or accused no. 3 and 4. It is further submitted that only a single instance has been pointed by the prosecution where an attempt was made by Abdul Samad to hand over a sum of Rs.3.5 lacs to accused no. 1. However the said cash/ amount admittedly did not originate from accused no. 7.

21.2 With regard to section 17 UAPA, it is submitted that section 17 UAPA is an improved version of section 3 of TADA. Section 17 UAPA requires prima facie evidence of knowledge that a person must possess while providing financial aid to another person that the said financial aid will ultimately be used for a terrorist act. However, in the present case, there is no evidence of any contact between accused no. 7 with the accused based in UAE and Saudi Arabia. As regards the contents of diary D-118, it is submitted that the prosecution has not proved the alleged transactions figuring in the diary. Further the names mentioned in the diary read with the statement of A-5 show that these are all innocent recipients of the money sent by the relatives who are based outside. One such name which figures out is one Rabia, who has not been made an accused in the present case. It is further submitted that in the present case, no commission of terrorist act has taken place and thus, no charge for offences u/s17, 18, 1B of UAPA can be framed. For section 19 UAPA, no evidence has been led against the accused. Further no allegation of section 20 UAPA has been made against accused no. 7. No evidence has been led to substantiate section 21, 38, 39 and 40 UAPA. Further no evidence of any conspiracy has emerged to substantiate section 120B r/w sections 467 and 471 IPC against

accused no. 7. There is no allegation regarding section 12 of Passport Act and section 38 of Aadhar Act. It is further submitted that there is nothing to connect this accused to the present offence. There is no evidence of any connectivity of this accused with any of the accused. Reliance has been placed on the judgment of **State of Tamilnadu, through Superintendent of Police v. Nalini & Ors (1999) SCC Online 571,**

22.1 In the written submissions filed on behalf of accused no. 9, it is submitted that the accused is a labour and was working in the Kingdom of Saudi Arabia to earn his livelihood. The accused has clean antecedents and has been falsely implicated in this case. It is further submitted that the accused was detained in Saudi Arabia on 25.12.2017 and was deported to India on 10.08.2018 and then arrested by NIA at New Delhi Airport. The allegations against the accused are, that he was a hawala conduit of accused Shaikh Abdul Naeem. The prosecution has relied upon the statements of witnesses PW5, PW28, PW29, PW31, PW32, PW35, PW45, PW46, PW47, PW178, PW179, PW180, PW181, PW182, PW183, PW184, PW185, PW188, PW208 and PW209. However, in the statements of these witnesses, there is no adverse material against the accused. It is further submitted that the



prosecution seeks to proceed on the basis of alleged confessional statement of accused. However, it is a well settled law that such evidence is very weak and the courts should be circumspect while relying upon such evidence. It is further submitted that the accused was not aware about the real identity of accused no. 1. It is further submitted that there is no evidence to show that there was any flow of money from accused no. 9 to accused no. 11. It is further submitted that it is alleged in the charge-sheet in paras 17.33 and 17.83 that accused no. 1 had several calls and message exchanged with accused no. 9 during the period 16.11.2017 to 18.11.2017. However, the calls and the exchange of messages between accused no. 1 and accused no. 9 itself do not show anything incriminatory. The fact that the present accused is a member of LeT has not been mentioned in the entire charge-sheet and there is no evidence to show that this accused is a member of LeT. Thus, offences u/s 20/38/40 of UAPA are not made out. It is further submitted that there is no evidence at all, either direct or indirect, of hatching of conspiracy or existence of the conspiracy or giving support to terrorist organization. No independent action is attributed to the present accused with regard to the conspiracy. It is further submitted that the prosecution witnesses have not made any reference of conspiracy to present accused. Thus,

without fulfilling the criteria of Section 15, offence u/s 18 and 18B of UAPA would not be made out. It is further submitted that knowledge is a prerequisite for offences u/s 17 and 21 UA(P) Act and there is nothing on record to show that the accused had , with knowledge, raised funds or to be given from hawala operators to A-1 or had originated from him, which were to be used for alleged terror activities. It is further submitted that it is alleged that the accused had provided shelter to accused no. 1. However, there is no evidence to establish the involvement of accused in harboring any terrorist knowing that such a person is a terrorist. During the period of stay in Orissa, accused no. 1 disguised himself as Sohail Khan and has not done any illegal activity in Orissa. It is further submitted that to constitute an offence u/s 39 UAPA, the activities have to be done with the requisite mens rea i.e. with an intention of furthering the activity of terrorist organization. However, there is no material to support such proposition. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in **Union of India v. Yasmeen Mohd. Zaheed (2019) 7 SCC 790.**

23.1 In the written submissions filed on behalf of accused no. 10, it is submitted that in order to substantiate its case against

this accused, the prosecution has relied upon the statements u/s 161 Cr.P.C and u/s 164 Cr.P.C of Abdul Samad, statement of accused no. 10 recorded under police custody and interconnection chart (D-311, 3/3). It is submitted that accused has been falsely implicated in this case. He did not know accused no. 1 who was represented as Suhail Khan. It is further submitted that as accused no. 10 had doubt on Suhail Khan, he withdrew his instructions to give the amount. Thus, it is evident from the prosecution case, accused no. 10 was never in touch with accused no. 1. He was directed by accused no. 11 to give amount to one Suhail Khan. As accused Shaikh Abdul Naeem denied to uncover his face, accused no. 10 withdrew his instruction to give the amount to give Suhail Khan. There is nothing on record to show the agreement of mind between accused no. 10 and accused no. 1 for committing the alleged crime. It is further submitted that the interconnection chart itself demonstrates that accused no. 10 was not in active touch with accused no. 1. With regard to disclosure statement of accused no. 10, it is submitted that being inadmissible u/s 25 of Evidence Act, it cannot be considered for substantiating charge against the accused no. 10. It is further submitted that the material and documents placed by the prosecution against the accused no. 10 do not disclose the existence of any ingredients constituting

the alleged offence. No incriminating material has been recovered from the possession of accused no. 10.

