

**IN THE COURT OF XLIX ADDL. CITY CIVIL & SESSIONS
JUDGE, (SPECIAL COURT FOR NIA CASES)
AT BENGALURU**

DATED : This the **14th** day of **June, 2021**

PRESENT:

Dr. Kasanappa Naik, *M.A., LL.M., Ph.D.*
XLIX Addl. City Civil & Sessions Judge,
(NIA Spl. Court) (CCH-50), Bengaluru.

S.C.NO.953/2017 C/W S.C.No.1386/2016

BETWEEN

The State of Karnataka by
Sadashivanagar Police Station,
Bengaluru.

. . Complainant

(By : Learned Spl. Public Prosecutor)

AND

Sabahuddin @ Sbahuiddin Ahamad
@ Saba @ Farhan and others

.. Accused

Mohammed Habeeb /**Accused No.7**

. . Applicant

(By : Sri Mohammed Tahir, Advocate)

**ORDERS ON APPLICATION FILED UNDER SECTION 227
OF CR.P.C., BY ACCUSED NO.7**

The learned counsel for the accused No.7 has filed
this application under Section 227 of Cr.P.C., praying the

Court to discharge him from the offences punishable under Sections 120-B, 121, 121-A, 122, 123, 307, 302 of the IPC, 1860, Sections 25, 27 of the Indian Arms Act, 1959, Sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908 and Sections 10, 13, 16, 17,18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and acquit him.

2. It is contended in the application that the complainant Police have not stated anything in the charge-sheet about the accused and also not collected any evidence which show that the accused has any distinct knowledge of the incident or crime involved in this case at any point of time. The complainant Police have not arrested any accused persons in this case for a considerable period of time and only after the arrest of accused No.1 by Lucknow Police in their Crime No.8/2008 registered by civil line Police, Lucknow, U.P., and his voluntary statement was recorded by the said Police on 19.02.2008 in which he has disclosed the alleged involvement of this accused regarding his assisting and facilitating the shootout incident involved in this case. The Police have made the petitioner as accused subsequent to

the said discloser. The accused No.1 said to have given his voluntary statement on 29.03.2008, which runs about 35 pages, wherein, he has narrated so many incidents and also stated that in the month of May, 2005, he went to Tripura, Agartala and met one Habeeb Miya/accused of this case and befriended with him in order to seek his assistance to cross the national border illegally, and to visit Bangladesh without disclosing his true intention, he went with him and came back with him from Bangladesh and also narrated incident which took place in the month of February, 2006, when second time he crossed the border illegally to Bangladesh, and at that time, accompanied this accused as he was away on Jammath tour. But helped him in connecting with one Pappu, who in turn, introduced accused No.1 with one Saif-ul-Islam, who actually helped him in crossing the border. The accused No.1 in his voluntary statement has revealed the name of many persons, who facilitated him in getting accommodation, helped him to get admission and other necessary help in the course of his stay in Bengaluru, and the Police have not made all such persons as accused nor cited them as

witnesses though having all informations. It is further stated that after the arrest, the Police recorded the statement of this accused on 22.03.2017 which has no legal sanctity. In the said statement, the accused narrated the incident of the year 2005 without mentioning any date and month on which he helped one Abbas/A.1 to cross the India-Bangladesh border, and also narrated another incident of the year 2006, when very same person i.e., Abbas/A.1 approached him to cross the border and in his absence, he introduced one of his relatives, Pappu, who in turn introduced said Abbas to one Saif-ul-Islam, who actually helped said Abbas to cross the border illegally. The voluntary statement recorded by the Police has no evidentiary value and the Police forced to identify the photo of Abbas, who is neither accused nor the witness in this case. The Police have also not made efforts to confront accused No.1 and accused No.7 to verify their respective claim and to prove their charges against them. The Police though filed a lengthy charge-sheet, but not produced even a single piece of evidence against this accused to prove the charges against him. The accused is languishing in jail

without committing any crime nor having any knowledge of the crime and his involvement. Thus, prayed to allow the application.

