

**IN THE COURT OF SH. AMIT BANSAL:
ASJ-02: NEW DELHI DISTRICT, PATIALA HOUSE
COURTS:NEW DELHI**

Date of Judgment: 19.03.2026

**SC No. 115/2019
FIR No. 106/2018
u/s 18/20 Unlawful
Activities(Prevention)Act, 1967
& 25 Arms Act, 1959
P.S. Special Cell**

CNR No. DLND01-004187-2019

Complainant:	State
REPRESENTED BY	State
ACCUSED	1. Jamsheed Zahoor Paul S/o Zahoor Ahmad Paul, R/o 41, Ganowpora, Balapora, Gano Pora, Shopiyan, Jammu & Kashmir. (A-1) 2.Parvaiz Rashid S/o Abdul Rashid Lone R/o 18, Shopian, Gano Pora, Shopiyan, Jammu & Kashmir. (A-2) 3. Asif Nazir Dar @ Omar Bin Nazir S/o Sh. Nazir Ahmad Dar, Panzgam, Avantipora, J&K (Accused stated to have expired on 08.09.2018) (A-3) 4. Adil Wani @ Adil Tokar S/o Sh. Ahmad Wani, Village Jam Nagri, Shopian, J&K (Accused stated to be not arrested as absconding) (A-4)

REPRESENTED BY	Sh. Ahmad Ibrahim and Ms.Tamanna Pankaj, Ld.Advocates for accused Jamsheed Zahoor Paul. Sh. Archit Krishna and Ms.Priya Vats, Ld.Advocates for accused Parvaiz Rashid Lone.
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Date of Offence	06.09.2018
Date of FIR	07.09.2018
Date of Charge-sheet	28.02.2019
Date of Framing of Charges	25.04.2022
Date of commencement of evidence	09.06.2022
Date on which judgment is reserved	17.03.2026
Date of the Judgment	19.03.2026
Final Order	Both A-1 and A-2 are acquitted in this case.

ACCUSED DETAILS :

Rank	Name of Accused	Date of Arrest	Date of Release on Bail	Offence charged with	Whether Acquitted/ convicted	Sentence Imposed	Already undergone period of detention during trial for Section 428 CrPC
1.	Jamsheed Zahoor Paul	07.09.2018	N/A	18/20 UA(P)A & 25 Arms Act, 1959	Acquitted	N/A	N/A
2.	Parvaiz Rashid Lone	07.09.2018	N/A	18/20 UA(P)A & 25 Arms Act, 1959	Acquitted	N/A	N/A
3.	Asif Nazir Dar @ Omar Bin Nazir	Could not be arrested (Expired on 08.09.2018)	N/A	N/A	N/A	N/A	N/A
4.	Adil Wani @ Adil Tokar	Could not be arrested	N/A	N/A	N/A	N/A	N/A

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. PROSECUTION WITNESSES :

Prosecution Witness Number	Name of Witness	Brief Description/ Role of the Witness, such as Informant, Jurist/Doctor, Eye-witness, IO, Panch Witness, etc.
PW1	Shah Alam	Licence Holder of pistol Ex. PW1/P1.
PW2	Mir Afzal Hussain	Receptionist in Shaka Guest House near Jama Masjid, Delhi.
PW3	Mohd. Iqbal Bhat	Service Manager, State Bank of India, Shopian, J & K. He has brought the copy of CAF, Identity Card & print out of Statement of Account no. 20136813945 of accused Parvaiz Rashid Lone.
PW4	Dharmender Singh	Licence Clerk, Licence Department, Office of ADM, Amroha District, Uttar Pradesh. He has brought the summoned record of Licence No. 968-II of Pistol no. RP-149573, bore .32 which was registered in the name of PW1 Shah Alam.
PW5	O. P. Mishra	Special Secretary, Home, GNCT of Delhi. He is a witness with respect to sanction to prosecute the accused persons in this case u/s 18/20 UA(P)A.
PW6	HC Vivek Kumar	With regard to deposit of two exhibits Mark A and Mark B in FSL, Rohini.
PW7	HC Sushil Kumar	Malkhana Mohrar in P.S Special Cell.
PW8	ASI Gobind Singh	Accompanied PW16 SI Manoj to spot after apprehension of accused persons A-1 and A-2.
PW9	ASI Mohan Singh	Member of raiding team which apprehended the accused persons A-1 and A-2. With regard to arrest of accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone and consequent recovery by the raiding team. He took rukka for registration of FIR.
PW10	SI Sundar Gautam	Member of raiding team which apprehended the accused persons A-1 and A-2. With regard to arrest of both accused persons and recovery.

PW11	Insp. Yashpal	Member of raiding team which apprehended the accused persons A-1 and A-2. With regard to investigation qua both accused persons.
PW12	ASI Mahesh	With regard to deposit of two yellow coloured envelopes in CERT-In.
PW13	ASI Narender	With regard to disclosure statements and supplementary disclosure statements of both accused persons.
PW14	SI Jagbir (Retired)	With regard to entries qua seal handing over and its return in seal issuing register.
PW15	Ombir Singh (CERT-In expert)	With regard to examination of exhibits and report.
PW16	SI Manoj Singh	Second IO of the case.
PW17	V. R. Anand Assistant Director, Ballistic, FSL	With regard to examination of pistols & cartridges
PW18	Insp. Vinod Kumar	First IO of the present case.
PW19	Sh. Arvind Digvijay Negi, IPS.	With respect to investigation carried out by him being IO in case RC-04/2016/NIA/DLI under Section 17/18/20/38/39/40 of UA(P)A & u/s 5 of Explosive Substances Act.
PW20	DCP Manishi Chandra	With respect to Sanction u/s 39 Arms Act to prosecute both accused persons.
PW21	HC Sandeep Kumar	He is Duty Officer. He has proved the computerized print out of FIR and certificate u/s 65B of Indian Evidence Act.
PW22	ACP (Retd) Lalit Mohan Negi	Fourth IO of the present case. With respect to investigation carried out by him in the present case and Panchnama prepared by him of Pistol ordered to be released to the licence holder Shah Alam.
PW23	ACP (Retd) Govind Sharma	Third IO of the present case.

B. DEFENCE WITNESSES, IF ANY: NONE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS. OTHER WITNESS)
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C. COURT WITNESSES, IF ANY: NONE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS. OTHER WITNESS)
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LIST OF PROSECUTION/ DEFENCE / COURT EXHIBITS**A. PROSECUTION**

S. No	Exhibit Number	Description of the Exhibit	The witness who proved or attested the document
1	Ex. PW1/A	Arms Licence	PW1
2	Ex. PW1/P1	Pistol	PW1
3	Ex. PW2/A	Entry in hotel guest register of Hotel Shaka	PW2
4	Ex. PW2/B	Copy of Aadhar Card of accused Jamsheed Zahoor Paul given at Shaka Guest House	PW2
5	Ex. PW2/C	Seizure memo of documents seized from Hotel Shaka	PW2
6	Ex. PW3/A	Certified copy of CAF alongwith ID Proof/documents qua accused Parvaiz Rashid Lone	PW3
7	Ex. PW3/B Collectively	Computerized statement of bank account of accused Parvaiz Rashid Lone	PW3
8	Ex. PW3/C	Certificate u/s 65B of Indian Evidence Act	PW3
9	Ex. PW4/A	Copy of entry in the register regarding	PW4

		Arms Licence no. 968-II of Pistol no. RP-149573, Bore.32	
10	Ex. PW4/B	Uploaded details of Arms Licence with Arms License Issuance Authority	PW4
11	Ex. PW4/C	Reply/information of ADM with respect to said Arms License	PW4
12	Ex. PW5/A	Sanction under 45(2) of UA(P)A to prosecute A-1 and A-2 under Section 18/20 UA(P)A	PW5
13	Ex. PW6/A	Copy of Road Certificate No. 159/21/2018	PW6
14	Ex. PW6/B	Acknowledgment of acceptance by FSL.	PW6
15	Ex. PW7/A	Copy of entries in malkhana register regarding deposit & movement of case property in malkhana	PW7
16	Ex. PW7/B	Copy of Road Certificate no. 191/20/18	PW7
17	Ex. PW8/P1	Yellow colour envelope containing notebook	PW8
18	Ex. PW8/P2	Yellow color envelope containing blue colour file cover containing some documents and another orange colour file cover	PW8
19	Ex. PW10/A	Seizure memo of pistol and 5 live cartridges qua accused Jamsheed Zahoor Paul	PW10
20	Ex. PW10/B	Seizure memo of	PW10

		pistol and 5 live cartridges qua accused Parvaiz Rashid Lone	
21	Ex. PW10/C	Arrest Memo of accused Jamsheed Zahoor Paul	PW10
22	Ex. PW10/D	Arrest Memo of accused Parvaiz Rashid Lone	PW10
23	Ex. PW10/E	Personal Search Memo of accused Jamsheed Zahoor Paul	PW10
24	Ex. PW10/F	Personal Search Memo of accused Parvaiz Rashid Lone	PW10
25	Ex. PW10/G	Disclosure Statement of accused Jamsheed Zahoor Paul	PW10
26	Ex. PW10/H	Disclosure Statement of accused Parvaiz Rashid Lone @ Shahid	PW10
27	Ex. PW10/P1	Pistol	PW10
28	Ex. PW10/P2	Five cartridges (4 live and one test fired)	PW10
29	Ex. PW10/P3	Five cartridges (4 live and one test fired)	PW10
30	Ex. PW10/P4	Black Colour Pithu bag	PW10
31	Ex. PW10/P5	Pink Colour Pithu Bag	PW10
32	Ex. PW11/DA	Statement dated 07.09.2018 u/s 161 Cr.PC of PW11 Insp. Yashpal	PW11
33	Ex. PW13/A	Supplementary disclosure statement of accused Parvaiz Rashid Lone @ Shahid	PW13

34	Ex.PW13/B	Supplementary disclosure statement of accused Jamsheed Zahoor Paul	PW13
35	Ex. PW13/C	Supplementary Disclosure Statement of accused Parvaiz Rashid Lone @ Shahid	PW13
36	Ex.PW13/D	Supplementary Disclosure Statement of accused Jamsheed Zahoor Paul	PW13
37	Ex.PW14/A	Copy of entry no. 248 and 249 qua seal handing over and its return in seal issuing register.	PW14
38	Ex.PW15/A	Detailed Analysis Report from CERT-In	PW15
39	Ex.PW15/B	Specimen of the CERT-In seal	PW15
40	Ex.PW15/C	Annexure-2 containing photographs of two sealed packets, mobile phones, SIM Cards and Memory Cards	PW15
41	Ex.PW15/D	Annexure-3 containing screenshots of the requisite chat session in the mobile phones.	PW15
42	Ex.PW15/E	Certificate u/s 65B of Indian Evidence Act	PW15
43	Ex.PW15/F	Forwarding Letter dated 20.12.2018 written by PW15	PW15
44	Ex.PW15/P1	Silver Pen Drive Make Kingston (PD-DPSpCL-106-18)	PW15
45	Ex.PW16/A	Site plan	PW16

46	Ex.PW16/B	Seizure memo of blue file cover containing few documents, wearing apparels & bag belonging to accused Parvaiz Rashid Lone	PW16
47	Ex.PW16/C	Seizure memo of yellow envelope containing notebook (register) and bag etc. belonging to accused Jamsheed Zahoor Paul	PW16
48	Ex.PW17/A	Report of Assistant Director, Ballistics, FSL Rohini qua pistols and cartridges	PW17
49	Ex.PW18/A	Sketch of pistol and five cartridges recovered from accused Jamsheed Zahoor Paul	PW18
50	Ex.PW18/B	Sketch of pistol and five cartridges recovered from accused Parvaiz Rashid Lone	PW18
51	Ex.PW18/C	Seal handing over memo	PW18
52	Ex.PW18/D	Rukka	PW18
53	Ex. PW19/A	Forwarding Letter of PW19 in case RC No. 04/2016/NIA/DLI	PW19
54	Ex.PW19/B collectively	Attested copy of charge-sheet, FIR and Arrest Memo of case RC-04/2016/NIA/DLI	PW19
55	Ex.PW20/A & Ex.PW20/B	Sanctions dated 09.07.2019 u/s 39 Arms Act qua both accused persons	PW20
56	Ex.PW21/A	Computerized print	PW21

		out of FIR	
57	Ex.PW21/B	Certificate u/s 65B of Indian Evidence Act	PW21
58	Ex.PW21/C	Endorsement on rear side of Rukka	PW21
59	Ex.PW22/A	Panchnama for release of pistol to owner Shah Alam (PW1)	PW22
60	Ex.PW22/B1 to B15	Photographs of pistol	PW22
61	Ex.PW23/A	Supplementary disclosure Statement of accused Jamsheed Zahoor Paul	PW23
62	Ex.PW23/B	Supplementary disclosure statement of accused Parvaiz Rashid Lone @ Shahid	PW23
63	Ex.PW23/C	Pointing Out Memo of Hotel Shaka	PW23
64	Ex.PW23/D	Attested copy of Shaka Guest House Register containing Entry no. 8525	PW23
65	Ex.PW23/E	Application of ACP Govind Sharma addressed to DG, CERT-In for copy and soft copy of BBM Chats	PW23
66	Ex.PW23/F & Ex.PW23/G	Notices to both accused persons for forfeiting Rs.52,000/-	PW23

B. DEFENCE: NONE

Sr. No.	Exhibit Number	Description of Exhibit	The witness who Proved or attested the document
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C. COURT EXHIBITS: NONE

Sr. No.	Exhibit Number	Description of Exhibit	The witness who Proved or attested the document
	Nil	Nil	Nil
	Nil	Nil	Nil

D. MATERIAL OBJECTS :

Sr. No.	Material Object Number	Description	Proved by/Attested by
1	Nil	Nil	Nil
2	Nil	Nil	Nil

J U D G M E N T

1. Both the above mentioned accused persons have been sent up to face trial in this Court for commission of offences punishable under Section 18/20 of the Unlawful Activities (Prevention) Act, 1967 [in short referred to as UA(P)A] and u/s 25 Arms Act, 1959.

2. Facts in brief:

2.1 The brief facts of the case are that an input was received through reliable sources in the office at Special Cell /NDR, Lodhi Colony, New Delhi that some radicalized youth of Jammu & Kashmir had pledged allegiance with banned terrorist organization ISIS/SI/DAESH and were involved in terrorist activities and for the purpose of terrorist activities, they were procuring sophisticated weapons through their contacts in U.P. This information was shared with supervisory officers and further sources were developed.

2.2 On 06.09.2018, SI Vinod Kumar of Special Cell/NDR received information from reliable source that two persons namely Parvaiz Rashid Lone and Jamsheed Zahoor Paul both r/o J&K who had pledged allegiance to banned terrorist organization ISIS/SI/DAESH and had already procured arms and ammunition from U.P for their cadres of ISIS-JK for executing some terrorist acts in J&K, would come at Netaji Subhash Park, near Lal Quila to proceed to Kashmir at about 11.00 a.m and if raid is conducted then they can be apprehended with illegal weapons.