24.1 In the written submissions filed on behalf of accused no. 11 Javed, it is submitted that the prosecution claims to have collected certain evidence against accused Javed such as telephonic talk between him and accused no. 1, voice sample and photo of Zakir. It is submitted that at the stage of framing of charge, it has to be considered whether grave suspicion for commission of offence exists or not. If two views are possible and one of them gives rise to suspicion, the trial judge will be empowered to discharge the accused. In this regard, reliance has been placed on the judgment of **P Vijayan v. State of Kerala, AIR 2010 SC 663**. It is further submitted that the talks between accused Javed and Mohd Imran do not show any terrorist activity. Furthermore, statements of four PWs namely Palvinder Pal Singh, Udayvir Singh, Rajesh Sharma and Krishan Gopal Khathar do not carry any cogent evidence against accused Javed. It is further submitted that the disclosure statement of accused no. 11 does not have any evidentiary value. It is further submitted that Zakir is an imaginary person and the prosecution has no cogent evidence with respect to terrorist activities linking accused Javed with

Zakir. It is further submitted that the entire case of the prosecuting depends on circumstantial evidence. It is further submitted that the prosecution itself conceded that Rs.3.50 lacs which was allegedly sent through hawala could not reach in the hands of terrorist persons and as such no link could be established by the prosecution of the accused with terrorist activities.

### **Findings**

25.1 I have considered the rival submissions as well as gone through the record carefully and considered the judgments cited at bar.

25.2 The entire case revolves around accused Shaikh Abdul Naeem and his efforts to establish bases in different parts of the country. After his escape from police custody, accused Shaikh first reached Ramnagar, U.P where, from summer of the year 2014 till November 2014, he stayed. From there he reached Gopalganj, Bihar and established himself at the place. It further appears that from Gopalganj, he went to Cuttack and then came back to Bihar and then to Ramnagar, U.P. He also visited Delhi, Chandigarh and other places allegedly to conduct reconnaissance for terror activities. He also visited Banda to recruit cited PW2

Shahnawaz. He also visited Bareilly to obtain money allegedly sent from UAE for terror funding.

25.3 It has not been disputed that accused Shaikh Abdul Naeem had been convicted and declared to be a member of a proscribed terrorist organization LeT in FIR No. 179/2007 by Fast Track Court 1, Bongaon, North 24 Parganas. The judgment of the said court is on record. It has also not been challenged on behalf of accused Shaikh Abdul Naeem that while he was being transported to Maharashtra from Kolkata, he escaped from custody of Kolkata Police near Raigarh, Chattisgarh Railway Station. After his escape from police custody, accused first appeared at Ram Nagar, U.P. At Ram Nagar, he initially met cited PW4 Harender Yadav by the roadside and sought lift from him. At that time, he was injured. He created a story that he was a victim of domestic violence. His mother was a Hindu and his father was a Muslim. After death of his mother, his father married another Muslim woman who was cruel towards him and the injuries, which he was having, were due to the beatings given by that woman. He was thrown out of the house and was penniless. (cited PW3 and PW4).

25.4 The notable fact is, that according to the testimonies of the witnesses, at that time, accused Shaikh Abdul Naeem was penniless and hungry and after earning around Rs.1500/-, he left Ramnagar in November 2014.

25.5 As per the evidence available, from Ram Nagar accused Shaikh Abdul Naeem reached Gopal Ganj. At Gopal Ganj, the person who helped him in settling in was A-2 Bedar Bakht. According to the statement of cited PW-8, it was Dhannu Raja who called him and his friend Mahfooz Alam (approver) to meet him where he introduced accused Shaikh Abdul Naeem as Sonu and said that he was his friend and he needed a room on rent. As per the statement of cited PW-8, Mehfooz Alam told Dhannu Raja that if Dhannu Raja gave his ID, he would give a room to the person who came with Dhannu Raja. Next day, he gave his ID proof.

25.6 A similar statement has been given by Mahfooz Alam cited PW67/approver. He has stated that Dhannu Raja made a telephonic call to him and said that a friend of his had come from Mumbai and he should meet him. When he reached there, Dhannu Raja introduced accused Shaikh Abdul Naeem to him as his friend Sonu who had come from Mumbai. He asked Mahfooz

Alam to arrange for an accommodation for him. He said that he was taking a guarantee for Sonu. On Dhannu Raja's guarantee, he got a room for accused Sonu at the house of Nasir on his own guarantee and thereafter, Sonu gave his ID which had his name as Sohail Khan and the address was of Chandoli. Furthermore, money which was being received by accused Shaikh Abdul Naeem from unknown persons through Western Union Money Transfer was received in the account of approver as well as received through Dhannu Raja as is visible from the statement of approver(Mahfooz Alam). The fact that approver Mehfooz Alam also provided help to accused Sheikh Abdul Naeem in receiving terror funds is borne out from his own statement and documentary evidence. The relevant documents, which have been seen by me regarding the transfer of money, are D-43, D-213, D-214, D-218 and D-219.

25.7 It is here that accused Shaikh Abdul Naeem managed to have a passport issued in his name at the address of one Walimuddin Khan. After his death, his son cited witness PW20 Sharik Mohammad Khan refused to give this passport. Accused had made efforts to obtain this passport from cited witness PW20 through Upender Rai, who had stated that his son Prashant Rai



was a witness to the police verification of this passport to Shaikh Abdul Naeem.

