IN THE COURT OF SH. CHANDER JIT SINGH
JUDGE FAMILY COURT-02 NORTH EAST,
KARKARDOOMA COURTS DELHI

SC No. 425/2018
RC No. 17/2018
PS : NIA/HQ/DLI
U/s : 120-B/121/121A/124A/153A/153B/505 of IPC,
18/20/38&39 of UA(P)A.

National Investigating Agency

Versus

1. **Aasiya Andrabi @ Aasiyeh Andrabi @ Syedah Aasiya Firdous Andrabi @ Aasiyeh Ashiq** D/o Late Dr. Syed Shuhabuddin Yaseen Andrabi R/o Iqbal Colony, Lane No.2, 90 Feet Road, PS- Soura, PO- Noushera, Dist-Srinagar, Jammu and Kashmir.

2. **Sofi Fehmeeda @ Sofi Fehmeeda Sidique @Fehmeeda Sidique** D/o Late Mohammad Siddique Sofi R/o 79-Sikh Bagh, Lal Bazar, PS- Lal Bazar PO-Nowshera, Dist-Srinagar, Jammu and Kashmir.

3. **Nahida Nasreen @ Naheeda Manzoor @ Naheeda Nasreen Noor** D/o Late Sheikh Noor-ul-din R/o 158 Drang Bal Ward No-6, PS- Pampore, PO- Panpur, District- Pulwama, Srinagar, Jammu and Kashmir.

....Accused.

Date of Committal	:	03.07.2018.
Date of Arguments	:	28.02.2025
Date of reserved for order	:	09.09.2025
Date of Pronouncement	:	14.01.2026

JUDGMENT

VERSION OF PROSEUCITON/FACTUAL MATRIX

1. Succinctly put, the case of the prosecution is that Central Government received a credible information that Aasiyeh Andrabi and her associates Sofi Fehmeeda and Nahida Nasreen as well as others from a proscribed terrorist organization "**Dukhtaran-E-Millat" (**hereinafter called as **'DEM'),** were using various platforms to spread insurrectionary imputations and hateful speeches to endanger the integrity, security and sovereignty of India. On this information and after considering the gravity of the offence, vide its order F.No.11011/28/2018/NIA/ CTCR, MHA directed the National Investigation Agency to register and investigate the case in exercise of the powers conferred under sub-section 5 of section 6 r/w section 8 of the National Investigation Agency Act, 2008. Accordingly, the National Investigation Agency, New Delhi, PS registered the present case.

2. It is further stated in chargesheet that Dukhtaran-E-Millat literally means "Daughters of the

General Muslim Community". It is an all women outfit with declared objective of achieving secession of Kashmir from India and vociferously advocates merger of Kashmir with Pakistan.

2.1 That DEM has maintained its long standing ideological stand that Kashmir is an "unfinished agenda of Partition of Indian subcontinent". That it is a natural part of Pakistan and should have originally gone to it by reason of its being predominantly Muslim. DEM openly supports and encourages young Kashmiris to take up guns to achieve 'martyrdom' in the cause of 'freedom' of Kashmir from Indian rule.

2.2 That DEM as a terrorist organization has certain ideological precepts that it uses as a propaganda tool to instigate and motivate Kashmiri population to rise in insurrection against the Indian State and to attain its ultimate objective of merger of Kashmir with Pakistan. It is further alleged that DEM through the accused persons used social media and seditious gatherings, besides

garnering supports from terrorist entities abroad, for its stated aims. From a reading of posts, imputations and assertions made on Twitter, and Facebook posts of accused persons, it is evident that they are running a concerted war against the Government established by law in India.

2.3 That DEM is headed by A1, A2 and A3 as its central leadership. DEM through A1 was vocal in supporting a terror outfit named Lashkar-e-Jabbar (hereinafter called as"LeJ"). Dukhtaran-E-Millat has a non-negotiable and declared secessionist and insurrectionary agenda with open calls for uprising against the Indian State. It has called upon foreign terrorist outfits to support DEM in its efforts for the merger of Kashmir with Pakistan.

2.4 That Dukhtaran-e-Millat has worked closely with multiple terrorist outfits and other Kashmiri separatist leaders most particularly with Masrat Alam and Syed Ali Shah Geelani. It is further alleged that A1 used to hold annual meetings on the birthday of her husband Qasim

Faktoo wherein she used to give seditious speeches. A1 is one of the masterminds of the protests along with Masrat Alam Bhat, leader of the pro- Pakistan Muslim League, and they together spearheaded the "Quit Jammu and Kashmir" campaign against Government of India.

2.5 It is further alleged that A-1 had founded a woman Organization namely Dukhtaran-E-Millat of which she is Chairperson since its formation. A3 is also a founding member of DEM. She is the General Secretory of DEM. Launching of the Dukhtaran-E-Millat was basically aimed at giving the secessionist movement a broader social appeal by projecting support of Kashmiri women for the secession of J&K state from Union of India. A2 is the Press Secretory of DEM & Personal Secretory of Aasiya Andrabi (A1). She had joined this organization in the year of 2003. Dukhtaran-E-Millat is resorting to various illegal programmes which have a direct bearing upon sovereignty, integrity and security of the state and at the same time creating problems for the general public by

harassing the general public, enforcing the strikes, resorting the violence etc.

2.6 It is further alleged that A1, A2, & A3 were arrested after filing of FIR No 60/2018 dated 18.04.2018 by Anantnag PS, J&K Police. Thereafter, the three accused persons (A1, A2, A3) were produced before the Hon'ble Spl. Judge, NIA Court on 06.07.2018 for the purpose of proceeding/investigation in the above mentioned case (RC-17/2018/NIA-DLI).

2.7 It is further the case of the prosecution that Facebook, and Twitter profiles of A1 along with many videos of hers show that A1 is running a propaganda campaign wherein she regularly broadcasts seditious, inflammatory and insurrectionary material/statements with a clear objective of orchestrating an uprising against the Indian State. It is further alleged that A-1 and her associates regularly celebrate 'Pakistan Day' in Srinagar wherein anti-India speeches are made, insurrectionary material is distributed and pro-Pakistani slogans are

chanted along with unfurling of Pakistani flag to profess, that Kashmir is a part of Pakistan and that India is an aggressor. A1, A2 & A3 in their speeches vociferously maintain that they want freedom from India and accession of Kashmir with Pakistan. Through her terrorist front DEM, A1 is also promoting ill-will and enmity between different communities in India with clear intention of endangering the territorial integrity of India. Investigation has established that A1 gave statements to many media houses wherein she gave wide publicity of her ideology of secession of Kashmir from India and its merger with Pakistan. The investigation found several incriminating videos, posts etc over the cyberspace which were available in open source. During the investigation, following details of G-mail accounts and Facebook profiles used by accused persons were obtained.

G-mail Accounts

S. No.	Name of Accused	Gmail Accounts
i.	Sofi Fehmeeda	sofifehmeeda@gmail.com sofifahmeeda02@gmai

ii.	Nahida Nasreen	nahidanoor.nn@gmail.com
iii.	Aasiyeh Andrabi	aasiyehandrabi08@gmail.com
iv.	Dukhtaran-E-Millat Mail id	dhuktaranemillat@gmail.com

Facebook profiles

S.No	**Name of accused**	**Facebook accounts which were used by accused persons**
1	Aasiyeh Andrabi	i . https://www.facebook.com/aAasiy eh.an rabi
2	Nahida Nasreen	i. https://www.facebook.com/nahidan asre en.noor
3	Sofi Fehmeeda	i. https:// www.facebook.com/ bintiaAasiy eh.sofifehmeeda?ref ii. https://www.facebook.com/ sofifehmee da.sofi. iii. https://www.facebook.com/ sofi.fame.5 6?ref=b

2.8 During the investigation, details of Twitter Accounts used by accused persons for spreading insurrectionary material were obtained. Details of Phone Numbers Used by Dukhtaran-E-Millat were also collected,

which are as under:-

S. No	Name	Phone Numbers used by the Accused Persons.
01.	Aasiyeh Andrabi (A1)	9419049230
02.	Sofi Fehmeeda (A2)	9906536565, 9906566565 & 9419049231
03.	Nahida Nasreen (A3)	9796313204, 9419022571 & 9622557081

2.9 It is further alleged that accused persons used Social Media Accounts to instigate people of Jammu & Kashmir against Indian security forces. During the course of investigation several mobile numbers pertaining to accused persons and their associates were collected which were found to be used by them for incriminating activities. The call data Records of these mobile numbers were collected. During analysis of 08 mobile numbers of accused persons, it was noticed that accused persons had made/received calls to/from their associates who were residing in J&K as well as in Pakistan. The Call Data Record Analysis Report indicated that accused A1, A2 and A3 had used telephonic communication through their

respective mobile numbers and also well connected with each other and with many entities from abroad most particularly from Pakistan.

2.10 It is further alleged that during the investigation, various documents and incriminating materials were seized. During the course of investigation it came to notice that the accused used to procure travel ticket from Frozen Vally Tour & Travel, Srinagar, Jammu and Kashmir. Accordingly, the travel details of accused A1, A2 and her associates were obtained. The owner of said travel agency also stated that Rs. 180500/- was paid by A2 to frozen valley from 05.04.2016 to 25.3.2017 against travel ticket made for A1, A2 and their associates. He also confirmed that the mobile numbers 9906536566 and mail id sofifehmeeda@gmail.com, which belonged to A2, was provided for traveller's details. One mobile phone was taken from Auqib Javaid which was used for recording of interview of A1. Verification report of the ownership/title of the house used as residence of A1 as

well as Head Quarters of Dukhtaran-E-Millat situated at 9 feet road, Iqbal colony, Soura, PO- Naushera, PS- Soura, Srinagar, J&K was received from the office of District Magistrate, Srinagar. This confirmed that said property belonged to Mahmooda Begum, w/o Ghulam Hassan Shah who was the mother-in-law of A1. During investigation it came to notice that this house was exclusively used as head office of DEM and Pakistan day was celebrated (at this house). JKP police searched this house on 03.06.2018 in case number 60/2018 PS Anantnag and substantial incriminating documents and electronic materials were seized. During investigation it was revealed that one Creta SUV vehicle was purchased on the name of accused A2 in the year 2016. The investigation has established that this vehicle was exclusively used by the accused persons for activities relating to furtherance of objectives of DEM and is also used to ferry its Chief. During the course of investigation, the certified copy of registration and sale certificate was received from Sh. Farooq Ahmad Sofi

(brother of A2).

3. It is further submitted that during the investigation, statement of Auqib Javeed @ Aaku was recorded. The witness stated that he belonged to the Greater Kashmir Media Group (hereinafter called as '**GKMG**') and had recorded an interview given by A1 that was published on 15 January, 2018 in an online publication named KashmirInk by GKMG. The physical copy of the interview published in the paper was received as evidence from the publisher. Through this interview A1 acknowledged that Dukhtaran-E-Millat was being run by A1 as its Chairperson. Some responses given by A1 to the questions of Auqib Javed have been reproduced as under:

> **I In response to the question of witness Auqib Javed**, "How did you come to launch your organization Dukhtaran - E-Millat?",A1 responds by saying that "***Dukhtaran-E- Millat is not an organization, it is a movement***". The interview at the outset clearly

mentioned "*Andrabi founded Dukhtaran-E-Millat, an Islamist women's organization that is part of the separatist movement. It has hundreds of active members across Jammu and Kashmir and advocates for the state's merger with Pakistan.*" The witness maintains that these assertions were made by A1 and confirmed something that is already a matter of general knowledge, at least in Kashmir valley. It is clear from the interview and the attendant circumstances that A1 acknowledged both implicitly and explicitly that Dukhtaran -E- Millat is being operated by her and has hundreds of active members across Jammu and Kashmir and advocates for the state's merger with Pakistan.

I In answer to the questioned asked during the same interview (Question: "So, how did your organization get into separatist politics?") she says, *"My argument was simple and it has not changed since:* ***it is haram to contest***

elections,under Indian constitution. It is hypocritical to say we are against India and then contest elections and take an oath to safeguard the sovereignty of the Indian state*. Besides****, I am of the belief that Kashmir is the natural part of Pakistan****."* She also says "*Ours is a women's group with no men interfering,and* ***which believes in the complete merger with Pakistan."***

3.1 It is further alleged that the said interview has unambiguous, precise, crystal and categorical statements leaving no doubt as to the design, doctrine and ultimate thesis of Dukhtaran-E-Millat. The contents of the interview were taken as evidence in the investigation by lawfully downloading the interview from the online portal (KashmirInk). Sh. Auqib Javeed as a witness confirmed that through his mail id, he had sent the checked transcript to his Editor Mr. Majid Maqbool.

3.2 During the investigation, one compact disc (CD) containing unedited interview of Aasiya Andrabi which was conducted by Shuja-Ul-Haq, correspondent,

Headlines Today (India Today Group) and 02 news related to Aasiya Andrabi along with a certificate as per Section 65B of the Indian Evidence Act was collected. The video interview was published in a national news channel 'Headlines Today, on 16.04.2015. In that, A1 was appearing in veil but her voice was clear. She was speaking in English. The context on which this interview was taken was a seditious rally organized by various separatist factions where anti-India sloganeering was conducted. A1 asserted that *"you know that this is not anything new here in Kashmir, whenever people get chance to come on the roads, they are chanting slogans against India, and in favour of Pakistan,* ***against Indian aggression and illegal occupation.*** *So, whatever was done throughout yesterday was the same, what we have been doing right from last 68 years. So,* ***I don't know why India is totally frustrated, especially the Indian media*** *and now police have also taken action and there are FIRs against Geelani sahib, Masrat Alam sahib and*

Peer Saifullah sahib. So, it will act over FIRs only. ***Inshalla-ur-Rehman we will not desist from whatever we are doing, because this is something which is our conviction that Kashmir is to be freed from its (India's) illegal occupation and this is our inshalla-ur-rehman, inshalla-ur-rehman our pledge, inshallah this movement will be taken to its logical conclusion, because India has illegally occupied Kashmir and India has no right on Jammu & Kashmir, and India has used fake accession*** *papers, saying that Kashmiris have done accession with India. So Kashmiris have already* rejected India's occupation on Kashmir".

3.3 It is alleged that in this interview, her assertions were in overt and unambiguous tone and she made no attempt to hide her imputations and directly revealed her intentions to endanger the territorial integrity and sovereignty of the country. That her assertions were seditious and *promote, instigate* insurrection against the Government established by law

in India.

3.4 It is further alleged that during the investigation, one interview of A1 broadcasted by Neo TV was downloaded. This video was published on a popular Pakistani news channel (Neo TV) which was also broadcasted over the YouTube. This interview was widely circulated on social media (YouTube) and was also uploaded by accused persons on their Facebook profiles. This video established the main thesis of A1 and DEM. That the statements uttered in this interview and the imputations made were to excite disaffection, bring into hatred and contempt towards the Government established by law in India. Parts of this statement/interview were clearly to promote enmity between different groups on grounds of religion, residence and place of birth and are clearly prejudicial to maintenance of harmony.

3.5. It is also alleged that during the investigation, various videos from Youtube were downloaded in which

A1 was heard to be inciting general population against the Government established by law in India and calling forces inimical to Indian sovereignty and integrity of India.

3.6 It is further alleged that investigation on the activities of DEM and A1 revealed that A1 used social media to spread insurrection and terror. She also promoted enmity between different communities in India by extensive use of social media platforms. Through her social media activities, A1 wanted to endanger the sovereignty and integrity of India by inciting people of Kashmir. Her activities on social media are evidence of their design of abetting waging of war against Government established by law in India. Investigation has established that A1 used social media for glorifying Kashmir terrorists as well as for propagating anti-India /pro-Pakistan ideology. A1 has been using Twitter & Facebook, besides uploading videos on YouTube to instigate the members of Muslim community/ Kashmiris

to agitate for the secession of Kashmir from the Union of India, thereby undermining the territorial integrity of India. Their social media accounts revealed that A1 was involved in spreading propaganda and inciting people to resort to violence with an objective of abetting waging war against Government of India and for the merger of Kashmir with Pakistan.

3.7 During the investigation, Cyber Tracking Report of Facebook Profile and Twitter Profile of A-1 was obtained which revealed that A-1 had showed her sympathy and support for the Kashmir militants who were involved in terrorist activities against Government established by law in India.

4. It is also alleged that A2 had uttered incriminating imputations and assertions through the medium of online news media which was published in the online web news portal www.oracleopinions.com.

4.1 It is alleged that investigation has established, that A2 is the Press Secretary of DEM, Personal

Secretary of its Chairperson and has been involved in the activities of a terrorist organization which is proscribed as per the Unlawful Activities (Prevention) Act.

4.2 It is alleged that during the investigation, cyber tracking report of Facebook profile and Twitter profile of A-2 were obtained which revealed that A-2 was involved in spreading propaganda and inciting people to resort to violence with an objective of waging war against Government of India and for the merger of Kashmir with Pakistan.

5. It is further alleged that during the investigation, on 31.07.2018, two incriminating videos were downloaded from the Facebook account of A-3. In these videos, A-3 was heard inciting general population against the Government established by law in India and calling upon forces inimical to Indian sovereignty and integrity of India. Through this speech, A3 was seen making assertions to promote enmity between different groups on grounds of religion that are prejudicial to maintenance

of harmony besides promoting ill-will among different communities. She also advocated secession of Jammu and Kashmir from the Union of India. A3 was invited to address the gathering at the house of terrorist killed in encounter. ("*Issilie issi baat ki wazahat karne kelie Dukhtarani Millat ki General Secretary Mohatarma Nahida Nasreen Sahiba poori wazahat ke sath aap ko yeh samjhane ki koshish kare gi ki itne logon ki jo itni shahadat hai isko hamein kis tareh rakhwali karni hai aur dushmanon ki sajisho aur chalo se bekhabar reh kar apne deen ki aabyari karni hai aur musalmano ko kaise ek sath hona hai kalima La ila ha illal lahu ki buniyad par. Mohatarma Nahida Nasreen Sahiba*:-")

5.1 It is alleged that in these videos A3 was seen inciting general public of Kashmir and mothers to motivate their children to join the militancy for the sake of Islam and against the government established in India by law, when she said *"Hum inko Mubarak baad pesh karne kelie aaye hein ki Allah taala ke deen kelie inka*

bacha Shaheed ho gaya. *Asiya Andrabi Sahiba iss mehfil mein khud majood hoti. Lekin Usne mujhe bataya kih yeh mera apna tha, yeh mera batija tha. Mujhe Hospital mein reh kar bhi dukh hai. Mein ne iss programme ki shuruaat tilawat se ki hai…***Alhamdulillah hum sab ko pata hai kih Shaheed kya hai. Shaheed sach mein zinda hote hein….** *Meri pyari mawo aur behno hum iss waqt dekh rahe hein kih hum aise soorati haal mein hein kih* **Hindustan din mein hamare 10-10 jawanon ko qatl karta hai. hamari bachiyon tak ko Shaheed karte hein. Hamari izzat aur asmat ke sath khilwad karte hein.iss waqt yeh soorati haal hai kih yeh sirf hamare Kashmir mein hi nahin hai balki poori duniya mein Musalmanoon ka qatli aam kiya ja raha hai…***islie ab Kafir iss waqt poori duniya mein islam ko, jihad ko dehshat gardi ka rang diya ja raha hai.* **Yeh ab issi islam ko, issi jihad ko, jo jihad aman qayam karne kelie kiya jata hai. Jihad se hi duniya mein aman qayam hoga. Charoon tarf jihad se hi aman aayega.** *Ab soorati haal yeh hai kih ab iss jihad ko*

khatam kiya ja raha hai. Jihad ko fasad bola jar aha hai. Issi wajeh se aise harbe kiye ja rahe hein kih jis se islam ko, jihad ko fasad ka rang diya jae. Alhamdu lillah hum iss waqt Kashmir mein deeni Islam kelie 1947 se lad rahe hein. ***Apna Kashmir Hindusn se azad karke apne Pakistan mein milane kelie.*** *47 mein kis wajeh par Kashmir ka masala khada ho gaya. Masla e Kashmir sirf iss wajeh se khada ho gaya kih jab bari sageer ka hissa ho gaya, Hindustan ka hissa ho gaya uss waqt aam Kashmiri apne Pakistan ke sath rehna chahata tha. Wohi buniyad aab tak hamari hai.* ***Yeh 2 qoumi nazriy jo hamein Quraani Kareem ne samjhaya hai Islam ek qoum hai aur duniya ko Kafir hein, chahie woh yahood hein, chahie woh hanood hein, chahie woh mushrik hein, yeh doosri qoum hai. 2 qoumi nazriya hamein Allah taale sikhate hein.*** *yeh 2 qoumi nazriya hamein Rasooli Rehmat sikhate hein.* ***Islie 2 qoumi nazriya par Pakistan ban gaya hai. Issi 2 qoumi nazriya par Kashmir ko Pakistan se milna tha. Lekin Hindustan ne sazish ki hai.***

jis ki wajeh se isne hamen 1947 se lekar aaj tak gulam bana ke rakh diya. *Alhamdu lillah 1947 se lekar aaj tak jo bhi tehreek uthi Kashmir ki aazadi ke khatir uska koi tasawur nationalism ka ya aur kisi aur cheez ka nahin tha. Balkih 90s tak har ek Kashmiri kehta tha kih "Hum kya chahate"? "Pakistan". Doosra kuchh bhi nahin tha. UNO mein bhi 2 chizein hein. ya Hindustan ya Pakistan. Alhamdu lillah, Hindustan ka naam yahan par koi bhi nahin le ga. Kion kih Hindustan ke gaiz w gazb se aur Hindustan ke zulm se hum azad hona chahate hein. Meri pyari behno hamein achhi tareh pata hona chahie kih 90s mein jab askariat yahan par peak par thi us waqt Askaryat ka dabao, hamari taqt khatam karne kelie, hamari taqat ko tukde karne ke khatir nationalism ka paat padhaya gaya jis ka natija aapko pata hai hai kih 90 mein fir aapas mein guroohi tasadum ho gaye. Lekin Alhamdu lillah, Allah taala ke fazl se pichlie dahai mein* ***ek masoom mujahid jis mein Burhan wani Shaheed ho gaya jis wajeh se Askari tehreek fir wajood mein aa gai.***