3. The learned Special Public Prosecutor has filed his detailed objections denying the averments of application on various grounds. A perusal of records, it is seen that earlier, the accused No.7 had filed an application under Section 239 of Cr.P.C., on 06.10.2017 and by way of memo dated 30.11.2017 not pressed the same with a permission to file fresh application under the correct provisions of law. The learned Special Public Prosecutor during his arguments has submitted that in fact, there is no need to file application for discharge and that the prosecution also need not file objections, but however, adopted the objections filed against the application under Section 239 of Cr.P.C., on 08.02.2018, as objections against this application.

4. The learned Special Public Prosecutor in the said objections stated that the accused No.1 met this accused No.7 in a Masjid at Agartala, Tripura State and got

acquainted with him and that accused No.1 alleged to have stated that he is engaged in Jihadi activities and that the terrorist organizations in Pakistan have trained him to commit terrorist and disruptive activities in Bengaluru and that he had to prepare recce, after meeting a person at Dakha of Bangladesh, who is belonging to terrorist organization of Pakistan and after taking financial assistance from him and therefore, requested accused No.7 to assist him to cross the border illegally into Bangladesh from India and accordingly, the accused No.7, who was also having Jihadi mindset, determined to assist accused No.1 to commit terrorist activities in Bengaluru in the name of Jihad. It is further stated that the accused No.7 took accused No.1 to Cumilla City of Bangladesh by crossing border illegally and thereafter, sent to Dhaka. Accused No.1 met the terrorists belongs to Pakistan based terrorist organizations and again, he came back to Cumilla and met accused No.7. Again accused No.7 helped accused No.1 to cross the border into India illegally and helped him to come to Agartala of Tripura State. The accused No.1, by crossing the border of India and entering into Bangladesh met many

persons of LeT organizations of Pakistan. It is stated that accused No.1 after coming back from Bangladesh along with accused No.2 barged into the compound of Indian Institute of Science of Bengaluru and assisted accused No.1. Thereafter, accused No.1 and 2 have escaped from Bengaluru after committing the terrorist acts. The accused No.7 though having knowledge about involvement of accused No.1 and 2 in Bengaluru incident, has assisted them to escape in 2006 to go to Bangladesh from India.

5. It is stated that the investigation officer has filed charge-sheet after collecting necessary materials. There are sufficient and reliable evidence collected against accused No.7 and there are no grounds to discharge him. The application is filed on imaginary grounds. The accused has not produced sufficient materials and on the other hand, there are sufficient materials to frame charge against accused for the offences alleged. Thus, prayed to dismiss the application.

6. It is seen that the I.O., has also filed his report dated 19.01.2018 in support of the said objections.

7. I have heard the arguments addressed by the learned counsel for accused No.7 and learned Special Public Prosecutor through video conference and I have perused the entire materials on record.

8. The points that arise for my consideration are as under :-

- 1) *Whether the accused No.7 has made out grounds for his discharge under Section 227 of Cr.P.C?.*
- 2) *What order?*

9. My findings on the above said points are as under:-

Point No.1 :- In the affirmative ;

Point No.2 :- As per final order for the following:-

REASONS

10. **POINT NO.1:** - The learned counsel for the accused No.7 has argued that the accused No.7 is implicated in this case in view of alleged confession statement given by accused No.1 before Lucknow Police in 2008 and thereafter, the I.O., of this case took custody of

accused No.1 under body warrant and produced before the Court. It is further argued that after investigation the I.O., alleged to have recorded the voluntary statement of accused No.1, wherein the accused No.1 alleged to have stated about this accused No.7 for having he assisted accused No.1 to cross the border from India to Bangladesh and thereafter, accused No.7 alleged to have assisted accused No.1 to cross the border from Bangladesh to India and thus, as per the prosecution, this accused No.7 though having knowledge that he is involved in the shootout case in IISc., in Bengaluru and he too have Jihadi mindset and thus, even this accused No.7 is also involved in the crime. The learned counsel for the accused further contended that perusal of alleged confession statement of accused No.1 nowhere disclosed that this accused had knowledge about accused No.1 been Jihadi or that he is intended to commit terrorist activities in Bengaluru and such being the case, even if it is accepted that accused No.7 helped accused No.1 to cross the border to go to Bangladesh, it does not prove the ingredients of the offences alleged and there are no grounds to frame charge against this accused. It is