25.8 This Prashant Kumar Rai has been cited as PW1 and has admitted that he had signed on the residential proof documents of Sohail Khan and later he came to know that these were passport documents. The said passport has been seized by NIA and is D-136. So far this Gopal Ganj base of accused Shaikh Abdul Naeem is concerned, two persons had been arrested and they are accused no. 2 Bedar Bakht @ Dhannu Raja and Mahfooz Alam who has become an approver and has been pardoned.

25.9 It is noticeable here that accused Shaikh Abdul Naeem who was living in penury at Ram Nagar came into money after reaching Gopal Ganj. It is not even the case of the accused that he earned this money. He had received it from abroad. At this stage, there is grave suspicion that this money was sent by his handlers including Habib-ur-Rehman and one Zakir.

25.10 Accused Shaikh Abdul Naeem also visited Cuttack and this brings into picture accused Habib-ur-Rehman.

25.11 I have seen statements of two witnesses cited as PW5 and PW28. These statements reflect that in August 2017,

accused Shaikh Abdul Naeem had reached Cuttack and he had reached there on the instructions of accused Habib-ur-Rehman who had instructed cited PW5 to help accused Shaikh Abdul Naeem to set up a business and find shelter for him. Accused stayed at Cuttack for some days and was provided shelter as instructed. Efforts were made to set up a business for accused Shaikh Abdul Naeem but it did not succeed. Efforts were also made to send money to accused through cited PW28 as is visible from his statement. This money was being sent by Habib-ur-Rehman. Thereafter accused returned to Gopal Ganj.

25.12 Then there are allegations against accused Shaikh Abdul Naeem that with the help of accused Towseef Ahmad Malik @ Tipu (A-3), he tried to recruit and recruited people to the cause of Jihad and LeT.

25.13 In this regard, there is a statement of cited PW2 Shahnawaz who has stated that at a madrasa in Fatehpur, he met accused Towseef Ahmad Malik @ Tipu. Statement of this witness reflects that Towseef Ahmad Malik @ Tipu was a highly radicalized person and he tried to recruit Shahnawaz for Jihad. In August 2017, Towseef Ahmad Malik @ Tipu made a telephonic call to this witness, asked him to reach Banda. At Banda, he was

introduced to one person by the name of Shehzad. This Shehzad and Towseef Ahmad Malik @ Tipu tried to recruit him for Jihad and asked him to learn driving, arrange for a vehicle and stated him that the said vehicle would be used to transport the members of their organization. In October 2017, an amount of Rs.10,000/- was also deposited by accused Towseef Ahmad Malik @ Tipu in the account of this witness. Then he was instructed to reach Delhi and meet accused no. 1 whom he knew as Shehzad. On reaching Delhi, Shehzad asked him to reach a place in Himachal whereafter he developed cold feet and returned home. Out of Rs.10,000/-, he also returned Rs.7,000/- to Towseef Ahmad Malik @ Tipu.

25.14 There are statements of witnesses cited as PW36, PW37, PW38, PW39 and PW41. These statements are of the witnesses who were students of Jamia Arabia Madrasa, Banda. Their statements reflect that in July 2017, accused Shaikh Abdul Naeem who was introduced as Hamid @ Sohel was staying in the room of accused Towseef Ahmad Malik @ Tipu and to all these people, Towseef Ahmad Malik @ Tipu introduced accused Shaikh Abdul Naeem as his relative/ brother/ khala's son and stated that he was from Bihar.

25.15 Then there is a statement of cited PW42. He was also a student of the same madrasa. His statement further reflects that accused Shaikh Abdul Naeem, who was introduced to him as Hamid tried to influence him for Jihad and he almost became ready but developed cold feet at the last moment. He further stated that initially Towseef Ahmad Malik @ Tipu had introduced Shaikh Abdul Naeem @ Hamid as his relative but later on, Towseef Ahmad Malik @ Tipu told him that the real name of accused Shaikh Abdul Naeem was Hamid. He was from Pakistan and he had come to madrasa to recruit boys.

25.16 This accused had also visited Himachal Pradesh, Delhi and Chandigarh. The allegations against him are, that accused Shaikh Abdul Naeem visited that places in order to conduct reconnaissance of tourist places in order to find targets for terrorist activities. It is also alleged that he had taken videos and photos of those places and these videos and photos have been recovered from the mobile phone of accused. The scrutiny report of extracted data is D-195.

25.17 It has been contended on behalf of the accused that as he was an escaped convict, he was trying to hide himself and was roaming around as tourist and that the photos and videos

were taken as a tourist and it cannot be said that they were taken to select targets.

25.18            However, there is a document on record which is D-38. It was seized during the personal search of accused Shaikh Abdul Naem. Perusal of this document reveals that apart from the codes, there is a handwritten note in this diary which is as under:-

All foreign country nationals come here for 2 to 3 months and stay there in hotels and hand made camps.

They take drugs and listen music.

TOSH is favourite place for foreigners to take drugs and they stay in some hotels where only foreigners are allowed.

And no security issue is there.

There is a AYWI Centre where they come after 8'o clock till 12 mid night.

Our boys people can do our business as they want and can come back too.

If you will send . pg-1.

We will purchase tents and can stay on the top at a separate place.

25.19            It appears from this note that accused was selecting targets to inform and seek instructions from his handlers.

25.20 This note prima facie raises a grave suspicion that the said visit was neither to hide from police nor was the visit as a tourist but was a reconnaissance exercise.