Alhamdu lillah hamara ***Burhan bhi Pakistan ka zabardast hami tha.*** *Lekin uske baad hum dekh rahe hein kih Hindustan fir koshis kar raha hai kih 90 mein jis tareh aap dekh rahe hein kih jaise, Crack down hai aur baqi jo harbe hein.* ***Hindustan woh harbe iss waqt fir se azma raha hai jo usne 90 mei azmaye hamari askari tehreek ko kamzoar karne kelie****. Islie Hindustan iss waqt chahata hai kih aaj usko pata hai kih ab mujhe nationalism ka naara nahin chale ga. Aaj hamare chhote chhote bache Islam ka ilm padte hein. yeh kitabein padte hein, yeh alhadees padte hein, yeh quraan padte hein islie mein ab nationalism ka naara dekar ab inko kamzoar nahin kiya ja sakta hai balkih ek naya naara dala gaya, Shariat ke naam par****. Balkih naya ek naara diya gaya khalfat ke naam par jo ek khoobsoorat nara hai. yeh ek aisa naara hai kih, Shariat ko hum kaise inkaar kar sakte hein kih hamein yahan par shariat manzoor nahin hai. Shariat ya Shahadat, yeh ek behtareen nara hai. Alhamdu lillah jo bache maidani jihad mein hein. woh sahi mein Shariat*

kelie lad rahe hein. *magar issi naara ki aad mein Pakistan ke khilaf ek muhin shuru ki gai. Isi ke sath sath ekh muhin shuru ki gai…. Yehi missal hai ki hum bolte hein ki Kalima ke buniyad par Pakistan bana hua hai. Islie usko Madina saani ki hasiat hai. Koi uski hassiat mane ya na mane, fir bhi duniya mein kai ahli hanood hein. Ahli hanood kehte hein hamara jo pehla aur bada mandir hai woh Khana Kaba hai. Iska matlab hai kih Khana Kaba ab Musalmanon ka Qibla Awal nahin hai? Issi tareh Pakistan ki azmat koi mane ya na mane,* ***Pakistan hamare lie Madina saani hai****. Iska matlab hai kih Pakistan Kalima toiba ki buniyad par bana hai…..Yehi missal hai kih hum bolte hein kih Kalima ke buniyad par Pakistan bana hua hai. Islie usko Madina saani ki hasiat hai. Koi uski hassiat mane ya na mane, fir bhi duniya mein kai ahli hanood hein. Ahli hanood kehte hein hamara jo pehla aur bada mandir hai woh Khana Kaba hai. Iska matlab hai kih Khana Kaba ab Musalmanon ka Qibla Awal nahin hai? Issi tareh*

Pakistan ki azmat koi mane ya na mane, Pakistan hamare lie Madina saani hai. Iska matlab hai kih Pakistan Kalima toiba ki buniyad par bana hai…. ***Hum 1980 se iss tehreek ke sath hein….*** *Hamein kal ka janma bacha Shaheed Abdullah Bangru ke baare mein bataye ga. Usne janam hi nahin liya ho ga ja Abdullah Bangru sahib Shaheed ho gaye. Hamein Shaheed Maqbool Ilahi ke bare mein batwo. Shaheed Ejaz Dar Sahab, Shaheed Abdullah Bangru Sahab, hamein sab ke bare mein pata hai,* ***hamare in aziz shaheedon mein koi bhi Pakistan ki mukhalifat nahin karta. Yeh sab Pakistan ke naam ke upar jaan dene kelie tayar the. Mera chhota bacha Burahan Sahab. Mujhe Facebook par Pakistan ke kuchh log jo likhte rehte hein kih 'Pakistan ka kya paigam'? 'Kashmir bane ga darul Islam'*** *lekin hum gawah hein kih jo mayen unse milti thein, jo mayen unko janti hein,* ***Burhan Sahab ne kabhi bhi Pakistan ki mukhalifat nahin ki hai. Eid ka chand jab dekha gaya to woh kush tha aur bol raha tha kih aaj Hindustan ki alag Eid hai aur hamari***

alag eid hai. Uss din Hindustan aur Pakistan ki ek din eid nahin thi. Hamara Burhan Sahab Pakistan ka mukhalif nahin tha woh Pakistan kelie jaan dene kelie tayar tha. who Pakistan ke sath bohot mohabbat karta tha. *Issi tareh hamare 47 se hue Shaheed, sabhi shaheedon ka khawab tha kih* **"Kashmir bane ga Pakistan….** *4-5 saal pehle mohtarm Asiya Andrabi Sahiba ne buzargon se guzarish ki thi jab aapka koi programme hota hai woh chahie us Hurriat ka ho ya iss Hurriat ka ya kisi bhi tanzeem ka to uss waqt agar aap apne apne jhande uthawo ge to koi baat nahin hai. Lekin jab mushtarka programme ho to us mein ek hi jhanda aur ek hi naara hona chahie woh hai Pakistan.* **Mujhe iss baat par fakhar hai kih Dukhtaran ka apna koi jhanda nahin hai. hamara jab bhi koi jahanda ho ga to hum Pakistan ka jhanda uthayen ge. Kion Pakistan ka jhanda ek symbol hai. yeh jhanda uthate hi samaj aata hai kih hum kya chahate hein. Hum jaloos nikalte hein to Pakistan jhanda hath mein hota hai** *iska matlab hota hai kih hum sadko kelie nahin nikle hein, hum transformers*

*kelie nahin nikle…**Hum ne pichhle 75 saal se Hindustan ko reject kiya hai islie hum kaise bol sakte hein. hamara ab ek hi option hai aur woh hai Pakistan.…** Khilafat kelie pehle musalmanon ko mutahid karna hai. isswaqt duniya mein 155 mulk hein. Aap Hindustan se Kashmir ko azad karo to ye 156 wan mulk ban jae ga. Isswaqt musalman sab se ziada hein lekin Islami soach yeh nahin hai. Hum chahate hein kih insallaha taala agar hum azad ho kar apne Pakistan se mil jayen ge to 155 mulk the to 155 hi rahen ge lekin hamein aage aage chalna pade ga. Agar hamein khilafat chahie to hamein mumalik ko yakja karna hai. Lekin iski zimadari hamari nahi hai. Allah taala ne hamare upar yeh zimadari nahin rakhi hai kih hamari zindagi mein hi khilafat qayam honi chahie. Balkih yeh bataya hai tum kaise Allah taale ke lie kaise apni jaanein qurbaan karo ge. **Tum kaise Allah taala ke raste mein jihad karo ge.** Iss raste mein tum kaise aage chalo ge? Inshaallah yeh Allah ka wada hai kih Qayamat se pehle Khilafat qayam ho jae gi. Meri pyari behno aur*

bachiyo mein iss programme ke zarie apni bachiyo ko, pyare jawanon ko yeh batana chahati hon kih tum apne aap par concentrate karo. Aaap mein kya galtiyan hein aap ehsaas karo…. ***Allah kare kih hamare bache bhi maidani Jihad ke tarf jayen aur kamyabi ja shadat naseeb kare*** *lekin koi yeh kehta hai kih yahan par Hindustan ki 9 lakh foj hai aur ek lakh Kashmir police hai mein ne aap ko baar baar kai programmes mein bataya hai ki hamare jawan tab tak mehfooz hein, hamari izzat w asmat tab tak mehfooz hai jab tak yeh askari jawan hein. lekin Allah bachaye agar yahan par askariat khatam ho gai to kisi bhi maan aur behan ki izzat mahfooz nahin hai lekin Hindustan kis administration iss askariat ko khatam karne keliye kabhi governor rule kar rahi hai kabhi kuch karte hein garz kih yeh woh harbe istimal kar rahe hein.* ***Mein apne askari jawanon ko keh rahi hon kih Alhamdu lillah jab se askari shuru ho gai hai hamar moral support unke sath raha hai. "hamein chahie kya bhi mushkilat aa gaye hum tab bhi askariyat ko moral support dete rahe.***

Aaj bhi hum alhamdullillah full support de rahe hein. Woh concentrate karein kih yahan par jo Hindustan ki katputli hukumat hai woh kaise khatam ho jae. Unka yahi kaam hai kih woh askariat ko mazboot karein. Hindustan ki reed yahan par khatam karein. Woh yahan par election na karne dein. Who kuchh aisa karein jisse Hindustan ko zalzala aa jae…. Inka bacha kal Shaheed ho gaya, woh zinda hai kion kih uska maqsad zinda hai. Jinke bache askari maidan mein hein unke parents ko bhi zimadari hoti hai. Mein ne misaal dekhi hai, Burhan Sahab ki maa, Burhan Sahab ka baap. Yani jab woh askariat mein nikla to unhoone usko full support diya."

5.2 It is alleged that during the investigation, Cyber Tracking Report-III (hereinafter called CTR-III) upon analysis of the Cyber activities of A3 was obtained. From the report and the material earlier downloaded (before the independent witnesses) during the initial investigation, it was revealed that A3 was found to be radicalizing and instigating the members of Muslim

community/ Kashmiris to agitate for the secession of Kashmir from the Union of India, thereby trying to undermine the territorial integrity of India. Her social media accounts overtly revealed that she was involved in spreading propaganda and inciting people to resort to violence with an objective of waging war against Government of India and for the merger of Kashmir with Pakistan".

5.3 It is further alleged that from several tweets and speeches of A1, A2 and A3 and their Facebook posts, it is clear that the accused persons regularly showed their solidarity with a proscribed terrorist organization named Lashkar-e-Toiba and Jamaat Ud Dawa, which was headed by a designated terrorist Hafeez Muhammad Saeed. It is further submitted that in videos no. 20 and 21, A3 was seen to be spreading insurrectionary imputations and hateful speeches that endanger the integrity, security and sovereignty of India. Mohammad Saqlain Sakhi who is nephew of the accused

A3 identified the voice on the incriminating videos and the un-veiled photographs of the A3 available with the investigation team. Upon examination before the independent witnesses he stated that, A3 was working in the proscribed organisation namely Dukhtaran-E-Millat in association with A1, head of Dukhtaran-E-Millat and A2 and that he is aware of the status of her aunt (A3) as a prominent member of DEM. Further, Mohammad Saqlain Sakhi was also shown the controlled photograph of the orator A3 in veil (burqa). After seeing the photograph, he identified A3.

5.4 Thereafter, Mohammad Saqlain Sakhi was also shown the Facebook page containing URL-**https:// www. facebook. com/ nahidanasreen.noor** and twitter page containing URL-**https://twitter.com/NahidaNnoor** and he clearly identified that these accounts were of his aunt A3. It is further alleged that investigation has revealed that A1 and A2 had been collecting jewelery items such as gold jewelry through donations during the

programs organized for the activities of DEM and had been raising funds by selling the gold jewelry so collected. This fact has been substantiated through documentary and testimonial evidence.

5.5 It is alleged that Hafeez Saeed and other terrorists in Pakistan have also supported the DEM and in particular A1 in her activity by providing her significant funds.

5.6 It is further stated in chargesheet that sanction for prosecution in respect of accused Aasiyeh Andrabi @ Syedah Aasiyeh Firdous Andrabi @ Aasiyah Ashiq, Sofi Fehmeeda @ Sofi Fehmeeda Sidique @ Fehmeeda Siddique and Nahida Nasreen @ Naheeda Manzoor @ Naheeda Nasreen Noor for commission of offences under sections 120B, 121, 121A, 124A, 153A, 153B & 505 of Indian Penal Code and Sec 13, 17, 18, 38 & 39 of Unlawful Activities (Prevention) Act 1967 had been obtained from the competent authority.

FILING OF CHARGESHEET, COGNIZANCE & CHARGE

6. After completion of investigation, charge sheet was filed against all three accused persons.

6.1 Learned Predecessor took cognizance in the matter against the accused persons for the offences punishable u/s 120B, 121,121A, 124A, 153A, 153B and 505 IPC and offences punishable u/s 18,20,38 & 39 of UA(P)A.

6.2 Vide order dated 21.12.2020, charges under aforesaid offences were framed against all the accused persons. All the accused persons were explained the charge framed against them to which they pleaded not guilty and claim trial.

EVIDENCE OF PROSECUTION

7. To bring home guilt of accused persons, prosecution has examined 53 witnesses in total.

8. Mr. Check Pal Sehrawat was examined as PW-1. He deposed that in the year 2018, CIO had called him and asked to download 55 videos from YouTube. That

PW-1 downloaded those screen shorts and videos from YouTube in official system of NIA. Witness further deposed that thereafter, IO gave him two DVDs. PW-1 stated that he checked those DVDs and found those DVDs blank. Witness proved the certificate u/s 65 B of Indian Evidence Act as Ex. PW1/1. Witness correctly identified the Sony DVD bearing his signatures encircled at point A. The DVD prepared by PW-1 was proved by him as Ex. P-1 upon same being produced in duly sealed envelope during course of examination of PW-1.

8.1. PW-1 was cross examined on behalf of accused persons and during cross examination, he denied that 55 videos as stated by him were not downloaded by him or DVD Ex. Article P-1 was not prepared by him.

9. PW2 is Deepanshu Gupta who deposed that on 02.05.2018, at the instruction of CIO of the case, he had downloaded the data available on 09 URLs, some of them were Twitter profile URLs and some were Facebook URLs. He further deposed that thereafter, he downloaded

the data available on Facebook profile of Aasiya Andrabi, one like page of Aasiya Andrabi, Facebook and Twitter profile of Nahida Nasreen and other Twitter profiles. The screenshots of data were pasted in a word document. He also deposed that CIO gave him two DVDs which he checked and found to be blank. Thereafter, data and the word document were transferred in DVDs and DVDs were sealed. He prepared a certificate u/s 65B of Indian Evidence Act bearing his signature at point A. That witness proved that certificate as Ex.PW2/1. PW-2 also proved the said DVD as Ex. P-2 upon being produced from sealed envelope during course of examination of PW-2.

9.1 PW-2 further deposed that on 14.09.2018, he again joined the investigation of this case and on that day, 12 URLs of YouTube were given to him by the CIO to download those videos. He also deposed that CIO gave him two DVDs which he checked and found to be blank. Thereafter, data and the word document were transferred

in DVDs and DVDs were sealed. PW-2 also proved the said DVD as Ex. P-3 upon being produced from sealed envelope during course of examination of PW-2. The data available in those videos were transferred in two DVDs and a certificate u/s 65B of Indian Evidence Act was prepared by him bearing his signature at point A. The certificate is Ex.PW2/2.

9.2. PW-2 was duly cross examined on behalf of accused persons and during cross examination, he stated that he had taken the permission from SP IT of NIA to create gmail ID and Facebook ID for the purpose of downloading the data. That CIO had not recorded his statement. During cross examination, PW-2 stated that anyone can prepare a Facebook ID or profile by any name if that name is available on the platform.

10. Mr. Saurabh deposed as PW-3. He stated that in his presence, Mr. Check Pal Sehrawat and Mr. Naveen had downloaded videos from Youtube and proved the recovery memo as Ex.PW3/1 . He further deposed that on

02.05.2018, in his presence, Facebook, Twitter and one more social media website namely kashmirink.in was accessed and data was downloaded from these URLs/profiles/social media profiles etc. He also proved the recovery memo as Ex.PW3/2. He further deposed that on 31.07.2018, around 69 videos from Youtube were downloaded in his presence and proved the recovery memo as Ex.PW3/3. PW-3 also proved his signatures on Ex. P-2.

10.1. PW-3 further deposed that on 31.07.2018, he was instructed by HR department to report at NIA HQ, Delhi and when he alongwith Ujjawal Jyoti Sen reached there, he met NIA officials. He further deposed that a blank DVD was then arranged and on being checked, it was found to be blank. He also stated that all the downloaded videos were burnt in that DVD and he put his signatures on that DVD. PW-3 also proved the said DVD as Ex. P-4 upon being produced from sealed envelope during course of examination of PW-3.

10.2. PW-3 was duly cross examined on behalf of accused persons during cross examination, witness deposed that IO had not recorded his statement and he had simply signed on exhibit articles PW-1, P-2, P-4 and PW-5 as per the instructions of IO.

11. PW-4, Sh. Arun Kumar Gupta, Sr. Scientific Assistant (Physics) CFSL, CBI, New Delhi, deposed that on 11.07.2018, he had obtained specimen voice sample Aasiya Andrabi, Nahida Nasreen and Sofi Fehmeeda. PW-4 exaplained the proceedings conducted at the time of recording of the sample of voice of accused. He stated that memo of the recording of specimen **voice of Aasiya Andrabi as Ex.PW4/1 & Ex.PW4/2 respectively. He further deposed that aforesaid proceedings were sealed in an envelope Ex.PW4/3, having the seal of DPG CFSL CHD. He further deposed that original packaging bears his signature at p**oint A which is Ex.PW4/4.

11.1 PW-4 further deposed that similar proceedings were conducted qua Nahida Nasreen and Sofi Fehmeeda

and proved the proceedings as declaration form and memo of the recording of specimen voice of Nahida Nasreen as Ex.PW4/5 & Ex.PW4/6 respectively. He further deposed that aforesaid proceedings were sealed in an envelope Ex.PW4/7, having the seal of DPG CFSL CHD. He further deposed that original packaging bears his signature at point A which is Ex.PW4/8.

11.2 PW-4 also deposed that thereafter, proceedings were conducted qua Sofi Fehmeeda and proved the proceedings as declaration form and memo of the recording of specimen voice of Sofi Fehmeeda as Ex.PW4/9 & Ex.PW4/10 respectively. He further deposed that aforesaid proceedings were sealed in an envelope Ex.PW4/11, having the seal of DPG CFSL CHD. He further deposed that original packaging bears his signature at point A which is Ex.PW4/12.

11.3 PW-4 further deposed that on 27.09.2019, accused Nahida Nasreen was produced from jail and he had seen her photograph on her production warrant.

Thereafter, he recorded additional voice sample of aforesaid accused in presence of NIA officials namely Insp. Raj Singh Malik along with witnesses. He proved the said proceedings as Ex.PW4/13 and original packaging as Ex.PW4/15.

11.4. PW-4 was cross examined and during cross examination, witness stated that it is correct that none of the declaration forms which were filled up on 11.07.2018 bears his signatures or the signatures of any witness or the NIA officials. That his statement was not recorded by the IO. PW-4 further stated that no declaration u/s 65B of Evidence Act was furnished by him for any of the voice samples recorded by him.

12. PW-5, Sh. Jyoti Priya, has deposed that on 11.07.2018, he was posted at SBI, LHO, Sansad Marg and at instruction of Vigilance Department to join proceedings as a witness. he reached the office of NIA HQ and met Insp. Raj Singh Malik, from where, he was taken to CFSL CBI. He further deposed that voice samples of three ladies

namely Aasiya Andrabi, Nahida Nasreen and Sofi Fehmeeda were taken in his presence at CFSL and proved the proceedings as Ex.PW5/1. PW-5 also identified her signatures on Ex. PW4/2, Ex. PW4/6 and Ex. PW-4/10. PW-5 further proved her signatures on Ex. PW4/3, PW-4/7 and Ex. PW4/11. PW-5 also deposed qua her signatures on Ex. PW4/12, Ex. PW4/8 and Ex. PW4/14 as well as proved her signatures on mere exhibits.

12.1. PW-5 was duly cross examined on behalf of accused persons and stated that all the three ladies were Parda nasheen and they were identified by one lady officer of NIA. That his statement was not recorded by the IO. PW-5 was confronted with her previous statement recorded u/s 161 CrPC qua the point that it does not mention that Parda Nasheen ladies were identified by Lady Officer.

13. PW-6, Sh. Abhay Kumar, has deposed that in July 2018, he had joined the proceedings at NIA HQ. PW-6 stated that he was told to witness downloading of videos

from YouTube etc. He stated that from some sites, certain videos were downloaded and proved the recovery memo dated 14.09.2018 as Ex.PW6/1.

14. PW-7, Sh. Fayaz Ahmad Kaloo, deposed that he was given an interview of Aasiya Andrabi by freelancer, namely, Aquib Javed and after editing, they had published the said interview in their newspaper Kashmir Ink. PW-7 also stated that he had sent copy of edited and unedited interview through email to his advocate Sh. **R.N Tufail** for handing over to NIA**.** and proved the unedited interview as Ex.PW7/1 as well as letter dated 17.08.2019 vide which he had sent copy of newspaper Kashmir Ink containing the interview of Aasiya Abdrabi, as Ex.PW7/2. PW-7 also stated that he gave original newspaper Kashmir Ink in which interview was published and bears his signatures. The said newspaper was proved as Ex. PW-7/3. PW-7 further deposed that vide letter Ex. PW7/2, he had also handed over the unedited version of the interview of Aasiya Andrabi. PW-7 had proved the documents running

into 09 pages as Ex. PW7/4.

14.1. During cross examination, PW-7 had stated that it is correct that when NIA officers had visited his establishment, he had physically handed over the documents to them. That witness could not tell whether any seizure memo was prepared or not. That he had not received any audio or video recorded version of this interview and he had not edited this interview.

15. PW-8 Sh. Rashid Makhdomi, Printer Publisher of Greater Kashmir, deposed that on 18.07.2018, he had handed over four documents to Ravinder Kumar, Deputy SP, NIA and proved the production cum seizure memo dated 18.07.2018 qua those documents as Ex.PW8/1. He was not cross examined despite opportunity having been given to accused.

16. PW-9 Sh. Aquib Javed @ Aaku, journalist with Newspaper Kashmir Observer, deposed that in the year 2018, from the directory, he got the number of Dukhtaran E Millat and he called on that number and one

woman picked up the phone and she had confirmed that it was the number of office of DeM. Witness further deposed that he had taken an interview of Aasiya Andrabi. The said interview was published in Kashmir Ink. The interview was published after editing the original version which PW9 had sent to Majid Maqbool.. PW-9 further deposed that it is the same interview which had been taken by him and sent through mail as attachment. PW9 proved the print out of unedited interview as Ex.PW9/1.

16.1. PW-9 was duly cross examined and stated that his statement was recorded by NIA officials. Witness could not tell whether he had stated to the IO that he had looked for the number of DeM in the directory. That during his questioning, NIA did not ask him to produce his computer system on which he had typed the transcript of the interview. That NIA did not ask for the original draft which he had sent to the representative of Aasiya Andrabi or the corrected copy sent by the representative of Aasiya Andrabi. That he had not forwarded the Audio recording

of interview to the editor of Kashmir Ink.

17. PW-10 Dr. Puneet Jain, Free Lance Journalist (Legal), deposed that in the year 2018, he was working as the group Chief Compliance and Law Officer and group Chief Corporate Affairs Officer for the India Today Group of companies. He had sent a CD of the interview of Aasiya Andrabi, which was conducted by their correspondence Sujaul Haq and proved the same Ex. PW10/1 as well as the certificate u/s 65B of Evidence Act as Ex.PW10/2.

17.1 PW-10 during cross examination deposed that he had prepared/burnt the contents of DVD which was sent by NIA and the DVD was burnt on his computer because the archive department had given him access to the archives where the demanded footage was available. PW-10 further deposed that prior to this case, he had provided electronic evidence on behalf of his company and issued certificate u/s 65B Evidence Act, in other cases also. That the difference in language of this certificate and

earlier certificates is because this what demanded by NIA.

18. PW-11 Sh. Ravinder Kumar, Director, Central Finger Print Bureau, NCRB, Mahipalpur, Delhi, has deposed that in the year 2018, he was working as DSP at NIA Headquarter, New Delhi and that during the investigation of case, he had visited Frozen Valley Tours and Travel near Khyber hospital, Srinagar and collected certain documents and seized them through seizure memo dated 16.07.2018, Ex. PW 11/1. He further deposed that he had also seized the mobile phone of journalist Aukib Javid Hakeem vide seizure memo dated 19.07.2018, Ex. PW 11/2.

19. PW-12 Sh. Shravan Kumar Tyagi deposed that in the year 2018, he was posted in IMS Unit, NIA HQ, Delhi and during investigation of the case, he had checked the credentials of phone number through internet and found that number was associated with JUD. He proved his report dated 18.09.2018 as Ex.PW12/1. He further deposed that he had also downloaded 69 videos from the

Facebook account of Fehmida Shehzad and Nahida Nasreen, which were saved in a CD and he had generated the hash value of said CD. He proved the recovery memo as Ex.PW3/3 as well as certificate u/s 65B Evidence Act as Ex.PW12/2.