2.3 SI Vinod Kumar conveyed the said information to his senior officers and upon directions formed a raiding party consisting of SI Alok, SI Sundar Gautam, SI Yashpal, ASI Raghubir, ASI Sanjeev Dhama, ASI Satender, HC Shahjad, HC Parvesh, HC Birender Negi, HC Mohan Singh, Ct. Aleem and Ct. Adim under the supervision of Insp. Sunil Kumar. The staff was briefed about the information and they proceeded to the place of information in two private Maruti cars and two private motor cycles from the office of NDR.

2.4 Upon reaching near Netaji Subhash Park, near Lal Quila, New Delhi, SI Vinod Kumar 2-3 passersby to join the raiding party but none agreed due to personal compelling reasons and left without disclosing their identities. Thereafter, SI Vinod Kumar along with raiding party members reached outside Netaji Subhash Park gate at Netaji Subhash Marg near Lal Quila, New Delhi and met the informer who informed him that the suspects had just moved towards Lal Quila. Immediately, the team along with informer moved towards Lal Quila through Netaji

Subhash Marg. The said accused persons were traced at Jama Masjid bus stop, Netaji Subhash Marg, New Delhi and were overpowered by SI Vinod Kumar along with HC Shahjad and others.

2.5 The accused persons, upon interrogation, informed their names and addresses. During search of black colour backpack having mark of Dell of the accused Parvaiz Rashid Lone, one pistol of 7.65 mm calibre was found wrapped in a blue colour file with a white colour doctor tape. The said pistol was found containing five cartridges of 7.65 calibre in its magazine. The sketch of pistol and five live cartridges was prepared. The pistol, magazine and cartridges were kept in a cloth parcel and a parcel was prepared which was marked 'A'.

2.6 Upon search of pink grey backpack of accused Jamsheed having mark of the North Face, one pistol of one pistol of 7.65 mm calibre was found wrapped in a notebook with a white colour doctor tape. The said pistol was found containing five cartridges of 7.65 calibre in its magazine. The sketch of pistol and five live cartridges was prepared. The pistol, magazine and cartridges were kept in a cloth parcel and a parcel was prepared which was marked 'B'.

2.7. Form FSL of both recovered pistols was filled and seal of 'SPL CELL NDR 15' was affixed on both cloth parcel of pistols and FSL Form and seal after use was handed over to HC Mohan. Thereafter both sealed parcels and FSL Form were taken in possession through a seizure memo.

3. SI Vinod Kumar prepared a rukka and sent it through HC Mohan

to PS:Special Cell Lodhi Colony to lodge FIR under Section 25 Arms Act, 1959. Further investigation of the case was marked to SI Manoj Singh who along with HC Govind Bisht reached at the spot and met SI Vinod Kumar and his raiding team members. SI Vinod Kumar handed over to him both apprehended persons i.e. Jamsheed Zahoor Paul (A-1) and Parvaiz Rashid Lone (A-2). SI Vinod Kumar also produced to him the case property. SI Vinod Kumar also produced him one bag recovered from A-1 and told that the recovered illegal arms i.e. one pistol and 5 live cartridges of 7.65 mm were recovered from it. SI Manoj Singh checked the bag and found besides some clothes, one notebook (register) on which 'CLASSMATE BECAUSE YOU ARE ONE OF A KIND' was printed and white doctor tape was wrapped with three side of notebook and one power bank white colour. The said bag was pink and grey in colour and the tag 'THE NORTH FACE' was mentioned over the bag. SI Manoj Singh kept the recovered notebook (register) in a yellow coloured envelope, sealed it with the seal of SPL CELL NDR 8 and remaining recovered articles were kept in the said recovered bag and all the recovered articles were taken into police possession through a seizure memo.

3.1 SI Vinod Kumar produced one more bag of black colour having 'DELL' logo on it to SI Manoj Singh who opened it with the help of chain look like laptop bag and told that it was recovered from the possession of A-2. Thereafter, SI Manoj Singh opened the bag and found one file colour blue and pink/red containing photocopies of educational documents of A-2 and fee slips etc. and other papers and some clothes. SI Manoj Singh kept the recovered file and the above said documents in a yellow colour envelope and sealed it with the seal

of 'SPL CELL NDR 8' and remaining articles were also kept in the said bag and taken into police possession through seizure memo.

3.2 SI Manoj Singh prepared site plan at the instance of SI Vinod Kumar. SI Vinod Kumar made interrogation from A-1 and arrested him in this case. During the personal search of A-1, besides other documents, one air ticket of Indigo dated 04.09.2018 in the name of A-1, one ticket no.1180 dated 06.09.2018 from Delhi to Jammu in the name of A-1 and A-2, one black colour Samsung mobile phone with Airtel SIM Card having IMEI No.359266077640963 and 359267077640961 and one black colour mobile partially damaged and screen damaged and 'LYF' written on back side cover were recovered. The said articles were taken into police possession through his personal search memo.

3.3 Thereafter, SI Manoj Singh made interrogation from A-2 and arrested him in the present case. During his personal search, besides other documents and cards, one air ticket of Indigo dated 04.09.2018 in the name of A-2, one black colour Lenovo mobile phone having SIM Card of JIO, IMEI No.865230030715715 and 865230030715723 and one I-Phone black colour were recovered. These articles were taken into police possession through his personal search memo.

3.4. Thereafter, SI Manoj Singh along with both accused persons and raiding party members reached PS:Special Cell Lodhi Colony, New Delhi and deposited the case property in the malkhana. Thereafter, SI Manoj Singh along with staff and both accused persons reached in his office at Special Cell/NDR, Lodhi Colony, New Delhi, interrogated

them and their disclosure statements were recorded. 5 days police custody remand of both the accused persons was obtained.

4. On 10.09.2018, SI Manoj Singh along with staff and A-1 and A-2 reached village Rampur Ghana, Tehsil Amroha, PS:Razabpur, Amroha, UP and made efforts to trace the source of recovered weapon. On 11.09.2018, at the instance of accused persons, one M.A. (JCL) was apprehended in the present case, who revealed that his relative M (JCL) and friends S (JCL) and M.K.(JCL) had arranged two pistols which they had sold for Rs.52,000/- to both accused persons as he knew A-2 who used to teach him mathematics. JCL M.A. produced his share of Rs.17,000/- which was seized. JCL M. was also apprehended who also produced his share of Rs.17,000/- which were seized. JCL S. and JCL M.K. were also interrogated. JCL M.K. told that he had stolen a licensed pistol of his maternal uncle, namely, Shah Alam and sold it to JCL S for one mobile colour Make MI Golden Colour. JCL M.K. also produced the same mobile phone which was seized. JCL M.K. was also apprehended in the present case. JCL S. produced Rs.18,000/- of his share which were also seized. He was also apprehended in the present case. All the JCLs were released on the undertaking of their parents.

4.1. Thereafter, SI Manoj Singh made interrogation from above said Shah Alam, who stated that he was having one licensed pistol with pistol no. RP-149573 32 bore which got misplaced from his house between 29.08.2018 to 04.09.2018. Said Shah Alam stated that he had interrogated his nephew JCL M.K. who told him that he had stolen the said pistol from his almirah and sold it to JCL S. for one mobile phone and that he had also informed the police regarding theft of his pistol.

He also produced photocopy of his arms license which was taken into police possession.

5. On 11.09.2018, the exhibits of the case were deposited in FSL Rohini vide road certificate no. 159/21/2018 dated 11.09.2015 and were duly received at FSL Rohini vide receipt no. FSL-2018-F-8406 dated 11.09.2018.

6. During investigation, it was revealed that A-1 and A-2 were propagating the ideology of terrorist outfit ISIS in India, they were also in touch with another ISIS militant, namely, Abdullah Basith, who had been arrested by NIA in case RC No.04/2016/NIA/DLI. On the basis of above evidence, on 29.10.2018, Section 18/20 of UA(P)A was added in the present case by SI Manoj Kumar. Thereafter, ACP Govind Sharma received complete case file from him and carried out further investigation. Further, 4 days police custody remand of A-1 and A-2 was obtained from the Id. Sessions Court and their further disclosure statements were recorded. During interrogation, A-1 *inter-alia* disclosed to the effect that he got the BBM Pin of Asif Nazir Dar @ Omar Bin Nazir (A-3) (since expired) with directions to contact him (BBM Pin of A-3 is Dawlah). A-1 also disclosed that he contacted A-3 through BBM, who told him that he was from ISIS-J&K module. He also *inter-alia* disclosed that he met with A-2 and told him that A-3 wanted to talk with him. He also disclosed that A-2 talked with A-3 through BBM. He also disclosed that A-3 offered A-2 to join ISIS-JK and the offer was accepted by A-2 and A-2 took BBM pin of A-3 from A-1. A-1 further disclosed that he also took the BBM pin of A-2, A-2 used the BBM with the name of Ummar Khattab, A-3 used the BBM

with the name of Omar Ibn Nazir, A-1 used the BBM with the name of Pheran Chum. He also disclosed that A-3 directed A-2 to arrange weapons for Tanjeem from UP and A-3 transferred Rs.20,000/- in his SBI account for purchasing the weapons. He also *inter-alia* disclosed that Adil Thokar (A-4) was also a member of ISIS-JK, who used 3 BBMs with the name of Bike Rider, Abu Dujana and Usama Bhai and that he remained in contact with A-4 through BBM. As per charge sheet, A-1 also made further very lengthy disclosure statement which is not being mentioned here for the sake of brevity. It is the case of prosecution that similarly A-2 also made a very lengthy disclosure statement which is not being mentioned here for the sake of brevity. During investigation, the information under Section 6 NIA Act was sent to NIA, Delhi through proper channel. During investigation, both the accused persons were found in touch with A-3 who was involved in FIR No.103/2018 under Section 302 RPC and 7/27 Arms Act PS:Nigeen, Hazratbal, Srinagar, J&K. During investigation, both the accused persons disclosed that they used to communicate with their associates A-3, A-4 and one Ummar Khatab on their BBM IDs i.e. BBM PIN ID D881A824, BBM ID Name Omar of A-3; BBM PIN ID DC869EBD, BBM ID Name Omar of Ummar Khatab; BBM PIN ID DB65F03A, BBM ID Name Abu Dujana of A-4; BBM PIN ID E3672F24, BBM ID Name Usma Bhai of A-4 and BBM PIN ID E3DA8AF3, BBM ID Name Bike Rider of A-4.

7. During investigation, on 01.11.2018, the mobile phones recovered from A-1 and A-2 were sent to Cyber Forensic Lab, CERT-In, CGO Complex, New Delhi through HC Mahesh vide RC No.191/21/2018 to retrieve the data and BBM Chats. Certified copy

and soft copy of data retrieved from mobile phones of both accused persons has been obtained from CERT-In vide no.7(58)/20018-CERT-IN-In dated 20.12.2018. It was found that BBM Pin ID D87E27DA with BBM ID Name Umar Khatab was being used by A-2 and BBM Pin ID DB9206C2 with BBM ID Name Pehran Chum was being used by A-1. Details of some BBM Chats have also been mentioned in the charge sheet.

8. During investigation, it was revealed that A-3 was shot dead by unknown persons in the area of PS:Nigeeen vide FIR No. 103/2018 under Section 302 RPC and 7/27 I.A. PS:Nigeeen, J&K. It was also mentioned in the charge-sheet that A-4 is not traceable and further investigation against him is going on.

9. As per the main charge sheet, on 22.02.2019, a prosecution sanction under Section 45(2) UA(P)A, 1967 against A-1 and A-2 was received from GNCTD vide F.No.8/31/2019/HP-II/768 dated 22.02.2019.

10. In the said circumstances, charge sheet under Section 18 and 20 of Unlawful Activities (Prevention) Act, 1967 and 25 Arms Act, 1959 was filed against both the accused persons.

11. The record would show that thereafter two supplementary charge sheets were filed in this case. In the first supplementary charge sheet, FSL result of Ballistics Division of Sector-14, Rohini, Delhi dated 30.04.2019, separate sanctions both dated 09.07.2019 for prosecution of A-1 and A-2 under Section 39 of the Arms Act, 1959 and copy of

supplementary charge sheet of FIR No.RC-04/2016/NIA/DLI with relevant papers were filed. In the second supplementary charge sheet, the proceedings regarding release of pistol allegedly recovered from A-2 on superdari to Mr.Shah Alam and its necessary photographs and documents were filed.

12. As per record, charge under Section 18 and 20 of UA(P)A, 1967 and 25 Arms Act, 1959 was framed against both the accused persons i.e. A-1 and A-2 on 25.04.2022.

12.1. The charge against A-1 and A-2 with respect to UA(P)A as framed was that prior to 06.09.2018, they both being the member of banned terrorist organization i.e. ISIS conspired with each other and with A-3 (subsequently expired) and A-4 (could not be arrested/absconding) to commit the terrorist act or any other act preparatory to the commission of a terrorist act at different places within Indian territory and in pursuance of said conspiracy with co-accused persons, they both purchased/collected weapons for the purpose of committing terrorist act and also had chats with co-accused persons through BBM and whatsapp in that context and they both thereby committed offence punishable under Section 18 UA(P)A. A-1 and A-2 are both further facing trial on the allegations of the prosecution that during the aforesaid period prior to 06.09.2018, they both were found to be members of ISIS, which is a banned terrorist organization and is involved in committing terrorist act and thereby both of them committed offence punishable under Section 20 UA(P)A.

12.2 Accused A-1 is further facing trial on the allegations of the

prosecution that on 06.09.2018 at about 10.45 p.m. at Jama Masjid Bus Stop, Netaji Subhash Marg, New Delhi within the jurisdiction of PS:Special Cell, he was found in possession of one pistol 7.65 mm along with 5 cartridges in its magazine without having any valid license issued by the competent authority and he thereby committed an offence punishable under Section 25 of Arms Act, 1959.

12.3 Accused A-2 is further facing trial on the allegations of the prosecution that on 06.09.2018 at about 10.45 p.m. at Jama Masjid Bus Stop, Netaji Subhash Marg, New Delhi within the jurisdiction of PS:Special Cell, he was found in possession of one pistol 7.65 mm having 'GSF-ASHANI' engraved on its butt along with 5 cartridges in its magazine without having any valid license issued by the competent authority and he thereby committed an offence punishable under Section 25 of Arms Act, 1959.