further argued that even in the alleged confession statement of accused No.1 recorded by the I.O., of this case indicate that accused No.1 has not disclosed his real name before accused No.7 nor he is stated anything about alleged terrorist acts going to be committed in Bengaluru or his nexus with terrorists in Pakistan and there is no basis to involve this accused No.7 in the crime. It is also argued that there is no iota of evidence to show that that this accused No.7 involved in terrorist activities nor there is any evidence to show that this accused had constant touch with accused No.1 in assisting in his terrorist activities and there is no *prima facie* case against this accused No.7 to frame charge and to proceed with the case. It is also argued that the voluntary statement of accused No.7 alleged to have been recorded by the I.O., is containing false facts, as accused No.7 never confessed that he had knowledge about the terrorist acts of accused No.1 and so also his nexus with other accused of this case, who are all residing in Pakistan. It is further argued that after alleged recording confession statement of accused No.7, the I.O., never recorded the statement of Pappu, Soheli or others to prove

that this accused asked them to help accused No.1 to cross the border to Bangladesh nor any mahazar conducted regarding meeting of accused No.1 and 2 at the alleged places etc., and thus, the alleged confession statement of accused No.7 is totally baseless and inadmissible in evidence. It is further argued that the voluntary statement of this accused is alleged to have been recorded by the I.O., during investigation is hit by Section 25 of Indian Evidence Act, as nothing has been discovered or seized from this accused to make it admissible under Section 27 of the Indian Evidence Act and continuing the prosecution against this accused is an abuse of process of law and that the accused is innocent having mother, wife and children, who have all become support-less in view of detention of this accused in the crime and thus prayed to allow the application and discharge the accused under Section 227 of Cr.P.C.

11. In support of the arguments, the learned counsel for the accused No.7 relied upon the following decisions :-

- 1) *2014 Cri.L.J. 1444 (The State of Tamilnadu vs. N. Suresh Rajan and others,*

2) *AIR 2010 SC 2943 (Ram Swaroop and others vs. State of Rajasthan).*

12. On the other hand, the learned Special Public Prosecutor has contended that the application filed by accused No.7 is not maintainable, as there are sufficient grounds against this accused to show that this accused No.7 had complete knowledge about accused No.1, who is terrorist and had conspiracy with other accused persons residing at Pakistan, in spite of that he helped accused No.1 to cross the border of Bangladesh, where the accused held discussion with accused No.3 regarding commission of terrorist acts at IISc., Bengaluru and even this accused is equally liable to answer the charges in this case. It is further argued that it is not the requirement of law that a thing or object is to be discovered in pursuance to confession statement under Section 27 of Indian Evidence Act, to make it admissible. Even a discovery of fact is also admissible in evidence and that as per the voluntary statement of accused No.7 recorded by the I.O., it is discovered that after committing terrorist acts, the accused No.1 escaped to Bangladesh by crossing border from Agartala and therefore, even this accused No.7 is deemed

to have committed the offence alleged in this case and hence, he cannot be discharged. It is also argued that at this stage, the Court need not enter into deep analysis of the materials on hand, and that the Court has to presume that the prosecution has made out a *prima facie* case to proceed against accused No.7. The learned Special Public Prosecutor has further argued that there is evidence to show that the accused No.1 is member of LeT, which is banned organization under the provisions of Unlawful Activities (Prevention) Act, 1967. It is also argued that the prosecution has made out *prima facie* case to frame charges against accused No.7 and thus, prayed to reject the application and frame charges against the accused.

13. In support of the arguments, the learned Special Public Prosecutor has relied upon the following decisions :-

- 1) 2014 Cri.L.J. 1444 (*The State of Tamilu Nadu vs. N. Suresh Rajan and others*,
- 2) 2010 Cri.L.J. 1427 (*P. Vijayan vs. State of Kerala*)
- 3) AIR 2010 SC 1589 (*State of Tamilu Nadu vs. J. Jayalalitha*)
- 4) 2005 Cri.L.J. 3950 (*State [NCT of Delhi] vs. Navajot Sandu and others*)