25.21 The fact that accused had visited this place is also stated by witnesses cited as PW9 Rakesh Ramola, PW10 Bittoo Kumar and PW11 Parvinder Singh. Photos and videos of these places were recovered from his phone. As per these statements, accused Shaikh Abdul Naeem was using an assumed ID of Rajiv and using the same identity, he had stayed at Arya Samaj, Chandigarh. When the accused was arrested, the voter ID card in the name of Rajiv Sharma son of Nepal Singh (D-20) was seized from his possession. Another voter ID card by the name of Md. Sohail Khan (D-19) bearing the same number as of D-20 was seized from the accused. Thus, it is apparent that both the IDs were forged.

25.22 In November 2017, accused Shaikh Abdul Naeem again tried to obtain Rs.3.50 lacs which were sent through *hawala* from UAE. Accused no. 9 Habib-ur-Rehman prima facie seems to be the person responsible for sending this money.

25.23 There are statements of witnesses which are showing close contact of accused Habib-ur-Rehman with Jakir, one Pakistani national.

25.24 Then there is a transcript of recording which was recovered from the phone which was seized from accused Shaikh Abdul Naeem. In the audio clip, accused no. 11 Javed is talking to accused Shaikh Abdul Naeem asking him to reach Deoband to receive the money being sent through *hawala* and in this conversation, when accused Shaikh Abdul Naeem states that his name is Soheli, Javed tell Jakir that he is stating his name as Soheli and Jakir states that he is telling the correct name. The fact that it is the voice of accused Javed is established by FSL report, D-308.

25.25 A duty was cast upon approver Abdul Samad to deliver this money to accused Shaikh Abdul Naeem and as per the statement of approver, in order to establish identity of Shaikh Abdul Naeem as the right person to whom the money was being delivered, he intended to take a photo of accused Shaikh Abdul Naeem but accused Shaikh Abdul Naeem forbade him and finally allowed him to take a photo where his face was not visible. When approver Abdul Samad informed accused Gul Nawaz of the situation, Gul Nawaz directed him not to deliver the money. The

fact that accused Habib-ur-Rehman was connected to this attempted delivery of money is established by the scrutiny report of Cert-In (D-195/27), which reflects after the failure to receive the money, accused Shaikh Abdul Naeem had sent a message to accused Habib-ur-Rehman on mobile no. +966553997172 on 17.11.2017 to the effect “--I met with that person. He is asking me to give ID proof. I will arrange by tomorrow and will meet again”. The fact that this number belongs to accused Habib-ur-Rehman is stated by cited PW5 in his statement. The fact that this delivery was attempted on 17.11.2017 is stated by approver Abdul Samad in his statement u/s 164 Cr.P.C.

25.26 From the aforesaid evidence as discussed above, it is prima facie established that after escaping from police custody, accused Shaikh Abdul Naeem managed to reach Ram Nagar where he was living in penury and after working as a labour for some time, he arranged some money. During this period, he was using the mobile phone of witness Virender Yadav and circumstances raise a grave suspicion that during this time, by use of that phone, he established contact with his handlers and then reached Gopal Ganj where he received huge amount of money. It is also prima facie established that accused Shaikh Abdul Naeem



used a forged voter ID card to obtain a driving license and then on furnishing false information in the name of Soheli Khan, he succeeded in having a passport generated for him though the said passport could not be collected by him. It is also prima facie established that with the assistance of accused Habib-ur-Rehman, he further tried to establish a base at Cuttack where again attempts were made by Habib-ur-Rehman to deliver money to him. The fact that his handler Habib-ur-Rehman was a member of LeT is established from the statement of various witnesses.

25.27 It is further prima facie established that he stayed at Jamia Arabia Madrasa where he was assisted in his effort to establish his identity in the name of Hamid @ Soheli by accused Towseef Ahmed Malik @ Tipu who introduced him as his relative and there he had tried to recruit Bilal Ahmed cited PW42 and with the help of Towseef Ahmad Malik had recruited cited PW2 Shahnawaz probably to work as overground worker/ sleeper cell.

25.28 Thus, prima facie it is established that accused Shaikh Abdul Naeem, continued to be a member of LeT and was working for it to choose targets and recruit cadre.

25.29 Further, it is prima facie established that accused was also using two forged voter ID cards, as have been discussed

above and are D-19 and D-20. He had used his fake identity to open bank accounts and also used bank accounts of other witnesses such as Sandeep to obtain money from his handlers. It is also prima facie established that accused in order to identify targets had visited Himachal Pradesh and Chandigarh.

25.30 It has been contended on behalf of accused Shaikh Abdul Naeem that it was a visit as a tourist.

25.31 However, prima facie this is belied by the note recovered from his diary which has been reproduced above and which reflects that it was an attempt to find out targets and he intended to inform his handlers that TOSH a place in Himachal Pradesh could be an easy target for hitting foreigners.

25.32 I accordingly find that there is sufficient evidence on record to frame charges u/s 120B IPC, 468 IPC, 471 IPC, 17 UAPA, 40 UAPA, 18 UAPA, 18B UAPA, 20 UAPA and 21 UAPA against accused Shaikh Abdul Naeem. I further find that as the accused had succeeded in obtaining a passport in false name, there is evidence to frame charges against him u/s 12 Passports Act. However with regard to sections 19 UAPA, 38 UAPA, 39 UAPA, 7 Arms Act and 25 Arms Act, the evidence is not sufficient to frame charge against the accused for these offences.

Further, with regard to section 34 of Aadhar Act, it has not been brought on record whether the aadhar cards, which were recovered from the accused, were genuine and had been obtained by giving false information or were completely forged. Section 34 of Aadhar Act is only attracted when a person by giving false information enrolls for issuance of aadhar card and in absence of such information, no charge u/s 34 Aadhar Act can be framed against him.