12.4 Both A-1 and A-2 pleaded not guilty to the above said charge and claimed trial.

13. In order to prove its case, prosecution has examined as many as 23 witnesses which are as under :-

13.1 **PW1 Shah Alam is the owner of licensed pistol .32 bore Ex.PW1/P1.** He has *inter-alia* deposed to the effect that on 28.08.2018, he had checked the said pistol in his almirah which was there in the almirah. On 29.08.2018, since his brother had returned from Haj pilgrimage, there were several guests in his home to meet his brother, so they were busy in attending the guests. On 04.09.2018, when he again

checked, the pistol was found missing from the almirah. He tried to locate the pistol in the house but the same could not be found. He further deposed that on getting suspicious against his nephew Mohd.Kasif aged about 15 years, he enquired in that regard from him and on enquiry, it was revealed that he had exchanged the pistol with a mobile phone from his friend Shazad and the said Shazad, on enquiry, disclosed that he had sold the said pistol to one Anas and one another boy. PW1 has further deposed that on 06.09.2018, he took the said four boys i.e. his nephew Mohd. Kasif, Shazad and two boys of another village including the said Anas to the police and when police enquired from Anas and his friend, they told the police that they had sold the pistol to Kashmiris. He deposed that efforts were made to locate those Kashmiris but they could not be found. PW1 has further deposed that on the next day, there was news on news channel about apprehension of Kashmiris by Delhi Police and the said Anas and his friend identified those Kashmiris in news screen and told PW1 that they had sold his pistol to those Kashmiris apprehended by Delhi Police. On 11.09.2018, Delhi Police officials came to his place for enquiry, he narrated the entire facts to the police and also handed over the photocopy of his arms licence to the police. PW1 has proved the arms licence consisting of three pages as Ex.PW1/A. He also correctly identified his pistol which was taken by his nephew Kasif and was subsequently recovered from the accused as Ex.PW1/P1.

13.2 PW2 Mir Afzal Hussain was receptionist in Shaka Guest House, 782, Motor Market, Near Jama Masjid, Delhi. He has deposed to the effect that he had worked as receptionist in the said guest house for the period from 2012 to 2018. He has deposed that as per record, on

28.07.2018, at about 5.30 p.m, one guest Jamsheed Zahoor Paul S/o Zahoor Ahmed Paul R/o 41, Ganapora, Shopian, J&K came to the said guest house for stay, he collected copy of his Aadhar Card and allotted him Room no. 113 in the guest house, the said guest checked in at 5.30 p.m itself and checked out at 2.50 p.m on next day i.e. on 29.07.2018. PW2 has further deposed that the said guest also provided his mobile no. 7006913616 at the time of checking in. PW2 made entry in the guest register at Sl.no.8525 on 28.07.2018 and also entered his checking out at the said serial itself on 29.07.2018 in his own handwriting. He has further deposed that on 05.11.2018, officials from Special Cell came to his guest house and enquired from him about the stay of alleged Jamsheed Zahoor Paul and he accordingly confirmed his stay and also provided the certified copy of relevant entry no. 8525 from the guest register which is Ex. PW2/A. The certified copy of Aadhar Card given by him to the police is Ex. PW2/B. The said documents were taken into possession by the police vide seizure memo Ex.PW2/C. PW2 has correctly identified accused Jamsheed Zahoor Paul in the court.

13.3 PW3 Mohd. Iqbal Bhat was Service Manager, State Bank of India, Shopian, J&K. He has proved the certified Customer Application Form along with Identity Card of DHS College of Engineering and Technology, Maharashtra as Ex. PW3/A collectively and certified computerized print out of Statement of Account in respect of A/c no. 20136813945 belonging to accused Parvaiz Rashid Lone for the period from 30.10.2012 to 01.07.2021 as Ex. PW3/B collectively. He also proved the Certificate u/s 65B of Indian Evidence Act in that regard as Ex.PW3/C.

13.4 PW4 Sh. Dharmender Singh was Licence Clerk in Licence Department, Office of ADM, Amroha District, Uttar Pradesh. He has produced the relevant record pertaining to Licence No. 968-II of Pistol no. RP-149573, .32 bore. He has deposed that as per record, the said Arms Licence was registered in the name of Shah Alam S/o Dulha Hassan. He has proved the relevant entry in that regard in the register as Ex. PW4/A; details of the said arms licence uploaded with arms license issuance authority as Ex. PW4/B and reply/information of the ADM regarding the said license addressed to the Court as Ex. PW4/C. He has deposed that the register which he had brought in the court is maintained in the office in the normal course of business and the contents of the same are true and correct to the best of his knowledge, information and belief.

13.5. PW5 Sh. O. P. Mishra was earlier posted as Special Secretary, Home, GNCT of Delhi. He has deposed that in February, 2019, while he was posted as Special Secretary, Home, GNCT of Delhi, the Home Department received proposal from Director of Prosecution, Delhi along with Independent Review of evidence u/s 45(2) of UAPA 1967 (Amendment Act 2008) with respect to FIR No. 106/2018 of P.S Special Cell. He has further deposed that along with seizure memo, arrest memo, FIR, draft charge-sheet and all other evidence on record was placed before the Hon'ble Lieutenant Governor, Delhi and after considering the material on record, Hon'ble Lieutenant Governor agreed to grant sanction to prosecute two accused persons, namely, Jamsheed Zahoor Paul and Parvaiz Rashid Lone @ Shahid for offences punishable u/s 18/20 of UA(P)A. PW5 has proved the requisite sanction

as Ex. PW5/A.

13.6 **PW6 HC Vivek Kumar** on 11.09.2018 has deposited the case property i.e. two sealed exhibits Mark A and B alongwith FSL form in FSL, Rohini, as per the directions of IO SI Manoj Kumar. He has proved the Road Certificate no. 159/21/2018 as Ex. PW 6/A and acknowledgment as Ex. PW6/B. He has deposed that till the case property and FSL form remained in his possession, the same were kept safe, intact and were not tampered with.

13.7 **PW7 HC Sushil Kumar was MHC(M) in P.S Special Cell.** He inter-*alia* deposed that on 07.09.2018, IO SI Manoj deposited two sealed parcels Mark A & Mark B sealed with the seal of SPL CELL NDR 15 stated to be containing fire arms and ammunition, two yellow colour sealed envelope with seal of SPL CELL NDR8 and two shoulder bag one black colour and one pink and grey colour containing some apparels, personal search articles of A-1 and A-2 which were consisting of two mobile phones each of A-1 and A-2, however, the said mobile phones were kept by the IO for further investigation. He made the relevant entry to this effect at serial no. 1645 in malkhana register. He deposed that on 01.11.2018, two yellow envelopes containing 4 mobile phones were sent to CERT-In through Ct.Mahesh vide RC No. 191/21/18 and after returning back he handed over to him acknowledgment about deposit of the said mobile phones. He deposed that on 21.12.2018, 3 khaki colour sealed envelopes sealed with the seal of CERT-In were deposited by SI Manoj in malkhana and he made endorsement to that effect in malkhana register. He deposed that on 28.05.2019, two yellow colour sealed envelopes sealed with the seal of

FSL Rohini were collected by Ct.Kranti Kumar and deposited in malkhana and he had made endorsement to that effect. The copy of malkhana register regarding deposit of case property of the present case and movement of the case property is Ex.PW7/A. The copy of RC No.191/20/18 along with acknowledgment is Ex.PW7/B. He further deposed that as long as the pulandas remained with him those remained intact.

13.8 PW8 ASI Gobind Singh has joined the investigation with IO SI Manoj on 07.09.2018. He has deposed that on the said date, he accompanied SI Manoj to Jama Masjid bus stand, Netaji Subhash Chand Marg where they met SI Vinod Kumar who was present there along with raiding team members and two accused persons, namely, Jamsheed Zahoor Paul and Parvaiz Rashid Lone. He has deposed that SI Vinod Kumar handed over two bags containing apparels, notebook sealed with seal of SPL CELL NDR8 which were taken into possession by SI Manoj Singh. He deposed that blue colour shoulder bag was recovered from accused Parvaiz Rashid Lone and notebook was recovered from accused Jamsheed Zahoor Paul. SI Manoj seized the notebook recovered from accused Jamsheed Zahoor Paul by keeping the same in a yellow colour sealed pulanda sealed with the seal of SPL CELL NDR8. He deposed that SI Manoj had completed CFSL Form and seal after use was handed over to him. PW8 has further deposed that thereafter they all returned back to the office of Special Cell along with case property and accused persons. PW8 deposited the seal of SPL CELL NDR8 in store. PW8 has identified the case property i.e. note book as Ex. PW8/P1 and blue colour file cover containing some documents and one orange colour file cover as Ex. PW8/P2. PW8 has

also correctly identified both the accused persons.

13.8.1 PW8 was cross-examined by Ld. Addl. PP for State after obtaining permission from the court as he was resiling from his previous statement under Section 161 Cr.PC on certain points. During his cross-examination by Ld. Addl. PP for State, he admitted that when SI Vinod had produced the accused persons along with case property and their shoulder bags, SI Manoj had checked the shoulder bags of both the accused persons. He further admitted that on checking the shoulder bag of accused Parvaiz Rashid Lone, blue colour file cover along with orange reddish colour file cover along with some documents were recovered and from the bag of accused Jamsheed Zahoor Paul, one notebook was recovered and the same was taken into police possession while keeping the same in their respective bags vide seizure memos. He admitted that due to lapse of time, he could not recollect the above facts.

13.9 PW9 ASI Mohan Singh is a member of the raiding team and has joined the investigation with IO SI Vinod on 06.09.2018 (due to some typographical error the date mentioned in his testimony is 06.07.2018). He has deposed to the effect that at about 8.00 p.m, SI Vinod had received a secret information to the effect that accused Parvaiz Rashid Lone and Jamsheed Zahoor Paul, who are associated with terrorist organization ISIS/DAEH, after procuring fire arms from Uttar Pradesh, would go to Jammu & Kashmir by boarding a bus from Subhash Park, Lal Quila, Delhi. SI Vinod shared the information with his senior officers and on the directions of senior officers, a raiding team was organized under the supervision of Insp. Sunil Kumar consisting of

himself, SI Vinod, SI Alok, SI Yashpal, SI Sunder Gautam, ASI Raghubir, ASI Satender, HC Virender Negi, HC Parvez, HC Sehzaad, Ct. Alim and ASI Sanjeev. The raiding team members were briefed by Insp. Sunil Kumar and were also got issued service pistols and thereafter, they all left the office in two private cars and two motorcycles and reached Bela Road, Subhash Park. SI Vinod Kumar had asked 4-5 passersby to join the raiding team after informing them about the secret information but they all refused and went away citing personal difficulty. Thereafter, the raiding team was again briefed and were deployed at strategic points.

13.9.1 PW9 has further deposed that at about 10.45 p.m, the secret informer pointed out towards two persons standing near Subhash Park and told that they both are Parvaiz Rashid Lone and Jamsheed Zahoor Paul who have come after procuring fire arms from UP and will board the bus for going to Jammu & Kashmir. After pointing out both A-1 and A-2, the informer left the spot and thereafter the raid was conducted. PW9 has further deposed that both the above accused persons were apprehended; they both were informed by SI Vinod about the secret information and that he wanted to take their search but before that, accused persons can also take search of raiding team members and their vehicles but both the accused persons refused the same. PW9 has further deposed that on taking formal search of accused Parvaiz Rashid Lone, he was found carrying black colour shoulder bag make DELL and on checking the same, it was found to be containing blue colour file folder under which there was another folder which was wrapped with tapes and was found containing a pistol, the same was taken out and on checking, five live cartridges were recovered from the magazine of the

said pistol. On taking search of accused Jamsheed Zahoor Paul and his bag, it was found containing notebook and some apparels, the said notebook was also containing one pistol having five live cartridges in its magazine. The sketch of both the recovered pistols, magazines and cartridges were prepared by SI Vinod, both the pistols, magazines and live cartridges were seized by SI Vinod by keeping the same in two separate sealed pulandas Mark A and Mark B which were sealed with the seal of SPL CELL NDR15, SI Vinod filled the FSL form; seal after use was handed over to PW9; SI Vinod prepared rukka and handed over the same to PW9 for registration of FIR and he accordingly reached P.S Special Cell at 01.20 a.m. of 07.09.2018 and got the FIR registered and further investigation was thereafter entrusted to SI Manoj, who along with his team had already reached the spot. PW9 also reached the spot and handed over the rukka and copy of FIR to SI Manoj as per the directions. PW9 has correctly identified both the accused persons and also identified the case property i.e. pistol recovered from accused Parvaiz Rashid Lone as Ex. PW1/P1.

13.10 PW10 SI Sundar Gautam was also one of the member of the raiding team and joined the investigation with IO SI Vinod Kumar on 06.09.2018. He has also deposed on the lines of PW9 ASI Mohan Singh qua receipt of secret information, constituting the raiding team, apprehending accused Parvaiz Rashid Lone and Jamsheed Zahoor Paul, effecting recovery from the bags of both accused persons of one pistol each containing five live cartridges each in its magazine, preparing sketches of pistols, magazines and cartridges by SI Vinod Kumar and their seizure vide seizure memos Ex. PW10/A (with respect to A-1) and Ex. PW10/B (with respect to A-2) respectively. He has further deposed

that after registration of FIR, the further investigation was entrusted to SI Manoj.

13.10.1 PW10 has further deposed that IO SI Manoj arrested accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone vide arrest memos Ex. PW10/C and Ex. PW 10/D respectively, conducted their personal search vide personal search memos Ex. PW 10/E and Ex. PW10/F respectively. IO deposited the case property in the malkhana and came back to their office where the IO interrogated accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone and recorded their disclosure statements Ex. PW 10/G and Ex. PW10/H respectively. PW10 correctly identified both the above mentioned accused persons and also the case property. the two pistols have been proved as Ex.PW1/P1 and Ex.PW10/P1. The cartridges (8 live and two fired) have been proved as Ex.PW10/P2 (Colly) and Ex.PW10/P3 (Colly). The black colour pithu bag is Ex.PW10/P4 and pink colour pithu bag is Ex.PW10/P5. The notebook of Classmate company having some notes, mobile numbers/details is Ex.PW8/P1. The blue colour file cover which contains some documents and one another orange colour file have been proved as Ex.PW8/P2 (colly).

13.11 PW11 Insp. Yashpal was also one of the member of the raiding team and joined the investigation with IO SI Vinod Kumar on 06.09.2018. He has also deposed on the lines of investigation and corroborated the statement of PW9 ASI Mohan Singh and PW10 SI Sundar Gautam.

13.12 PW12 ASI Mahesh has deposed that on 01.11.2018, IO ACP

Govind Sharma had handed over to him CFSL dockets, copy of FIR and other relevant documents and had instructed him to collect the exhibits from MHC(M) PS:Special Cell and to deposit the same in CERT-In Lodhi Colony. He deposed that accordingly, he collected two yellow colour envelopes from MHC(M) PS:Special Cell vide road certificate and took the same to CERT-In, 6, CGO Complex, New Delhi and deposited the same there. He deposed that receipt of the same was deposited with MHC(M) and copy was handed over to the IO.

13.13 **PW13 ASI Narender** has deposed that on 09.09.2018, IO SI Manoj Singh interrogated accused Parvaiz Rashid Lone and Jamsheed Zahoor Paul in his presence and recorded their disclosure statements Ex. PW 13/A and Ex. PW13/B respectively. He has also proved the supplementary disclosure statements of both the above accused persons as Ex. PW13/C and Ex. PW13/D respectively recorded by IO SI Manoj Singh on 11.09.2018. He correctly identified both the above accused persons in the court.

13.14 **PW14 SI (Retd) Jagbir was Incharge, General Store in the office of Special Cell.** He has proved the relevant entries no. 248 and 249 regarding handing over of the seal and its return in the seal issuing register as Ex. PW14/A.