14. Keeping in mind, the rival submissions, I have carefully perused the materials on record. It is seen that earlier, this Court having heard both the sides on the present application filed under Section 227 of Cr.P.C., and had passed an order dated 23.08.2018, dismissing the application. Thereafter, it is further seen that the accused No.7 preferred Cri.R.P.No.936/2019 before the Hon'ble High Court of Karnataka, and the Hon'ble High Court of Karnataka by an order dated 18.11.2020, allowed the said criminal revision petition and set-aside the order passed by this Court, with a direction to this Court, to keep pending the application under Section 227/229 of Cr.P.C., till hearing of the parties before charge and further, directed to pass an appropriate order on the application at the time of hearing on charge. In the meanwhile, in this case the the learned Special Public Prosecutor has filed memo on 04.01.2018 praying the Court, to club S.C.No.1386/2016 pending on the file of this Court with S.C.No.953/2017 and to commence trial in the case. Thus, the Court has passed an order and clubbed both these cases i.e. S.C.No.953/2017 and S.C.No.1386/2016. Earlier, the matters were pending on

the file of learned XXXIV Addl. City Civil and Sessions Judge, (CCH-35), Bengaluru, and as per the notification of the Hon'ble Prl. City Civil and Sessions Judge, Bengaluru dated, 29.04.2021, both these cases were transferred to this Court. Earlier, the learned Presiding Officer of CCH-35, heard both side and on perusing the materials on record, passed an order dated 05.09.2019 and posted the matter for framing charges against accused No.1 and 7. After receipt of the order of the Hon'ble High Court of Karnataka, Bengaluru, hearing on the application was resumed and while, the application was heard in part, the matters were transferred to this Court on 03.05.2021.

15. The facts of the case stated to be in brief are as under :-

It is seen that in pursuance to the complaint filed by Sri Madhusudhan Rao B., S/o Rama Rao, the Senior Manager, Cadila Pharmaceuticals Research Center, IISc., Bengaluru, on 28.12.2005 at 8.30 pm., the SHO of Sadashiva Nagar, Bengaluru has registered the case in Crime No.110/2005, against unknown persons, under Section 307 of the IPC, Section 25, 27 and 28 of the Indian

Arms Act, 1969 and Section 4 and 5 of Explosive Substances Act, 1908 and issued FIR. The complaint disclose that an annual seminar was held in J.N. Tata Auditorium in IISc., on the subject of operation research in infrastructure development and that a number of delegates had attended the said seminar, which was held in Satish Dhavan Hall. It is stated that at about 7.00 pm., wherein himself and security Sri Suresh and Sri Patel were on duty, he heard a sound of explosion outside the J.N. Tata Auditorium. Immediately, himself and his security - Muninarayana came out running from the lab and heard the sound from Monsanto Green House side. When he looked towards SID building, he noticed one person wearing pant, shirt and a sleeveless sweater, aged about 25 to 30 years and he was firing indiscremenatly and came towards the lab of these persons. He also fired towards door of lab of these persons and ran towards tunnel situated towards north of the lab. In the firing, the Car bearing No.KA-04-MA-1973 sustained damages, but the said person was consistently firing. Thereafter, the said person ran away along with gun and when they came towards the main gate

of the lab, he noticed that his employee - Patel had sustained fire injury and some employees shifted the said Patil to hospital in a vehicle. He came towards J.N. Tata Auditorium and around 25 feet away from main gate of the auditorium, one grenade was lying, blood was fallen on the road towards east of the said place, and also at a place towards east around 15 to 25 feet away from the lab. Thereafter, he came to know that the persons sustained injuries were shifted to hospital. Thereafter, it transpired that in the incident, one Dr. M.C. Puri, the delegate sustained injuries and died in the hospital. Whereas, one Sri Pankaj Gupta, Sri Patelappa @ Patel, Sri Vijayachandra, and Smt Beena sustained injuries. Thereafter, Section 302 of the IPC was invoked in the case. The records disclose that as per the memo dated 01.08.2006, the investigation was assigned to Sri Jithendranath, ACP, Anti-terrorist Squad, CCB, Bengaluru, and said officer has conducted investigation in the case and filed charge-sheet under Sections 120-B, 121, 121-A, 122, 123, 307, 302 of the IPC, Sections 25, 27 of the Indian Arms Act, 1969, 3, 4, 5 and 6 of the Explosive Substance Act, 1908 and Sections 10, 13,