26.1 Now I shall take the case against other accused individually.

26.2 Accused no. 2 is Bedar Bakht @ Dhannu Raja. As evidence has been discussed above, it is accused no. 2 who helped accused Shaikh Abdul Naeem in establishing his identity as Sohail Khan at Gopal Ganj and settle in at that place.

26.3 It has been contended on behalf of accused no. 2 that accused no. 2 is an innocent person who, being a student leader, after meeting accused Shaikh Abdul Naeem and hearing his story that he had fallen into bad times, decided to help him but he had no knowledge that accused Shaikh Abdul Naeem was an escaped terrorist.

26.4 This contention would have been believable but for the conduct of accused no. 2. Accused no. 2 introduced Shaikh Abdul Naeem as Sohela @ Sonu. He did not introduce him to others as a person who had incidentally met him and needed their help as was done by Harender Yadav when he introduced accused Shaikh Abdul Naeem to others at Ram Nagar and told them that he had met him on the road and that he did not know him prior to that day. However, accused Bedar Bakht @ Dhannu Raja introduced accused Shaikh Abdul Naeem to others, including approver Mahfooz Alam, as his friend who had come from Mumbai and as a person whose name he knew as Sonu/Sohel Khan. This is the name which accused has established only after reaching Gopal Ganj. Not only this, he arranged for rented accommodation by giving his own guarantee and he also helped accused Shaikh Abdul Naeem in receiving money in his account and disbursed it to the accused. Therefore, the circumstances surrounding this accused raise a grave suspicion of accused Bedar Bakht @ Dhannu Raja knowing the true identity of accused Shaikh Abdul Naeem but deliberately introducing him as his friend Sohela @ Sonu and helping him in establishing himself as Sohela Khan @ Sonu.

26.5 I accordingly find that there is sufficient evidence to raise a grave suspicion against accused no. 2 for prima facie committing offences punishable u/s 120B IPC, 17 UAPA, 40 UAPA, 18 UAPA and 19 UAPA. However, there is no evidence to reflect that accused Bedar Bakht @ Dhannu Raja had in any manner helped accused Shaikh Abdul Naeem in forging the identity documents which were used to obtain a driving license as well as passport. Thus, accused no. 2 is to be discharged for offences punishable u/s 468 IPC, 471 IPC, 12 Passport Act and 34 Aadhar Act. Further, there is no evidence against accused Dhannu Raja for offences u/s 18B UAPA, 20 UAPA, 21 UAPA, 38 UAPA and 39 UAPA and he is to be discharged for these offences. Further, there is no evidence against accused Dhannu Raja for offences u/s 7 and 25 Arms Act and he is to be discharged for these offences.

27.1 Coming onto the case against accused Towseef Ahmad Malik @ Tipu (A-3). As has been discussed above, accused Towseef Ahmad Malik @ Tipu was studying in Jamia Arabia Madrassa. He was a radicalized person who tried to incite others to join Jihad. In July 2017, accused Shaikh Abdul Naeem appears at the said madrassa and started staying at the room of

Towseef Ahmad Malik. Accused Towseef Ahmad Malik introduced this person as Hamid @ Sohel and told some witnesses, whose statements have been discussed above, that he was his relative from his mother's side and to some other witness that he was from Pakistan. This raises a grave suspicion that accused Towseef Ahmad Malik knew the real identity of accused Shaikh Abdul Naeem otherwise he would not have lied that accused Shaikh Abdul Naeem was related to him. This is further fortified by the subsequent acts of the accused where he alongwith accused Shaikh Abdul Naeem recruited cited witness PW2 Shahnawaz to their cause and not only that, he transferred money to the account of cited witness Shahnawaz and instructed him to reach Delhi to give this money to accused Shaikh Abdul Naeem. Not only this, as has been stated by cited PW42, he finally disclosed to PW42, upon whom also an attempt of recruitment was being made, that real name of accused Shaikh Abdul Naeem was Hamid, who was from Pakistan and who had come to recruit boys in madrassa. This also reflects that he knew the real identity and purpose of accused Shaikh Abdul Naeem.

27.2 I accordingly find that there is grave suspicion which arises against accused Towseef Ahmad Malik @ Tipu for

commission of offences punishable u/s 17 UAPA, 18 UAPA, 18B UAPA, 19 UAPA, 20 UAPA, 21 UAPA, 40 UAPA and 120B IPC. However, there is no evidence of this accused being a part of the conspiracy for or in any manner assisting the commission of offences punishable u/s 468 IPC and 471 IPC, 12 Passport Act and 34 Aadhar Act, sections 7 and 25 Arms Act. Further, there is no evidence against this accused for commission of offences punishable u/s 38 UAPA and 39 UAPA and he is discharged for these offences.

28.1 This brings me to the case against accused no. 6 Dinesh Garg @ Ankit Garg, accused no. 7 Adish Kumar Jain, accused no. 10 Gul Nawaz and accused no. 11 Javed.

28.2 They are being taken up together because they have been charge-sheeted in this case on account of one transaction which is, an attempted delivery of Rs.3.50 lacs to accused Shaikh Abdul Naeem on instructions of one Jakir and Habib-ur-Rehman and their role in this entire case is limited to this act.

28.3 The allegations against accused no. 6 and 7 are, that they in connivance with their associates in Saudi Arabia and in India had received, raised and collected terror funds through illegally smuggled gold, foreign currency of different countries

and cash in Indian currency. Further allegations against accused no. 6 are, that he facilitated hawala channels through which terror funds were delivered to accused Shaikh Abdul Naeem and had supplied Rs.3.50 lacs to Abdul Samad, who attempted to deliver it to accused Shaikh Abdul Naeem.