13.15 **PW15 Sh. Ombir Singh was posted as Scientist F in Cert-In on 01.11.2028.** He has deposed that on the said date, he received two packets vide memo no.7294/ACP/NDR/SPL/CELL dated 31.10.2018 which were seized in the present case. He deposed that the said packets were containing seized digital items i.e. Mobile phones with SIM cards

and memory cards, as detailed in his report. He has further deposed that the sealed packets were photographed and after that the digital items as they got from the sealed packets were photographed and their details were verified from the letter from Special Cell. He has deposed that he has mentioned the description of the digital items in his report as well as the detailed information of digital items were photographed and the same were placed in report as Annexure-2.

13.15.1 PW15 has further deposed that data from the mobile phones, SIM Cards and memory cards were retrieved using mobile forensic tools and equipments; all the retrieved data was transferred in a Pen Drive and was provided to the Special Cell with his detailed Analysis Report Ex.PW15/A bearing his signature and stamp of CERT-In at Point A; all the seized digital items were repacked in two packets and sealed with the seal of CERT-In. He has proved the specimen of the CERT-In seal on record consisting of one page as Ex.PW15/B. He has proved the Annexure-2 as Ex. PW15/C consisting of two pages containing photographs from both sides of the two packets received, photographs of the mobile phones, SIM cards and memory cards. He has also proved Annexure-3 consisting of 95 pages (starting from 105 to 199) as Ex.PW15/D containing screenshots of the requisite chat session in the mobile phones. PW15 has also proved the certificate u/s 65B of Indian Evidence Act as Ex. PW15/E. He has further deposed that he handed over his detailed report along with the annexures, certificate u/s 65B of Indian Evidence Act, digital items in two sealed packets and Pen Drive containing the retrieved data in sealed condition to the authorized official of Special Cell/NDR, New Delhi vide forwarding letter Ex.PW15/F. PW15 has correctly identified the the said Silver Colour

Pen Drive Kingston Make upon which a slip bearing PD-DPSpCL-106-18 as the same Pen Drive in which he had transferred the retrieved data as Ex.PW15/P1.

13.16 PW16 SI Manoj Singh was second IO in the present case. He has deposed that on 07.09.2018, the further investigation of the present case was entrusted to him. He along with HC Govind reached the spot where he met SI Vinod along with raiding team members and two accused persons, namely, Jamsheed Zahoor Paul and Parvaiz Rashid Lone. He correctly identified both the accused persons as present in the court. SI Vinod also handed over to him two sealed pulandas sealed with the seal of SPL CELL NDR15, FSL form, sketches of the recovered arms and ammunition, seizure memos, two bags recovered from the possession of accused persons and also the custody of both accused persons. PW16 prepared the site plan at the instance of SI Vinod Kumar which has been proved as Ex. PW16/A.

13.16.1 PW16 has further deposed that during search of bag of accused Parvaiz Rashid Lone, one blue colour file containing some documents was recovered which he kept in a yellow colour envelope, sealed the same with the seal of SPL CELL NDR8 and thereafter kept the other items i.e. wearing apparels belonging to the accused in the same bag which was seized vide seizure memo Ex.PW16/B. He deposed that from the bag of accused Jamsheed Zahoor Paul, one notebook and wearing apparels etc were recovered. The said notebook was kept in a yellow colour envelope which was sealed with the seal of SPL CELL NDR8, he kept wearing apparels belonging to the accused in the same bag and seized the same vide seizure memo Ex. PW16/C. He

had arrested both accused persons vide arrest memos Ex. PW 10/C and Ex. PW10/D respectively, conducted their personal search vide memos Ex. PW10/E and Ex. PW10/F respectively and during search two mobile phones each were recovered from both the accused persons which were kept open for investigation purposes. He deposed that HC Mohan returned back to the spot and handed over to him the rukka and computerized print out of FIR.

13.16.2 PW16 has further deposed that he interrogated accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone and recorded their disclosure statements Ex.PW10/G and Ex. PW10/H respectively. He deposed that pursuant to the disclosure statements to the effect that four juveniles had sold out the weapons to them, they reached Amroha, UP where both the accused persons led the police party to the houses of said juveniles/JCL and on examination, three juveniles disclosed that they had sold the weapons to the accused persons in lieu of total money of Rs.52,000/- which they had distributed among themselves as Rs.17,000/-, Rs.17,000/- and Rs.18,000/-. The said juveniles handed over to PW16 the said received money which he took into possession vide seizure memos which are part of judicial record in Ld.Juvenile Justice Board where the juveniles are facing trials. PW16 has deposed that he had apprehended all the four juveniles/JCLs, recorded their statements and thereafter handed over the custody of the juveniles to their respective parents/legal heirs. Thereafter, they returned back to Delhi and deposited the case property in the Malkhana. PW16 got deposited the pulandas of recovered arms and ammunition in FSL for examination through HC Vivek. PW16 has further deposed that during investigation, he recorded the supplementary disclosure statements of

both the accused persons on 09.09.2018 and 11.09.2018 which are Ex.PW13/A to Ex. PW13/D respectively. PW16 has deposed that in their disclosure statements, both the accused persons had disclosed that they used to communicate with their handlers, namely, Umarbin Nazir (A-3) and Adil Thokar (A-4) on BBM App; the BBM App ID of accused Jamsheed Zahoor Paul was disclosed as Pehraan Chum and that of accused Parvaiz Rashid was disclosed as Umar Khatab. PW16 has further deposed that during the scrutiny of mobile phone of accused Parvaiz Rashid Lone, it was found that he used to communicate with Adil Thokar on three BBM App IDs and to Umar Bin Nazir on two BBM App IDs and when the IDs were examined, they came across various photographs where the terrorists were holding weapons, movement of army was being shared and the accused also sent the photographs of the recovered licensed pistol. PW16 has examined the licence holder Shah Alam and recorded his statement.

13.16.3 PW16 has further deposed that during investigation, it was transpired that accused Abdullah Basith, who was facing trial in NIA case, had met accused Jamsheed Zahoor Paul in Delhi in the year 2018. On the strength of incriminating material recovered from electronic devices and other material, provisions of UA(P)A were added in the present case and accordingly the investigation of this case was transferred to ACP Govind Sharma. PW16 also filed PIR in the Ld.Juvenile Justice Board qua the JCLs. PW16 correctly identified both the accused persons and also the case property.

13.17 PW17 Dr. V. R. Anand was Assistant Director, Ballistic in FSL, Rohini, Delhi. He had examined two pistols of 7.65 mm caliber marked

as F1 and F2 and ten 7.65 mm cartridges marked as A1 to A10 respectively. He has deposed that on examination, pistol marked as F1 and improvised pistol marked as F2 were in working order and test fire was also conducted successfully. The cartridges A1 to A10 were live cartridges; the cartridge A1 was test fired through the pistol marked as F1 and cartridge A6 was test fired through the improvised pistol 7.65 mm bore. He deposed that the exhibits F1 and F2 and cartridges A1 to A10 were fire arm/ammunition as defined under Arms Act, 1959. He has deposed that all the exhibits/remnants were sealed with the seal of VRA FSL DELHI after examination. He has proved his detailed report dated 30.04.2019 as Ex. PW17/A.

13.18 **PW18 Insp. Vinod Kumar was first IO of the present case.** He has deposed on the lines of investigation and corroborated the testimony of PW9 ASI Mohan Singh, PW10 SI Sundar Gautam and PW11 Insp. Yashpal. He has proved the sketches of recovered arms and ammunition from accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone as Ex. PW18/A and Ex. PW18/B respectively. He has proved the seal handing over memo as Ex. PW18/C and rukka as Ex. PW18/D. PW18 correctly identified both the accused persons A-1 and A-2 and also correctly identified the case property.

13.19 **PW19 Arvind Digvijay Negi, IPS the was IO of case RC-04/2016/NIA/DLI** under Section 120B, 201 IPC, Section 17/18/20/38/39/40 UA(P)A 1967 and Section 5 of Explosive Substances Act. He *inter-alia* deposed that after completion of the investigation in that case, the charge sheet was filed on 07.02.2019, however, A-1 and Abdullah Basith were not charge sheeted as both

were being investigated by Delhi Special Cell and further no workable inputs were disclosed by them during the investigation. He has further deposed that pursuant to requisition from DCP, Special Cell, he had forwarded the supplementary charge-sheet, copy of FIR and arrest memo in case RC-04/2016/NIA/DLI dated 28.01.2016 to DCP, Special Cell vide his forwarding letter Ex. PW19/A. He has proved the attested copy of the charge-sheet, FIR and the arrest memo consisting of 36 pages as Ex. PW19/B collectively. It is pertinent to note that during his cross-examination, PW19 *inter-alia* deposed and admitted to be correct that NIA in RC-04/2016/NIA/DLI filed charge sheet stating that no prosecutable evidence could be found against A-1 and A-2. He deposed that he was not having knowledge of the fact that A-1 and A-2 were discharged by Id. Special Court, New Delhi on 19.11.2020 in RC-04/2016/NIA/DLI it found no evidence on record to frame charge against them.

13.20 **PW20 DCP Manishi Chandra** had accorded sanction u/s 39 Arms Act to prosecute accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone under the relevant provisions of Arms Act, 1959. He has proved the requisite sanctions both dated 09.07.2019 as Ex. PW20/A and Ex. PW20/B respectively.

13.21 **PW21 HC Sandeep Kumar** has proved the computerized print out of the present case FIR as Ex. PW21/A, certificate u/s 65B of Indian Evidence Act as Ex. PW21/B and endorsement of the then Duty Officer ASI Harshvardhan as Ex. PW21/C. He has deposed that the present case FIR was got recorded by the then Duty Officer ASI Harshvardhan (since expired).

13.22 PW22 ACP (Retd) Lalit Mohan Negi was also entrusted further investigation of the present case in the month of March, 2021. He has deposed that after collecting file from the MHCR, he procured the relevant documents from NIA pertaining to case RC No. 04/2016/NIA/DLI. He further deposed that pursuant to the order passed by the court to release the licensed weapon to the licence holder Sh.Shah Alam, he got 15 coloured photographs of the pistol as well as of the cartridges and thereafter, released the pistol to the licensee Sh.Shah Alam and in that regard, he prepared the Panchnama Ex.PW22/A bearing his signatures as well the signatures of the public witnesses and the licensee. He has proved the 15 photographs as Ex. PW22/B1 to Ex. PW22/B15. He has further deposed that during the course of investigation, he collected the FSL result Ex. PW17/A; he applied for the Sanction u/s 39 Arms Act and placed the same on record after procuring the same from DCP Manishi Chandra; recorded the statement of witnesses and thereafter filed the supplementary charge-sheet.

13.23 PW23 ACP (Retd) Govind Sharma was also entrusted further investigation of the present case on 29.10.2018. He has deposed that since both accused persons, namely, Jamsheed Zahoor Paul and Parvaiz Rashid Lone were found to be involved in terrorist activities in different parts of India and were having links with terrorist organization IS-JK, the further investigation of the present case was entrusted to him. During investigation, he took four days PC remand of both the accused persons A-1 and A-2, interrogated them and recorded their detailed disclosure statements Ex. PW23/A and Ex. PW23/B respectively. He

deposed that pursuant to the disclosure statement, accused Jamsheed Zahoor Paul (A-1) led the police team to Hotel Shaka, Urdu Bazar, Jama Masjid and pointed out the hotel where he had stayed earlier and had meetings with other members of terrorist organization vide pointing out memo Ex. PW23/C. He seized photocopy of the relevant page of the Guest Register showing the entry vide which the accused had stayed in the said hotel along with the photocopy of the Aadhar Card vide seizure memo Ex.PW2/C. He has proved the attested photocopy of the Guest Register containing the relevant entry no.8525 as Ex.PW23/D and the attested photocopy of the Aadhar Card is Ex.PW2/D.

13.23.1 PW23 has further deposed that during the course of investigation, four mobile phones were sent for examination to CERT-In vide Road Certificate No.191/21/2018 Mark X along with letter to DG, CERT-In requesting therein for the certified copy as well as soft copy of BBM Chats. He has proved the copy of his application as Ex.PW23/E. He has further deposed that he intimated by way of notices Ex.PW23/F and Ex.PW23/G respectively to both the accused persons regarding forfeiting of Rs.52,000/- given by them to the person from whom they had purchased the arms and ammunition. He also procured the requisite Sanction u/s 45 of UA(P)A and placed the same on record, recorded the statement of witnesses, prepared the charge-sheet and filed the same in the concerned court.

14. After conclusion of Prosecution Evidence, statement of both the accused persons were recorded u/s 313 Cr.PC/351 BNSS wherein they have denied the material circumstances appearing in prosecuting evidence against them.

14.1 Accused Jamsheed Zahoor Paul (A-1) further stated that he was detained on 05.09.2018 from Kashmere Gate bus stand, Delhi around 3.00 p.m and was driven around till around 10.00 p.m when he was taken to an undisclosed location. He stated that he was kept at that place for around one entire day with blind folds on his eyes and was finally taken to P.S Special Cell only on the night of 06.09.2018 where he was made to sign various blank sheets of paper. He stated that no pistol or five live cartridges were recovered from his possession and that he has been falsely implicated in the present case. He stated that the said alleged recovery has been planted upon him by the police officials of P.S Special Cell. He has further stated that he never met Abdullah Basith or any other member of any terrorist organization and his arrest was merely on the basis of suspicion of this alleged meeting. He stated that he had never used BBM Messenger. He preferred not to lead any defence evidence in his said statement.

14.2 Accused Parvaiz Rashid Lone further stated that he was detained on 05.09.2018 from opposite Kashmere Gate bus stand, Delhi at around 6.00 p.m (day light hour) and was driven around by police officials from Special Cell till around 10.00 p.m when he was taken to an undisclosed location where he was kept for around one entire day with blind folds on his eyes and was finally taken to P.S Special Cell only on the night of 06.09.2018 where he was made to sign various blank paper sheets. He stated that no pistol or five live cartridges were recovered from his possession and he has been falsely implicated in the present case. He further stated that the said alleged recovery has been planted upon him by the police officials of P.S Special Cell, he had never

interacted with any member of any terrorist organization and his arrest was probably because his real brother Firdous Rashid Lone was encountered by the Army in January 2018 on the allegation of being a militant. He has further stated that he had BBM App installed on his phone but his ID is not Ummer Khattab R.A. He preferred to lead defence evidence in this case, however, as per record did not subsequently lead any defence evidence.

14.3 As per record, the defence evidence was ultimately closed vide order dated 16.01.2026.

ARGUMENTS ON BEHALF OF PROSECUTION AND ACCUSED PERSONS :-

15. The accused persons A-1 and A-2 have filed separate written arguments and their Id. Counsels have also addressed oral arguments. The Id. Addl. PP for State has addressed oral arguments. The submissions would be mentioned in the relevant paragraphs of the judgment.