19.1. PW-12 was duly cross examined on behalf of accused persons and during cross examination, witness deposed that in Ex. PW3/3, his name figures at Serial No. 3 in the list naming team members. IO had not recorded his statement on that day. Witness further stated that on 18.09.2018, when he had prepared his report, his statement was not recorded. PW-12 further stated that this verification method is not 100 percent full proof.

20. PW-13 Sh. Zeeshan Qureshi, Cluster Head, HDFC Bank, Srinagar, J&K, desposed that in the year 2018, he was posted at HDFC Bank, Munawarabad Branch, Srinagar, J&K. He had retrieved the statement of account and account opening form of Sofi Fehmeeda. He

proved the letter dated 11.07.2018 as Ex.PW13/1 (D-14) as well as the certificate under Bankers Book of Evidence Act as Ex.PW13/2. Witness has further proved the statement of account of Sofi Fehmeeda bearing saving bank account no. 27081000001303 as Ex.PW13/3 as well as the electronic copy of account opening form of Sofi Fehmeeda and KYC documents as Ex.PW13/4, Ex.PW13/5, PW13/6, PW13/7, Ex.PW13/8 (KYC documents of Sofi Fehmeeda). PW-13 further deposed that at the time of appearing the accused, Rs. 30,000/- were deposited through cheque and copy of said cheque is proved as Ex. PW13/9. He further proved as PW13/2 (certificate under Bankers Book of Evidence Act with respect to account of Sofi Fehmeeda bearing current account no. 50200018868506 and (statement of account of Sofi Fehmeeda) as Ex.PW13/10.

20.1. PW-13 was cross examined on behalf of accused persons and during cross examination, he stated that the accounts for which he had provided the documents

were not opened in his presence. That none of the pages of statements of accounts Ex. PW13/3 and Ex. PW13/10 bear any stamp that they have been certified as per Bankers Book of Evidence Act. That neither the NIA had asked nor he had supplied any certificate u/s 65 B of Indian Evidence Act.

21. PW-14 Sh. Omer Farooq Marazi deposed that in the year 2018, I was working as Freelance Journalist and in January 2018, he had interviewed Sofi Fehmeeda at the house of Aasiya Andrabi situated at Soura, Sringar, J&K. He deposed that the said interview got published on Oracle Opinions and proved the same as Ex.PW14/1; recovery memo as Ex.PW14/2; pocket diary in which he had noted down/recorded interview of Sofi Fehmeeda as Ex.PW14/3. Envelope containing the pen drive as Ex.PW14/4.

21.1 PW-14 was cross examined at length on behalf of accused persons and during cross examination, he stated that he had not made any efforts nor asked the woman who

had been interviewed by him as Sofi Fehmeeda for her identity. That witness had not asked the names of other women whom he had initially met after reaching the house of Aasiya at Soura. That he had stated to NIA officials that when he reached that house and knocked the door and a lady opened the door and that he asked that lady whether she was Sofi and she answered in affirmative.

21.2. That during further cross examination, witness stated that after the interview, he had e-mailed the interview to Nadeem Gul for editing. That he had gone alone to interview Sofi Fehmeeda. That he had not sent the final draft of interview to Sofi for approval. That he had not taken any formal written approval from Sofi for publishing the interview. That in response to the court question, witness had stated that from the date of publication of interview till date, he has not received any objection from Sofi Fehmeeda or on her behalf that she had not given this interview or that the facts stated in interview were not her responses to his question or

retracting the said interview.

22. PW-15 Sh. Sarwar Alam has proved the photocopy of the entry register of the hotel regarding the stay of Masood Ahmed S/o Mohd. Ismaeel, Sofi Fehmeeda Siddique D/o Mohd. Siddique Sofi, Aasiya Andrabi D/o Ashiq Hussain Faktu, Mrs. Shehzada D/o Gulam Nabi, Mrs. Aasiyeh Ashiq, Mr. Mohd. Bin Qasim S/o Dr. Ashaq Hussain Faktu and Mr. Masood Ahmed S/o Mohd. Ismail Mir and their associates as Ex. PW-15/1 and PW 15/2. Witness further deposed that at the time of checking in by these persons, they had provided their phone number and affixed their signatures in the relevant coloums of the guest entry register. That they had also provided their Id proofs. That he handed over photocopies of these ID proofs as had been provided to them to the NIA. That photocopy of driving license of one Syed Mohd. Taha as submitted to their hotel and as submitted by him to NIA is Ex. PW15/3.

22.1. PW-15 further deposed that the photocopy of

voter ID card of one Rahila Firoze as submitted to their hotel and as submitted by him to NIA is Ex. PW15/4. That witness also proved the copy of employee ID card of one SMT Andrabi as Ex. PW15/5 and the photocopies of election cards of Sofi Fehmeeda Siddique, Masood Ahmad, Sehzada and Aasiyeh Aashiq as submitted in hotel is Ex. PW15/6. That witness further proved the copy of ID card of one Shaista Gull, voter Card of Sofi Fehmeeda Sidique and Aasiyeh Aashiq and driving license of one Mohd. Bin Qasim Faktoo as Ex. PW15/7.

22.2 PW-15 was duly cross examined on behalf of accused persons and during cross examination, witness has stated that he had called to the NIA headquarter only once on 19.09.20218 and his statement was recorded by NIA. That he had submitted the details as per the hotel register and he has no personal knowledge of the case.

23. PW-16 Sh. Aga Sayeed Masood, owner of Frozen Valley Tour and travels, Srinagar, has proved the computer generated transaction details i.e. records

pertaining to Aasiya Andrabi and her associates Sofi Fehmida, maintained at his office for the period 05.04.2016 to 25.03.2017 as Ex. PW16/2 as well as the certificate u/s 65B Indian Evidence Act as Ex. PW16/1. He deposed that all these details were also sent to NIA by e-mail by him with the subject "Ms. Sofi Fehmida details" and proved said e-mail as Ex. PW16/3.

23.1. During cross examination, witness could not tell whether the printout of the documents Ex. PW16/1was taken out from his office or whether the NIA had brought this document with it.

24. PW-17 Sh. Shuja-Ul-Haq, freelance journalist deposed that in the year 2015, he was working with TV Today Network Ltd and had interviewed Aasiya Andrabi at her house situated at 90 Feet Road, Saura, Srinagar. He further deposed that just before the said interview, an event had happened where Hurriyat leaders had raised Pakistani flags and his channel had asked him to interview Aasiya Andrabi. who was the head of an organization

named Dukhtaran-E-Millat. He had proved the DVD containing the complete interview of accused Aasiya Andrabi as Ex.PW17/1.

24.1. During cross examination, PW-17 has stated that the interview was around 5 minutes long. That interview was recorded in Hindi as well as in English. That Interview which he has seen in DVD Ex. PW17/1 is same and complete interview of Aasiya Andrabi as had been conducted by him.

25. PW-18 Mohd. Saqlain Sakhi deposed that in the year 2015, he joined a Pune based company Markets and Markets Research Pvt. Ltd. as Senior Executive (Sales). He deposed that accused Nahida Nasreen is his Mausi. He deposed that he had contacted her Mausi on social media such as Facebook etc. He further deposed that there were two phone numbers on which he used to contact Nahida Nasreen. He proved the disclosure cum voice identification memo dated 25.10.2018 as Ex. PW18/1; print out of the downloaded facebook page of

Nahida Nasreen as Ex. PW18/2; print out of the downloaded twitter page of Nahida Nasreen as Ex. PW18/3 and print out of the screen shot of one of the videos identified by him as Ex. PW18/4.

25.1. PW-18 was duly cross examined on behalf of accused and during cross examination, witness has stated that though he had an account but he was not active on twitter.

26. PW-19 Ms. Mounika Gadadasu, Assistant Programmer, NIA Headquarters, New Delhi, deposed that on September 6th 2018, at the instruction of CIO, she had accessed six URLs and downloaded the data available and converted it in PDF form. She had also downloaded two videos from those facebook IDs, which were then burnt on to a DVD. Witness has proved the recovery memo as Ex. PW19/1 as well as the certificate u/s 65B Indian Evidence Act as Ex. PW19/2 and the said DVD as Ex. Article P-11.

26.1. PW-19 was duly cross examined on behalf of accused persons and during cross examination, witness

deposed that he had not received written instructions to conduct these proceedings. That URLs were provided to him in the form of a soft copy. That Facebook ID No. 7868651529 was not personally created by him and it had created by NIA for the purpose of data extraction. That witness stated that he has no idea who had authorized the creation of that ID.

27. PW-20 Sh. Sanjay Kumar, Assistant Manager, SBI, Ghaziabad Branch, deposed that in the year 2018, he was posted as Assistant Manager at Administrative office, Shankar Road, Delhi and joined the investigation proceedings at NIA headquarter on 06.09.2018 along with his bank official namely Devender Kumar Singh. He deposed that they were taken to the systems room where some more officers of NIA and their technical staff were already present. He further deposed that they have witnessed the proceedings of downloading some data from the internet. The said data was burnt in a DVD in their presence. Witness has proved the memo as Ex. PW19/1.

Witness has further deposed that before burning the data on the said DVD, it was shown to them that said DVD was blank.

28. PW-21 SI Jitender Kumar Ojha, CDR Analysis Unit, NIA, New Delhi, has proved the CDR analysis report dated 08.11.2018 as Ex.PW21/1 and PW21/2.

28.1. PW-21 was duly cross examined on behalf of accused persons and during cross examination, witness has stated that he has not filed with his report the copies of the CDR on the basis of which he had done the analysis and prepared his report.

29. PW-22 Ms. Aparna Panickar, Cyber Forensic Examiner, NIA headquarters, New Delhi, deposed that in August, 2018, she was directed by the CIO of this case to cyber track the activities of the three accused of this case namely, Aasiya Andrabi, Nahida Nasreen and Sofi Fehmeeda. On the basis of phone numbers of aforesaid accused persons, she searched facebook/twitter and

accessed the account of Aasiya Andrabi and took the screen shots of that account and the posts etc. of that account. She further deposed that in the twitter account of Aasiya Andrabi, she found that the other two accused namely, Sofi Fehmeeda and Nahida Nasreen were following her and accessed both these accounts. Witness has proved her report pertaining to accused Aasiya Andrabi as Ex. PW22/1; screen shots of the facebook account of Aasiya Andrabi as Ex. PW22/2; screen shots of the twitter account of accused Aasiya Andrabi as Ex. PW22/3; details of the videos of accused Aasiya Andrabi which were found on Youtube as Ex. PW22/4; social media account of Dukhtaran-E-mallet and the screen shots as Ex.PW22/5.

29.1 Witness has also proved her report pertaining to accused Sofi Fehmeeda as Ex. PW22/6; screen shots of the facebook account of accused Sofi Fehmeeda as Ex. PW22/7; screen shots of the twitter account of accused Sofi Fehmeeda as Ex. PW22/8.

29.2 Witness has also proved her report pertaining to accused Nahida Nasreen as Ex. PW22/9; report pertaining to the activities of accused Nahida Nasreen on the facebook and the screen shots thereof as Ex. PW22/10; screen shots of the twitter activities of accused Nahida Nasreen as Ex. PW22/11.

29.3 PW-22 has further deposed that in September, 2018, CIO of the case provided her symmetric contacts of Whatsapp account of Aasiya Andrabi for its analysis and proved her report dated 27.09.2018 as Ex. PW22/12; screen shots of the accounts pertaining to the phone numbers found in the WhatsApp contacts of accused Aasiya Andrabi as Ex. PW22/13; list of the phone numbers which were searched and analyzed by her as Ex. PW22/14 and report as Ex. PW22/15.

29.4. PW-22 was duly cross examined at length and during cross examination, witness stated that he had not mentioned the ID through which he logged into the facebook or twitter accounts of the accused of which he

had prepared the report. Witness could not read or write Urdu or Kashmiri and he had independently verified to be 100% sure that the followers of Aasiya Andrabi, namely, Nahida Nasreen and Sofi Fehmeeda whose accounts he had accessed after clicking the links into the twitter acount of Aasiya Andrabi were the same Nahida Nasreen and Sofi Fehmeeda who were accused in this case. Witness further stated that there were no other followers of Aasiya Andrabi by the name of Nahida Nasreen and Sofi Fehmeeda.

29.5. That during further cross examination, PW-22 further stated that she could not have found out about the friends or followers of Aasiya Andrabi on facebook without logging into facebook. That without logging into twitter they cannot see the followers or following of a particular twitter account. That for finding out about the phone numbers which had been provided by the CIO to him for analysis. That from serial No. 29 onwards till 77 of Ex. PW22/12, he has not given the source wherefrom

the names of the people who are using these numbers have been ascertained. That many other places in this document the source of information has not been provided. That in his analysis, he had not provided or found out the name of the actual operator of the URLs wherefrom he had downloaded certain videos/photographs etc.

30. PW-23 Sh. Riyaz Ahmed Wani, S/o Sh. Abdul Rehman Wani, R/o Umar Colony, Wanbal, Rawalpura, Srinagar, deposed that in the year 2018, he was Consulting Editor in Newspaper namely Greater Kashmir. He deposed that in July, 2018, in his presence, the publisher of the newspaper namely Sh. Rashid Maqdoni had handed over the unedited copy of one interview of accused Aasiya Andrabi which was published in their newspaper. He proved the production cum search memo as Ex. PW8/1.

31. PW-24 Sh. D. P. Gangawar, Assistant Director, CFSL, Chandigarh, deposed that on 20.07.2018, he had received three sealed parcels for examination and

the seals were found to be intact. He conducted the voice sample analysis and submitted his report dated 14.09.2018 as Ex. PW24/1 and after examination, the parcels containing exhibits were sealed with the seal of DPG CFSL CHD and the sample seal was affixed on his report.

31.1 Witness has further deposed that he had examined the parcels, seals were found to be intact, for its analysis and had prepared his reports as Ex. PW24/2, PW24/3 and PW24/4.

31.2. PW-24 was duly cross examined and during cross examination, PW-24 has stated that he had not specifically written in his report whether the sample voices which were sent to him were the original recordings or not because it was sent by the NIA as original recording and he had presumed it to be so. That alongwith the samples, he had been sent the transcripts of questioned documents/recordings. That has not attached the spectrogram with the report. That he has not mentioned which version of gold wave and multi speech software was

used by him. That his software has a feature by using this voice can be changed. That he had not filed the result/report of this software analysis. Witness also stated that the software does not give results but helps in analysis by the listener by enhancing the voice. Witness also stated that he has no diploma or degree etc in Linguistic typology and he has not undergone any training in Linguistic Typology of which he could produce documentary evidence. Witness also stated that his lab is not certified u/s 79A of the IT Act.

32. PW-25 Sh. Pawan Singh, Nodal Officer, Vodafone Idea Ltd., has proved the forwarding letter dated 18.09.2018, which was signed by Sh. Saurabh Aggarwal at point A as Ex. PW 25/1 since he had worked with him and seen him writing and signing in the ordinary course of his duty. He has proved the photocopy of customer application form for mobile no. 9796313204 in the name of Naheeda D/o Manjor Ahmed as Mark PW25/A; photocopy of the voter ID card of the customer bearing the

stamp of the company at point A as Mark PW 25/B; certificate u/s 65 B Indian Evidence Act issued by the than Nodal officer Sh. Saurabh Aggarwal bearing the stamp of the company and the initials of Sh. Saurabh Aggarwal at point A, as Ex. PW25/2 and CDR of the mobile no. 9796313204 from 15.09.2017 to 15.09.2018 as Ex. PW 25/3.

32.1. During the cross examination, the witness stated that he has worked with Mr. Saurabh Aggarwal from the year 2018 till the year 2022 when he had left the services of the company. He has not brought any record to show that Sh. Saurbh Aggarwal had left the services of the company. That there are no initials and stamp on the reverse sides of pages D-23/6/31 to pages D-23/30/29.

33. PW-26 Sh. Farooq Ahmad Sofi deposed that they are five sisters namely Akhtar, Hamida, Shagufta, Shakila and Sofi Fehmeeda and two brothers. He further deposed that his sister Sofi Fehmeeda had been adopted by Aasiya Andrabi and his sister along with Aasiya Andrabi

were working for spreading the religion of Islam with an organization called Dukhtaran-e-millat. He further deposed that his sister used to reside at the house of Aasiya Andrabi at Saura in Srinagar and she used to travel in her own vehicle for the purposes of the organization. He further deposed that his sister had purchased a Maruti 800, then Maruti Alto, thereafter, I-10 car and lastly, she had purchased Creta which she was using. He further deposed that during the investigation of the present case, the Creta car bearing registration no. JK 01 AB 6079 belonging to his sister was handed over by him to NIA vide memos Ex. PW26/1 and Ex.PW26/2. He further deposed that he had handed over the copy of registration certificate of the aforesaid vehicle and the copy of its sale to NIA and proved these documents as Ex. PW-26/3 and Ex. PW-26/4.

33.1. PW-26 was duly cross examined on behalf of accused persons and during cross examination, witness had stated that the Creta vehicle was seized while it was

stationed at his house. He never transferred money to the bank account of Sofi. That in response to the court question, witness has stated that he has never filed any income tax returns and therefore, no income has been shown by him to the govt. authority for any particular year. Witness further deposed that he had not taken out the money which he had paid to Sofi Fehmeeda for buying the Creta from any bank account.

34. PW-27 Sh. Bilal Ahmad Khan deposed that in the year 2018, he was working as Manager (Accounts) with Arise Automotive Pvt. Ltd. Tangpora Bypass, Srinagar, and had handed certain documents to NIA namely certified copies of the ledger account of Sofi Fehmeeda; certified copy of J&K bank E banking transaction made to Arise Automotive Pvt. Ltd. by Sofi Fehmeeda; payment receipts bearing no. 6332, 8978, 8983, 8984 and 9020 issued by Arise Automotive Pvt. Ltd. against payments made by Sofi; receipt no. 8978; receipt no. 8983; receipt no. 8984; receipt no. 9020; documents

of purchase of the aforesaid vehicle by Sofi Fehmeeda and proved those documents as Ex.PW-27/1, Ex.PW27/2, Ex.PW27/3, Ex.PW27/4, Ex.PW27/5, Ex.PW27/6, Ex.PW27/7, Ex.PW27/8 respectively. He further deposed that aforesaid documents were seized by NIA vide a seizure memo 29.12.2018 Ex.PW27/9.

34.1. PW-27 during cross examination, witness stated that at a given time, only one receipt book was used by their company except for the receipt which is issued at the time of booking because they have a separate receipt book for booking purposes.

35. PW-28 Muzamil Yaseen, Team Leader of M/s Arise Automotive Pvt. Ltd. Tangpora Bypass, Srinagar, deposed that on 29.11.2018, NIA team had visited their office and certain documents pertaining to purchase of Hyundai Creta by Sofi Fehmeeda were handed over by their Accounts Manager Sh. Bilal Ahmed Khan to NIA. which were seized vide memo Ex.PW27/9.

36. PW-29 Inspector Shashi deposed that on

06.07.2018, accused Sofi Fehmeeda, Aasiya Andrabi and Nahida Nasreen were arrested in this case in his presence vide arrest memos Ex.PW29/1, Ex.PW29/3, Ex.PW29/5 respectively and their personal search memos were conducted vide memos Ex.PW29/2, Ex.PW29/4, Ex.PW29/6 respectively.

37. PW-30 ASI Mohd. Ashraf Ganai deposed that on 31.07.2018, in the early hours of morning, NIA team had visited PS Soura and met the SHO. They told him that they wanted to videograph the house of accused Aasiya where some incriminating videos had been allegedly filmed. He further deposed that the team of NIA was led by Sh. Vikas Katheria IPS. Thereafter, the NIA team along with the team of local police reached 90 Feet road, Iqbal Colony where the house of Aasiya Andrabi, who is the chief of DeM, was situated. He further deposed that on reaching there, Sh. Vikas asked the SHO to call some public persons to join the proceedings. The SHO made call to few persons but none came. Thereafter, we called out to

see if somebody was inside the house but no body answered. Then he saw a small gate which was open and the team entered the house through that small gate.

37.1 Witness has further deposed that on entering the house, photography and videography of entire house was done. Witness has proved the memo as Ex.PW30/1. PW-30 further deposed that after the videography was completed, SD card was taken out and sealed by the IO. He identified the said SD card on its production in the court and proved the same as Ex.PW24/5.

38. PW-31 Kishan Kumar Sony is the witness who had witnessed the proceedings of voice sample recording of one of the accused persons in the present case at NIA Headquarter, New Delhi and proved the same as Ex.PW4/13.

39. PW-32 Sh. Sunil Karmakar deposed that in July, 2019, he was posted as Manager at Airport Authority of India and a mail was received in their office from NIA that NIA was to conduct a raid on 09.07.2019 and two

officials may be appointed from their office to join as witnesses. He deposed that he and one Sh. Rajiv Kumar Gupta were nominated to join the investigation and on 09.07.2019, he and Sh. Rajiv Kumar Gupta reached NIA Camp, Srinagar. On reaching there, they met Insp. Raj Singh Malik, who took them to Sh. Katheria, IPS/SP NIA and briefed them about the proceedings to be done on that day. Thereafter, one Farooq Ahmed Sofi brought one Creta SUV to NIA camp office and they checked the papers of the vehicle and it was in the name of one Fehmeeda Ahmed Sofi. He further deposed that in their presence, the said vehicle was seized by NIA officers vide seizure memo Ex. PW-26/2.

40. PW-33 Sh. Ajay Kumar is the Nodal Officer, Bharti Airtel, who proved CDRs and CAF of mobile nos. 9622557081, 9906536565, 9796390691 and 9797812699 as Ex.PW-33/1, Ex. PW-33/3, Ex. PW-33/6 and Ex. PW-33/8 respectively. He also proved the CDRs of mobile no. 9906566565, 9906536565 and 9622557081 as Ex.PW-

33/12, Ex.PW-33/13 and Ex.PW-33/14 respectively.

41. PW-34 Inspector Naveen Choudhary deposed that on 27.08.2018, during the investigation of this case, 55 incriminating videos available on youtube relating to accused Aasiya Andrabi, Sofi Fehmeeda nad Nahida Nasreen of DeM were downloaded and during this proceeding, two independent witnesses were present. Witness further deposed on 02.05.2018, during the investigation, on the instruction of CIO, certain incriminating data from the social Media of accused person was downloaded by Sh. Deepanshu Gupta, Asst. Programmer of NIA.

41.1 PW-34 further deposed that in the last week of 2018, he had accompanied the CIO of this Case for the investigation of this case to Srinagar. The witness has proved the Seizure memo is Ex.PW-34/1. The witness further proved the certificate u/s 65 B of Indian Evidence Act as Ex. PW-34/2. Witness further deposed that on the instruction of CIO certain incriminating data from the

social media account of accused person are also downloaded on 06.09.2018 and 14.09.2018. PW-34 further proved that visitor register seized vide seizure memo Ex. PW-34/3. The witness further deposed that the two registers were then on the request of manager handed back to the manager on a Jimanama with the direction to produce the originals before the Court and the copies of the relevant pages were taken on record. The said Jimanama is Ex.PW-34/4. The witness further proved the original acknowledgment receipt of certain documents in CFL Chandigarh of specimen voice and videos of the accused persons as Ex.PW-34/5.