16, 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against this accused No.7 and so also accused No.1 and showing accused No.2 to 6, 8 and 9 as absconding and registered the case in C.C.No.24511/2016, on the file of 1st ACMM Court, Bengaluru. The charge-sheet in S.C.No.1386/2016 arose out of C.C.No.12872/2008. Whereas, the case against accused No.7 in S.C.No.953/2017 was arose out of C.C.No.24511/2016 and again the case against accused No.2 to 6, 8 and 9 was split-up and pending in C.C.No.19018/2017 on the file of 1st ACMM Court, Bengaluru. The records further disclose that after the date of incident, till 2008, the investigation officer was clueless about the culprits of the crime involved in this case and it all came to light when the Police of Lucknow i.e., Hussainganj Police Station in Crime No.47 to 52/2008 under Sections 121, 122, 123, 207 of the IPC and Section 25 of the Arms Act, arrested accused No.1 - Sabahuddin @ Sbahuiddin Ahamad @ Saba @ Farhan son of Shabbir Ahamad @ Wakil Sahib, in connection with their case and while recording the voluntary statement of accused No.1, he alleged to have disclosed his involvement in this case

and also disclosed the name of accused No.2 to 9. Thereafter, the I.O., took steps, and obtained body warrant of accused No.1 for the first time from the said case/C.C.No.12872/2008 by an order dated 01.03.2008 and accused No.1 was produced in the Court below on 28.03.2008, and he was remanded to Police Custody as per the request of the I.O., and the then I.O., recorded voluntary statement of accused No.1, wherein, the accused No.1 had revealed the role of himself and accused No.2 to 9 and thereafter, in pursuance of the said voluntary statement, further investigation was conducted and charge-sheet against him and others was filed on 26.06.2008, by showing other accused as absconding. The case against accused No.1 was committed on 28.10.2016. The records further disclose that though the name of accused No.7 was came to light in the year 2008, but no steps were taken against accused No.7 to arrest him. In the year 2017, the accused No.7 was arrested in Agartala of Tripura State and he was produced before the Court below and accused No.7 was subjected to interrogation and his voluntary statement was recorded. It further reveal that in pursuance of the said

voluntary statement of accused No.7, the I.O., has conducted further investigation, but no material objects was recovered nor the statement of witnesses, who came to light in the statement, is recorded. The statement of accused No.1 recorded by Lucknow Police was in Hindi language and the learned counsel for accused No.7 has produced its English translation. The statement of accused No.1 recorded by the I.O., in this case is also available on record.

16. A perusal of voluntary statement of accused No.1 said to have been given by him before the Police of Lucknow reveals that he has mentioned the names of accused No.2 – Hamza, accused No.3 – Yusuf Bhai, accused No.4 – Abdul Azeez @ Vali, accused No.8 – Zaki-ur-Rehaman Lakvi and though, he has mentioned that he and accused No.2 came over to Bengaluru to carryout terrorist activities at IISc., but he has nowhere stated the name of accused No.7 that accused No.7 has assisted him to cross the border and to go to Bangladesh. Further, the name of accused No.7 first time surfaces only in the voluntary statement of accused No.1 said to have been recorded by the I.O., in this

case. On careful perusal of the voluntary statement of accused No.1 recorded by the I.O., in this case on 29.03.2008, wherein, the names of accused No.3 – Mujamil @ Yusuf, accused No.4 – Abdul Azeez, accused No.5 – Athif, accused No.6 – Abubakar, and accused No.9 – Basheer, have been surfaced for having assisted him in carrying out the terrorist activities. The relevant portion of the statement of accused No.1 recorded by the I.O., which alleged to incriminate the accused No.7 in the crime is at page No.15, wherein, the accused No.1 as per the call of accused No.4 - Abdul Azeez, he left for Kolkata, in order to go to Bangladesh. He tried to take assistance of someone to go to Bangladesh, but was not successful. He realized that Kolkata is far away from Bangladesh border and people would not be allowed to cross the border. He visited a book shop and therein, he went through the map and realized that Agartala is a nearest city to Bangladesh Border. He went to Agartala by flight and stayed in a hotel, which is situated on Laxminarayana Bari Road. He visited Gedu Mian Mosque, situated on L.N. Bari Road, where Tablighi Jamaat were being preached to the people in Tripuri