16. The case of the prosecution in nutshell is to the effect that a secret information was received in the office of Special Cell that some youth of Jammu and Kashmir had pledged allegiance to banned terrorist organization ISIS/SI/DAESH and for purpose of terrorist activity they were procuring weapons in UP. On 06.09.2018, PW18 Insp.(Then SI) Vinod Kumar (PW18/Ist IO) received source information that both the accused persons who had pledged allegiance to above said banned terrorist organization would come at Netaji Subhash Park Near Lal Quila to proceed to Kashmir at about 11.00 p.m. Thereafter, a raiding

party was prepared, out of which four members of the raiding team have been examined as prosecution witnesses i.e. PW9 ASI Mohan Singh, PW10 SI Sunder Gautam, PW11 Insp.Yashpal and PW18 Insp.Vinod (1st IO of the case). The raiding party was constituted under the supervision of one Insp.Sunil Kumar (not examined by the prosecution). During search one 7.65 caliber pistol with five live cartridges each were recovered from possession of each of the accused. PW18 Insp.Vinod prepared a rukka and sent it through PW9 ASI (then HC) Mohan Singh to police station Special Cell, Lodhi Colony to lodge FIR under Section 25 of the Arms Act. Further investigation of the case was marked to PW16 SI Manoj Singh (2nd IO of the case) who along with PW8 ASI (then HC) Govind Bisht reached at the spot and met PW18 and his raiding team members. PW18 handed over to PW16 both the accused persons. PW18 also produced to PW16 the case property i.e. two sealed white cloth parcels, seizure memos and one FSL Form. PW18 also produced to PW16 one bag recovered from the accused Jamsheed Zahoor Paul informing him that one pistol and five live cartridges of 7.65 mm were recovered from it. PW18 also produced one more bag of black colour having the logo of 'DELL' on it to PW16 and informed him that it was recovered from the possession of accused Parvaiz Rashid. PW16 prepared the site plan at the instance of PW18. After interrogation the accused Jamsheed Zahoor Paul was arrested and from him some other things, one air ticket of Indigo dated 04.09.2018 in his name, one black colour Samsung mobile phone, one black colour mobile phone partly damaged and screen damaged and one ticket dated 06.09.2018 from Delhi to Jammu in the name of Jamsheed and Parvaiz were recovered. After interrogation, PW16 also arrested the accused Parvaiz Rashid and during his personal search various

articles were recovered including one air ticket of Indigo dated 04.09.2018 in the name of accused, one black colour Lenovo mobile phone and one I-Phone black colour. The said articles were taken into possession by the police vide personal search memo. On 10.09.2018, PW16 along with staff and accused persons reached village Rampur Ghana, Tehsil Amroha, UP and made efforts to source the recovered weapons. On 11.09.2018 at the instance of accused persons one M.A. (JCL) was apprehended in the present case wherein the said JCL revealed that his relative 'M' and friends 'S' and 'M.K.' had arranged two pistols which they had sold for Rs. 50,000/- for both the accused persons. Out of which, 'M.A. (JCL)' had received Rs.17,000/- as his share. At the instance of JCL, M.A., another JCL 'M' was apprehended who supported the version of JCL M.A. and disclosed that he had received Rs.17,000/- out of said Rs.52,000/- as his share. Thereafter, two more JCLs i.e. 'S' and 'M.K.' were also apprehended. JCL 'M.K.' told that he had stolen a license pistol of his maternal uncle, namely, Shah Alam (PW1) and sold it to JCL 'S' for one mobile phone make MI, Golden Colour. PW16 interrogated PW1 during which he stated that his one licensed pistol of 32 bore got misplaced from his house between 29.08.2018 to 04.09.2018. PW1 made efforts to trace his pistol and even interrogated his nephew 'M.K.' who told him that he had stolen the said pistol from his almirah and sold it to JCL 'S' for one mobile phone. On 11.09.2018, the exhibits of the case were deposited in FSL, Rohini. During interrogation. it was revealed that both the accused persons were propagating the ideology of terrorist outfit ISIS in India. They were also in touch with another ISIS militant, namely, Abdullah Basit, who had been arrested by NIA in case RC No. 04/2016/NIADLI. Thereafter, Section 18/20 of UA(P)A were added on 29.10.2018 by PW16. Further

investigation was marked to PW23 ACP Govind Sharma. The accused Parvaiz Rashid used to communicate through BBM with the name of Ummar Khattab with one Omar Ibin Nazir. Accused Parvaiz Rashid used BBM with the name of Ummar Khattab whereas accused Nazir used BBM with the name of Omar Ibin Nazir. He used the BBM with the name of Pheran Chum. He was in touch with Jamsheed and Aasif Nazir @ Omar Ibin Nazir continuously. Aasif Nazir @ Omar Ibin Nazir had directed accused Parvaiz Rashid to arrange weapons for Tanzeem from UP. Accused Jamsheed Zahoor Paul had further disclosed that he knew Adil Thokar, Aasif Nazir @ Omar Ibin Nazir, Aasif, Daud Sofi etc. who were the cadres of ISIS (J&K Module) through social media and BBM. During investigation both the accused persons stated that they used to communicate with their associates Omar Ibn Nazir, Adil Thokar and Ummar Khattab on their BBM IDs. On 01.11.2018, the mobile phones recovered from both the accused persons were sent to Cyber Forensic Lab, CERT in, CGO Complex, New Delhi through PW12 ASI (then HC) Mahesh to retrieve the data and BBM chats. The accused Parvaiz Rashid was found to be using the BBM ID Umar Khatab and the accused Jamsheed Zahoor Paul was found to be using BBM ID Pehran Chum. Some BBM Chats were also recovered. It was mentioned in the charge sheet that accused Asif Nazir Dar @ Omar Bin Nazir was shot dead by unknown persons in the area of PS:Nigeen and another associate Adil Wani @ Adil Thokar was not traceable. The prosecution sanction under Section 45(2) of UA(P)A against both the accused persons was received from GNCT of Delhi on 22.02.2019. Thereafter, charge sheet was filed under Section 25 Arms Act, 1959 and 18/20 UA(P)A.

RECOVERY OF ONE PISTOL EACH ALONG WITH FIVE LIVE CARTRIDGES EACH FROM THE POSSESSION OF THE ACCUSED PERSONS A-1 and A-2.

17. Ld. Addl. PP for the State has submitted that the pistol Ex.PW1/P1 which was recovered from the possession of the accused Parvaiz Rashid Lone @ Shahid vide seizure memo Ex.PW10/B along with five live cartridges was the licensed pistol of PW1 Sh.Shah Alam which he has also correctly identified during his testimony in the court. He submitted that in the said circumstances false implication is ruled out. He also stated that further seizure memo of pistol and five live cartridges from accused Jamsheed Zahoor Paul has also been proved as Ex.PW10/A. He stated that non filing of record or examination of any witness with respect to JCLs M.A. 'M', 'S' and 'M.K' is not fatal to the case of the prosecution. He submitted that the handlers of the accused persons had sent the accused persons to UP for collecting of arms and ammunition and thereafter to go to Jammu & Kashmir. He also stated that non joining of any public witness during the search and seizure of one pistol and five live cartridges each from the accused would also not dent the case of the prosecution. He further stated that the mentioning of FIR number in the seizure memos, sketch of recovered pistols, seizure memos of pistol and five live cartridges are inconsequential and would not affect the case of the prosecution. He also stated that PW20 DCP Manishi Chandra has proved the sanctions dated 09.07.2019 under Section 39 of the Arms Act, 1959 to prosecute the accused persons as Ex.PW20/A and Ex.PW20/B respectively. He also referred to cross-examination of PW22 ACP (Retd.) Lalit Mohan Negi wherein he has *inter-alia* deposed that he had made the request for grant of sanction under Section 39 of the Arms Act in July, 2019 and had received the

said sanction on 09.07.2019 through dak from the office of PW20 DCP Manishi Chandra. He further stated that there are only minor variations in the testimony of raiding team members who have been examined as PW9, PW10, PW11 and PW18 and the said minor variations would not affect the case of the prosecution. He thus submitted that both the accused persons were found in possession of firearm and ammunition (one pistol 7.65 mm along with five live cartridges each) without any valid license in contravention of Section 3 of the Arms Act, 1959 and are thus liable to be convicted under Section 25 (1B)(a) of the Arms Act, 1959.

18. The Id. Counsel for accused **Parvaiz Rashid Lone (A-2)** submitted that there are vague and contradictory testimonies of material witnesses regarding the presence of secret informer and further one of the main witness Insp.Sunil who as per the testimony of PW18 (1st IO) had briefed the raiding team members about the secret information was not examined by the prosecution. He also submitted that different times of constitution of raiding team, different accounts and time and duration of briefing and different times of departure from Special Cell have been deposed by different prosecution witnesses. He further submitted that the material locations deposed by the prosecution witnesses have not been mentioned on the site plan Ex.PW16/A. He also submitted that no independent witness was present during the entire proceedings from 10.30 p.m. on 06.09.2018 till 04.30 a.m. on 07.09.2018 even though the entire proceedings were alleged to have been carried out at a highly public place i.e. Bus Stop, Metro Station and admittedly by prosecution witnesses that many public witnesses were present. He submitted that no explanation has been provided by the prosecution witnesses as to

why independent witnesses were not joined at any stage in this case. He submitted that failure to join independent witnesses, especially when public witnesses are available, is fatal to the case of prosecution regarding recovery of arms and ammunition. He further submitted that in the absence of any public witness supporting the prosecution version, the court has to expect a better standard of proof in the statement of all the police witnesses for bringing home the offence to the accused. In that regard, he referred to the judgment of Hon'ble Supreme Court of India in the case **Sans Pal Singh vs. State of Delhi**, (1998) 2 SCC 371. He also referred to the judgment of Hon'ble High Court of Delhi in case titled as **Anoop Singh vs. State**, (1992) 24 DRJ 165. He further submitted that there is no explanation as to why FIR number is mentioned in the recovery memos or the sketch plan which came into existence before the registration of the case. He submitted that FIR number is mentioned on the site plan Ex.PW16/A, seizure memos of pistol and five live cartridges i.e. Ex.PW10/A (with respect to accused Jamsheed Zahoor Paul) and Ex.PW10/B (with respect to accused Parvaiz Rashid Lone @ Shahid) and there is no explanation from the prosecution in that regard. He stated that in the said circumstances a doubt is raised about the genuineness of the arms and ammunition allegedly recovered from the accused persons. In that regard, he also referred to the judgment of Hon'ble High Court of Delhi in case titled as **Pawan Kumar vs. The Delhi Administration**, 1989 CrL LJ 127. He submitted that the number of FIR given on the top of the aforesaid documents clearly indicate that either the FIR was recorded prior to the alleged recovery or number of the said FIR was inserted in these documents after its registration and in both the situations it seriously reflects upon the veracity of the prosecution version and creates a great

deal of doubt about the recovery of the arms and ammunition in the manner alleged by the prosecution. In that regard, he also referred to the judgment of Hon'ble Delhi High Court in case titled as **Mohd. Hashim vs. State, Crl. A. No. 7/96, date of decision 14.10.1999**. It was further argued that there is invalidity of sanction under the Arms Act, 1959. In that regard, he submitted that the cognizance of Section 25 of Arms Act, 1959 was taken by the Id. Predecessor of this court on 28.02.2019 whereas the sanction under Section 39 of the Arms Act, 1959 was obtained on 09.07.2019. In that regard, he referred to the testimony of PW20 and the sanctions dated 09.07.2019 Ex.PW20/A and Ex.PW20/B. He further referred to the cross-examination of PW22 wherein he *inter-alia* deposed that he had made the request for grant of sanction under Section 39 of the Arms Act in July, 2019 which was received on 09.07.2019 through dak from the office of PW20. He stated that in the present case the said sanction was admittedly accorded after filing of the charge sheet. In view of Section 39 of the Arms Act, 1959, it was expected from the IO to seek previous sanction of the concerned authority to institute prosecution against the accused persons, but no prior sanction was obtained by the IO before filing of the charge sheet. He submitted that in the said circumstances charge under Section 25 Arms Act, 1959 is not maintainable. He submitted that the said charge would stand vitiated in that regard even though if for the sake of argument, it is said that the prosecution has proved the possession of pistol and cartridges from the accused persons. In that regard, he referred to the judgment of Hon'ble High Court of Bombay in case titled as **Abu Rahbar Hasan Khan vs. State of Maharashtra, Crl. Appeal No. 269 of 2017 and Session Case No. 607 of 2012, date of decision 29.10.2021**. He stated that valid sanction is *sine qua non* of criminal

proceedings and in the absence of valid sanction, entire proceedings are vitiated. He relied upon the judgment of Hon'ble High Court of Bombay in case titled as **Mahesh Kariman Tirki and Others vs. State of Maharashtra, Through PSO, Crl. Appeal No. 136 and 137 of 2017, date of decision 05.03.2024**. He thus stated that a strong doubt is raised on the story of the prosecution regarding recovery of alleged arms and ammunition from the accused persons and both the accused persons should be acquitted in the present case.

19. Ld. Counsel for accused **Jamsheed Zahoor Paul (A-1)** adopted the above said arguments of ld. Counsel for co-accused. He also submitted that cognizance for Arms Act offence in the present case was taken by the ld. Predecessor of this court on 28.02.2019 whereas the case of the prosecution is itself that the request for sanction under the Arms Act was moved subsequently and sanctions Ex.PW20A and Ex.PW20/B were granted only on 09.07.2019. He stated that the prosecution must establish firstly that a valid prior sanction existed before institution/cognizance and the sanction was granted by the competent authority within the meaning of the Arms Act, 1959. He also referred to the above said judgment in the case of **Abu Rahbar Hasan Khan (supra)**. He also stated that the prosecution has failed to prove the alleged recovery of the firearm from the said accused beyond reasonable doubt. He stated that the recovery rests entirely on the testimonies of police witnesses which suffer from material inconsistencies and are not corroborated by any independent public witness despite the prosecution's own case that the alleged apprehension took place at a public place and no genuine effort to associate public witnesses was made. He stated that further the site plan Ex.PW16/A was prepared by

PW16 SI Manoj Singh, Second IO of the case, who was admittedly not present at the spot at the time of raid and recovery, thereby casting doubt on the authenticity of the prosecution witness. He stated that no investigation has been conducted to establish any nexus between accused no. 1 and the weapon allegedly recovered from him. He also stated that the prosecution version regarding procurement of the weapon from JCLs in Amroha also remains wholly unsubstantiated as no documentary record, DD entry, local police intimation or statement of the juveniles or their family members has been brought on record. He thus prayed that the accused Jamsheed Zahoor Paul be also acquitted in this case under Section 25 of the Arms Act, 1959.