41.2 That witness was duly cross-examined on behalf of accused persons and during cross-examination, witness stated that on reaching the camp office at Srinagar, he was to inform the purpose of the visit and this information is not recorded in writing of the camp office. That written instructions given for leaving the station as well as his report back to the station given to the CIO on

his return. That incriminating videos as downloaded on 27.04.2018 were downloaded on the computer of the agency. The witness could not tell the specification of the Computer. That the system on which these videos were downloaded was not seized. That his laptop was used by Umar Fahrooq Marazi for downloading the interview was not seized. That videos which reflected celebration of Pakistan day and raising of anti India Slogans etc. which were allegedly filed at the house of Aasiya Andrabi were analyzed by me the CIO together.That No v ideography was done of the procedure where the neighbours were asked to join the investigation but refused. No officers from civil administration were summoned to join the investigation.

42. PW-35 Sh. Dharmender Kumar, the then Dy. Secretary, CTCR Division, Ministry of Home Affairs, New Delhi, accorded the sanction for prosecution of accused persons vide order dated 09.11.2018 and proved the same as Ex.PW-35/1.

43. PW-36 Sh. Prabhala Kumar has deposed that in the year 2018, he was working as Nodal Officer for BSNL and had provided the customer application forms and CDRs of mobile phone no. 9419049230, 9419049231 and 9419022571 to NIA vide forwarding letter Ex. PW-36/1.

44. PW-37 Inspector Raj Singh Malick is the witness who on 27.09.2019, he alongwith one lady official and other staff reached at CFSL, CGO complex Lodhi Road, New Delhi where two independent witnesses namely Ankit Porwal and Kishan Kumar Soni, and Nahida Nasreen was produced at CFSL In judicial custody and her voice sample was recorded after taking her consent. That text which was given to Nahida Nasreen to read out is written in Roman Script as well as Arabic Script which are Ex.PW-37/1 and **Ex.PW-37/2** respectively.

44.1 That witness further deposed on 31.07.2018, he had seized two mobile phones from one person namely Tariq Ahmad Dar. That on 04.09.2018 he had prepared a

draft of emergency discloser form to be sent through WhatsApp and submitted it to the Supervisory officer Ms. Sonia Narang. The witness further deposed that on 10.07.2019 he was a part of team led by the CIO which had attached one house at Iqbal Colony, 90 Feet Road, Saura Srinagar which was used as office of them. That during the course of investigation he had recorded the statement of some witnesses.

44.2 That during cross-examination conducted on behalf of accused persons, the witness stated that some notices under section 91 Cr.P.C. had been issued under his hand. The witness could not tell the names of all the persons to whom these notice has been issued by him.

45. PW-38 Sh. Aniket Singh deposed that he had participated in the proceedings conducted at NIA Officers' Mess at Humhama on 30.07.2018 as a witness in the presence of NIA officials and one Omar Farooq Marazi. The witness further deposed that during the investigation he was asked to download the said interview from Oracle

Opinion website and from one email I.D. That Omar Farooq had also produced a pocket diary which according to him contained the hand written notes the interview of Sofi Fehmeeda. That witness correctly identify PEN drive in which Omar Farooq had downloaded the interview of Sofi Fehmeeda.

45.1 PW-38 was duly cross-examined on behalf of accused person and during cross-examination, witness stated that his statement was recorded in this case only once. That he had personally not verified the identity of Omar Farooq Marazi. That he was not given any written order to join the investigation on 31.07.2018. That no efforts were made to join any public witness while going to the house of Aasiya Andrabi.

46. PW-39 Sh. Anurag Soni is the witness who deposed that he had participated in the proceedings/raid conducted at a house at Iqbal Colony, 90 Feet Road, Shoura and proved the memo of attachment of immovable property as Ex.PW-39/1.

46.1 The witness was cross-examined at length on behalf of accused person and during cross-examination witness deposed that he was given a written order to report at NIA office. That he had not personally verified whether the said house was of Aasiya Andrabi or not. That no efforts were made to join any of the neighbour in the proceeding. That he has not stated in his statement u/s 161 Cr.P.C. that an effort was made by peeping insight the house whether anybody was inside the home or not.

47. PW-40 Sh. Ramdas Prasad deposed that on 11.07.2018, he had participated in the proceedings conducted at NIA Officer at Delhi where voice samples of accused persons namely Aasiya, Sofi and Naheeda, were taken in his presence and proved the documents as Ex.PW4/2, Ex.PW4/10 and Ex.PW4/6.

47.1 PW-40 did not fully support the prosecution case, thus with the permission of the Court, the witness was cross-examined by Ld. Senior PP for NIA and during cross-examination, witness stated that from the NIA

office, they had gone to CFSL where sample were recorded. That NIA office and CFSL were two different building. That SD card was first put in a laptop and it was shown that it did not contain any data.

47.2 The witness was cross-examined and during cross-examination, the witness deposed that he had stated in his statement u/s 161 Cr.P.C. as per direction of his officer, he had reached at NIA office. That all the three ladies who voice sample were recorded in Boorqa and he could not see their faces.

48. PW-41 Sh. Wajahat H. Khan, Patwari, Tehsil Eidgah, Srinagar, provided the property details pertaining to accused Aasiya Andrabi to NIA and proved the said record as Ex.PW41/A and Ex.PW41/B.

49. PW-42 Sh. Majid Magbool deposed that in the year, he was working as Executive Editor of Kashmir Ink and conducted an interview of accused Aasiya Andrabi. He proved the printout of said unedited interview as Ex.PW9/1.

50. PW-43 Nishant Singh deposed that on 31.07.2018, he was instructed by the CIO of this case to download certain incriminating videos on the Facebook page of Nahida Nasreen and Fatima Shazad. That under his supervision, Inspector Shrawan Kumar who was the expert downloaded those videos and transferred them onto a DVD. That said DVD was placed in an envelope and sealed with the seal of NIA. That entire process was conducted in the presence of two independent witnesses who also signed at the time of sealing. That Inspector Shrawan Kumar issued a certificate u/s 65 B of Indian Evidence Act. That thereafter, he had prepared the recovery memo already Ex.PW-3/3 (D-28) and each page of which bears his signature at point C. He was also having the charge of DSP intel and Operations.

50.1 The witness was duly cross-examined on behalf of accused persons and during cross-examination, witness stated that the instructions for downloading the videos were given to him. That during these proceedings,

officers senior and superior to him were present. That these proceedings were recorded in 7 pages on being dictated by Ms. Sonia Narang DIG, NIA.

51. PW-44 Sh. Qamar Khan deposed that in the year 2018, he was working as a freelance translator from Urdu to English and had translated certain documents as instructed by Anubhav Multilingual Services.

52. PW-45 Sh. Kamal Kishore Gupta, Nodal Officer, BSNL, has proved the certificate under Section 65-B of Indian Evidence Act with respect to CDRs of mobile nos. 9419049230, 9419049231 and 9419022571 for the period 20.09.2017 to 20.09.2018 as Ex.PW-45/1.

53. PW-46 Sh. Anil Kumar Kaul is the witness deposed that in the year 2018 on the request of the NIA /IO of this case, he had taken out the CDRs of mobile no. 9419022571 for the period 20.09.2017 to 20.09.2018 and supplied it to the NIA. That witness further deposed that the said CDRs, each page of the said CDRs running into 45 pages bears signature and and stamp at point A.

54. PW-47 Sh. Muzafar Ahmed Beigh, AGM, BSNL, J&K, deposed that he had provided photocopies of CAFs of mobile nos. 9419049230, 9419049231 and 9419022571 to the NIA and proved the same as Ex.PW-47/3, PW-47/4 and PW-47/5.

55. PW-48 Sh. Ankit Garg deposed that he got the FIR registered of this case and proved the same as Ex.PW-48/1.

56. PW-49 Sh. Satish Kumar Chhikara deposed that he had issued the order dated 26.04.2018 under Section 6(5) and Section 8 of NIA Act and proved the same as Ex.PW-49/1.

57. PW-50 Sh. Gagan Chandra Bag, Dy. Manager Billing, Indraprastha Apollo Hospita, Delhi, proved the record pertaining to treatment of accused Sofi Femmeeda, Aasiya Andrabi at hospital as Ex.PW-50/1 to PW-50/6.

58. PW-51 Sh. Ashok Kumar deposed that in the year 2020 he was appointed as CIO of this case and the matter was at the stage further investigation at the time and

on the basis of the documents and evidence available, he filed a supplementary chargesheet.

59. PW-52 Sh. Vikas Katheria, the then DIG, Dimapur, is the Chief Investigating Officer of the present case who deposed about the investigations carried out by him as well as by his team members and supported the case of prosecution. The witness proves the DVDR which was sealed in an envelope and sealed with the seal of the Court and proved the same as Ex.PW-52/1. That witness prove a request letter sent to google to preserve these videos as Ex. PW-52/2. The witness further deposed that he receive replies from google LLC which have been proved by him Ex. PW-52/3 and Ex.PW-52/4 respectively. The witness further proved the envelope in which the DVDR was sealed as Ex. PW-52/5. The witness deposed that during the investigation protected witness A was examined and during his statement the witness produced certain booklets and accounts books which were also seized vide Ex. PW-52/6. The witness further proved the

printout of the emails as received to him from his supervisory officer as Ex. PW-52/7. The witness further proved the downloaded documents as Ex. PW-52/8.

59.1 PW-52 further proved the letter of request to gmail regarding preservation of mails two accused persons giving therein the email IDs as Ex.PW-52/9. That witness also proved the response received from the gmail to him as Ex. PW-52/10. The witness further proved the four cash books/Bahi books which were seized as Ex.PW-52/11 to Ex. PW-52/14. The witness further proved the letter of SPP Anantnag by which relevant true copies of documents/material was supplied alongwith the list as Ex. PW52/15 and proved the annexures of such letters as Ex. PW52/15A.That witness further proved the notification of Government of India as Ex. PW5216 and Government of India again issued a notification banning for the activities under schedule 1 of UA (P) A and same is Ex. PW52/17. That witness further proved the separate bunch of translated material from the agency as Ex. PW52/18 to

PW52/21. Witness further proved the D-39 which is special notice issued from Interpol which is now Ex. PW52/22. PW-52 also proved the report/letter received from DM, Srinagar as Ex. PW52/23 and D-54 is email received from Facebook Inc. received to him is Ex. PW52/24. Witness further proved the order for attachment of above mentioned properties as Ex. PW52/25. Witness also deposed that the competent authority as per UA (P) Act has also confirmed the above said seizure and attachment of properties vide order dated 05.09.2019 as Ex. PW52/26.

59.2. PW-52 was cross examined on behalf of accused persons at length and during cross examination, witness stated that many other material which was not available in open source I.e on social media/cyber space was also collected during his investigation. That all the process of downloading videos from the cyber space in the presence of independent witnesses as stated by him, done during his investigation at NIA, headquarter, New Delhi.

That instrument with the help of which those videos were downloaded were not seized during investigation. That there is no specific circular regarding not seizing of such instrument/devices through which videos were downloaded during the investigation.

59.3. That witness further deposed that he had gone for execution of production warrants after obtaining the same from the NIA court Delhi for ensuring the appearance of the accused for joining them in the investigation of this case. That no separate proceedings in this regard were done in Jammu & Kashmir except execution of production warrants. That no written notice was given to the local residents to join the proceedings on the last day of July 2018 while doing the v ideography of the premises of the house of Aasiya Andrabi. That no efforts were made to call upon any independent witness from the local mosque.

60. PW-53 Sh. Naresh Kumar Basor, Sr. Branch Manager, Bank of Baroda, Rajendra Par, Gurugram,

deposed that on 25.10.2018, he had joined investigation of the present case at NIA Headquarter where he was shown certain videos, Twitter and Facebook account of accused Naheeda Nasreen. He recognized the voice of his Mausi Naheeda Nasreen in one of those videos. He had also identified his Mausi Naheeda Nasreen in photo Ex.PW18/4.

61. The following documents have been exhibited during the course of prosecution witnesses by various witnesses examined by prosecution.

Sl. No.	**Document/Material Exhibited**	**Exhibit Number**
1.	Certificate u/s 65 B of Indian Evidence Act regarding 55 Videos downloaded from Youtube.	Ex.PW-1/1
2.	DVD containing 55 videos of Youtube.	Ex.Article P-1
3.	Certificate u/s 65 B of Indian Evidence Act regarding Twitter and Facebook URLs of the accused persons.	Ex.PW-2/1
4.	DVD containing Twitter and Facebook URLs.	Ex.Article P-2
5.	Certificate u/s 65 B of Indian Evidence Act regarding 12	Ex.PW-2/2

	Videos downloaded from Youtube.	
6.	DVD containing 12 videos of Youtube.	Ex.Article P-3
7.	Recovery memo of downloading 55 videos from Youtube.	Ex.PW-3/1 (D-2)
8.	Recovery memo of downloading Twitter and Facebook URLs of the accused persons.	Ex.PW-3/2 (D-3)
9.	DVD containing 69 videos of Youtube.	Ex.Article P-4
10.	Envelope containing DVD containing 69 videos of Youtube.	Ex.Article P-5
11.	Recovery memo of downloading 69 vidoes from Youtube.	Ex.PW-3/3 (D-28)
12.	Declaration form signed by Aasiya Andrabi for voice sampling.	Ex.PW-4/1 (D-11)
13.	SD card containing voice sample of Aasiya Andrabi.	Ex.Article P-6 (M-4)
14.	Proceeding memo of recording of Specimen voice of Aasiya Andrabi.	Ex.PW-4/2 (D-11)
15.	Envelope containing SD card containing voice sample of Aasiya Andrabi.	Ex.PW-4/3
16.	Original packaging of SD Card containing voice sample of Aasiya Andrabi.	Ex.PW-4/4
17.	Declaration form signed by Nahida Nasreen for voice sampling.	Ex.PW-4/5 (D-13)
18.	SD card containing voice sample of Nahida Nasreen.	Ex.Article P-7 (M-5)

19.	Proceeding memo of recording of Specimen voice of Nahida Nasreen.	Ex.PW-4/6 (D-13)
20.	Envelope containing SD card containing voice sample of Nahida Nasreen.	Ex.PW-4/7
21.	Original packaging of SD Card containing voice sample of Nahida Nasreen.	Ex.PW-4/8
22.	Declaration form signed by Sofi Fehmeeda for voice sampling.	Ex.PW-4/9
23.	SD card containing voice sample of Sofi Fehmeeda.	Ex.Article P-8 (M-6)
24.	Proceeding memo of recording of Specimen voice of Sofi Fehmeeda.	Ex.PW-4/10 (D-12)
25.	Envelope containing SD card containing voice sample of Sofi Fehmeeda.	Ex.PW-4/11
26.	Original packaging of SD Card containing voice sample of Sofi Fehmeeda.	Ex.PW-4/12
27.	Proceeding memo of recording of Specimen voice Nahida Nasreen dated 27.09.2019.	Ex.PW-4/13 (D-63)
28.	SD card containing voice sample of Nahida Nasreen dated 27.09.2019.	Ex.Article P-9 (M-14)
30.	Envelope containing SD card containing voice sample of Nahida Nasreen dated 27.09.2019.	Ex.PW-4/14
31.	Original packaging of SD Card containing voice sample of Nahida Nasreen dated	Ex.PW-4/15

	27.09.2019.	
32.	Recovery memo of downloading videos from the Youtube channel of Nahida Nasreen.	Ex.PW-6/1 (D-36)
33.	Printout of unedited interview of Aasiya Andrabi taken by Aquib Javed.	Ex.PW-7/1 (D-15)
34.	Letter dated 17.08.2019 vide which copy of Newspaper Kashmir Ink containing interview of Aasiya Andrabi.	Ex.PW-7/2 (D-19)
35.	Original Newspaper Kashimir Ink in which interview of Aasiya Andrabi published.	Ex.PW-7/3 (D-19/15/15)
36.	Unedited interview of Aasiya Andrabi sent by Aquib Javed to executive editor Majid Maqbool.	Ex.PW-7/4
37.	Production cum Seizure memo dated 18.07.2018 containing letter from Fayaz Ahmad/Kaloo regarding unedited inteview of Aasiya Andrabi, Copy of Aasiya Andrabi received from Aquib Javed, weekly Kashmir Ink dated 15.01.2018 and certificate u/s 65 B of Indian Evidence Act duly signed by Majid Maqbool executive editor of Kashmir Ink.	Ex.PW-8/1 (D-19)
38.	Printout of unedited interview of Aasiya Andrabi	Ex.PW-9/1 (earlier it is part of Ex.PW-7/4)
39.	Forwarding covering letter dated 17.07.2018 through which a CD containing interview conducted by Shuja Ul Haq was sent to NIA.	Ex.PW-10/1
40.	Certificate u/s 65 B of Indian	Ex.PW-10/2 (D-

	Evidence Act of CD containing interview conducted by Shuja Ul Haq.	21)
41.	Production cum Seizure memo of documents seized from frozen valley tours and travels Srinagar	Ex.PW-11/1 (D-20)
42.	Seizure memo regarding seizure of documents from Greater Kashmir Newspaper	Ex.PW-8/1 (D-19)
43.	Seizure memo dated 19.07.2018 regarding seizure of mobile phone of Aquib Javed	Ex.PW-11/2(D-18)
44.	Internet monitoring system analysis report of mobile of JUD	Ex.PW-12/1 (D-44)
45.	Certificate u/s 65 B of Indian Evidence Act pertaining to the CD Ex.Article P-4	Ex.PW-12/2 (D-28/9-10).
46.	Letter containing bank statement and KYC documents of Sofi Fehmeeda (A/c No.50200018868506, 27081000001303)	Ex.PW-13/1 (D-14)
47.	Certificate Under Bankers of Evidence Act	Ex.PW-13/2
48.	Statement of account no. 27081000001303 of Sofi Fehmeeda	Ex.PW-13/3
49.	Electronic copy of account opening of Sofi Fehmeeda	Ex.PW-13/4 (D14/3 and D14/4)
50.	KYC documents self attested by Sofi Fehmeeda	Ex.PW-13/5 & Ex.PW-13/6
51.	Current account opening form of Sofi Fehmeeda bearing account no. 50200018868506	Ex.PW-13/7 (D-14)

52.	KYC documents of current account	Ex.PW-13/8 (D-14)
53.	Cheque of Rs.30,000 of J&K submitted by Sofi Fehmeeda while opening the current account	Ex.PW-13/9
54.	Account statement of account no. 50200018868506 belongs to Sofi Fehmeeda	Ex.PW-13/10
55.	Interview of Sofi Fehmeeda published on online portal namely Oracle Opinions	Ex.PW-14/1
56.	Recovery memo dated 30.07.2018 of downloading of Interview of Sofi Fehmeeda published on online portal namely Oracle Opinions	Ex.PW-14/2
57.	Pages of Black coloured pocket diary in which interview of Sofi Fehmeeda was recorded	Ex.PW-14/3 (Colly)
58.	Envelope containing PEN drive in which interview of Sofi Fehmeeda was downloaded	Ex.PW-14/4
59.	PEN Drive containing interview of Sofi Fehmeeda	Ex.Article P-10.
60.	Guests register of Hotel Arina Inn Daryaganj New Delhi in which Masood Ahmad and Sofi Fehmeeda Siddique had checked in	Ex.PW-15/1
61.	Guests register of Hotel Arina Inn Daryaganj New Delhi in which Masood Ahmad and Sofi Fehmeeda had checked in as well as Shahzada and Aasiyeh Ashiq had checked in	Ex.PW-15/2

62.	Photocopy of driving licence of one Syed Mohd Taha as submitted to Hotal Arina Inn	Ex.PW-15/3 (D46/4/15)
63.	Photocopy of Voter ID of one Rahila Firoze as submitted to Hotal Arina Inn	Ex.PW-15/4 (D-46/5/15)
64.	Photocopy of SMT Andrabi as submitted to Hotal Arina Inn	Ex.PW-15/5 (D46/6/15)
65.	Photocopies of election card of Sofi Fehmeeda, Masood Ahmad, Shahzada and Aasiyeh Ashiq as submitted to Hotel Arina Inn	Ex.PW-15/6 (D46/7/15)
66.	Photocopy of ID card of Shaishta Gul, Voter ID of Sofi Fehmeeda and Aasiyeh Ashiq and driving licence of Mohd. Bin Qasim Faktoo as submitted to Hotel Arina Inn	Ex.PW-15/7 (D46/9/15)
67.	Certificate u/s 65 B of Indian Evidence Act, Computer generated transaction details pertaining to Aasiya Andrabi and her associates	Ex.PW-16/1
68.	Computer generated transaction details pertaining to Aasiya Andrabi and her associates	Ex.PW-16/2
69.	Email sent to NIA by frozen Valley Tours and travels regarding transaction details with the subject "Ms. Sofi Fehmeeda details"	Ex.PW-16/3
70.	DVD containing complete interview of Aasiya Andrabi conducted by Shuja Ul Haq	Ex.PW-17/1
71.	Disclosure cum voice indentification memo pertaining	Ex.PW-18/1

	to Nahida Nasreen dated 25.10.2018	
72.	Printout of downloaded facebook page of Nahida Nasreen and identification	Ex.PW-18/2 (D-50/4/6)
73.	Printout of downloaded Twitter page of Nahida Nasreen and identification	Ex.PW-18/3 (D-50/5/6)
74.	Printout of one of the videos identified by Mohd Saqlain Sakhi	Ex.PW-18/4 (D-50/6-6)
75.	Recovery memo dated 06.09.2018 regarding recovery of various incriminating articles/ posts recovered from Facebook Account of Sofi Fehmeeda, Dukhtaran-e-Millat, Fatima Shazad and Hadiya Sofi	Ex.PW-19/1 (D-31)
76.	Certificate u/s 65 B of Indian Evidence Act of recovery of various incriminating articles/posts recovered from Facebook Account of Sofi Fehmeeda, Dukhtaran-e-Millat, Fatima Shazad and Hadiya Sofi	Ex.PW-19/2 (D-31)
77.	Envelope containing DVD various incriminating articles/posts recovered from Facebook Account of Sofi Fehmeeda, Dukhtaran-e-Millat, Fatima Shazad and Hadiya Sofi	Ex.PW-19/3
78.	DVD with various incriminating articles/posts recovered from Facebook Account of Sofi Fehmeeda, Dukhtaran-e-Millat, Fatima Shazad and Hadiya Sofi	Ex.Article P-11
79.	Call data record analysis report	Ex.PW-21/2 (D-