language. He was listening the preaching and in the Mosque, he met one person called Habeeb son of Ghani Miya/accused No.7, resident of Agartala, who was sitting beside him during preaching. He came out from the Mosque and both exchanged views and accused No.1 enquired with accused No.7 whether he had been to Bangladesh and accused No.7 told that his maternal family is staying in Bangladesh in Cumilla City and that he visits Bangladesh by crossing the border without passport. Accused No.1 also expressed his desire to go to Bangladesh, as a visitor for which, he agreed stating that it was not a big problem to cross the border and decided to go to Bangladesh after a day. Accused No.1 gave him his hotel name and address where he stayed. He further alleged to have stated that a day later, he came to the hotel in the morning and both proceeded to sister's house of accused No.7, where he dropped his extra baggage and both went to border by three wheeler. They met one of relatives of accused No.7, who was the leader of the Village, who agreed to make arrangement to cross the border since he had bought the rights of smuggling through the border,

he paid Rs.100/- to the security forces in border and accordingly, they allowed to cross the Akhaura border following the cart, which was carrying jack fruits. After crossing border, they both traveled to Cumilla, where they stayed in the house of grand-mother of accused No.7. Thereafter, accused No.1 met accused No.4 - Abdul Azeez and thereafter, said Abdul Azeez summoned accused No.3 - Muzzammil through mobile, and thereafter, the accused No.4- Abdul Azeez sent him to Bengaluru, to assign task of illegal activities. Thereafter, accused No.1 came back to Cumilla along with money given by Abdul Azeez, where accused No.7 was waiting and both came back to Agartala by bus to the border and crossed the border without any hindrance.

17. Thus, a careful perusal, the entire statement of accused No.1 it is seen that except these averments, there is nothing to indicate that accused No.7 had knowledge that accused No.1 is terrorist or he is receiving funds from terrorists, and he has planned to commit terrorist acts in Bengaluru. The statement of accused No.1 disclose that the accused No.1 has not even disclosed his real name

before accused No.7 nor he stated as to why he is going to Bangladesh. It is there in the statement of accused No.1 that he want to go to Bangladesh, as a visitor. After the incident involved in this case, the accused No.1 said to have came to Agartala, in order to cross the border to go to Bangladesh and came to Agartala, as could be seen from the averments commenced from page No.28 of the statement, wherein, accused No.1 again comes to the same hotel at L.N. Bari Road, Agartala and he contacted accused No.7 - Habeeb over phone seeking his help to cross the border towards Bangladesh. At that time, accused No.7 alleged to have told accused No.1 that he is out of station and has gone for Tablighi Jammatt for preaching and asked him to meet his nephew Pappu, at his sister's house and accordingly, accused No.1 met said Pappu and asked him to arrange for him to cross the border. Thereafter, said Pappu alleged to have introduced Saif-ul-Islam telling that he would take him to cross the border towards Bangladesh. Accordingly, it further transpired that on the next day morning the said Saif-ul-Islam helped accused No.1 to cross the border by paying Rs.150/- to CRPF men and thus, he

went away to the border. Thus, except these averments there is no averments, which indicate that accused No.7 had knowledge about the terrorist acts going to be committed by accused No.1 in Bengaluru nor that accused No.1 is a Lashkar-e-Taiba member and receiving arms and ammunition in order to commit terrorist acts in Bengaluru City. Thus, I find that there was nothing in the statement of accused No.1 to implicate accused No.7 in the crime. It is seen that thereafter, accused No.7 was arrested and his statement was also recorded and thereafter, there is no further evidence collected to prove the involvement of accused No.7 in the crime. No mahazar was conducted by taking accused No.7 to the relevant places nor the statement of Pappu and Saif-ul-Islam was recorded. There is absolutely no legal evidence to show that accused No.7 had criminal intention or done any criminal acts. The Hon'ble Supreme Court, in the case of *Arup Bhuyan vs. State of Assam*, (AIR 2011 SC 957), has held as under :-

“So far so, confession is a very weak kind of evidence. The wide spread and rampant practice in the police in India is to use third degree methods for extracting confessions from the alleged accused. Hence, the Courts have to be cautious in accepting confessions made to the police by the alleged accused. Where the prosecution case mainly rests on the confessional

statement made to the police by the alleged accused, in the absence of corroborative material, the Court must be hesitant before they accept such extra-judicial confessional statements.”