20. The case of the prosecution as per testimony of PW18 (Ist IO) is that on 06.09.2018 at about 10.45 p.m. near gate no. 4 of Metro Station and Jama Masjid Bus Stand, the said two accused persons approached from the side of Darya Ganj and were heading towards Lal Quila. The secret informer informed about them to PW18 upon which PW18 with the help of one HC Shahzad and other team members apprehended both the accused persons. It is also the case of the prosecution that both the accused persons were having separate pithu bags/backpacks. Further, as per the case of the prosecution evident from the testimony of PW18, nothing incriminating was found from the search of both the accused persons, however, during the search of pithu bags of each of them, one pistol each with five live cartridges were recovered from their respective pithu bags. PW18 prepared separate sketches qua the recoveries of arms and ammunition from both the accused persons. The sketch pertaining to accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone are Ex.PW18/A and Ex.PW18/B respectively. PW18 prepared

separate pulandas of the pistol and live cartridges recovered from both the accused persons and sealed the same with seal of SPL Cell NDR 15. The pulanda pertaining to accused Parvaiz Rashid Lone was Mark A whereas pulinda pertaining to accused Jamsheed Zahoor Paul was Mark B. PW18 also filled the FSL Form on the spot itself. The pulanda pertaining to accused Jamsheed Zahoor Paul was taken into possession vide seizure memo Ex.PW10/A whereas pulinda pertaining to accused Parvaiz Rashid Lone was taken into possession vide seizure memo Ex.PW10/B. Seal after use was handed over to PW9 HC (Later on ASI) Mohan Singh vide seal handing memo Ex.PW18/C. PW18 prepared rukka Ex.PW18/D and handed it over to PW9 for registration of FIR and by that time PW16 SI Manoj Singh who was instructed to take up the further investigation by the higher officials also arrived at the spot. PW18 handed over the pulandas of the case property, FSL Forms, seizure memos/other memos along with custody of both the accused persons to PW16. PW16 prepared the site plan Ex.PW16/A. PW18 identified both the accused persons as present in the court during his testimony. The pistol recovered from accused Jamsheed Zahoor Paul is Ex.PW10/P1 and the cartridges are Ex.PW10/P2 (Colly). The pistol recovered from accused Parvaiz Rashid Lone @ Shahid is Ex.PW1/P1 and the cartridges are Ex.PW10/P3 (Colly).

21. The prosecution has examined four members of the raiding team, which allegedly recovered above said arms and ammunition from the accused persons, as prosecution witnesses. The said prosecution witnesses are PW9 ASI Mohan Singh, PW10 SI Sunder Gautam, PW11 Insp.Yashpal and PW18 Insp.Vinod Kumar. PW9 ASI Mohan Singh has deposed in his cross-examination that the raiding team was

constituted at around 08-08.30 p.m. PW10 on the other hand in his cross-examination has deposed that the raiding team was constituted at about 09.15 p.m. by Insp.Sunil Kumar and that PW18 had communicated the secret information to Insp.Sunil in his presence at around 08-08.35 p.m. In contradiction to it, PW11 has deposed in his examination in chief that at about 09.00 p.m., all the members of the raiding team and the secret informer had left the office of Special Cell in two private cars and two private motorcycles. There is thus material variation in the time line given by different members of the raiding team. Further, it is an admitted position by the said material witnesses that the raiding team was organized under supervision of one Insp.Sunil Kumar and the raiding team was also briefed by Insp.Sunil Kumar. In that regard, PW9 has deposed that PW18 informed senior officers about the secret information and on the directions of senior officers, a raiding team was organized under the supervision of Insp.Sunil Kumar and the raiding team was briefed by Insp.Sunil Kumar. In that regard, PW10 has deposed that PW18 shared the secret information with the senior officers Insp.Sunil Kumar who further informed the senior officers. He also deposed that Insp.Sunil Kumar organized the said raiding team comprising himself and others. In that regard PW11 has deposed that PW18 shared the secret information with Insp.Sunil Kumar and other senior officers and as per instructions of senior police officers, a raiding team under the supervision of Insp.Sunil Kumar was organized. PW18 has also deposed that he shared the information given by the secret informer with Insp.Sunil who further shared this information with senior police officers and pursuant to the directions from senior officer, Insp.Sunil organized a raiding team. PW18 also deposed that Insp.Sunil briefed the raiding team members about the secret

information. PW18 also deposed in his cross-examination that apart from him and Insp.Sunil Kumar, nobody else met the secret informer in the office of Special Cell. It is thus evident that Insp.Sunil Kumar is a very material prosecution witness with whom the secret information was shared, who organized the said raiding team and also briefed the said raiding team about the information and was also a part of the said raiding team. The said Insp.Sunil Kumar has, however, neither been cited nor examined by the prosecution in support of its case without any pertinent and plausible explanation. It raises a strong doubt over the veracity of the case of the prosecution. In view of the said material discrepancies, the presence of some public witness during the alleged recovery of arms and ammunition from the possession of the accused persons would become necessary. As discussed above, PW18 has deposed to the effect that the accused persons were allegedly apprehended near Gate No. 4 of Metro Station and Jama Masjid Bus Stand while they were approaching from the side of Darya Ganj and were heading towards Lal Quila. It is admittedly a very busy place where lots of persons are always present. PW9 in his examination in chief has deposed that PW18 had asked 4-5 passerby to join the raiding team having informed them about the secret information but none agreed and all went away showing their personal difficulty. PW9 in his cross-examination has also deposed that there was usual traffic on the route from PS:Special Cell to Bela Road and there were many public persons present at Bela Road when they reached there. He further deposed that at the spot where de-briefing was carried out, also there were many public person present. He deposed that SI Vinod Kumar (PW18) had asked 2-3 passerby to join the raiding team but none came there citing their personal difficulty. In that regard, PW10 has *inter-alia*

deposed that they left the office of Special Cell in two private cars and two private motorcycles and reached at Darya Ganj where IO connected few public persons to witness the raid but none came forward and left away by citing genuine reasons. He further deposed that therefrom, they reached at spot near Subhash Park/Jama Masjid Metro Station, Lal Quila where also the IO connected public persons to become witness to raid but none agreed to it. PW10 in his cross-examination *inter-alia* deposed that at Darya Ganj, Lohe Ka Pul, Taxi Stand, Mahavir Vatika, PW18 tried to contact 4-5 public persons to become witness to raid but they refused citing personal reasons. He further deposed that from there, they reached Subhash Park, Jama Masjid Bus Stop, opposite Red Fort at about 10.30 p.m., there were passerby at the spot and PW18 once again had contacted 2-3 public persons to become witness to raid but they refused citing personal reasons. PW11 also deposed that on their way to spot, they stopped at Darya Ganj where IO contacted few persons to become witness to the raid but none joined the same and left away by citing their personal excuses. He deposed that thereafter they reached near Subhash Park where IO (PW18) again contacted few persons to join the raid but none agreed to it. In that regard, PW18 has deposed that they reached the Iron Bridge near Mahavir Vatika where he contacted 2-3 passerby to join the investigation but they did not join the raiding team citing genuine problems. It is thus evident that the place of alleged recovery is a busy area where although the public persons were present but were not joined as witness at any stage including the alleged recovery proceedings of above said arms and ammunition from the accused persons. The failure to join independent witness, especially when the public witnesses were available raises a strong doubt on the prosecution version regarding the recovery of the

said arms and ammunition from the accused persons. It is also not the case of the prosecution that any notice was given to the said public witnesses by the IO to join the investigation proceedings. My views are substantiated by the judgment of Hon'ble Supreme Court of India in the case of **Sans Pal Singh (supra)**. Further, the Hon'ble Delhi High Court in case **State vs. Ravi Kumar @ Toni, CRL.L.P. 340/2019, date of judgment 26.11.2024** *inter-alia* held as under:-

"29. This procedural lapse raises serious doubts about the credibility of the seizure and subsequent proceedings. The reliance placed by the Trial Court on Mohd.Masoom vs. State of NCT of Delhi:219(2015) DLT 271, which criticizes the routine explanation of "passerby refusing to join the raid", is entirely justified. The absence of independent witnesses in such circumstances further diminishes the reliability of the prosecution's case."

Further, the testimony of PW9, a member of the raiding team, would show that he has deposed to the effect that on 06.07.2018 at about 10.45 p.m., the accused persons were apprehended, thereafter PW18 conducted search of the accused persons and their bags, PW18 prepared Form FSL, seal after use was handed over to him, PW18 prepared rukka which was handed over to him (PW9) with directions to get the FIR registered, he with rukka left the spot for PS:Special Cell, reached there at about 01.20 a.m. on 07.09.2018, the duty officer after registration of FIR and making his endorsement on rukka returned the original rukka to him along with copy of FIR with directions to handover the same to PW16 and accordingly he with rukka and copy of FIR handed over the same to PW16 who had already reached at the spot. In his cross-examination, PW9 *inter-alia* deposed that he had left the spot at about 01.30 a.m. on 07.09.2018 with rukka for PS:Special Cell for registration of FIR and reached at the spot at about 03.15 a.m.

He admitted that PW18 had prepared Form FSL, sketch of recovered pistol, magazine and cartridges prior to his departure from the spot at 01.30 a.m. In that regard PW18 has deposed regarding seizure of above said arms and ammunition on 06.09.2018 from the accused persons. He further deposed that the sketch of arms and ammunition pertaining to accused Jamsheed Zahoor Paul is Ex.PW18/A and the sketch pertaining to accused Parvaiz Rashid Lone is Ex.PW18/B. PW18 deposed that he prepared separate pulandas of pistol and live cartridges recovered from both the accused persons, he also filled the FSL Form on the spot itself, the pulanda pertaining to accused Jamsheed Zahoor Paul was taken into possession vide memo Ex.PW10/A whereas pulanda pertaining to accused Parvaiz Rashid Lone was seized vide seizure memo Ex.PW10/B. He further deposed that seal after use was handed over to PW9 and thereafter he prepared rukka consisting of four pages Ex.PW18/D which was handed over to PW9 for registration of FIR. He also deposed that by that time PW16 who was instructed to take up further investigation also arrived at the spot and he handed over pulandas of case property, FSL Forms, seizure memos/other memos along with custody of both accused persons to PW16 who prepared the site plan Ex.PW16/A. The above said testimony of PW9 and PW18 would show that the site plan Ex.PW16/A, seizure memos of pistol and five live cartridges Ex.PW10/A (with respect to accused Jamsheed Zahoor Paul), the sketch of pistol and live cartridges Ex.PW18/A, seizure memo of pistol and five live cartridges Ex.PW10/B (with respect to accused Parvaiz Rashid Lone) and the sketch of pistol and five live cartridges Ex.PW18/B were prepared prior to registration of FIR in this case. The record would, however, show that FIR No. 106/2018 is specifically mentioned on Ex.PW10/A, Ex.PW18/A,

Ex.PW10/B, Ex.PW18/B and site plan Ex.PW16/A. No explanation has been given from the side of the prosecution as to how the FIR number has been mentioned on the said documents. In the said circumstances, a doubt is raised about the genuineness of the arms and ammunition allegedly recovered from the accused persons. The number of FIR given on the top of the aforesaid documents clearly indicate that either the FIR was recorded prior to the alleged recovery or number of the said FIR was inserted in these documents after its registration and in both the situations it seriously reflects upon the veracity of the prosecution version and creates a great deal of doubt about the recovery of arms and ammunition in the manner alleged by the prosecution. Reliance is placed upon the judgments of Hon'ble High Court of Delhi in the cases of **Pawan Kumar (supra)** and **Mohd. Hashim (supra)**. Further, PW1 has proved the pistol allegedly recovered from accused Parvaiz Rahid Lone as ExPW1/P1. PW1 has, however, admitted in his cross-examination that the said pistol was not recovered in his presence and for that reason he cannot comment as to from which of the accused, the pistol in question was recovered. It is the case of the prosecution that on 11.09.2018 at the instance of accused persons one M.A. (JCL) was apprehended in the present case wherein the said JCL revealed that his relative 'M' and friends 'S' and 'M.K.' had arranged two pistols which they had sold for Rs.50,000/- to both the accused persons. PW1 is the maternal uncle of JCL 'M.K.' The prosecution in that regard has, however, failed to examine or prove any document with respect to above said JCLs 'M.A.', 'M', 'S' and 'M.K.' It also raises an adverse inference and a strong doubt over the case of the prosecution. Further, the record would show that the cognizance of offence under Section 25 of Arms Act, 1959 was taken by the Id. Predecessor of this court on

28.02.2019 whereas the sanction under Section 39 of the Arms Act, 1959 was obtained on 09.07.2019. In that regard, PW20 DCP Manishi Chandra has specifically deposed to the effect that on 09.07.2019, the IO of the present case had placed before him the case file of the present case containing the statements of the prosecution witnesses, the documents relied upon by the investigating agency including seizure memo, report of ballistic expert besides the case diaries and after carefully perusing the same and upon satisfaction that both the accused persons had committed the offence, he accorded sanction under Section 39 Arms Act to prosecute them under the relevant provisions of the Arms Act 1959. The sanction dated 09.07.2019 in that regard under Section 39 of the Arms Act, 1959 with respect to accused Jamsheed Zahoor Paul has been proved as Ex.PW20/A. The sanction dated 09.07.2019 in that regard under Section 39 of the Arms Act, 1959 with respect to accused Parvaiz Rashid Lone has been proved as Ex.PW20/B. In that regard, PW22 ACP (Retd.) Lalit Mohan Negi has specifically *inter-alia* deposed in his cross-examination to the effect that he had made the request for grant of sanction under Section 39 of the Arms Act in July, 2019 and had received the sanction under Section 39 of the Arms Act on 09.07.2019 through dak from the office of PW20 DCP Manishi Chandra. It is thus an admitted position even on behalf of the prosecution that the cognizance of offence under Section 25 of the Arms Act, 1959 was taken by the Id. Predecessor of this court on 28.02.2019 whereas the sanctions Ex.PW20/A and Ex.PW20/B under Section 39 of the Arms Act, 1959 was obtained only on 09.07.2019. It is thus an admitted position that in the present case the said sanctions were accorded and obtained after filing of the charge sheet and taking of cognizance of the said offence by the Id. Predecessor of this court. It

has been specifically *inter-alia* held by the Hon'ble High Court of Bombay in the case titled as **Abu Rahbar Hasan Khan (supra)** as follows:

"57..... It is an admitted fact that the chargesheet came to be filed against the Appellant on 30.07.2012 whereas witness Sharda Raut (PW23) received papers for sanction on 27.12.2012, on the same day she accorded the sanction; so it can be said that the sanction was accorded after filing of the chargesheet. In view of Section 39 of the Arms Act, 1959, it was expected from the Investigating Officer to seek previous sanction of the District Magistrate to institute prosecution against the Appellant, but no prior sanction was obtained by the Investigating Officer before filing chargesheet. Therefore, charge u/s 25 (1B)(a) is not maintainable. The Trial Court has held that though the sanction is defective, the whole proceedings cannot be vitiated. It is true that the entire prosecution cannot be vitiated for want of sanction, only charge u/s. 25(1B)(a) r/w. Section 27(3) can be vitiated. Though the prosecution is proved the possession of pistol and cartridges with the Appellant, but for want of sanction, the Appellant cannot be convicted for the said offence."