		5)
80.	Covering letter and Call data record analysis report	Ex.PW-21/1
81.	Report pertaining to activities of Aasiya Andrabi alongwith screenshots	Ex.PW-22/1 (D-41/1/38 to 8/38)
82.	Annexure A of report containing screenshots of Facebook of Aasiya Andrabi	Ex.PW-22/2 (D-41/9/38 to 11/38)
83.	Annexure B of report containing screenshots of Twitter Account of Aasiya Andrabi	Ex.PW-22/3 (D-41/12/38 to 32/38)
84.	Annexure C of report containing details of Videos of Aasiya Andrabi found on YouTube	Ex.PW-22/4 (D41/33/38)
85.	Annexure D of report pertaining to social media account of Dukhtaran-E- Millat and the screenshots	Ex.PW-22/5 (D41/35/38 to 38/38)
86.	Report pertaining to activities of Sofi Fehmida alongwith screenshots	Ex.PW-22/6 (D42/1/35 to 7/35)
87.	Annexure A pertaining to the screenshots of the Facebook account of Sofi Fehmeeda	Ex.PW-22/7 (D-42/8/35 to 14/35)
88.	Annexure B pertaining to the screenshots of the Twitter account of Sofi Fehmeeda	Ex.PW-22/8 (D-42/15/35 to 31/35)
89.	Report pertaining to activities of Nahida Nasreen	Ex.PW-22/9 (D-43/1/36 to 7/36)
90.	Annexure A pertaining to the activities of accused Nahida Nasreen on Facebook and screenshots	Ex.PW-22/10 (D-43/8/36 to 17/36)

91.	Annexure B pertaining to activities of accused Nahida Nasreen on Twitter	Ex.PW-22/11 (D-43/18/36 to 32/36)
92.	Report and Screenshots of account linked to number belongs to JUD and FIF	Ex.PW-22/12 (D45/1/32 to 6/32)
93.	Annexure A screenshots of account pertaining to the phone numbers found in Whatsapp contacts of accused Aasiya Andrabi	Ex.PW-22/13 (D45/7/32 to 18/32)
94.	Annexure B containing list of phone number searched and analysed	Ex.PW-22/14 (D-45/29/32 to 32/32)
95.	Cyber trancking report of Youtube video in respect of Dukhtaran-E-Millat	Ex.PW-22/15 (D-51/1/3 to 3/3)
96.	CFSL Chandigarh Report dated 14.09.2018 alongwith forwarding letter pertaining to voice sample analysis	Ex.PW-24/1 (D-37)
97.	CFSL Chandigarh Report dated 14.09.2018 alongwith forwarding letter pertaining to voice sample analysis	Ex.PW-24/2 (D-38)
98.	CFSL Chandigarh report dated 13.02.2019 pertaining to voice sample analysis of accused Aasiya Andrabi	Ex.PW-24/3 (D-55)
99.	CFSL Chandigarh report dated 23.10.2019 pertaining to voice sample analysis of accused Nahinda Nasreen	Ex.PW-24/4 (D-57)

100.	Forwarding letter dated 18.09.2018 from Nodal Officer of Vodafone Idea	Ex.PW-25/1 (D-23/1/31)
101.	Photocopy of customer application form of mobile no. 9796313204 in the name of Naheeda	Ex.PW-25/A (D-23/2/31)
102.	Certificate u/s 65 B of Indian Evidence Act of mobile No. 9796313204	Ex.PW-25/2 (D-23/31/31)
103.	CDR of mobile no. 9796313204	Ex.PW-25/3 (D23/6/31 to D-23/30/31)
104.	Order of seizure of Hyundai Creta bearing registration no. JK 01 AB 6079	Ex.PW-26/1 (D-60)
105.	Memorandum of attachment of Hyundai Creta bearing registration no. JK 01 AB 6079	Ex.PW-26/2 (D-60)
106.	Copy of registration certificate of Hyundai Creta bearing registration no. JK 01 AB 6079	Ex.PW-26/3 (D-24)
107.	Copy of sale of Hyundai Creta bearing registration no. JK 01 AB 6079	Ex.PW-26/4 (D-24)
108.	Certified copy of ledger account of Sofi Fehmeeda	Ex.PW-27/1
109.	Certified copy of e-banking transaction made to Arise Automotige Pvt. Ltd by Sofi Fehmeeda.	Ex.PW-27/2 (Colly) (D-58)
110.	Certified copy of payment receipt issued by Arise Automotige Pvt. Ltd to Sofi Fehmeeda	Ex.PW-27/3 to 27/7 (D-58)
111.	Documents of purchase of Creta	Ex.PW-27/8

	Vehicle by Sofi Fehmeeda	(Colly) (D-58)
112.	Sezuire memo of all documents from serial no. 108 to 111 (in this list)	Ex.PW-27/9
113.	Arrest memo of Aasiya Andrabi	Ex.PW-29/1 (D-8)
114.	Personal search memo of Aasiya Andrabi	Ex.PW-29/2 (D-8)
115.	Arrest memo of Sofi Fehmeeda	Ex.PW-29/3 (D-9)
116.	Personal search of Sofi Fehmeeda	Ex.PW-29/4 (D-9)
117.	Arrest memo of Nahida Nasreen	Ex.PW-29/5 (D-10)
118.	Personal search of Nahida Nasreen	Ex.PW-29/6 (D-10)
119.	Proceeding memo of videography of house of Aasiya Andrabi	Ex.PW-30/1 (D-26)
120.	Envelope containing memory card in which videography of house of Aasiya Andrabi was recorded	Ex.PW-24/5
121.	Photocopy of customer application form of mobile no. 9622557081	Ex.PW-33/1 (D-52) (Colly) (OSR)
122.	Copy of Voter ID of Nahida as submitted while taking mobile no. 9622557081	Ex.PW-33/2 (OSR)
123.	Photocopy of CAF of mobile no. 9906566565 in the name of Fahmida Siddiqui	Ex.PW-33/3 (D-52) (OSR)
124.	Phtotocopy of declaration form made by Fahmida Siddiqui	Ex.PW-33/4 (D-52) (OSR)
125.	Photocopy of driving licence of	Ex.PW-33/5

	Fehmida Siddiquie while taking mobile no. 9906566565	(OSR)
126.	Photocopy of CAF of mobile no. 9796390691 in the name of Fahmida Siddiqui	Ex.PW-33/6 (D-52) (OSR)
127.	Copy of driving licence of Fehmida Siddiqui while taking mobile no. 9796390691	Ex.PW-33/7 (OSR)
128.	Photocopy of CAF mobile no. 9797812699 in the name of Aasiya D/o Ghulam Hussain Bhat	Ex.PW-33/8 (D-52) (OSR)
129.	Photocopy of Voter ID of Aasiya while taking mobile no. 9797812699	Ex.PW-33/9 (D-52) (OSR)
130.	Certificate u/s 65 B of Indian Evidence Act of mobile no. 9622557081, 9906536565, 9797812699 & 9906566565	Ex.PW-33/10
131.	CDR of mobile no. 9797812699	Ex.PW-33/11 (Colly)
132.	CDR of mobile no. 9906566565	Ex.PW-33/12 (Colly)
133.	CDR of mobile no. 9906536565	Ex.PW-33/13 (Colly)
134.	CDR of mobile no. 9622557081	Ex.PW-33/14 (Colly)
135.	Seizure memo of day book titled as “Day book -4” having record of sale and purchase of ornaments	Ex.PW-34/1 (D17/1/1)
136.	Certificate u/s 65 B of Indian Evidence Act regarding downloading of Interview of Sofi Fehmeeda published on online portal namely Oracle Opinions	Ex.PW-34/2 (D-25)

137.	Seizure memo of certified copy of pages of visitors register of Hotel Arina Inn	Ex.PW-34/3 (D-46/1/15)
138.	Jimanama of returning two registers to the manager of Hotel Arina Inn	Ex.PW-34/4 (D-46/2/15)
139.	Acknowledgement receipt after submitting specimen voice sample of the accused in CFSL Chandigarh	Ex.PW-34/5 (D-49)
140.	Prosecution sanction dated 09.11.2018 against the accused person	Ex.PW-35/1
141.	Forwarding letter by Nodal Officer BSNL of CAF and CDRs of Mobile no. 9419049230, 9419049231 & 9419022571	Ex.PW-36/1 (D-53)
142.	Text given in Roman script to Nahida Nasreen to read out while giving in voice sample	Ex.PW-37/1
143.	Text given in Arabic script to Nahida Nasreen to read out while giving in voice sample	Ex.PW-37/2
144.	Production cum seizure memo dated 31.07.2018 regarding seizure of two mobile phone belongs to Smt. Ruqiya W/o Tariq Ahmed Dar	Ex.PW-38/1 (D-27)
145.	Memorandum of attachment of house of Aasiya Andrabi dated 10.07.2019	Ex.PW-39/1 (D-61)
146.	Seizure memo of Diary of Omar Farooq containing hand written notes of interview of Aasiya Andrabi	Ex.PW-14/2 (D-25)

147.	Ownership verification report of house of Aasiya Andrabi Collected from DC Srinagar Office	Ex.PW-41/B (D-47)
148.	Scanned copy of revenue record regarding house of Aasiya Andrabi	Ex.PW-41/A (D-47)
149.	Certificate u/s 65 B of Indian Evidence Act regarding unedited interview of Aasiya Andrabi	Ex.PW-42/A (D-19)
150.	Certificate u/s 65 B of Indian Evidence Act regarding CDR of mobile no. 9419049230, 9419049231 & 9419022571	Ex.PW-45/1
151.	Photocpy of CAF of mobile no. 9419049230 in the name of Aasiyeh Aashiq	Ex.PW-47/1 (OSR)
152.	Copy of Voter ID Card submitted by Aasiyeh Aashiq while taking mobile no. 9419049230	Ex.PW-47/2 (OSR)
153.	Photocopy of CAF of mobile no. 9419049231 in the name of Sofi Fehmeeda Siddque	Ex.PW-47/3 (OSR)
154.	Photocopy of Voter ID of Sofi Fehmeeda Siddque while taking mobile no. 9419049231	Ex.PW-47/4 (OSR)
155.	Photocopy of CAF of mobile no. 9419022571 in the name of Nahida Nasreen	Ex.PW-47/5 (OSR)
156.	Copy of Ration card of Nahida Nasreen while taking mobile no. 9419022571	Ex.PW-47/6 (OSR)
157.	Copy of FIR against the accused person dated 27.04.2018	Ex.PW-48/1
158.	Copy of MHA order dated	Ex.PW-49/4 (D-

	26.04.2018 u/s 6 (5) and section 8 of NIA Act 2008 approving registration of FIR	1/4/4)
159.	Certificate u/s 65 B of Indian Evidence Act regarding the billing records of Indraprastha Apolo Hospital Delhi regarding cash receipts of Sofi Fehmeeda, Aasiya Andrabi	Ex.PW-50/1
160.	Cash receipt of payment of Rs.1000 of Sofi Fehmeeda in Indraprastha Apolo Hospital Delhi dated 08.04.2014	Ex.PW-50/2
161.	Cash bill paid by Sofi Fehmeeda on 29.10.2014 at Indraprastha Apolo Hospital Delhi	Ex.PW-50/3
162.	Case receipt of payment of Rs.1000 by Aasiya Andrabi Indraprastha Apolo Hospital Delhi dated 08.04.2014	Ex.PW-50/4
163.	Patient registration details of Aasiya Andrabi in Indraprastha Apolo Hospital Delhi dated 08.04.2014	Ex.PW-50/5
164.	Patient registration details of Sofi Fehmeeda in Indraprastha Apolo Hospital Delhi dated 08.04.2014	Ex.PW-50/6
165.	Envelope in which DVD containing 55 videos of Youtube was sealed	Ex.PW-52/1
166.	A letter to Google to preserve the video of accused person	Ex.PW-52/2 (D-4)
167.	Reply from Google pertaining to the request of preservation of videos of accused	Ex.PW-52/3 and Ex.PW-52/4

168.	Envelope containing DVD in which Twitter and Facebook URLs of the accused persons were downloaded	Ex.PW-52/5
169.	Seizure memo of accounts book	Ex.PW-52/6 (D-16)
170.	CDR of mobile no. 9419049230, 9419049231 & 9419022571	Ex.PW-46/1
171.	Memory card in which videography of house of Aasiya Andrabi was recorded	Ex.PW-24/6
172.	Printout of IN-SYMETRIC contact lists of primary phone number used by Aasiya Andrabi and Duktran-E- Millat as received from Whatsapp	Ex.PW-52/7 (D-30)
173.	Documents regarding Hafiz Mohammad Saeed being prescribed terrorist and his organisation Jamat Ud Dawa as downloaded from UN website	Ex.PW-52/8
174.	E-mail received from facebook confirming two facebook accounts used by Sofi Fehmeeda operating from a particulare mobile number	Ex.PW-52/24 (D-54)
175.	Order of attachment of DeM Headquarter and residents of Aasiya Andrabi	Ex.PW-52/25 (D-61)
176.	Order of competent authority confirming the seizure and attachent of properties belongs to accused persons and DeM	Ex.PW-52/26

177.	Letter of request to Google regarding preservation of email IDs of two accused persons	Ex.PW-52/9 (D-6)
178.	Response from Google regarding preservation of email IDs	Ex.PW-52/10 (D-6/1/3)
179.	Four cash books/Bahibooks regarding cash transactions by selling jewellery and money received by Sofi Fehmeeda	Ex.PW-52/11 to Ex.PW-52/14
180.	Letter received from SSP Anantnang pertaining to FIR No. 60/2018 providing relevant two copies of documents/material including envelope marked Dukhtaran-e-Millat with cell number 9906566565, letter pads of Dukhtaran-e-Millat, identity card of Nahida Nasreen (A-3) issued by Dukhtaran-e-Millat organization, poster of Dukhtaran-e-Millat Nidahi Soohuda, recruitment form of Dukhtaran-e-Millat, receipt book of Dukhtaran-e-Millat	Ex.PW-52/15 (D-7)
181.	Letter dated 26.07.2018 giving details criminal antecedents of accused persons	Ex.PW-52/15A (D-29)
182.	Government of India notification banning Dukhtaran-e-Millat	Ex.PW-52/16 (D-22)
183.	Government of India notification dated 30.12.2004 banning Dukhtaran-e-Millat under Schedule I of UA(P) Act, 1967 at entry no. 29.	Ex.PW-52/17 (D-64)
184.	Translated documents pertaining to accused persons as received	Ex.PW-52/18 (D-32)

	from Anubhav Multi Lingual Services	Ex.PW-52/19 (D-33) Ex.PW-52/20(D-34) Ex.PW-52/21 (D-35)
185.	Interpol special notice against Mohd. Hafiz Saeed, Amir of Jamaat Ud Dawah	Ex.PW-55/22 (D-39)
186.	True copies of documents sent by District Magistrate, Srinagar confirming ownership of properties at 90 Foot Road, Saura, Srinagar in the name of mother in law of Aasiya Andrabi wherein headquarter of Dukhtaran-e-Millat was situated	Ex.PW-52/23 (D-47)

STATEMENT OF ACCUSED U/S 313 Cr.PC.

62. Thereafter, on 02.02.2023, statement of accused Aasiya Andrabi @ Aasiyeh Andrabi @ Syedah Aasiya Firdaous Andrabi @ Aasiyeh Ashiq, under Section 313 Cr.P.C was recorded in part. Further statement of accused persons were recorded on 09.02.2023. All the incriminating evidence was put to accused persons. Answers of accused persons were recorded. It is stated by accused that PWs are deposing falsely at the behest of the

Agency as they have been falsely implicated in the present matter due to Political Vendetta. Accused persons claimed innocence in the present matter and expressed their willingness to lead defence evidence.

DEFENCE EVIDENCE

63. In their defence, accused had produced a witness namely Sh. L. Thangminlun Haokip and his examination was strated as DW-1. However, recording of evidence of this witness was disallowed by Ld. Predecessor of this court as witness has been summoned for irrelevant facts which is not in any manner helpful in proving defence of accused persons in this case. Subsequently, on behalf of accused certain documents were placed on record by Ld. Defence counsel through a statement made at bar. The statement was limited to placing the documents on record and these documents were not tendered in evidence. This fact is important to note as by simply placing any document on record does not imply that said document stands proved as required

under law. To prove any such document placed on record, first of all the document has to be tendered on record so that the further party have an occasion to make their submission, if any, on that document. Further, the document concerned needs to be proved by following the procedure laid down in law in this regard. The document must be proved either by adducing the original of said document before court or by placing the original before the court or by examining a witness who could prove the document. However, as noted above, except having placed the document on record, no other steps have been taken on behalf of accused for proving these documents.

SUBMISSIONS ON BEHALF OF BOTH PARTIES

64. It is argued on behalf of prosecution that that Dukhtaran-e-Millat (DEM) was banned and declared as a 'Terrorist Organization' in the year 2004 vide notification of Government of India, which is proved as E**x. PW-52/16 (D-22**). That there is sufficient material on record to establish association of Aasiya Andrabi (A-1) with DEM

as Head of the Organization/Chairman.

64.1 That it has been admitted by the accused Aasiya Andrabi in her statement u/s 313 Cr.PC and in her written statement u/s 233(2) of CrPC that *"till date we were working under the banner of DeM…"*.

64.2 That all the witnesses during their examination proved that all the accused persons and their organization have been repeatedly advocating and inciting people for secession from India and for that purpose. It is argued that accused were working for terrorist organization and they incite people to join terrorist organizations, eulogize terrorists and call for desertion from army. They have even supported the stone-pelters.

64.3 Further, it is argued on behalf of prosecution that material available on record in the form of statements during the interview of the accused persons, tweets, re-tweets done by the accused persons on social media platform, which were liked and retweeted by several other

persons and videos uploaded on YouTube channels, clearly establishes that accused persons have incited and promoted animosity between the communities. That accused persons are not mere member of the terrorist organization i.e. DEM, but they have also disseminated their utterances against the Government of India by inciting the people against a particular section as well as Government of India.

64.4 It is submitted on behalf of NIA that evidence in this case is electronic in nature such as tweets, videos, interviews and speeches which have been duly proved by the witnesses during their examination. The said tweets, videos, interviews and speeches were given by accused persons, who were admittedly working for a terrorist organization i.e. DEM. That accused persons were openly supporting secessionism and terrorism in Kashmir. That said tweets, videos, interviews and speeches reflect that

accused persons have been acting in concert to incite animosity between different religious groups and also on the basis of region and caste. Further, the aforesaid act of the accused persons are the utterances which are intended to incite people to join terrorism.

64.5 It is argued on behalf of prosecution that phone numbers which were used by the accused persons for disseminating and promoting animosity between the communities have duly been proved by the witnesses during their examination. It has been established through the testimony of witnesses that accused persons were raising funds for terrorist acts and had conspired by inciting the people knowingly for commission of terrorist act and they were actively working for the terrorist organization i.e. DeM, while A-1 was the Chairman, A-2 was Press Secretary & Personal Secretary and A-3 was General Secretary of the said organization.

64.6 It is further submitted on behalf of State that

house of accused Aasiya Andrabi (A-1) was being used for furtherance of the activities of DeM as has been deposed by PW-14 Sh. Omar Farooq Marazi, Freelance Journalist and PW-17 Sh. Shuja-Ul-Haq, Freelance Journalist with TV Today Network Ltd, that they had interviewed accused Aasiya Andrabi and Sofi Fehmeeda at the house of accused Aasiya Andrabi situated at 90 feet Road, Saura, Srinagar.

64.7 It is further argued on behalf of prosecution that prosecution has placed on record extracted digital data pertaining to social media of all the accused persons showing their involvement in the present matter. Reliance has been placed upon the decisions in the cases of **Arjun Panditrao vs Kailash Kushanrao Gorantyal & ors**. MANU/SC/0521/2020; **Ramakant Rai v Madan Rai & ors.** MANU/SC/0780/2003; **Balwant Singh & ors. v State of Punjab** MANU/SC/0344/1995; **Manzar Sayeed Khan & Ors. v State of Maharashtra & Ors.** MANU/SC/7279/2007; **Thwaha Fasal & ors. v Union of India & Ors.**

MANU/SC/1000/2021 and **Sajidbeg Asifbeg Mirza v State of Gujarat** MANU/GJ/8524/2006.

65. It is argued on behalf of accused persons that accused persons have only been advocating an issue which was raised since 1948 and that the voice of the people of Kashmir should be heard. That DEM has not been arrayed as an accused in the present case nor any evidence is placed on record by prosecution to show how local youth were instigated and what revolt was carried out as an after effect of rebellious surges. That till date, accused no.1 has not been convicted in any case.

65.1 It is further submitted on behalf of accused that entire evidence which is alleged to have been collected from social media is in the form of secondary evidence. That prosecution has failed to prove that Twitter or Facebook accounts were in fact operated or even created by accused. It is submitted that unless one has a facebook account or logs into it, the person cannot check the facebook account of another person. Furthermore, without

logging into twitter, one can only see the tweets on the twitter of another person but cannot check the followers of that person.

65.2 With regard to the alleged videos on YouTube, it is submitted that it lacks primary authentication. No witness was produced regarding as to who has uploaded the videos on YouTube or whether they are in fact original in nature. It is further argued that most of the alleged videos are repetitive in nature and no scientific proof was led to prove the authenticity of the same.

65.3 It is further submitted on behalf of accused that most of the videos or posts are either in Kashmiri and no evidence was led to prove the translations and that no evidence has been led to show the effect of these so-called inflammatory and hateful videos and speeches. That same is the position regarding the evidence pertaining to print media. That neither the mobile phone of PW-9 Aquib Javed was seized by the IO nor the original audio recording was available on the said mobile phone. That

interview was not proved either by primary or secondary evidence. Same is the position regarding the alleged interview of accused Sofi Fehmida. That prosecution has failed to authenticate that the voices in the alleged videos are of the accused nor any evidence has been placed to prove the same.

65.4 It is also submitted on behalf of accused that no evidence has been led by the prosecution to show that DEM is a registered organization. No document has been placed on record pertaining to membership/recruitment form, any brochure, layout, objectives or any document reflecting number of registered members or any statement of accounts to show their source of funds collected during investigation. That no evidence is led to the fact that accused no.1 is mastermind and headed conspiracy against Government of India. That accused was also charge-sheeted in the case of Hafiz Sayeed & Ors, where she was discharged by this court. That prosecution has failed to examine any witness to prove its allegation of raising of

funds by selling jewellery.

65.5 It is argued on behalf of accused that DEM, established in 1981 and is not an organization but is a socio-religious movement dedicated to the empowerment and upliftment of women in Jammu & Kashmir as well as to promote the well-being of society by educating women about Islam and emphasizing both Quranic and formal education, express their opinions against discrimination, domestic violence and sexual abuse. That charges as leveled against accused persons are the result of a political vendetta.

65.6 It is submitted on behalf of accused that mere advocacy or discussion or incitement is not sedition. No one can be prosecuted for sedition unless they have direct connection to the commission of violence or the instigation of public disorder. Simply expressing a political opinion about Kashmir is a protected speech. Dissent and debate are the cornerstone of a healthy democracy. Hence, merely stating that 'Kashmir is an

unfinished agenda of partition' is a protected speech. Mere advocacy, even if controversial, is not punishable unless it crosses into incitement. That speech must have a direct link to violence; vague criticism of the government does not amount to sedition. Only speech that directly incites violence or public disorder can be restricted under the law.

65.7 It is further argued on behalf of accused that prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The evidence presented is largely circumstantial, which lacks authentication, and does not satisfy legal thresholds for sedition or terrorist activities. There is no allegation of commission of actual terrorist act attributed to accused persons. That present case is a result of political motivated, act aimed at suppressing dissent rather than addressing a tangible security threat. Reliance has been placed upon the decision in the cases of **Mathivanan v State of Tamil Nadu** Crl. OP(MD) No. 18337/2021, decided on 17.12.2021;

Kedarnath v State of Bihar; P.J. Manuel v State of Kerala ILR (2013) 1 Ker 793; **Gurjatinder Pal Singh v State of Punjab**; **Balwant Singh v State of Punjab** AIR 1995 SC 1785; **Mohd. Yaqub v State of West Bengal** 2004 (4) CHN406 and **Shreya Singhal v UOI** (2013) 12 SCC 134.