18. A careful scrutiny of the confession statement given by the accused No.1, it reveal that he has not disclosed anything about his intention or plan with accused No.7 and as I already narrated, accused No.1 alleged to have said accused No.7 that he is going to Bangladesh, as a visitor. When there is nothing spoken about accused No.7 by accused No.1, which incriminate him in any of the crime, I failed to understand, as to why this accused No.7 was arraigned as accused in the case. In confession statement of accused No.7, he alleged to have stated about revelation of accused No.1 before him that he is engaged in Jihadi activities and that he has hatched a conspiracy to commit terrorist activities in Bengaluru and that he was being helped by Pakistan people and also imparted training to him regarding mode of committing Jihad and further, that he has to meet a person from Pakistan at Dakha in Bangladesh, to collect money and also to discuss how to execute the task. The statement given by the accused No.7 and averments in his statement are hit by Section 25 of the

Indian Evidence Act and therefore, there being no supporting evidence to prove that the accused No.7, with the knowledge and criminal intention of accused No.1 with such conspiracy, helped him to cross the border. Moreover, the alleged assistance given by accused No.7 was earlier to Bengaluru incident and thereafter, accused No.7 never met accused No.1. There is no independent evidence available to prove that accused No.7 assisted accused No.1 to do any criminal and unlawful acts. If at all, the accused No.7 had assisted accused No.1 in crossing the border to go to Bangladesh illegally, it is for the concerned Police at Tripura to prosecute him in this regard and he cannot be prosecuted in this case.

19. As I already narrated, the accused No.7 never taken by the I.O., to Agartala to conduct mahazar of the spot in Masjid, where both alleged to have met or the spot of Akhaura border and so also evidence collected to show that accused No.1 stayed in Swagatham Hotel, situated on Laxminarayana Bari Road, Agartala. Thus, the materials produced against this accused No.7 are not sufficient to proceed against him.

20. A provision of Section 227 of Cr.P.C., reads as under :-

***"227. Discharge.** If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing"*

21. A careful perusal of the provisions of Section 227 of Cr.P.C., it reveal that if there is no sufficient ground for proceeding against accused, the Court is empowered to discharge him and record his reason for doing so. Before that, the Court shall consider the records of the case and also documents submitted in the case coupled with hearing the submission of accused and prosecution.

22. The Hon'ble Supreme Court in *Navjot Sandhu's* case (supra), has held at para 13 as under :-

"Pointing out a material object by the accused furnishing the information is not necessary concomitant of Section 27. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the investigating officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the investigating officer will be discovering a fact viz. the concealment of an

incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the police officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the police officer chooses not to take the informant accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence."

23. As rightly argued by the learned Special Public Prosecutor, mere pointing out of material object by accused furnishing information, is not necessary under Section 27 of Indian Evidence Act. The law laid down by the Hon'ble Supreme Court makes it clear that even discovery of facts is also admissible under Section 27 of the Indian Evidence Act. But it is seen that there is no corroborative evidence to prove the facts disclosed by the accused No.7 in his confession statement and by the statement of accused No.7 no new fact has been discovered by the I.O., as the fact of accused No.1 crossing border along with accused No.7 to Bangladesh and further, after the incident as per the guidance of accused No.7, his two relatives assisted accused No.1 crossing brother to Bangladesh, has already

been stated by accused No.1 in his statement. As I already narrated, no evidence to corroborate the statement of accused No.7 is produced in this case. Except the confession statement of accused No.7, no other independent evidence is produced to establish that accused No.7 having knowledge about the criminal intention of accused No.1, has assisted him in crossing the border. Since, the relatives of accused No.7 are residing in Cumilla, if he had assisted accused No.1 to cross the border, as he had frequently crossed the border, no criminal intention on the part of accused No.7 with reference to facts of this case can be gathered.