The facts of this judgment are squarely applicable on the facts of the present case. In the present case also, as discussed above, the charge-sheet was filed on 28.02.2019 and the cognizance of the offences was also taken on 28.02.2019, whereas the sanctions Ex.PW20/A and Ex.PW20/B under Section 39 of the Arms Act, 1959 was received only on 09.07.2019. In the said circumstances also and the law laid down in the above said judgment, the charge against the accused persons under Section 25(1B)(a) of the Arms Act, 1959 is not maintainable and both the accused persons are liable to be acquitted in this case for commission of offence punishable under Section 25(1B)(a) of the Arms Act, 1959. In view of the above said discussion and totality of the facts and circumstances of the case, the prosecution has failed to prove beyond reasonable doubt that both the accused persons were found in

possession of one pistol 7.65 mm each along with five live cartridges each without any valid license and hence both the accused persons, namely, Jamsheed Zahoor Paul and Parvaiz Rashid Lone are liable to be acquitted under Section 25(1B)(a) of the Arms Act, 1959. Both the accused persons are thus acquitted under Section 25(1B)(a) of the Arms Act, 1959.

CHARGE UNDER SECTION 18/20 OF UA(P)A

22. The arguments of Id. Addl. PP for State and Id. Counsels for accused persons would be referred in the relevant paragraphs of the judgment.

23. Ld. Addl. PP for the State has submitted that during investigation it was revealed that both the said accused persons were propagating the ideology of terrorist outfit ISIS in India and they were also in touch with another ISIS militant, namely, Abdullah Basith who had been arrested by National Investigation Agency (NIA) in case RC No.04/2016/NIA/DLI and on the basis of said evidence on 29.10.2018, Section 18/20 of UA(P)A was added in the present case by PW16. He submitted that thereafter the investigation of the present case was transferred to PW23 ACP Govind Sharma. He also referred to the testimony of PW2 Mir Afzal Hussain, employee of Shaka Guest House at near Jama Masjid, Delhi.

24. On the other hand, Id. Counsel for accused persons submitted that there is no evidence on record that the accused persons or specifically the accused Jamsheed Zahoor Paul came in contact or touch with ISIS militant, namely, Abdullah Basith. They further referred to the

testimony of PW2 and submitted that PW2 was receptionist in Shaka Guest House and prosecution from his testimony has at maximum proved that the accused Jamsheed Zahoor Paul stayed in the said guest house on 28.07.2018 and checked out on 29.07.2018, however, there is nothing on record to show that the said accused had met any said Abdullah Basith or any other militant there. He also referred to cross-examination of PW23 wherein the said witness perused the judicial file and stated that he did not find any such letter on judicial record to show that Special Cell, Delhi Police had received letter dated 28.09.2018 from NIA informing that the accused persons in the present case were in touch with Abdullah Basith, who was under arrest at that time in RC No.04/2016/NIA/DLI. They also referred to the cross-examination of PW19 Sh.Arvind Digvijay Negi, IPS, who admitted in his cross-examination that NIA in RC-04/2016/NIA/DLI filed charge-sheet stating that no prosecutable evidence could be found against accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone.

25. In that regard, perusal of the evidence led by the prosecution would show that in fact there is no evidence on record to prove that the accused persons or specifically the accused Jamsheed Zahoor Paul came in contact or touch with ISIS militant, namely, Abdullah Basith. PW2 Sh. Mir Afzal Hussain has deposed to the effect that he was serving as a receptionist in Shaka Guest House near Jama Masjid, Delhi and as per record on 28.07.2018 at about 05.30 p.m., one guest, namely, Jamsheed Zahoor Paul came there for stay. He further deposed to the effect that he checked in the room no. 113 at 05.30 p.m. and thereafter on the next day i.e. 29.07.2018, he had checked out of the room at 02.50 p.m. The copy of the relevant page of the guest entry containing

relevant entry has been proved as Ex.PW2/A and copy of Aadhar Card is Ex.PW2/B and the seizure memo in that regard has been proved as Ex.PW2/C. From the said testimony of PW2, the prosecution at best has proved that accused Jamsheed Zahoor Paul stayed in the said guest house on 28.07.2018 and checked out on 29.07.2018, however, there is nothing on record to show that the said accused had met any said Abdullah Basith or any other militant there. PW23 in his cross-examination has also *inter-alia* deposed that there is no document to show that accused Jamsheed Zahoor Paul had met anyone during his stay in hotel Shaka. Cross-examination of PW23 ACP (Retd.) Govind Sharma also mentions to the effect that the said witness perused the judicial file, however, did not find any such letter on judicial record to show that Special Cell of Delhi Police had received letter dated 28.09.2018 from NIA informing that the accused persons in the present case were in touch with Abdullah Basith who was under arrest at that time in RC No. 04/2016/NIA/DLI. Similarly, PW19 Sh.Arvind Digvijay Negi, IPS during his cross-examination *inter-alia* admitted that NIA in RC No. 04/2016/NIA/DLI filed charge sheet stating that no prosecutable evidence could be found against accused Jamsheed Zahoor Paul and Parvaiz Rashid Lone. He also deposed to the effect that there was no witness or documentary or electronic evidence found during investigation of RC No. 04/2016/NIA/DLI to show that accused persons had conspired to commit terrorist act. The prosecution has thus failed to prove that the accused persons were propagating the ideology of terrorist outfit ISIS in India and they were also in touch with another ISIS militant, namely, Abdullah Basith, who had been arrested by NIA in case RC No. 04/2016/NIA/DLI. Similarly, no material has been placed on record to prove that the accused persons were members of the

terrorist organization IS-JK and conspired with other co-accused persons Asif Nazir Dar @ Omarbin Nazir (since expired) Adil Vani @ Adil Thokar (absconding) to commit terrorist act or acts preparatory to the commission of terrorist act.

26. Ld.Addl. PP for State has referred to the testimony of PW15 Scientist (Retd) Sh. Ombir Singh and submitted that two mobile phones each were recovered from the possession of both the accused persons. He referred to CERT-In report dated 20.12.2018 Ex.PW15/A. He also argued that PW15 has proved Annexure 3 consisting of 95 pages Ex.PW15/D bearing the stamp of CERT-IN on each page which was enclosed with the detailed report containing screenshots of the requisite chat session in the mobile phones. He submitted that these are the photographs/screenshots from a video which would show that the accused persons were talking about army movement etc. He thus prayed that the accused persons be convicted under the relevant provisions of UA(P)A.

27. Ld. Counsel for **accused no. 1 Jamsheed Zahoor Paul (A-1)** submitted that it is the case of the prosecution that two mobile phones each belonging to the accused persons were seized on 07.09.2018, those remained unsealed and accessible till 29.10.2018 and were sent to FSL only on 01.11.2018. In that regard, he has referred to the testimony of PW12 ASI Mahesh, who deposed that on 01.11.2018, IO ACP Govind Sharma had handed over to him CFSL dockets, copy of FIR and other relevant documents and had instructed him to collect the exhibits from MHC(M) PS:Special Cell and to deposit the same in CERT-IN Lodhi Colony. PW12 deposed in his cross-examination that

he had deposited the same in CERT-IN on 01.11.2018. Ld. Counsel for accused Jamsheed Zahoor Paul further referred to testimony of PW16 SI Manoj Singh who *inter-alia* deposed in his cross-examination that the phones seized by him were not sealed and were kept open for investigation and that during the course of investigation he made efforts to switch on the phones and volunteered that two phones could be switched on whereas the other two could not be switched on. PW16 further deposed in his cross-examination that he kept the mobile phones recovered in the present case till he handed over the case file to the subsequent IO on 29.10.2018. PW16 further deposed that he had handed over the case property including the mobile phones to the subsequent IO ACP Govind Sharma on 29.10.2018 and that he had handed over the mobile phones in unsealed condition to subsequent IO. PW16 also admitted that he had not ever deposited the mobile phones in the malkhana of the police station in this case. He argued that no satisfactory explanation has been offered for the prolonged custody of the devices with the IO and further it has not been explained as to why the said devices were not deposited in the malkhana and promptly sent for forensic examination. He argued that this deviation from the standard procedure casts a serious doubt on the integrity of the alleged digital evidence. He further argued that the prosecution has relied upon screenshots allegedly extracted from the mobile phone of accused no. 2 Parvaiz Rashid Lone vide Ex.PW15/D to attribute certain BBM IDs to the accused persons, however, no investigation was done to independently verify the identity of the users operating the said IDs. He submitted that the attribution rests solely on the disclosure statements without any technical analysis or documentary proof or independent corroboration. He submitted that there is no evidence on record to

establish the identity of the alleged suspicious persons operating the BBM IDs referred to by the prosecution and that there is also no material to suggest that such IDs were linked to persons associated with any proscribed organization. He further argued that the CERT-IN report Ex.PW15/A records that data extraction from the two mobile phones recovered from accused no. 1 Jamsheed Zahoor Paul did not yield any incriminating material as one device was not capable of storing multimedia or instant massaging applications while the other was found damaged and non functional. He thus submitted that in the said circumstances the digital evidence does not advance the prosecution case under UA(P)A in any manner and prayed that the accused Jamsheed Zahoor Paul be acquitted in this case under Section 18/20 UA(P)A.

28. In that regard, the Id. Counsel for **accused no. 2 Parvaiz Rashid Lone (A-2)** argued that there is no material on record to show membership of terrorist organization and commission/preparation of any terrorist act. He submitted that it has been alleged by the prosecution that Asif Nazir Dar and Adil Vani are ISJK handlers and accused no. 2 was communicating with them through BBM App on his phone. He submitted that it is denied that the screenshots of chats Ex.PW15/D are from the mobile phone of A-2. He submitted that the prosecution has not led any evidence to prove that persons who are being allegedly corresponded with in Ex.PW15/D are members of ISIS or that they or the accused persons had any discussion regarding commission or preparation of a terrorist act. He argued that only assuming without admitting that A-2 had communicated with the alleged BBM IDs, mere alleged BBM chats with unidentified persons,

even if carrying a weapon in their profile picture and assumed to be members of any terrorist organization do not constitute membership within the meaning of Section 20 UA(P)A in the absence of any independent and corroborative evidence. He argued that membership under Section 20 UA(P)A cannot be a passive membership and has to be treated as an active membership which results in participation in the acts of the terrorist organization and the prosecution must lead specific evidence to connect an active role by the accused with particular incidents of violence and terrorism for conviction under Section 20 UA(P)A. He also submitted that the screenshots of the chats Ex.PW15/D are wholly inadmissible in the evidence as the same are photographs/screenshots from a video admittedly taken on 09.11.2018 as seen at one minute 13 seconds of video in pendrive Ex.PW15/P1. He further argued that it has been admitted by PW16 (IO) as well as PW7 [(MHC(M))] that the mobile phone of A-2 i.e. A2-MOB was kept open with the IOs from 07.09.2018 till 01.11.2018 which raises a strong possibility of tampering with the phone. He further argued that it has been admitted by the prosecution that the phone was sealed and sent to CERT-IN on 01.11.2018, however, PW15 i.e. the forensic examiner has admitted that no analysis of the phone was conducted prior to 07.12.2018 or that he had recorded the video contained in pendrive Ex.PW15/P1. He argued that in the said circumstances, the prosecution has failed to establish untampered and continuous chain of custody of the alleged screenshots of the chats and further such contradictions disprove the evidence of PW15 and render Ex.PW15/D completely inadmissible. He further submitted that the certificate under Section 65B of Indian Evidence Act Ex.PW15/E does not disclose the particulars of such devices allegedly used for recording the video dated

09.11.2018 as contained in pendrive Ex.PW15/P1 nor the devices used for taking screenshots therefrom or for taking printouts of the said screenshots Ex.PW15/D as filed along with the report. He argued that in the absence of such mandatory particulars regarding the devices involved in production, storage and transmission of the alleged electronic record i.e. the video and screenshots, the said certificate is inadmissible and such electronic record cannot be relied upon to attract any liability under UA(P)A. He further submitted that the mandatory timelines prescribed under Rules 3 & 4 of The Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 have not been complied with and as such the sanction is defective. He also relied upon the following judgments:

- (i) **Anvar P.V. Vs. P.K. Basheer and Ors., Civil Appeal No.4226 of 2012, date of decision 18.09.2014, [2014] 11 S.C.R. 399: (2014) 10 SCC 473,**
- (ii) **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors., (2020) 7 SCC 1,**
- (iii) **Mahesh Kariman Tirki and Ors. Vs. State of Maharashtra, Through PSO, Crl. Appeal No.136 and 137 of 2017, 2024 SCC OnLine Bom 3353,**
- (iv) **Fuleshwar Gope vs. Union of India & Ors., Crl. Appeal Arising out of SLP (Crl.) No. 4866 of 2023, date of judgment 23.09.2024.**

29. In that regard, PW16 SI Manoj Singh has *inter-alia* deposed in his examination in chief that during the course of interrogation supplementary disclosure statement dated 09.09.2018 and 11.09.2018 of both the accused persons were recorded and in their disclosure statements, both the accused persons had disclosed that they used to communicate with their handlers, namely, Umarbin Nazir and Adil