28.4 The allegations against accused no. 10 are, that he had sent / shared name, mobile number of accused Shaikh Abdul Naeem and amount to be given to accused Shaikh Abdul Naeem through Whatsapp with Abdul Samad, who was his courier pertaining to the Districts of Saharanpur, Muzaffarnagar and Bijnour (U.P). It is further alleged that this hawala channel had been used by LeT, the Proscribed terrorist organization in India, to send money (terror fund) to their members / cadres active in India. It is further alleged that the handlers of accused Shaikh Abdul Naeem had given money to accused Javed and Javed in connivance with accused Gul Nawaz had sent Rs.3.5 lacs from Saudi Arabia through the aforesaid hawala channel to Shaikh Abdul Naeem @ Sohel Khan.

28.5 The allegations against accused no. 11 Javed are, that accused Javed had sent Rs.3.50 lacs through accused Gul Nawaz to be delivered to accused Shaikh Abdul Naeem and an attempted



delivery was made by approver Abdul Samad on 17.11.2017 at Roorkee. An audio file was retrieved from the mobile phone seized from accused Shaikh Abdul Naeem had established that on 16.11.2017 and 17.11.2017, accused Shaikh Abdul was in telephonic conversation with accused Javed. It is further alleged that in the year 2017, Javed came into contact with Jakir who requested accused Javed to send Rs.3.50 lacs to India to a person in Muzzafarnagar whereafter he contacted accused no. 2. Accused no. 11 then took 20425 Rials from Jakir and slip containing the mobile number of the recipient whereafter, he sent it through illegal hawala channels with the active connivance of accused no. 5, 6 and 7. A photograph of Jakir, who had ordered delivery of Rs.3.50 lacs to accused Shaikh Abdul Naeem was also seized from accused Javed.

28.6 First I shall take up the allegations against accused Dinesh Garg @ Ankit and accused Adish Kumar Jain that these accused in active connivance with their associates in Saudi Arabia had illegally received, raised and collected terror funds and were engaged in gold smuggling activities.

28.7 During scrutiny of evidence, I was not able to find any evidence regarding both these accused being engaged in an

act of receiving terror funds in the form of smuggled gold, foreign currency of different countries and cash in Indian currency although there was evidence that they were engaged in hawala operations. Therefore, a specific query was raised by the court and written response was filed by NIA wherein it was stated, that there was no direct evidence of gold smuggling and that the evidence reflected that accused were engaged in *hawala* operations. However, at the same time, it was not even stated what was the indirect or circumstantial evidence to that effect or that through these operations both these accused were receiving terror funds. A lot of *hawala* transactions pertaining to these accused have been placed on record in the form of diary recovered from Abdul Samad where these transactions were recorded. However, the only instance with regard to alleged terror funding which has been pointed out from all these transactions is the attempted delivery of Rs.3.50 lacs to accused Shaikh Abdul Naeem. Therefore, it can be safely concluded that apart this transaction, there is no evidence of any activity of these accused relating to terror funding.

28.8 Interestingly, this delivery has no connection with accused Adish Kumar Jain. As per the allegations, the amount

which was to be delivered to accused Shaikh Abdul Naeem was picked up by Abdul Samad from accused Dinesh Garg on the instructions of accused Gul Nawaz. Therefore, this being the case, accused Adish Kumar could not have been made an accused in this case unless it was shown that evidence which was collected for the *hawala* transactions of this accused, some of which are on record, reflected that he was engaged in receiving or disbursing terror funds to some module of a terrorist organization or on behalf of terrorist organization. However, there is not even an allegation of this kind against accused Adish Kumar Jain. Therefore, the court had categorically inquired why this accused was arrayed as an accused in this case? It was submitted by NIA that he would not have been made an accused in this case but for the recovery of illegal arms from his house. This is a very surprising submission which has been made and it reveals a sad state of affairs where the high handedness of police officers makes a person suffers for the crime which he has not committed as just by the reason of recovery of illegal arms/ weapons from his house, the person has been arrested and charge-sheeted under the stringent provisions of UAPA and has been claimed to be involved in terror activities. This accused has been in custody since his arrest despite the fact that the only offence for which he

could have been charge sheeted was under Arms Act for recovery of illegal arms. Apart from that, there is no evidence at all of accused Adish Kumar Jain of either being involved in the conspiracy of present case or otherwise being involved in any terrorist activities or activities related to terror funding.

28.9 With regard to the offence under Arms Act, I find that as the offence of possession of illegal arms and ammunition is not connected to this case or any conspiracy of this case, this court cannot assume the jurisdiction to try the accused for the said offence and the right approach for the prosecution would have been to inform the local police regarding recovery of illegal weapons and the local court would have had the jurisdiction to investigate that case and the jurisdiction to try it would only be of the court within whose local jurisdiction illegal weapons were recovered. This court lacks the jurisdiction to try the accused for this offence.

28.10 I accordingly find that with regard to accused Adish Kumar Jain, there is no evidence for framing of charge for any of the offences for which he has been charge-sheeted.