65.8. Oral arguments have been addressed on behalf of both the parties. Written arguments have also been filed on behalf of NIA as well as on behalf of accused. In addition to written arguments by Ld. Counsel for accused persons, accused themselves have also submitted handwritten arguments alongwith certain documents.

66. It has been argued by the accused persons in their hand written arguments that prosecution was not able to differentiate between the movement and an organization. It was stated that accused never denied to raise voice under the banner of DeM I.e Daughters of Faith. Every muslim woman following the tenants of Islam can be called Dukhtan-e-Millat. It is further argued that they have never issued ID Card in the name of DeM and

same is a fabricated document. It is also argued that it has never been established or made clear by NIA as to how said ID card collected nor there is any seizure memo to support this fact nor any witness has been examined to prove this claim.

66.1. It is further argued that as far as twitter and account on Facebook, certain phone numbers shown tobe connected with them, it has already been stated that they do not belongs to accused. In respect of videos, it is argued that these videos clips are downloaded from open sources and are not any original videos. These videos are doctored misusing "Artificial Intelligence". It is argued that NIA could not produce any single original video clip other than uploaded videos available on social media platforms. That authenticity of these videos was not established. It is also argued that videos clips have been produced regarding huge youth gathering but no civil witness has been produced to prove what actually was spoken and who was delivering the speech. It is further argued that if the video

clips of interviews uploaded on news channels or interviews published by print media, if the contents of interviews was incriminating as claimed by NIA then interviewer, channel heads, publisher are all equally responsible, especially when Journalist are themselves coming on their own to collect interviews. It is argued that the videos are doctored only to make false case against accused persons.

66.2. It is also argued that DeM is not an organization which is registered any where and therefore, there is no question of house of accused No.1 being the office of DeM. It is argued that NIA has stated of not finding any civil witness to join the proceedings at the time of videography of house of accused No.1 but this argument cannot be accepted from " Indian" Intelligence Agency like NIA. The said house is located in a densely populated area of main Srinagar City and if as per NIA claims any gathering was held outside the premises of house of accused, why no independent witness is produced

or could be joined during the investigation. It is submitted that it is for the reason that entire proceedings were motivated and manipulated, no independent witness is available for deposition before Court.

66.3. It is further argued that the allegations of NIA regarding celebration of birthday of Dr. M Qasim Factoo on 05.02.2018 in the said house and speeches delivered are false as date of birthday of Dr. M. Qasim Factoo Sahab is 13th November. It is also argued that NIA is claiming that Pak day was celebrated in the house of accused No.1 on 23.03.2018 but said claim is manifested and false as the videos shows dated of 22.3.2018.

66.4 It is also argued that only in the custody of NIA, accused is learnt that DeM has been declared as proscribed/terrorist organization and they were not informed about it nor any legal procedure is followed. It is argued that an application under RTI Act was filed where replies to six queries were sought. The said application was forwarded to multiple sections/department of MHA

but every where she got same reply and no such information is on record. It is argued that Hon'ble High Court was approached in this regard but it was held that u/s 36 (3) of UA(P)A, a procedure has been prescribed for addition and disposal of the application. It is further argued that detailed petition had be sent to Home Minister Government of India but same was refused to be posted by jail authorities. That they again approached Hon'ble High Court of Delhi and the matter is now pending. It is argued that therefore, if as per the arguments of NIA negligence of law is not an excuse, the same principle would apply on the authorities as well as they do not have any material against DeM.

66.5. It is further argued that in one case, Hon'ble High Court of Delhi has held that when relevant documents regarding the ban order of Satanic Verses are not available in official record, it will be assumed that they do not exist and the ban was lifted. That accused are victim of political vendetta.

66.6 It is argued that contention has been raised on behalf of NIA of close family of accused No.1 is residing in Pakistan but family of accused NO.1 resides in other countries such as US, UK, Saudi Arabia and Malyasia as well. That NIA has failed to prove that accused NO.1 having any contact with member of JUD, Hafiz Saeed and not even a single chat is produced in support are to be false claim.

66.7. It is further argued that accused have never indulged in any terrorist act. It is argued that Jihad has been wrong interpreted and correct meaning of Jihad implies that "to struggle and strive for the right of pious cause". Thus, Jihad qua Kashmir is only to strive to achieving the goal of self determination. It is argued that accused always had a right to determine. It is argued that demanding the said right is part of freedom of expression and how this freedom of expression can be a crime. It is argued that this right should be made available as agreed. It is further argued that a UNHOGIP is still existing at

Srinagar whereas there isno such office in any other Indian State. Reference has been made to decision of court of Sessions at Delhi that " it is the freedom of speech as over acting principle, which permits one man's subaltern to be another man's naxal. It permits one man's friable to be another man's welfare. It even permits one man's martyr to be another man's militant." Submissions is made that the case against accused is false and moso could not be established by prosecution and therefore, should be dismissed.

ANALYSIS DISCUSSION

67. In the present matter, accused were charged on multiple accounts the various offences for which accused are facing charges are as follows:-

68. I have considered the material on record, arguments of the parties and the judgments relied upon by the parties. Before proceeding further, various offences for which accused are facing trial are enlisted herein below for ready reference:-

Sl. No.	SECTION	ACTS
1.	120-B IPC	Criminal Conspiracy,
2.	121 IPC	waging war against the government of India,
3.	121-A IPC	conspiracy to wage war against the government of India,
4.	124 A IPC	sedition
5.	153-A IPC	promoting enmity between different groups,
6.	153-B IPC	imputations, assertions prejudicial to national-integration and
7.	505 IPC	statements conducting to public mischief,
8.	18 UA (P) A	conspires or attempts to commit, or advocates, abets, advises or incites terror act,
9.	20 UA (P) A	being member of terrorist gang or organization,
10.	38 UA (P) A	offence relating to membership of a terrorist organization and
11.	39 UA (P) A	offence relating to support given to a terrorist organization) under the Unlawful Activities (Prevention Act.

CHARGE U/S 124 A OF IPC

69. The first charge taken up for discussion is the charge for an offence punishable under section 124 A of IPC. In this regard, court is enlightened by a decision rendered by Hon'ble Supreme Court of India in case titled as ***S.G Vombatkere Vs Union of India Writ Petition © No. 682/2021*** in respect of section 124 A of IPC. The relevant portion of said judgment is extracted as under:-

"8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

a. The interim stay granted in W.P. (Crl.) No.217/2021 along with W.P.(Crl.)No.216/2021 vide order dated shall continue to operate till further orders.

b. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.

c. If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to concerned Courts for appropriate relief. The

Courts are requested to examine the reliefs sought, account the present order passed as well as the clear stand taken by the Union of India.

*d. **All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.***

e. In addition to the above, the Union of India shall be at liberty to as issue the Directive proposed and before us, to the State Governments/Union Territories to prevent any misuse of Section 124A of IPC.

f. The above directions may continue till further orders are passed.

69.1. It has been held by Hon'ble Supreme Court of India that all pending trial, appeal and proceedings in respect to charges framed u/s 124A IPC to be kept in abeyance with liberty for adjudication regarding other charges, if any, if the court is of the opinion that no prejudice could be caused to accused.

69.2. It is trite law that whenever an accused is charged on more than one count, the prosecution is required to prove each count of charge separately. The

requirement of law is that in respect of each charge, prosecution must adduce evidence to bring home guilt of accused, if any. No doubt when upon the same facts and circumstances, different charges are framed against accused, there will be certain facts which will be overlapping. However, factual matrix of the case and evidence adduced by prosecution are to be considered holistically qua the offence regarding which the decision of being guilty or not guilty is given. It follows that while discussing evidence adduced by prosecution, it is to be evaluated by Court that whether the evidence so produced demonstrate the guilt of accused qua each of the offence. There are cases where accused was facing charges on multiple counts but prosecution could prove some of the charges and could not prove some of charges. Proof of one of the charge does not imply that it automatically amounts to proof of all the charges forthwith for which accused is facing trial. Therefore, this court is of the opinion that since to prove each

offence, prosecution is required to prove ingredients of each offence separately, no prejudice will be caused by adjudicating the other offences besides the offence u/s 124 A of IPC.

70. As far as, other offences are concerned, there are charges for commission of offences punishable under IPC and under UA (P) A. In this regard, qua different charges, separate discussion and analysis is carried out, however, where ever necessary some of the charges shall be analysed and discussed collectively.

CHARGES U/S 17, 18 & 20 OF UA (P) A and 120 B of IPC.

71. All the accused have been charged with offences punishable u/s 17, 18 and 20 of UA (P) A as well as offence punishable u/s 120 B IPC. The first ingredient to be considered from the material on record qua offences punishable u/s 17, 18 or 20 of UA (P) A is material on record displays conspiracy of or raising funds for or involvement of DeM in, 'terrorist act'.

71.1. Qua these offences reference to , section 2 (k) of UA (P) A is necessary section 2 (k) of UA (P) A defines the terrorist act as the act which has meaning assigned it in the section 15 of UA (P) A and the expression terrorism and terrorist shall be construed accordingly. Hence, to comprehend the definition of terrorist act, reference to section 15 of UA (P)A is imperative. For ready reference, section 15 of UA (P) A is extracted as under:-

> *"Terrorist act-- Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security , economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,— (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause— (i) death of, or injuries to, any person or persons; or (ii) loss of, or damage to, or destruction of, property; or (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or 5 [(iiia) damage to, the monetary stability of India by way of production*

or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or] (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or 6 [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or commits a terrorist act.

[Explanation.—For the purpose of this sub-section,— (a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

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

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

71.2. UA (P)A is not the first and not only the statue which has dealt with the issue of terrorism or has incorporated punishment for the terrorist act. The statutes like TADA and POTA have been in place to deal with offences which has contours of terrorist act. In this regard, reference can be made to the judgment of Hon'ble Supreme Court of India in case titled as ***Yakub Abdul Razak Memon vs State Of Maharashtra, The CBI Mumbai, Criminal Appeal No. 1728/2007, 21 March, 2013,*** to understand the position of the law on the issue of terrorism. Germane portion of the above said judgment is extracted as follows:-

> *"433) The term "terrorism" is a concept that is commonly and widely used in everyday parlance and is derived from the Latin word "Terror" which means the state of intense fear and submission to it. There is no particular form of terror, hence, anything intended to create terror in the minds of general public in order to endanger the lives of the members and damage to public property may be termed as a terrorist act and a manifestation of terrorism. Black's law dictionary defines terrorism as "the use of threat or violence to intimidate or cause panic, esp. as a means of affecting political conduct" (8th edition, page 1512).*

434) Terrorism is a global phenomenon in today's world and India is one of the worst victims of terrorist acts. Terrorism has a long history of being used to achieve political, religious and ideological objectives. Acts of terrorism can range from threats to actual assassinations, kidnappings, airline hijackings, bomb scares, car bombs, building explosions, mailing of dangerous materials, computer-based attacks and the use of chemical, biological, and nuclear weapons—weapons of mass destruction (WMD).

435) The fight against terrorism requires a concerted and multifaceted strategy at both the domestic and international levels and should involve a legal order which itself needs to be updated and elaborated upon and should hence be turned into a practical tool. There exist several domestic and international legislations to counter terrorism. The Terrorist and Disruptive Activities (Prevention) Act, 1985 (Act 31 of 1985) which received the assent of the President on May 23, 1985 and was published in the Gazette of India, Extra., Part II, Section 1, dated May 23, 1985, came into force on May 24, 1985 in the whole of India for a period of two years.

The Statement of Objects and Reasons of the said Act reads as follows:

"Prefatory Note — Statement of Objects and Reasons.— Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. Since the 10th May, 1985, the terrorists have expanded their activities to other parts of the country, i.e. Delhi, Haryana, Uttar

Pradesh and Rajasthan as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to terrorise, to create fear and panic in the minds of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires to be taken serious note of and dealt with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern."

436) The Bill as introduced sought to make provisions for combating the menace of terrorists and disruptionists, inter alia, to—

(a) provide for deterrent punishment for terrorist acts and disruptive activities;

(b) confer on the Central Government adequate powers to make such rules as may be necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities; and

(c) provide for the constitution of Designated Courts for the speedy and expeditious trial of offences under the proposed legislation.

437) The said Act No. 31 of 1985 was due to expire on May 23, 1987 and in order to combat and cope with terrorist and disruptive activities effectively and to strengthen it further, the Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987) was enacted. Since both the Houses of Parliament were not in session and it was necessary to take

immediate action, the President promulgated the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) on May 23, 1987 which came into force w.e.f. May 24, 1987. However, this Act repealing the Ordinance, received the assent of the President of India on September 3, 1987 and was published in the Gazette of India, Extra., Part II, Section 1, dated September 3, 1987. The scheme of the Act 31 of 1985 and Act 28 of 1987 as reflected from their preambles is the same. The scheme of the special provisions of these two Acts were/are "for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto".

International Conventions

438) There also exist several International Conventions, which aim to suppress terrorism and define terrorist acts. The League of Nations took the initiative to formulate the first Global Convention on Preventing Terrorism and, accordingly, adopted the 1937 Convention for the Prevention and Punishment of Terrorism, which defined "acts of terrorism" as:

"Criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, a group of persons or the general public."

439) More recently, several International Conventions and Multilateral Agreements have been entered into by States to curb global terrorism. The International Convention for the Suppression of Terrorist Bombings, 1997 defines the offence of "terrorist bombing" as follows:

"Article 2.1 – Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place or public use, a State or government facility, a public transportation system or an infrastructure facility:

a) With the intent to cause death or serious bodily injury; or

b) With the intent to cause extensive destruction of such a place, facility or system, where such a destruction results in or is likely to result in major economic loss."

440) The United Nations Security Council in its 2004 Resolution denounced "terrorist acts" as follows:

"criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature." India's Contribution in Combating Terrorism

441) India has played a major part in strengthening international consensus against terrorism in UN, Non-Aligned Movement (NAM) and South Asian Association for Regional Cooperation (SAARC). India is a party to major international conventions against terrorism and has also incorporated them in domestic legislation. These conventions and treaties condemn terrorist acts and expressly state the grave concern posed by terrorism. Terror Attacks

442) Another trend common to both national and international terrorism is the emergence of terrorist groups motivated by religious fanaticism.

Whenever the perpetrators are motivated by religious fanaticism or had secular goals and beliefs, they become susceptible to the idea of sacrificing their own life for carrying out the will of God, or Allah or in waging a 'holy war'. It is important to note here that terrorism is abhorred and condemned by all the religions of the world. Terrorists conduct planned and coordinated attacks targeting innocent civilians with a view to infuse terror in the minds of people. India, particularly, has been a victim on several occasions. An indicative list of recent terrorist attacks on India as furnished by learned senior counsel for the CBI is provided below:

|S.No. |Date of |Place of Attack |No. of Bomb | No. of Persons | | |Attack | |Blasts |killed | |1. | 12.03.1993 |Bombay |13 |257 | |2. |14.02.1998 | Coimbatore |13 |46 | |3. |13.12.2001 |New Delhi |- |9 | |4. |25.09.2002 |Akshardham |- |29 | |5. | 06.12.2002 |Mumbai (Ghatkopar) |- |2 | |6. | 25.08.2003 |Mumbai (Zaveri |- |50 | | | |Bazaar) |

| | |7. |29.10.2005 |Delhi |3 |60 | |8. |11.07.2006 | Mumbai (Local trains)|- |209 | |9. |25.08.2007 | Hyderabad |2 |42 | |10. |23.11.2007 |Lucknow, Varanasi, |- |18 | | | |Faizabad | | | |11. | 13.05.2008 |Jaipur |9 |63 | |12. |25.07.2008 | Bangalore |9 |2 | |13. |26.07.2008 |Ahmedabad | 21 |56 | |14. |13.09.2008 |Delhi |5 |30 | |15. | 26.11.2008 |Mumbai |- |172 | |16. |13.02.2010 | Pune |- |17 | |17. |13.07.2011 |Mumbai |3 |26 | | 18. |07.09.2011 |Delhi (outside Delhi|1 |12 | | | | High Court) | | | |19. |13.02.2012 |Delhi (Israeli | Injured Persons | | | |Embassy Official's |4 | | | | car) | |

443) Terrorist attacks are not only limited to India but several terrorist attacks have also been taken place in countries around the world.

Following is a list of select terrorist attacks outside India:

|S.No. |Date of |Place of Attack |No. of Bomb | No. of Persons | | |Attack | |Blasts |killed | |1. | 11.09.2001 |NY and Washington DC,|4 |Nearly 3000 | | | |USA | | | |2. |12.10.2002 |Bali, Indonesia |3 |202 | |3. |11.03.2004 |Madrid, Spain |10 |191 | |4. |07.07.2005 |London, England |4 |52 | Supreme Court of India on Terrorism:

444) The Supreme Court of India has also explained the term 'terrorism' in a series of cases. Provided below are summaries of key cases on terrorism.

In Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors., (1994) 4 SCC 602, one of the key questions for consideration of this Court was in relation to the applicability of Section

3(1) of TADA. This Court held that while offences mentioned in Section 3 of TADA may overlap with offences mentioned in other statutes, a charge under Section 3 should be made where the offence was committed with the intention as envisaged in Section 3. This Court further observed:

> *"7. 'Terrorism' is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the*

ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon….." (emphasis supplied)

445) Girdhari Parmanand Vadhava vs. State of Maharashtra, (1996) 11 SCC 179 relates to kidnapping of a boy for ransom and on non-payment of the same, the accused persons tortured and killed the boy. The Designated Court convicted the accused and awarded life sentence. While adjudicating the appeal, it was contended by counsel for the accused persons before this Court that kidnapping is not a terrorist activity within the meaning of the provisions of TADA. This Court, while affirming the conviction and that the offence committed was a terrorist act, held as under:

"39. A crime even if perpetrated with extreme brutality may not constitute "terrorist activity" within the meaning of Section 3(1) of TADA. For constituting "terrorist activity" under Section 3(1) of TADA, the activity must be intended to strike terror in people or a section of the people or bring about other consequences referred to in the said Section 3(1). Terrorist activity is not confined to unlawful activity or crime committed against an individual or individuals but it aims at bringing about terror in the minds of people or section of people disturbing public order, public peace and tranquillity, social and communal harmony, disturbing or destabilising public administration and threatening security and integrity of the country…..

….. It is the impact of the crime and its fallout on the society and the potentiality of such crime in producing fear in the minds of the people or a section of the people which makes a crime, a terrorist activity under Section 3(1) of TADA. In our view, in the facts of the case, the learned Designated Judge has rightly convicted the accused for offences under Section 3(1) of TADA besides convicting each of them under Section 120-B and Section 302 read with Section 120-B of the IPC." (emphasis supplied)

446) In State through Superintendent of Police, CBI/SIT vs. Nalini & Ors., (1999) 5 SCC 253, this Court, while adjudicating the convictions of several accused persons in the case for assassination of Mr. Rajiv Gandhi, former Prime Minister of India, spelt out the ingredients of an offence under Section 3(1) of TADA as follows:

"650. …… A perusal of the provision (Section 3(1)), extracted above, shows that it embodies the principle expressed in the maxim "actus non facit reum, nisi mens sit rea"; both "mens rea" and a criminal act are the ingredients of the definition of "terrorist act". The mens rea required is the intention (i) to overawe the Government as by law established; or (ii) to strike terror in the people or any section of the people; or (iii) to alienate any section of the people; or (iv) to adversely affect the harmony amongst different sections of the people. The actus reus should comprise of doing any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any

other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detaining any person and threatening to kill or injure such persons in order to compel the Government or any other person to do or abstain from doing any act." (emphasis supplied)

447) In Mohd. Khalid vs. State of West Bengal, (2002) 7 SCC 334, while affirming the decision in appeal, this Court held that it is difficult to define terrorism in precise terms and acknowledged that terrorism is a threat to global peace and security. This Court further observed as under:

"42. ……..It is not possible to define the expression 'terrorism' in precise terms. It is derived from the word 'terror'. As the Statement of Objects and Reasons leading to enactment of the TADA is concerned, reference to the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as the 'Old Act') is necessary. It appears that the intended object of the said Act was to deal with persons responsible for escalation of terrorist activities in many parts of the country. It was expected that it would be possible to control the menace within a period of two years, and life of the Act was restricted to the period of two years fro the date of its commencement. But noticing the continuance of menace, that too on a larger scale TADA has been enacted. Menace of terrorism is not restricted to our

country, and it has become a matter of international concern and the attacks on the World Trade Center and other places on 11th September, 2001 amply show it. Attack on the Parliament on 13th December, 2001 shows how grim the situation is, TADA is applied as an extreme measure when police fails to tackle with the situation under the ordinary penal law. Whether the criminal act was committed with an intention to strike terror in the people or section of people would depend upon the facts of each case." (emphasis supplied)

448) Nazir Khan & Ors. vs. State of Delhi, (2003) 8 SCC 461 pertains to prosecution of accused persons involved in kidnapping of foreign nationals and killing of police officers during combat. While the mastermind of this terrorist operation was subsequently released by the government in exchange for passengers held as hostages in the hijacked Indian Airlines Flight IC 814, the other accused persons were tried for offences punishable under the IPC and TADA. This Court, while hearing their appeals, challenging the judgment of Designated TADA Court, which had awarded death and life sentences to certain accused persons, made detailed observations about the nature of terrorist activities and attempted to define terrorism and held as under:

"13…. As noted at the outset, it is not possible to precisely define "terrorism". Finding a definition of "terrorism" has haunted countries for decades. A first attempt to arrive at an internationally acceptable definition was made under the League of Nations, but the convention drafted in 1937 never came into existence. The UN Member States still have no agreed-upon

definition. Terminology consensus would, however, be necessary for a single comprehensive convention on terrorism, which some countries favour in place of the present twelve piecemeal conventions and protocols. The lack of agreement on a definition of terrorism has been a major obstacle to meaningful international countermeasures. Cynics have often commented that one State's "terrorist" is another State's "freedom fighter". If terrorism is defined strictly in terms of attacks on non-military targets, a number of attacks on military installations and soldiers' residences could not be included in the statistics. In order to cut through the Gordian definitional knot, terrorism expert A. Schmid suggested in 1992 in a report for the then UN Crime Branch that it might be a good idea to take the existing consensus on what constitutes a "war crime" as a point of departure. If the core of war crimes — deliberate attacks on civilians, hostage-taking and the killing of prisoners — is extended to peacetime, we could simply define acts of terrorism as "peacetime equivalents of war crimes". (emphasis added)

14. League of Nations Convention (1937):

"All criminal acts directed against a State along with intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public." (GA Res. No. 51/210: Measures to eliminate international terrorism)

1. Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed.

2. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.