Thokar on BBM App. He deposed that BBM App ID of accused no. 1-Jamsheed Zahoor Paul (A-1) as told by him is Pehraan Chum and BBM App ID of accused no. 2-Parvaiz Rashid Lone (A-2) as told by him is Umar Khatab. He deposed that he came to know that A-2 used to communicate to Adil Thokar on 3 BBM App IDs and to Umarbin Nazir on 2 BBM App IDs. He deposed that when they examined these IDs, they came across various photographs where the terrorists were holding weapons and the movement of army was being shared. In his cross-examination, PW16 *inter-alia* deposed that mobiles of the accused persons were seized by him in between 02.30 a.m. to 04.30 a.m., he had not noted down the hash value prior to seizing the mobile phones or thereafter and that 2 mobile phones out of 4 mobile phones were operational whereas other 2 were already in switched off condition. He admitted that phones seized by him were not sealed and were kept open for investigation. He volunteered that 2 phones could be switched on whereas the other 2 could not be switched on. He also deposed that he had kept the mobile phones recovered in the present case till he handed over the case file to the subsequent IO on 29.10.2018. He deposed that he handed over the case property including the mobile phones to the subsequent IO ACP Govind Sharma (PW23) on 29.10.2018. He deposed that he handed over the mobile phones in unsealed condition to the subsequent IO and admitted that he had never deposited the mobile phones in the malkhana of the police station in this case. He could not say if the pendrive Ex.PW15/P1 contains video titled WP_20181214_16_21_53_Pro. He denied the suggestion that the said video was recorded by him and the IO ACP Govind Sharma on 09.11.2018 or that therefore he was aware about its contents. He denied the suggestion that the seized mobile phones were deliberately kept in

unsealed condition by him to tamper with them and plant chats on BBM App of seized I-Phone5 (A1428) to falsely implicate the accused persons or that the said phone was tampered with prior to 09.11.2018 by him and ACP Govind Sharma. He also denied the suggestion that he and ACP Govind Sharma sent video dated 09.11.2018 to experts of CERT-In and instructed them to provide screenshots of the same along with their report. He also denied the suggestion that screenshots of the video recorded by him on 09.11.2018 were attached to report of CERT-IN dated 20.12.2018. He was not aware if any extraction report was received from CERT-In of the phones belonging to A-1. He could not comment if no data qua accused A-1 was received from CERT-IN. He deposed that no BBM chats were recovered from the mobile phone of A-1 during CERT-In analysis. PW23 ACP (Retd.) Govind Sharma deposed that on 29.10.2018, the investigation of the present case was entrusted to him as both the accused persons were found to be involved in terrorist activities in different parts of India and were having links with terrorist organization IS-JK. He deposed that during the course of investigation, 4 mobile phones were sent for examination to CERT-IN vide road certificate no. 191/21/2018 Mark X. PW23 *inter-alia* deposed in his cross-examination that 4 mobile phones of the present case were forwarded to CERT-IN on 01.11.2018. He further deposed that prior to 01.11.2018, the said 4 mobile phones were kept in sealed condition in malkhana under the custody of malkhana moharrar. He denied the suggestion that prior to sending the mobile phones to CERT-In, they were in possession of respective IOs in unsealed condition. He admitted that he had not sealed the said 4 mobile phones during his tenure as IO. He denied the suggestion that the above mentioned mobile phones were not sent to CERT-IN on 01.11.2018 or that they

were in fact sent after 09.11.2018 or that I-Phone5 (A1428) Black Colour was tampered with by him and IO PW16 SI Manoj Singh prior to 09.11.2018 or that a video showing tampered chats on the said phone was recorded on 09.11.2018 by him and PW16 or that CERT-IN was asked to provide printouts of the screenshots from the said recorded video. PW7 HC Sushil Kumar, MHC(M), PS:Special Cell has deposed in his examination in chief that on 01.11.2018, 2 yellow envelopes containing 4 mobile phones were sent to CERT-IN through HC Mahesh (PW12) vide RC No.191/21/18. He deposed in his cross-examination that all the 4 mobile phones were sent to CERT-IN on 01.11.2018 in two envelopes as per directions of IO in unsealed condition. He admitted that all the 4 mobile phones were remained with IO till the mobile phones were sent to CERT-In lab. In that regard, PW12 ASI Mahesh has deposed in his cross-examination that he had deposited the envelopes in CERT-In on 01.11.2018, however, he did not recollect if the envelopes collected by him from MHC(M) were in sealed condition or unsealed condition. In that regard, testimony of PW15, a scientist of CERT-In is also important. He deposed to the effect that data from the mobile phones, SIM Cards and memory cards was retrieved using mobile forensic tools and all the retrieved data was transferred to pendrive and provided to Special Cell with his detailed analysis report Ex.PW15/A. The specimen seal of CERT-In is Ex.PW15/B. Annexure 2 Ex. PW15/C annexed with the report contains the photographs from both sides of two packets received, photographs of mobile phones, SIM Card and memory cards. He deposed that Annexure 3 consisting of 95 pages Ex.PW15/D was enclosed with his detailed report containing screenshots of the requisite chat session in mobile phones. He deposed that he had also issued a certificate under Section 65B of Indian

Evidence Act which is Ex.PW15/E. The above said pendrive was proved as Ex.PW15/P1. In his cross-examination, PW15 *inter-alia* deposed that he had received letter dated 31.10.2018 seeking forensic analysis and data retrieval from Special Cell on 01.11.2018. It is pertinent to note that during cross-examination of PW15, the pendrive Ex.PW15/P1 was also played on court computer in the court. PW15 after seeing the report deposed that the extraction process had started on 07.12.2018 at 13:13:09 hours. He deposed that it was probably correct that he did not conduct any data extraction of A-2 mob prior to 07.12.2018 at 13:13:09 hours. He thereafter admitted that he did not perform any analysis of A2 Mob prior to 07.12.2018 at 13:13:09 hours. He admitted that images at Ex.PW15/D are photographs of a phone containing chats. He admitted that the photograph do not contain any date and volunteered that the screens/display of mobile of which photograph was taken generally did not contain any date. He did not remember the date when the photographs of phone screen/display containing chats were taken. He did not remember as to what device was used to take those photographs and deposed that it was a digital device. The said witness further deposed that the digital camera of Nokia Lumina Cellphone was used to take the photographs and that the said cell phone was property of CERT-In. He admitted that the model number, serial number, IMEI number and other details of the Nokia Lumina Cell Phone were not mentioned in his report as well as in his certificate under Section 65B of Indian Evidence Act. He volunteered that he found the same unnecessary. He denied the suggestion that photographs at Ex.PW15/D were in facts screenshots from video of a mobile phone taken by the seizing agency on 09.11.2018. He further denied the suggestion that the screenshots of data displayed on the

mobile phone had not been annexed by him to his report as the same would reveal that the photographs Ex.PW15/D were screenshots from video of a mobile phone taken by the seizing agency on 09.11.2018. He deposed that the devices were received in sealed condition and denied the suggestion that the devices were received in unsealed condition. He specifically deposed that in one of the mobile phone, BBM Chat data was photographed from the mobile display. He deposed that the mobile phone B1Mob was in working condition whereas B2Mob was not in working condition and that no extraction whatsoever was possible/carried out from B2Mob. He could not point out from his report whether B1Mob was a keypad phone or a smart phone. He did not remember if there were applications available or if any *whatsapp*/BBM Chats were found in B1Mob.

30. The digital forensic data retrieval and analysis report of CERT-In dated 20.12.2018 has been proved as Ex.PW15/A. It was *inter-alia* mentioned in the said report that data from the cell phones marked as A1-Mob, A2-Mob and B1-Mob were extracted using mobile forensic equipments and tools and digital data, namely, phone book contacts, SMSs, call logs, media files, documents etc. had been retrieved. It was further mentioned that BBM chat data from cell phone A2-Mob could not be extracted by any mobile forensic work station as well as the mobile forensic equipment, hence as per the international practice, videography of the display of cell phone was done while browsing through BBM Data, namely, chats, images, contacts etc. and in that way mobile display showing BBM Data had been captured in the digital video. It was further mentioned in the said report that the cell phone marked as B2-Mob was noticed to be in a non working condition, so it

could not be interfaced with any mobile forensic equipment/tools to retrieve data from the same. It was further *inter-alia* mentioned that all the requisite data as could be retrieved from the digital items using available digital forensic equipment and tools have been provided into the flash drive and the screenshots of the requisite BBM Chats have been placed at Annexure III (which has been proved as Ex.PW15/D).

30.1 The personal search memo of A-1 has been proved as Ex.PW10/E and personal search memo of A-2 has been proved as Ex.PW10/F. Both the said personal search memos are dated 07.09.2018. The said personal search memos would show that one black colour Samsung Mobile Phone with Airtel SIM and one black colour mobile partially damaged and screen damaged were recovered from A-1 which were kept separately for investigation whereas one black colour Lenovo Mobile Phone having sim of Jio and one I-Phone of black colour were recovered from A-2 which were kept separately for investigation. It is thus the case of prosecution that above said two mobile phones each were recovered from A-1 and A-2 on 07.09.2018 which were kept separately for investigation. In that regard, testimony of PW16 SI Manoj Singh is very important who admitted that phones seized by him were not sealed and that he had kept the mobile phones recovered in the present case till he handed over the case file to subsequent IO on 29.10.2018. He specifically deposed that he handed over the mobile phones in unsealed condition to subsequent IO i.e. PW23 and had not ever deposited the mobile phones in the malkhana of the police station in this case. As discussed above, PW12 ASI Mahesh has deposed that on 01.11.2018, PW23 had handed over to him CFSL dockets, copy of FIR and other relevant documents and instructed him

to collect the exhibits from MHC(M) PS:Special Cell and to deposit the same in CERT-In Lodhi Colony. PW12 deposed that he deposited the same in CERT-In on 01.11.2018 and did not recollect if the envelopes collected by him from MHC(M) [PW7] were in sealed condition or unsealed condition. PW7 HC Sushil Kumar, MHC(M) has deposed in his cross-examination that all the 4 mobile phones were sent to CERT-In on 01.11.2018 in two envelopes as per direction of IO in unsealed condition. PW7 admitted that all the 4 mobile phones remained with IO till the mobile phones were sent to CERT-In lab. PW15, the Scientist from CERT-In has specifically deposed that the extraction process had started on 07.12.2018 at 13:13:09 hours. He also admitted that he did not perform any analysis of A-2Mob prior to 07.12.2018 at 13:13:09 hours. It would show that as per the case of the prosecution itself, the said mobile phones were seized from A-1 and A-2 on 07.09.2018, however, the said mobile phones were kept in unsealed condition with the IOs and were only sent for analysis to CERT-In on 01.11.2018 in two envelopes in unsealed condition and were only analysed by CERT-In on 07.12.2018 at 13:13:09 hours. It would show that the said mobile phones remained with the IOs in unsealed condition for about two months. No satisfactory explanation has been offered for the said prolonged custody of the said mobile phones with the IOs. It has also not been explained as to why the devices were not deposited in the malkhana and promptly sent for forensic examination. It raises a strong doubt of tampering with the said mobile phones as without any plausible or satisfactory explanation the prolonged custody of the said devices remained with the IOs and that too in an unsealed condition. In the said circumstances, no reliance whatsoever can be placed on the alleged data including the above said screenshots of BBM Chats as

allegedly recovered from the said mobile phones. In the said circumstances, no reliance whatsoever can be placed on Ex.PW15/D stated to contain screenshots of the requisite chat session in the mobile phones or the contents of pendrive Ex.PW15/P1. As discussed above, PW15 has admitted that the images at Ex.PW15/D were photographs of a phone containing chats. He earlier did not remember as to what device was used to take the said photographs, however, deposed that it was a digital device and subsequently deposed that digital camera of Nokia Lumina Cell Phone was used to take the photographs. He also deposed that the said Nokia Lumina Cell Phone is a property of CERT-In and admitted that its model number, serial number, IMEI number and other details of the Nokia Lumina Cell Phone were not mentioned in his report as well as in his certificate under Section 65B of Indian Evidence Act Ex.PW15/E. The Hon'ble Supreme Court of India in the case of **Anvar P.V. (Supra)** has *inter-alia* held that under Section 65B (4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied that (a) there must be a certificate which identifies the electronic record containing the statement, (b) the certificate must describe the manner in which the electronic record was produced, (c) the certificate must furnish the particulars of the device involved in the production of that record, (d) the certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act and the certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device. It was also held that all the safeguards are taken to ensure the source and authenticity which are the two hallmarks pertaining to electronic record sought to be used as evidence. It was also held that

electronic records being more susceptible to tampering, alteration, transposition, excision etc. without such safeguard, the whole trial based on proof of electronic records can lead to travesty of justice. It was also held that only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A-Opinion of examiner of electronic evidence. It was also held that the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of Evidence Act are not complied with, as the law now stands in India. In the latest judgment in the case of **Pooranmal vs. The State of Rajasthan & Anr., Arising Out of SLP (Crl.) No. 1977 of 2026, date of decision 10.03.2026**, the Hon'ble Supreme Court of India held after referring to the cases in **Arjun Panditrao Khotkar (supra)** that it has re-affirmed and clarified the position laid down in **Anvar P.V. (supra)** observing that the requirement of a certificate under Section 65B of the Evidence Act (Section 63 of BSA) for admissibility of electronic evidence is mandatory and cannot be dispensed with. The perusal of the certificate dated 20.11.2018 under Section 65B (4)(c) of the Indian Evidence Act, 1872 as given by PW15 has been proved as Ex.PW15/E. It is an admitted position by PW15 that images Ex.PW15/D were photographs of a phone containing chats and digital camera of Nokia Lumina Cell Phone was used to take the photographs and the said cell phone is property of CERT-In. He also admitted that model number, serial number, IMEI number and other details of said Nokia Lumina Cell Phone are not mentioned in the said certificate under Section 65B of Indian Evidence Act Ex.PW15/E. Perusal of the said certificate Ex.PW15/E also shows that it does not mention the manner in which

the electronic record was produced and it also does not furnish the particulars of the device involved in the production of the said record. The said certificate Ex.PW15/E is thus totally inappropriate and does not fulfil the mandatory requirements of Section 65B of the Indian Evidence Act. In the said circumstances, the electronic record particularly Ex.PW15/D i.e. the screenshots of the requisite chat session in the mobile phone cannot be read in evidence and becomes inadmissible in evidence and cannot be relied upon to support the case of the prosecution. Further, during perusal of pendrive Ex.PW15/P1 in the court, it seemed that it had the time stamp of date 09th November, however, as mentioned above, the mobile phones were sent to CERT-In on 01.11.2018 and the extraction process as per testimony of PW15 had started only on 07.12.2018 at 13:13:09 hours. On 9th November, 2018, the said mobile phones should be in the custody of CERT-In, however, the prosecution has failed to explain this lacuna. Moreover, the prosecution has also failed to prove that the accused persons used to communicate with their handlers, namely, Umarbin Nazir and Adil Thokar on BBM App. The prosecution has also failed to prove that BBM App ID of accused Jamsheed Zahoor Paul was Pehran Chum and BBM App ID of accused Parvaiz Rashid Lone was Ummar Khatab. The prosecution has also not proved that BBM App IDs of said Adil Tokhar was Abu Dujana, Usma Bhai and Bike Rider. Similarly, the prosecution has also not proved that BBM App IDs of said Umar Ibn Nazir and Ummar Khatab was Omar. The prosecution has also failed to prove that the accused persons were connected to IS-JK. The prosecution has thus failed to prove the charge against both the accused persons that on 06.09.2018 they being the member of banned terrorist organization ISIS conspired with each other and with other persons,

namely, Asif Nazir Dar @ Ummaar Ibn Nazir (subsequently expired) and Adil Vani @ Adil Thokar (absconding) to commit the terrorist act or any act preparatory to the commission of a terrorist act at different places within Indian territory and in pursuance of the said conspiracy they both purchased/collected weapons for the purpose of committing terrorist act and also had chats with the said persons through BBM and Whatsapp in that context. The prosecution has also failed to prove that during the said period prior to 06.09.2018, both the accused persons were found to be members of ISIS which is a banned terrorist organization and is involved in committing terrorist acts. Both the accused persons are thus liable to be acquitted and are thus acquitted under Section 18/20 of UA(P)A.

31. In view of the above said facts and circumstances of the case and discussion, it is held that the prosecution has failed to prove its case beyond reasonable doubt against both the accused persons. Both the accused persons, namely, Jamsheed Zahoor Paul (A-1) and Parvaiz Rashid Lone (A-2) are thus acquitted in this case under Section 18/20 of The Unlawful Activities (Prevention) Act, 1967 and also under Section 25(1B)(a) of the Arms Act, 1959.

32. Both the accused persons A-1 and A-2 are running in judicial custody in this case. Both the said accused persons be released from judicial custody, if not required to be detained in any other case. The bail bonds of the accused persons A-1 and A-2 as earlier furnished in compliance of Section 481 BNSS (437A Cr.PC) are accepted for six months from today.

33. File be consigned to the record room.

**Announced in the open
Court on 19.03.2026.**

**(Amit Bansal)
Additional Sessions Judge-02
New Delhi District
Patiala House Courts
New Delhi**