28.11 Coming on to the case of accused Dinesh Garg @ Ankit Garg and Gul Nawaz.

28.12 It is the prosecution's own case that accused Dinesh Garg @ Ankit Garg is a *hawala* operator. From the statements of witnesses on record, it is evident he was engaged in *hawala* operations where money sent by expats, who were working in middle East, was reaching to their relatives through this hawala operation. Accused Gul Nawaz is also engaged in same business and approver Abdul Samad, cited PW33 and PW34 were the couriers for these operations. There is evidence and it is the case of the prosecution that accused Javed instructed accused Gul Nawaz to have Rs.3.50 lacs delivered to accused Shaikh Abdul Naeem whose name was disclosed as Sohail. It is also the case of the prosecution and there is prima facie evidence to that effect that Gul Nawaz instructed approver Abdul Samad and on his instructions Abdul Samad collected Rs.3.50 lacs from Dinesh Garg (A-6) in order to deliver it to accused Shaikh Abdul Naeem. There is evidence, as has been discussed in the earlier portion of this order, that this money was sent by accused Habib-ur-Rehman through Jakir who in turn sent it through accused no. 11 Javed. There is also evidence to the effect that when accused Shaikh Abdul Naeem did not allow his identity to be established by way of photograph, accused Gul Nawaz instructed Abdul Samad not to deliver the money and the money on the instructions of Gul

Nawaz was delivered to somebody else rather being returned to accused Dinesh Garg @ Ankit Garg.

28.13            However, there is no evidence on record at all which could reflect that either accused Gul Nawaz or accused Dinesh Garg were aware that this money had originated as a terrorist fund or was being delivered for terrorist activities or to a terrorist. On the contrary, the conduct of Gul Nawaz, where he refused to deliver the money unless accused Shaikh Abdul Naeem allowed himself to be photographed or provided ID, raises a probability that accused Gul Nawaz was acting in his business in a routine manner without knowing the real identity of accused Shaikh Abdul Naeem or knowing that accused Shaikh Abdul Naeem was a terrorist. I say so because had he known about it and had been involved in the conspiracy, he would have directed Abdul Samad to deliver the amount irrespective of the fact whether accused Shaikh Abdul Naeem allowed himself to be photographed or not or, whether he provided his ID or not.

28.14            Therefore, the circumstances which emerge about the role of these two accused persons are that they are hawala operators and during their operation, they acted upon an instruction, which incidentally was meant to deliver money to a

terrorist and no circumstance has emerged which could raise a grave suspicion of them being a part of this conspiracy.

28.15 Apart from that, there are three witnesses on whom the prosecution relies. One is approver Abdul Samad and others are cited PW33 and PW34. However there is nothing in there statements which can inculpate either accused Dinesh Gupta or Gul Nawaz for the offences for which they have been charge-sheeted.

28.16 I accordingly find that there is no evidence either in the form of a testimony or in the form of circumstances which would raise a grave suspicion of accused Gul Nawaz and accused Dinesh Garg of being involved in this conspiracy. Thus, I find that they are to be discharged for the offence punishable u/s 120B IPC and 17 UAPA, 18 UAPA, 18B UAPA, 19 UAPA, 20 UAPA, 21 UAPA, 38 UAPA, 39 UAPA and 40 UAPA.

28.17 Surprisingly, these accused have also been charge-sheeted for offences punishable u/s 468 IPC, 471 IPC, 12 Passports Act and 34 Aadhar Act. There is neither any allegation nor any evidence that these accused had either committed or conspired to commit any of these offences. This reflects the callous manner in which the charge-sheet was prepared. I find

that they are to be discharged for these offences also because there is not even an allegation of commission of these offences or conspiring for the commission of these offences.

28.18 There is also an allegation of Arms Act against accused Dinesh Garg @ Ankit Garg because of allegations that illegal arms were recovered from his house.

28.19 However, here again I find that when the accused was not involved in this offence, the recovery of that arms and ammunition cannot be said to be a connected offence and that being the case, the matter would not be covered by section 14 NIA Act and as the offence was not committed within the territorial jurisdiction of this court, the court cannot charge the accused for the said offence and try him for the same.

29.1 Coming onto the case against accused no. 11 Javed. The case of accused Javed stands on a different footing from accused Gul Nawaz or accused Dinesh Garg. Accused Javed is the person who was sitting in Middle East and who on the instructions of Jakir ordered Gul Nawaz to have an amount of Rs.3.50 lacs delivered to accused Shaikh Abdul Naeem. The fact that he did so on the instructions of Jakir is prima facie visible from the recorded conversation recovered from the phone of



accused Shaikh Abdul Naeem. This is the conversation between accused Shaikh Abdul Naeem and Jakir. Transcript of this conversation is D-297 and FSL report, which is D-308, had established that the other voice in this recording was of accused Javed. Accused Javed was in direct contact with accused Shaikh Abdul Naeem. Witnesses have further stated that Jakir who was sending this money through Javed was a close associate of Habib-ur-Rehman. Witnesses have also stated that Habib-ur-Rehman was a member of LeT as discussed above and the fact that it was Habib-ur-Rehman who had sent this money can be prima facie seen from SMS sent by accused Shaikh Abdul Naeem to Habib-ur-Rehman, the details of which have already been discussed. Therefore, with regard to this accused, at this stage grave suspicion of him being involved in the conspiracy and raising and remitting terror funds arises.

29.2 I accordingly find that accused Javed is liable to be charged for the offence punishable u/s 120B IPC, 17 UAPA, 18 UAPA, 40 UAPA. For rest offences punishable u/s 468 IPC, 471 IPC, 18B UAPA, 19 UAPA, 20 UAPA, 21 UAPA, 38 UAPA, 39 UAPA, 12 PP Act, 34 Aadhar Act and sections 7 and 25 of Arms Act, there is no evidence to raise a grave suspicion of the accused

committing these offences and thus, accused is to be discharged for these offences.