3. Short legal definition proposed by A.P. Schmid to the United Nations Crime Branch (1992):

Act of Terrorism = Peacetime Equivalent of War Crime

4. Academic Consensus Definition:

"Terrorism is an anxiety-inspiring of repeated violent action, employed by (semi-) clandestine individuals, groups or State actors, for idiosyncratic, criminal or political reasons, whereby — in contrast to assassination — the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat-and violence-based communication processes between terrorist (organization), (imperilled) victims, and main targets are used to manipulate the main target [audience(s)], turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought." (Schmid, 1988) Definitions

15. Terrorism by nature is difficult to define. Acts of terrorism conjure emotional responses in the victims (those hurt by the violence and those affected by the fear) as well as in the practitioners. Even the US Government cannot agree on one single definition of uniform and universal application. The old adage, "One man's terrorist is another man's freedom fighter" is still alive and well. Listed below are several definitions of terrorism used by the Federal Bureau of Investigation:

Terrorism is the use or threatened use of force designed to bring about political change. Brian Jenkins Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted.

Walter Laqueur Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence an audience.

James M. Poland Terrorism is the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to intimidate or coerce a government, individuals or groups, or to modify their behavior or politics.

Vice-President's Task Force, 1986 Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

FBI definition" (emphasis supplied)

449) In Madan Singh vs. State of Bihar, (2004) 4 SCC 622 this Court upheld the conviction and sentence awarded by the Designated Court in respect of accused persons who had killed several police officers in combat. While affirming that the offence committed was rightly charged under Section 3 of TADA, this Court observed in detail in respect of terrorist activities and held as follows:

"19. Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised and orderly society…..

…..It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb the harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb the even tempo, peace and tranquility of the society and create a sense of fear and insecurity."

71.3. Further, after the enactment of POTA, its

constitutionality was challenged and while dealing with the issue regarding constitutionality of the act I.e POTA, in the judgment titled as **People's Union For Civil Liberties & Anr vs Union Of India on 16 December, 2003,** W.P.(C) No. 389/2002 & W.P.(Crl) No. 89/2002, Hon'ble Supreme Court of India has made observations on terrorism and relevant part thereof is extracted as under:-

> *"Paul Wilkinson, an authority on terrorism related works, culled out five major characteristics of terrorism. They are:*
> *1. It is premeditated and aims to create a climate of extreme fear or terror*
> *2. It is directed at a wider audience or target than the immediate victims of violence.*
> *3. It inherently involves attacks on random and symbolic targets, including civilians.*
> *4. The acts of violence committed are seen by the society in which they occur as extra normal, in literal sense that they breach the social norms, thus causing a sense of outrage; and*
> *5. Terrorism is used to influence political behavior in some way - for example to force opponents into conceding some or all of the perpetrators demands, to provoke an overreaction, to serve as a catalysis for more general conflict, or to publicize a political cause.*

In all acts of terrorism, it is mainly the psychological element that distinguishes it from other political offences, which are invariably accompanied with violence and disorder. Fear is induced not merely by making civilians the direct target of violence but also by exposing them to a sense of insecurity. It is in this context that this Court held in Mohd. Iqbal M. Shaikh V. State of Maharashtra, (1998) 4 SCC 494, that:

"...it is not possible to give a precise definition of terrorism or to lay down what constitutes terrorism. But... it may be possible to describe it as a use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. ... if the object of the activity is to disturb harmony of the society or to terrorize people and the society, with a view to disturb even tempo, tranquility of the society, and a sense of fear and insecurity is created in the minds of a section of society at large, then it will, undoubtedly be held to be terrorist act…

Our country has been the victim of an undeclared war by the epicenters of terrorism with the aid of well-knit and resourceful terrorist organizations engaged in terrorist activities in different States such as Jammu & Kashmir, North- East States, Delhi, West Bengal, Maharashtra, Gujarat, Tamilnadu,

Andhra Pradesh. The learned Attorney General placed material to point out that the year 2002 witnessed 4038 terrorist related violent incidents in J&K in which 1008 civilians and 453 security personnel were killed. The number of terrorist killed in 2002 was 1707 out of which 508 were foreigners. In the year 2001 there were as many as 28 suicide attacks while there were over 10 suicide attacks in 2002 in which innocent persons and a large number of women and children were killed. The major terrorist incidents in the recent past includes attack on Indian Parliament on 13th December 2001, attack on Jammu & Kashmir Assembly on 1st October, 2001, attack on Akshardham temple on 24th September 2002, attack on US Information Center at Kolkatta on 22nd January 2002, Srinagar CRPF Camp attack on 22nd November 2002, IED blast near Jawahar Tunnel on 23rd November 2002, attack on Raghunath Mandir on 24th November 2002, bus bomb blast at Ghatkopar in Mumbai on 2nd December 2002, attack on villagers in Nadimarg in Pulwama District in Jammu Kashmir on the night of 23rd-24th March 2003 etc. There were attacks in Red Fort and on several Government Installations, security forces' camps and in public places. Gujarat witnessed gruesome carnage of innocent people by unleashing unprecedented orgy of terror. People in Bihar, Andhra Pradesh, and

Maharashtra etc have also experienced the terror trauma. The latest addition to this long list of terror is the recent twin blast at Mumbai that claimed about 50 lives. It is not necessary to swell this opinion by narrating all the sad episodes of terrorist activities that the country has witnessed. All these terrorist strikes have certain common features. It could be very broadly grouped into three.

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

2. Attack on symbols of national pride and on security / strategic installations. (eg. Red Fort, Military installations and camps, Radio stations etc.)

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

Terrorist acts are meant to destabilize the nation by challenging its sovereignty and integrity, to raze the constitutional principles that we hold dear, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow democratically elected government, to promote prejudice and bigotry, to demoralize

the security forces, to thwart the economic progress and development and so on. This cannot be equated with a usual law and order problem within a State. On the other hand, it is inter-state, inter-national or cross-border in character. Fight against the overt and covert acts of terrorism is not a regular criminal justice endeavor. Rather it is defence of our nation and its citizens. It is a challenge to the whole nation and invisible force of Indianness that binds this great nation together. Therefore, terrorism is a new challenge for law enforcement. By indulging in terrorist activities organized groups or individuals,trained, inspired and supported by fundamentalists and anti-Indian elements were trying to destabilize the country. This new breed of menace was hitherto unheard of. Terrorism is definitely a criminal act, but it is much more than mere criminality. Today, the government is charged with the duty of protecting the unity, integrity, secularism and sovereignty of India from terrorists, both from outside and within borders. To face terrorism we need new approaches, techniques, weapons, expertise and of course new laws. In the above said circumstances Parliament felt that a new antiterrorism law is necessary for a better future. This parliamentary resolve is epitomized in POTA."

71.4. As noted above, Hon'ble Supreme Court of India has held and observed that the terrorism has not been

defined in the TADA whereas reference to definition u/s 2 (k) of UA (P)A clearly spells out that the term **'terrorism'** is to be seen in the context of terrorist act as defined and given meaning in section 15 of UA (P)A. The reference to the above said judgments is relevant and important for the issue as the provisions in these two statutories i.e. TADA and POTA are considered to be pari mateira with the definition of terrorist act as incorporated in section 15 of UA (P)A.

72. Analyzing the definition of Terrorist Act in section 15 of UA (P) A reveals that for any act to be considered a terrorist act following ingredients must be proved or established i.e.

1. An act being done by any one (whoever does any act);

2. with intent to threat or likely to threaten;

(i) one unity, integrity, security, economic security or Sovereignty of India;

(ii) or with intent to strike terror or likely to strike terror

in the people or any section of people of India or in foreign country;

3. by using bombs, dynamite etc resulting in death or injury to any person or the person or loss or damage or to destruction of property or disruption of property in India or in foreign country;

4. damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India;

5. overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary.

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

72.1. This definition can be said to have three parts. The first being Actus Reus in the form of anything being

done by anyone; second being the means-rea of the person as the provision contemplates Actus Reus with a specific intent and thirdly, use of material/instrument/article to achieve the desired result as envisaged in section 15 of UA(P)A.

72.2. In this regard, the phrase in section 15 (I) (a) of UA (P) A which has been incorporated as the *'residuary mechanism'* to be used for achieving any of the desired result mentioned in (I) to (iv) of section 15 (I) (A) of UA (P)A is very important. The residuary phrase in section (15) (1) (a) is ***' by any other means of whatever nature'.*** In the first brush, it appears that the principle of Ejusdem generis shall be applicable while interpreting the said phrase and the residuary phrase should be interpreted to mean /include similar kind of mechanism/articles as are listed in the said provision contained in section 15 (I) (a) of UA(P) A. In simple words by applying the principle of Ejusdem generis, the above phrase of *"by any other means of whatever nature"* should also refers to

material/means similar to bomb, dynamite, chemical substance, lethal weapon, poison or noxious gases etc.

72.3. However, a more careful reading of the phrase bring out the use of word of '***whatever nature'*** alongwith the words '***by any other means'***. This use of word in the form of '***whatever'*** nature would change the perspective andprinciple which should be applicable while adjudicating the above noted residuary phrase in section 15 (1) (a) of UA (P)A.' It is trite law that whenever a word is used in a statue and same has not been legally defined in said statue, ordinary dictionary meaning of the concerned word is to be applied while interpreting the said word. The word 'whatever' has not been defined in UA (P) A or any other statue for that matter. Hence, dictionary meaning of this word shall be put to use while interpreting the import of this phrase as a whole. The dictionary meaning of word ***'whatever'*** is that it is not important what is or it makes no difference what is and anything or everything. It follows that the legislature in its wisdom while laying down the

residuary phrase in section 15 (1) (A) of UA(P)A has intended not to limit the use of article/modus/mechanism only to the things/means specified in section 15 (1) (a) of UA(P)A, rather Legislature has given a broadest possible spectrum to deal with dastardly act of terrorism and has included that if anything or everything of any kind of modus is used by a person while doing an act with the requisite intention and for the purpose contained in section 15 of UA (P) A, said act would be covered under the ambit of section 15 of UA (P) A. Hence, while evaluting if or not material on record establishes conspiracy or prepartion of terrorist act or raising funds for terrorist act or involvement of DeM in a terrorist act, abvoe discussed scope of definition terrorist act has to be the touchstone on which material on record shall be tested.

72.4. Another definition relevant for the purpose of present case is contained in section 2 (I) of UA(P)A. 2 (I) of UA(P) A defines secession of a part of territory of India from Union includes the assertion of any claim to

determine whether such part will remain part of territory of India. Section 15 of UA(P) A incorporates that when an act is done with an intent to threat or to likely to threaten sovereignty of India among other purposes, section 15 of UA (P) A shall be applicable on said act. In this regard on the issue of sovereignty and integrity of India, this court is guided by judgment of Hon'ble High Court of Delhi in case titled as ***Union of India and another Vs Satnam AIR 2018 , Delhi 72***. The germane portion of said judgment is extracted as under:-

> *"Since the mention of the phrase „sovereignty and integrity of India" in both these provisions was with respect to secessionist activities, with one Act preceding, and the other succeeding, the enactment of the Passport Act, 1967, it is only reasonable to presume that the legislative intention with respect to the use of the phrase in the present Act is similar. In Sardar Govindrao v. State of M.P., (1982) 2 SCC 414, the Court held that, "The term "sovereignty" as applied to States implies "supreme, absolute, uncontrollable power by which any State is governed, and which resides within itself, whether residing in a single individual or a number of individuals, or in the whole body of the people". Thus, sovereignty, according to its non legal connotation, is the supreme power which governs the body politic, or society which constitutes the*

State, and this power is independent of the particular form of Government, whether monarchial, autocratic or democratic."

73. Adverting to present matter, among other charges, one of the charge for which accused is facing trial is offence punishable u/s 20 of UA (P) A. It stipulates punishment for being member of terrorist gang or organization. Section 20 of UA (P) A provides that *'any person who is a member of a terrorist gang or a terrorist organization which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine'.* It implies that to attract punishment under this provision, prosecution must prove membership of accused in a terrorist gang or a terrorist organization. Further, the said terrorist gang or terrorist organization is involved in terrorist act.

73.1. As far as, membership of accused persons in a terrorist organization is concerned material on record reflects that accused persons are members of Dukhtaran-

E-Millat which is declared as terrorist organization by virtue of notification in the first schedule appended to UA (P) A. As per definition in section 2 (m), an organization listed in the schedule or an organization operating under the same name as an organization so listed is a terrorist organization. Prosecution has established the fact of DeM being listed in the schedule of UA (P) A through testimonies of witnesses and copy of gazette notification by virtue of which UA (P) A and its schedule was promulgated. The first ingredient contemplated u/s 20 of UA (P) A of accused being member of a terrorist organization stands established from the material on record. (Detailed discussion on this aspect is made in the succeeding paragraphs while discussing section 38 and 39 of UA (P) A).

73.2. As far as second ingredient is concerned, prosecution is required to establish that said terrorist organization is involved in terrorist act. To prove this aspect, commission of actual terrorist act needs to be

portraited and established on record. Prosecution has examined 53 witnesses who have proved documents and other material in their attempt to manifest guilt of accused persons. In this regard, the witnesses examined by prosecution can be categorized as the persons who have played role regarding passing of order of investigation by NIA, sanction for prosecution, downloading of material/videos/ posts from Internet, independent witnesses to said process, editors/Journalist who published/ interviewed accused, experts who have examined the sample of voice of accused and officials of NIA who were part of investigating team including CIOs from time to time. Any of these witnesses have not deposed about any particular instance which may be termed as actual terrorist act wherein DeM is involved. So much so, in the entire evidence adduced by prosecution after framing of charges, there is no evidence regarding any incident or act which can be said to be an actual terrorist act. There are evidences in the form of videos or

interviews or posts where stone pelting or use of gun towards secessionist approach of Kashmir has been approved or endorsed and encouraged but no violent incidence in particular, pursuant to such endorsement or encouragement, has been brought on record.

73.3. One may argue that the act of accused in promoting secessionist activity amounts to having had committed the terrorist act. In this regard, one needs to be mindful of the provision incorporated in section 15 of UA (P) A. The fact of encouraging citizens of this country for supporting and to ask for secession of a part of the country apparently seems to be a terrorist act but unless it satisfies the requirement laid down in section 15 of UA (P) A, said act cannot be said to be a terrorist act. The material on record establishes act(s) on the part of accused whereby they intend to break integrity and unity of India as well as undermine the sovereignty of India, however, no material has been produced in this case to show that by such acts of promoting secession of a part of India, it has resulted in

death of or injuries to any person or loss of or damages to or destruction of property, disruption of any supply or services essential to the life of community in India or in foreign country or damage to monetary stability of India or damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or overawes any public functionary or caused death or attempt to kill public functionary or have kidnapped, abducted or detained and threatened to kill a person to force commission or omission of an act.

73.4. The material on record in the form of testimonies of the witnesses and exhibits including videos and posts etc are limited regarding vociferous support of secession of a part of India including through use of gun and militancy but any actual incident pursuant to such encouragement is not pointed out nor any other incident/act is pointed out which is terrorist act and wherein terrorist organization namely, DeM is involved. Dictation on no witness stated about any actual terrorist

act) Thus, out of two ingredients, one could not be established by prosecution.

74. Accused are also facing trial in respect of offence punishable u/s 17 of UA (P) A. Section 17 of UA (P) A incorporates punishment for raising funds for terrorist act. It incorporates Punishment for raising funds for a terrorist act and imposing severe penalties including life imprisonment and fines for anyone collecting or providing funds (from any source, legitimate or illegitimate) for terrorist activities, even if the funds weren't actually used for terrorist activities. Section 17 of UA (P) A criminalizes fundraising, including via counterfeit currency, for individuals, gangs, or organizations involved in terrorism/ terrorist acts.

74.1. The provision contained in section 17 of UA (P) A is of a very wide amplitude as it covers funds raised directly or indirectly as well as collection of funds. Section 17 also provides that raising of/providing of or collection of funds may be from legitimate or illegitimate source as

far as same is meant to be used or likely to be used in full or part for commission of a terrorist act. Section 17 indicts the person who raises the funds; the person who will give/provides the funds and/or also the person who collects the funds. Therefore, anyone who is associated with any part regarding funds meant for a terrorist act, is liable u/s 17 of UA (P) A. This provision incorporates that the very act of raising or providing or collecting the funds is sufficient and it is not required that such funds should actually be used for commission of terrorist act.

74.2. Explanation C of section 17 of UA (P) A further widens the scope of offence punishable u/s 17 of UA (P) A. It stipulates that raising or collecting or providing funds in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organization for the purpose not specifically covered under section 15 shall also be construed as an offence. It implies that the mere act of raising or collecting or providing funds to an individual terrorist, terrorist gang or terrorist organization

which may in any manner is for their benefit shall be an offence u/s 17 of UA (P) A. Thus, the scope of acts covered by virtue of section 17 is not limited to that aspect that the money collected/provided/raised is for any of the specified purpose detailed in section 15 of UA (P) A. If the money is in 'any manner' for the benefit of individual terrorist, terrorist gang or terrorist organization, provisions of section 17 stands attracted and person concerned shall be liable under this offence.

74.3. The use of words 'any manner' in explanation C of section 17 of UA(P) A indicates that even if the funds raised/provided/collected are meant for carrying out day to day activities or sustenance of individual terrorist, terrorist gang or terrorist organization or for their hiding etc, the said act of raising/providing/collecting funds is such which is punishable u/s 17 of UA (P)A. This word/phrase is not defined in UA (P) A or any other statue. Hence, dictionary meaning of the word 'any manner' shall be employed to interpret it. The dictionary

meaning of ‘any’ is one or more of a number of people or things especially when it does not matter which the dictionary meaning of ‘manner’ is the way that something is done or happens. Thus, it implies that by incorporating explanation C to section 17, Legislature has intended that terrorist gang or terrorist organization or individual should not have access to funds in any form or purpose.

75. In the present matter, to prove the guilt of accused u/s 17 of UA (P) A, copy of bank statement of bank account in the name of accused Sofi has been placed on record as well as proved by prosecution. Further, witnesses have been examined regarding purchase of vehicles meant for transporting/commuting accused persons to further the activity of DeM.

75.1 Mr. Bialal Ahmad Khan was examined as PW-27. He has stated that he handed over the certified copy of ledger account of Sofi Fehmeeda Sidique to NIA. He also stated to have handed over certified copy of J&K Bank E-banking transaction made to Arise Automotive Pvt. Ltd

by Sofi Fehmeeda Sidique. That witness has proved the receipt No.8978, 8983, 8984, 9020 as Ex. PW27/4 to Ex. PW-27/7 respectively. Further, Mr. Gagan Chandra was examined as PW-50 who stated that as per record, a cash receipt dated 08.4.2024 for sum of Rs. 1000/- from Ms. Sofi Fehmeeda Sidique reflected the receipt of money from Sofi Fahmeeda. That another receipt in the sum of Rs. 1000/- is reflected in the name of Ms. Aasiya Andrabi. That the cash bill was paid by Sofi Fehmeeda Sidique on 29.10.2024. That as per patient register details, the name of patient Ms. Sofi Fehmeeda Sidique and as per another register details of another patient's name is reflected as Ms. Aasiya Andrabi.

75.2. Mr. Zeshaan Qureshi was examined as PW-13. He has stated that he retrieved the statement of account and account opening form of Sofi Fehmeeda . That witness proved letter dated 11.7.2018 as Ex. PW13/1 and certificate under the banker book as Ex. PW13/2. He also deposed to have supplied statement of account of Sofi

Fehmeeda Sidique bearing bank account No. 27081000001030 and proved the same as Ex. PW13/3. He also stated that he had provided the KYC documents of the above bank account and deposed that KYC documents were self attested by Sofi Fehmeeda Sidique. The said documents were proved as Ex. PW13/5 and PW13/6. He further deposed that electronic copy of account opening form of current account which was duly stamped by bank and signed by him and proved the same as Ex. PW13/7. The KYC documents of this account were also self attested by Sofi Fehmeeda Sidique and proved the same as Ex. PW13/8. During the cross examination, this witness stated that none of the pages of statements of accounts Ex. PW13/3 and PW13/10 bears any stamp that they have been certified as per Bankers Book of Evidence Act. It was also stated that neither NIA had asked nor he supplied any certificate u/s 65 B of Indian Evidence Act. Certain other witnesses have been examined indicating the expenses on lodging/boarding and other aspects of accused persons.

75.3. The evidence adduced by prosecution has to be analyzed in the backdrop of the requirement mandated under law for bringing home the guilt of accused persons u/s 17 of UA (P) A. The bank statements of account of Sofi Fehmeeda Sidique has been placed on record and PW-13 has stated that the same being issued by bank under his signatures, these statements were proved as Ex. PW13/3 and Ex. PW13/10. Though, in the cross examination, witness has stated that original of these statements do not bear of stamp and certification under Banker Books of Evidence Act. It is also admitted that certificate u/s 65B of Indian Evidence Act has not been supplied. Therefore, apparently the same said statement being electronic record would have been proved only through in terms of provision incorporated in section 65 B of Indian Evidence Act.

75.4. Even if for arguments, the Ex. PW13/3 is considered, prosecution was required to prove that the funds in question were being raised by the accused

persons. Said Ex. PW13/3 is part of document D-14 filed with the chargesheet. This document i.e. D-14 has about 30 pages and the statement of account runs from19th to 30th pages. There is a handwritten insertion on D-14/19/30 regarding the column of deposits and withdrawal. The said statement of account can only be a proof of movement of money and at best, is a document which can indicate the receipt of money or payment/transfer thereof. However, section 17 of UA (P) A requires a little more than just movement of money/funds. Section 17 of UA (P) A requires that funds must be raised/provided or collected by a person. Therefore, this requires a conscious effort on behalf of a person to do any of these acts i.e. raising of funds, providing of funds and/or collection of funds. This act of raising/providing or collecting funds has to be with the knowledge that such funds are likely to be used by a terrorist organization or terrorist gang or by any individual terrorist to commit terrorist act and this mens-rea must be contemporaneous with raising/collecting/providing of

funds.

75.5. Accordingly, alongwith the act of raising or providing or collecting funds, requisite mens-rea of accused is also required to be proved by prosecution. The term raising of funds has not been defined in the statue and therefore, is required to be understood in its regular dictionary meaning. To raise funds means to gather/collect money from people for a particular purpose/cause/organisation. For instance, fund raising event, fund raising match for charity etc. It follows that to establish that fund has been raised by a person for achieving the nefarious design as contemplated in section 159 17 of UA (P) A, prosecution is required to demonstrate that a person has done an act in the form of asking people or organization or institution or any one for a specific purpose while conveying and convincing them about the purpose for which funds are required. To establish any such act on the part of accused, a witness or any other material indicating such acts on the part of

accused must have been brought on record. However, no such witness has been examined nor any material in this regard has been brought on record.

75.6. The column titled as deposits indicate various modes of deposit/credit viz: by way of interest, some money transferred through cheque clearing etc. There have been transactions reflecting in respect of Auto pay, cash deposit etc. In respect of entries of cash deposit in particular, further investigation from the concerned bank through when cash was deposited in the bank account of Sofi Fehmeeda Sidique could have revealed who had deposited the cash in said bank account and reason for deposit of funds/money by that person. Such material could have been the basis to assess whether or not accused had sought/raised funds for DeM. However, in absence of such material, no presumption can be drawn in this regard. The bank account in question is not stated to be an account in the name of DeM which is the terrorist organization. Therefore, even if any money is deposited in the said bank

account, it, primafacie, is an individual transaction. To elevate such deposit or transactions from individual deposit/transaction to the deposit/raising of funds for terrorist organization i.e. DeM, the bank statements simplicitor (which is not provided for the want of certificate u/s 65 B of Indian Evidence Act), are not sufficient.