24. The committal records of S.C.No.953/2017, go to show that as per the remand application dated 06.04.2017, this accused No.7 was produced before the Court and got his remand extended on the ground that the I.O., has applied for recording the statement of accused No.7 under Section 164 of Cr.P.C., and that the Court has posted the matter to 07.04.2017 for recording the said statement, but no such requisition is filed before the committal Court nor any such requisition was made before the Court with a

request to record the said statement and no such statement was got recorded. Thus, after recording of the alleged confession statement of accused No.7, no statement was recorded nor any material objects were recovered and not even the statement of any relevant witnesses is recorded.

25. The Hon'ble Supreme Court, in the case of *N. Suresh Rajan and others* (supra), has held at para 21 as under :-

“The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Section 227 of the Code, the trial court is required to discharge the accused if it “considers that there is not sufficient ground for proceeding against the accused”. However, discharge under Section 239 can be ordered when “the Magistrate considers the charge against the accused to be groundless”. The power to discharge is exercisable under Section 245(1) when, “the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction”. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken. Thus, there is difference in the language employed in these

provisions. But, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused."

26. Thus, a perusal of law laid down by the Hon'ble Supreme Court, it is incumbent upon the Court while dealing with discharge application that the Court has to see that there is *prima facie* case to proceed against accused, but in this case, as I already pointed out, the prosecution has not made out *prima facie* case against accused No.7 to frame charge against him for the offence punishable under Sections 120-B, 121, 121-A, 122, 123, 307, 302 of the IPC, Sections 25, 27 of the Indian Arms Act, Sections 3, 4, 5 and 6 of the Explosive Substance Act and Sections 10, 13, 16, 17,18 and 20 of the Unlawful Activities (Prevention) Act, 1967

27. Further, the Hon'ble Supreme Court, in the case of *P. Vijayan* (supra), has held as under :-

"The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial

starts. At the stage of S.227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

28. Thus, there being no sufficient ground to proceed against accused No.7, this Court cannot frame charge against him, merely because a charge-sheet is filed against him. On careful perusal of the decisions relied upon by the learned Special Public Prosecutor, it goes to show that considering the facts and circumstances involved in this case, the principles of law laid down in the said decisions will not helpful to this case to come to the conclusion that the prosecution has made out *prima facie* case to proceed against accused. On the other hand, on the basis of the materials available on hand, I am of the considered opinion that there is no sufficient grounds to proceed against accused No.7.

29. Thus, keeping in mind the requirements of provision of Section 227 of Cr.P.C., and also the law laid down by the Hon'ble Supreme Court in the aforesaid

decisions, and so also, on careful perusal of entire materials on record, I am of the considered opinion that there is no sufficient ground to proceed against accused No.7 for the offences alleged against him and therefore, the accused No.7 is liable to be discharged and hence, I have answered Point No.1 in the affirmative.

30. **Point No.2:** In view my findings on the above said point, the application is liable to be allowed. Hence, I proceed to pass the following: -

ORDER

The application filed by accused No.7 - Mohammed Habeeb @ Habeeb Miya @ Habeeb son of Ghani Miya, under Section 227 of Cr.P.C. is hereby allowed.

The accused No.7 is discharged under Section 227 of Cr.P.C., for the offences punishable under Sections 120-B, 121, 121-A, 122, 123, 307, 302 of the IPC, 1860, Sections 25, 27 of the Indian Arms Act, 1959, Sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908 and Sections 10, 13, 16, 17,18 and 20 of the Unlawful Activities (Prevention) Act, 1967

Office is hereby directed to detach the file
in S.C.No.953/2017 from the records.

The copy of this order shall be kept in
S.C.No.1386/2016.

*(Dictated to the Judgment Writer directly on computer,
typed by him, corrected by me and then pronounced in
open Court on this the **14th** day of **June, 2021**).*

(Dr. KASANAPPA NAIK),
XLIX Addl. City Civil & Sessions Judge,
(NIA Special Court),
Bengaluru (CCH-50).