30.1 Then there is curious case of approver Abdul Samad before me.

30.2 Approver Abdul Samad was arrested on 05.02.2018 and thereafter, an application was moved by him for becoming an approver on 11.05.2018. Thereafter, his statement u/s 164 Cr.P.C was recorded and vide order dated 16.05.2018, the said application was allowed by my learned Predecessor and he was declared an approver and pardoned.

30.3 Technically, approver Abdul Samad remains an accused. By virtue of his cooperation and disclosing true facts, he has been given a concession of pardon. As per section 308 Cr.P.C, the said pardon is conditional and can be revoked on the grounds mentioned in the said section and person so pardoned still can be tried as an accused. Therefore, although Abdul Samad has become an approver and has been pardoned charges are not required to be framed against him and thus, no finding is required to be given as to whether charges can be framed against him or not. However, he still remains an accused in this case.

30.4 The role of Abdul Samad was only of a courier who on the instructions of accused Gul Nawaz (A-10), collected money from accused Dinesh Garg (A-6) and attempted to deliver it to accused Shaikh Abdul Naeem @ Sohel Khan and acting on the instructions of accused Gul Nawaz, he did not deliver that money.

30.5 As discussed above, it has been found that accused Gul Nawaz, on whose instructions, Abdul Samad acted and accused Dinesh Garg from whom he had collected money, have not been found to be involved in the conspiracy and that no charges for the sections for which they have been charge sheeted can be framed against them. Resultantly, approver Abdul Samad who was merely acting on their instructions also could not have been charged for any of the offences for which he has been charge-sheeted. Even his statement u/s 164 Cr.P.C is completely exculpatory.

30.6 However, Abdul Samad had turned approver while in custody, he is still in jail as per the provisions of section 306 (4) (b) Cr.P.C. However, as I have found that even if the entire evidence is considered, no charges can be framed against this person, thus, it will be highly unjust to keep him further in

custody simply for the reason that instead of contesting charges, he became an approver and even though no charges could have been framed against him on the evidence which had been brought before the court against him. Thus, I hereby find that there is requirement of formal declaration of discharge of this accused/approver so that he can be ordered to be released from prison and his status will remain that of a witness for the prosecution, it is accordingly so declared.

31.1 Now coming onto the case against accused no. 9 Habib-ur-Rehman. As discussed above, accused Habib-ur-Rehman was acting as a handler of accused Shaikh Abdul Naeem. It is he who, as per the statements of cited PW5 and PW28, had tried to help accused Shaikh Abdul Naeem to establish a base for himself in Cuttack, Odisha. He even attempted to have Rs.7 lacs delivered to accused Shaikh Abdul Naeem through cited PW28, who however did not agree to it.

31.2 Furthermore, there is prima facie evidence to the effect that amount of Rs.3.50 lacs, which accused Javed through accused Gul Nawaz had attempted to deliver to accused Shaikh Abdul Naeem, had also originated from Habib-ur-Rehman because after the delivery had failed, accused Shaikh Abdul

Naeem had sent an SMS to accused Habib-ur-Rehman informing him that he had met that person and the said person was asking him to give ID proof. Therefore, the actions of accused Habib-ur-Rehman clearly point out that he was a handler of accused Shaikh Abdul Naeem who was an LeT member/ operative, which is a proscribed terrorist organization and thus, it can at this stage be inferred that accused Habib-ur-Rehman, was a handler of accused Shaikh Abdul Naeem, was a member of LeT.

31.3 Furthermore, apart from this circumstance, the fact that he was associated with LeT is established by the statement of his own wife which has been recorded as cited PW45.

31.4 I accordingly find that he is liable to be charged for the offence punishable u/s 120B IPC, 17 UAPA, 18 UAPA, 19 UAPA, 20 UAPA and 40 UAPA. For rest offences i.e u/s 468 IPC, 471 IPC, 18B UAPA, 21 UAPA, 38 UAPA, 39 UAPA, 12 PP Act, 34 Aadhar Act and sections 7 Arms Act and 25 Arms Act, there is no evidence to raise a grave suspicion for commission of these offences and thus, accused is to be discharged for these offences.

32.1 Accordingly, in view of the above discussion, approver Abdul Samad, accused Dinesh Garg (A-6), Adish

Kumar Jain (A-7) and Gul Nawaz (A-10) are discharged for all the offences for which they had been charge sheeted.

33.1 The following charges are hereby ordered to be framed against the remaining accused:-

A1 Shaikh Abdul Naeem	Sections 120B IPC, 468 IPC, 471 IPC, 17 UAPA, 40 UAPA, 18 UAPA, 18B UAPA, 20 UAPA, 21 UAPA and 12 Passport Act.
A2 Bedar Bakht @ Dhannu Raja	Sections 120B IPC, 17 UAPA, 40 UAPA, 18 UAPA and 19 UAPA.
A3 Towseef Ahmad Malik @ Tipu	Sections 120B IPC, 17 UAPA, 18 UAPA, 18B UAPA, 19 UAPA, 20 UAPA, 21 UAPA and 40 UAPA.
A9 Habib-ur-Rehman	Sections 120B IPC, 17 UAPA, 18 UAPA, 19 UAPA, 20 UAPA and 40 UAPA.
A11 Javed	Sections 120B IPC, 17 UAPA, 18 UAPA and 40 UAPA.

34.1 Separate charges be accordingly framed against the accused.

Announced in open court  
today on 10.06.2022  
(This order contains 86 pages  
and each page bears my signatures.)

**(Parveen Singh)**  
Special Judge (NIA)  
ASJ-03, New Delhi Distt.,  
Patiala House Court, Delhi.

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**(Parveen Singh)**  
ASJ-03/NDD/PHC/ND/10.06.2022