76. The other witnesses examined in this regard are the persons who have received money from accused persons either towards purchase of auto mobile/vehicle/ or towards other expenses including hospital bills. The said evidence is about the end use of money. The end use of money has been made punishable u/s 17 of UA (P) A only when such end use is for a terrorist act. Isolated act of purchasing a vehicle for commuting or to pay bills etc is not a terrorist act. Section 17 of UA (P) A has a very wide span and purpose of same is to nip the evil in the bud so that the very act of raising/collecting/providing money for benefit of terrorist organization can be cubed and such

money does not end up in any wrong hand leading to cowardly act of terrorism resulting in loss of lives or damage of properties. However, section 17 of UA (P) A is very specific regarding for the end use of money and the end use of money besides the envisaged end use, is not punishable if the source of money/fund is not found in terms of section 17 of UA (P) A. Therefore, as far as, provision of section 17 of UA (P) A is concerned, the above discussion shows that prosecution has falling short for proving the same.

77. All the accused persons are also facing trial for an offence punishable u/s 18 of UA (P) A as well as offence punishable u/s 120B of IPC. Before proceeding further, in analyzing the material on record qua section 18 of UA (P) A, and section 120B IPC, both the provisions are re-produced for ready reference:-

Section 18 of UA (P) A

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

facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

78. Analyzing the section 18 of UA (P) A reflects that this provision had covered multiple acts in its ambit. These acts can be listed as (1) conspiracy; (2) attempt to commit terrorist act; (3), to advocate commission of terrorist act; (4) abets commission of terrorist act; (5) advices commission of terrorist act or incites directly or indirectly facilitate commission of terrorist act; or (6) any act preparatory to commission of terrorist act.

78.1. Anyone who is found to have committed any of the above acts or more than one of the above acts, is a person who is liable for punishment u/s 18 of UA (P)A. Hence, the prosecution is required to prove that accused has committed any one or more than of the above acts. Through use of word 'or' by Legislature after each separate act, it has been made clear that responsibility of

prosecution shall be discharged by adducing proof of commission of any of the above acts by accused persons.

79. In the present matter, translation of various posts of accused persons have been carried out and placed on record. Mr. Qamar Khan has been examined as PW-44 and he has stated that one Anubhav Multilingual Services had contacted him to translate from Urdu to English. That he had translated and provided the translation to Anubhav Multilingual Services in pen-drive. That translations were provided to him by Abhinav in pendrive. These translations were proved as Ex. PW52/19. Qua the accused Aasiya Andrabi. Translation is proved as Ex. PW52/20, qua accused Sofi Fehmeeda Sidique, translation is proved as Ex. PW52./21 qua accused Nahida Nasreen. The certificate in this regard has been issued by Anubhav Multilingual Services which is part Ex. PW52/19.

79.1. In these translations of posts on social media, in translation at Serial No. 16/64 at page No. 10th of 97, page at D-33 which is part of Ex. PW52/19, it contains

translation of letter from Mr. Nawaz Sharif, then Prime Minister of Pakistan wherein it is stated that accused No.1 has showed her interest in the current strategy of Pakistan Government for right to self determination of Kashmir people. It further states that Pakistani realizes its role very well and there will be no weakness in their firmness and steadiness. That Pakistan will give moral, political and diplomatic support in this regard. Translation of another posts at serial No. 51/64 reflects that post states that India started sending medicine of cow urine in occupied Kashmir. At page No. 4/54, the post of Aasiya Andrabi states that there is gratification of Pakistan today; 23rd March. At serial No. 33, page of total 97 in D-33 as part of Ex. PW52/19 and at page No. 32/54, the post of Aasiya Andrabi states that leader of DeM has called martyrdom of two mujahid who were fighting Indian Forces more than 24 hours, as extraordinary achievement. It further states that they also inform to Muslims of J&K that by conducting so called elections, the ruler cannot establish

full control on Kashmir. That achieving freedom from brutal country like India is not easy job and an entry at page No. 33, 34, the post of Aasiya Andrabi states that Kashmir was never part of India. It further states that India is aggressor and occupier while Pakistan is their advocate and well wisher.

79.2. There are other posts regarding boycott of elections on the ground that casting vote is rejection of Islam. At Page No. 46 of total 97 pages of D-33, Page No. 5/147 is re-tweet by Aasiya Andrabi on unification of Pakistan. It is said in this posts/re-tweet that India has forcefully captured Kashmir and according to two nations theory, Kashmir is part of Pakistan as an independent State. It further states that twin nations theory has Shariya base and it is an issue of pure faith. There are other tweets/posts regarding the same but reference to some of them is made to avoid repetition and above posts points out /indicate the gist of the speeches/posts by accused. To sum up and recapitulate the gist of all the posts made by accused is that Kashmir is not part of India and India has forcefully occupied the Kashmir. That Kashmir is part of

Pakistan as the people of Kashmir are Muslims. That to achieve this end, struggle including armed struggle and use of guns is imperative.

80. The translation of post/tweet by Sofi Fehmeeda are contained in Ex. PW52/20. In translation of page 4/82 on 3rd of page in D-34, accused Sofi Fehmeeda has re-tweeted that when will they be saved from Indian Operations and Pakistani (s) is theirs. At page No. 6/82 on page No. 5th page in D-34, it is re-tweeted by Sofi Fehmeeda that Kashmir will become Pakistan. Pakistan will become abode of Islam. Another re-tweet at page No. 8/82 on 6th page in D-34 wherein it is said that sister Aasiya Andrabi gave interview to Bol TV in which she said that Kashmir will become Pakistan. Pakistan will become abode of Islam. She explain in detail. At page No. 7/47 of D-34, it is re-tweeted by Sofi Fehmeeda that being Muslim, she is Pakistani. On page 9th of 47 page in D-34, it is tweeted by Sofi Fehmeeda that India is terrorist country and should leave Kashmir. On page 10th of 17 in D-34, it posted/tweeted that leader of DeM Aasiya Andrabi some video message and it has came after 13th

Kashmiri were martyred and it got viral. On page 23 in D-34, at entry/page 32/82, it is posted/tweeted that Kashmir will Pakistan. On page No. 26/47 in D-34 at entry 36/82, it is posted/tweeted by Sofi Fehmeeda that delegation of Dukhtaraan-e-Millat which included Nahida Nasreen and Shiasta Shehzad went to Shopian today to pay their condolence with the family whose beloved son are martyred. They raised the issue of freedom movement in Kashmir and Ideology of Pakistan.

80.1 On page No. 28 of D-34, at entry 40/82, it is posted/tweeted that Kashmir has no existence without Pakistan and on the perspective of Islam and faith, they are Pakistani and Pakistan is theirs. On page No. 47 in D-34, at entry page No. 82/82, it is posted by Sofi Fehmeeda as part of press release from Dukhtaraan-e-Millat that small stones in their hands have given new lease of life to our freedom. Similarly these youths risked their lives to save their brethren from the havoc created by flood. It also posted the opinion of Aasiya Andrabi regarding flood situation in Kashmir. Only some of the tweets/posts are referred to brevity. The gist of all the tweets/posts of

accused Sofi Fehmeeda is that there should be secession of Kasmir from India and merger of same with Pakistan. For that secession and merger, all the necessary means should be adopted.

81. Ex. P-52/21 relates to translation regarding the posts by Nahida Nasree. At page 6 of D-35 by Ex. Pw52/21, there is post regarding unification/secession of Kashmir in Pakistan. It is stated in the post that Kashmir is part of Pakistan and not an independent State. That two nation theory has Sharia base. That it is an issue of pure faith, according to which Muslims can never be part of an idolater‘s empire. That they want to be part of Muslim Ummah and to establish the Caliphate, first step towards that will be unification with Pakistan. There is another post on page 9 of D-35 Ex. PW52/21 wherein it is posted that three women linked with Dukhtaran-e-Millat and four students who were arrested yesterday while going to Pulwama to pray tribute to the martyrs were taken to Police station Soura. There is another post regarding arrest of seven members Dukhtaran-e-Millat when they headed to Pulwama to martyred Mansoor‘s house to to pray

tribute him and condolences to his family. Publicity Secretary Dukhtaran-e-Millat. This is post shared by Nahida Nasreen and this message was originally posted by Sofi Fehmeeda.

81.1. There is another post with photographs which reflects gathering of women and address said gathering as members of Dukhtaran-e-Millat paying tribute to martyrs of Shopian. On page 12 of D-35, there is post regarding interview of Kashmir leader Aashiya Andrabi. That video of said interview is part of Ex. PW27/4. On page 25 of D-35, there is a post alongwith video and the post states how strong blast can all nuclear bombs of the world have if they are put together. There is another post on page No. 26 of D-35 by accused Nahida Nasreen where alongwith photographs showing gathering of women, it is stated that they are members of Dukhtaran-e-Millat presenting their condolences to the family of martyred Firdoos Sahib in Gunapora, Shopian. There is another post shared by accused Nahida Nasreen on the same page regarding co-accused Aashiya Andrabi having been put under house arrest and not allowed to go for Friday prayers in a close

by Mosque. This post mentions that Sofi Fehimeeda as Personal Secretary, Dukhtaran-e-Millat

81.2. There are two posts on page No. 29 of D-35 wherein there are multiple photographs of gathering of female, these posts states those females as members of Dukhtaran-e-Millat in Nazimpora, Hayan, Trai and Drubagam, Pulwam paying tribute to martyrs and offering their condolences to the families of the martyrs. On page NO. 45 of D-35, there is post at page/entry 23/87 that Kashmiris have no existence without Pakistan. That Kashmir issue emerged with the creation of Pakistan. From the perspective of faith and from the perspective of Islam, they are Pakistani and Pakistan is theirs.

82. To re-iterate gist of posts by Nahida Nasreen also indicates her acts and intention of secession of Kashmir from India and for its merger with Pakistan. All these posts of three accused persons also shows association of all the three accused with each other. To sum up the gist of posts of accused, suffice is to observe that their activities is completely routed in design of secession of Kashmir State from India so that it may

merge with Pakistan. They have been vociferously endorsing supporting and promoting the sentiments as well as provoking the people of Kashmir.

83. So much so, in their posts, accused have called for boycott of elections and to reject the candidate who come with idea of development. No doubt, the mere act of calling upon people to boycott the elections, is not a crime itself but this act of accused is to be seen in the totality of factual matrix of the case as well as in the backdrop of the fact that the boycott of elections is premised it being anti-islam. The attempt on behalf of accused was not only to dissuade the people of Kashmir from participating in election but is to drift them away from the talks of development which people of Kashmir like residents/people of any other region deserves.

84. In addition to the above said posts on social media platform, certain videos have also been downloaded from internet and placed on record. A process has been followed for downloading such videos from internet and their transfer in blank DVDs alongwith certificate u/s 65 of Indian Evidence Act of official concerned. The process is

carried in presence of independent witnesses and their testimonies regarding downloading and transferring have been recorded during the trial. Reference will be made to some of the videos which indicate the list of the narrative/spoken word/speeches of the accused persons. The reference is made to some videos only to preserve brevity as these videos will reflect the list of the acts of accused. Additionally, it is the quality of the evidence which will be the parameter for adjudication of a matter rather than quatity of the evidence. Thus, even if there is only one video which satisfies the legal requirement, existence of other videos is only corroborating in nature.

84.1. In Ex. PW27/4, there are multiple videos. In Video No. 2/URL-2, it is stated that India is in illegal occupation of Kashmir and Kashmir is to be freed from illegal Indian occupation. It is also stated that hoisting of Pakistan flag in Kashmir is not wrong and they will continue to do so. In another video, Video No. 3 reflects the speech whereby Pakistan is supported. In Video No. 11, Pakistan day is celebrated. In Video No. 37, there is talk about two nation theory and that there was partition of

sub-continent on the basis of religion wherein all the Hindus had one nation/land and Muslim will have their land/nation in Pakistan. It is stated that Kashmir being Muslim dominated population is part of Pakistan. Similar statement has been made in video No.1 of Ex. PW27/4. It is stated that Kashmir shall be with Pakistan on the ground of Islam and will not be with India even in peace. That they are ready to sacrifice lakhs of lives to be away from India. In video No. 53, there is protest procession wherein there is cutting/ slaughtering cow to indicate opposition to decision of courts in India as well as opposition of law of India while following law of Islam. One more video may be referred in continuation of the video No. 19 in Ex. PW27/4 where appeal is made by Aashiya Andrabi to Pakistan for seeking help that Kashmir is looking at Pakistan. That they want to go to Pakistan and wanted to save Kashmir.

84.2. In respect of the videos, an argument has been raised that it is not proved to contain the voice of accused persons. In this regard, Scientific evidence has been produced by prosecution and same has been assailed by

accused persons.

84.3. To prove the voice of accused in the video, sample of voice of accused were collected. Mr. Arun Kumar Gupta has been examined as PW-4 in this regard. He has stated that on 11.7.2018, letter was given to him by his HOD for recording of specimen voice sample in RC No. 17/2018 of NIA. That thereafter, NIA officials alongwith witnesses brought three women to his office. That PW-4 explained the entire procedure to the women whose voice samples were to be taken. These women were identified by Inspector Nidhi and SP NIA. That declaration forms of Aasiya Andrabi and witnesses were got signed from Aasiya Andrabi and witnesses. That declaration forms from the witnesses namely Jyoti Priya, Deputy Manager SBI and Sh. Ram Das Prasad. That declaration form qua accused Aasiya Andrabi is Ex. PW4/1. Declaration form qua accused Nahida Nasreen is Ex. PW4/5 and declaration form in respect of accused Sofi Fehmeeda is Ex. PW4/9.

84.4. After that SP NIA gave accused Aasiya Andrabi a written text to be read for recording of voice

sample. That thereafter, a fresh micro SD card was produced by SP NIA. That it was put into the DVR played before the accused and the witnesses to show that it does not contain any audio file. After that specimen voice sample of Aashiya Andrabi was recorded when she read the text provided to her. On stopping of the recording, date and time was automatically punched on the micro SD card. The voice sample is mark S-1. The card was removed from DVR and it was shown to the accused and witnesses that the DVR was not having any micro SD Card. That the said card was put to its original packing and it was put in an envelope and sealed with the seal of NIA. That proceedings memo of the recording of specimen voice was prepared. PW-4 proved the proceeding memo Ex. PW2/2 bearing his signature. That envelope in which micro SD card in which the SD card was sealed after the recording of voice sample was proved as Ex. PW1/3 and micro SD Card was proved as Ex. P-6. PW-4 also stated that he appended his signature when SD card was placed into packing before it was put in an envelope and sealed with seal of NIA and proved the

packaging as Ex.PW4/4. Similar process was followed for recording specimen voice of accused Nahida Nasreen and Sofi Fehmeeda.

84.5. PW-4 further stated that on 27.9.2019, accused Nahida Nasreen was produced from Jail for recording her additional voice sample. The additional voice sample of accused Nahida Nasreen was recorded on that day in the similar manner in which was earlier recorded. The proceeding memo in this regard is Ex. PW1/13. The envelope in which Micro SD card was sealed is Ex. PW4/14. The packaging is Ex. PW4/15 and Micro SD Card was proved as Ex. P-9.

84.6. In his cross examination, PW-4 has stated that in none of the proceedings, it was mentioned that which make or model of the DVR was used for recording the voice sample. That declaration u/s 65 B of Evidence Act was furnished by him for any of the voice samples recorded by him. That the said proceedings were stated to be conducted in presence of independent witnesses. In this regard, Ms. Jyoti Priya was examined as PW-5 who has deposed regarding the proceeding for recording specimen

voice sample of accused on 11.7.2018. During her examination, she has identified her signatures on the documents concerned.

84.7. The process of recording of specimen voice sample was sought to be assailed by accused. Firstly, on the ground that certificate/declaration u/s 65 B of Indian Evidence Act has not been given by PW-4. That certificate/declaration u/s 65 B of Indian Evidence Act is required to be filed in respect of sample of voice recorded. Section 65 B (1) of Indian Evidence Act defines electronic document, section 65 B (1) of Indian Evidence Act also envisages the condition when this certificate/ declaration u/s 65 B of Indian Evidence Act is to be given. Such certification u/s 65 B of Indian Evidence Act is to be given when the original cannot be produced before the court. With respect to recording of voice sample, as per the process explained and established before the court, specimen voice samples were recorded in Micro SD card through DVR and the said Micro SD card in original has been placed on record. It is not the scenario in the present case that copy of said specimen voice sample has been

placed on record and original is retained by the department where said specimen voice samples were recorded. Therefore, once the original micro SD card itself have been produced before the court, it is not required that any certificate u/s 65 B of Indian Evidence Act is to be submitted for proving these Micro SD cards.

84.8. In the cross examination of Ms. Jyoti Priya examined as PW-5, she has been confronted with her statement u/s 161 of erstwhile CrPC wherein it is not recorded that three women were identified by lady officer whereas witness has so stated in her deposition before the court. Every variation in the testimony of witnesses in her deposition before the court in comparison to her testimony before IO is not fatal as far as creditworthiness of the witness is concerned. The impact of variation is to be considered in factual matrix of the case holistically and not in isolation. The accused have signed the proceedings drawn in respect of recording of voice samples of accused persons. Therefore, the fact that witness has not stated about three accused/women identified at the time of recording of specimen voice samples is of not much

consequence.

84.9. This specimen voice sample was sent for scientific analysis to CFSL. To prove the analysis by expert, Sh. D.P Gangawar, Assistant Director, CFSL was examined as PW-24. He has stated that he conducted the examination/sample analysis and submitted his report. The witness was duly cross examined. The testimony and creditworthiness of witness as well as his report was attempted to be shaken. During the cross examination, PW-24 has stated that he has not attached the spectrogram with the report but also stated that the same is available with his file and upon query by court, it is also stated that he has brought the file containing spectrogram. However, after that on behalf of accused, Ld. Counsel choose not to ask anything further on this aspect and did not ask the witness to show the spectrogram. Further, witness has also stated that he has not mentioned about the version of gold wave and multi speech software used by him. He also stated that this software has a feature by using which the voice can be changed. He also stated that he has not filed the result/report of this software analysis but the same

time, it was further stated that he has brought the file and stated that he can produce the result. After that witness i.e. PW-24 had produced the file before the court and had taken out result of analysis by gold wave and multi speech software. Witness also produced two handwritten sheets. He stated that this was the analysis done by him on the basis of gold wave and multi speech software. He also stated in his reply to the court qua the software that software does not give results but helps in analysis by the listener by enhancing the voice, clearing the noise etc. It implies that it is expert who makes the ultimate analysis and is not dependent on the software alone. The witness was asked anything else about the gold wave and multi speech software. No question was put to witness regarding his hand written notes sheets or about the analysis carried out by him.

85. One question was put to witness that if or not his lab is certified u/s 79 (A) of IT Act and was replied by witness in negative. Firstly, it was not clarified as to on which date this certification was sought but without going into this technical details, before deliberating on this issue,

section 79 (A) of IT Act is reproduced as under:-

> *"Central Government to notify Examiner of Electronic Evidence.–The Central Government may, for the purposes of providing expert opinion on electronic form evidence before any court or other authority specify, by notification in the Official Gazette, any Department, body or agency of the Central Government or a State Government as an Examiner of Electronic Evidence."*

85.1. The section 79 (A) of IT Act is not to be read in isolation and should be read with the other provisions relating to expert evidence and testimonies of expert witnesses. In this regard, reference can be made to section 294 of erstwhile CrPC. A combined reading of section 294 of erstwhile CrPC and section 79 (A) of IT Act shows that the purpose and the intent behind incorporating section 79 (A) of IT Act is to supplant the provision contained in section 294 of erstwhile CrPC rather than to limit the applicability of section 294 of erstwhile CrPC. Therefore, it incorporates the scenario where at in addition to the expert analysis by Government Establishment such as CFSL, if any lab is certified in addition to said Government Establishment, analysis and report of those labs has also been made admissible in evidence. Therefore,

this fact of CFSL being not certified u/s 79 A of IT Act is of no consequence.

85.2. To restate the position of law in terms of terrorist act u/s 15 of UA (P) A and punishment of conspiracy etc u/s 18 of UA (P) A, reference to the germane portion of judgment of Hon'ble Supreme Court of India in case titled as ***Gulfisha Fatima Vs State (Govt. of NCT of Delhi), arising out of SLP (CRL) NO. 13988/2025*** is extracted as under:-

> **SCOPE OF "TERRORIST ACT" UNDER SECTION 15 AND THE STATUTORY CONTEXT**
>
> *84. During the course of arguments, a fervent and sustained debate emerged not merely on the threshold under Section 43D(5), but on a more foundational premise, namely, what the statute itself comprehends as a "terrorist act" and, correspondingly, the legal character of the allegations sought to be brought within Chapters IV and VI of the Act. On behalf of the appellants, it was urged that the prosecution narrative, even if taken at its highest, discloses at best a situation of public disorder, and that the invocation of the UAPA proceeds on an overstretched understanding of terrorism. The prosecution, on the other hand, contended that the statutory definition is not confined to conventional forms of violence, and that Parliament has consciously employed a broader formulation to capture conduct which threatens the unity, integrity, security, including economic security, or sovereignty of India, and which disrupts civic life in the manner contemplated by the Act. The submissions, in substance, invited the Court either to proceed on assumed notions of what constitutes terrorism, or to anchor its analysis firmly in the legislative definition enacted by Parliament.*

85. In this backdrop, and before proceeding to an accused-specific evaluation of the material on record, it becomes necessary to clarify the statutory meaning and setting of Section 15. The prima facie satisfaction contemplated by Section 43D(5) is not a matter of impression or gravity alone; it is a satisfaction referable to defined statutory ingredients. Unless the legal contours of the offence alleged are first identified, the subsequent assessment of individual role risks proceeding without a clear statutory reference point, and may result in either an unduly restrictive or an unduly expansive application of the threshold. It is for this reason that the Court considers it appropriate to briefly notice the scope of Section 15, and its inter-relationship with allied provisions, so that the analysis which follows proceeds on a clear legal foundation and is thereafter applied, with the necessary care and precision, to each appellant individually.

86. Section 15 of the Act defines what constitutes a "terrorist act" for the purposes of the statute. The definition is structured around two essential elements. First, the act must be done with intent to threaten, or be likely to threaten, the unity, integrity, security, including economic security, or sovereignty of India, or with intent to strike terror in the people or any section thereof. Second, the act 28 must be of such a nature as to cause, or be likely to cause, the consequences enumerated in the provision.

87. The means by which such acts may be committed are not confined to the use of bombs, explosives, firearms, or other conventional weapons alone. Parliament has consciously employed the expression "by any other means of whatever nature", which expression cannot be rendered otiose. The statutory emphasis is thus not solely on the instrumentality employed, but on the design, intent, and effect of the act. To construe Section 15 as limited only to conventional modes of violence would be to unduly narrow the provision, contrary to its plain language.

88. The consequences contemplated under Section 15 further illuminate the legislative understanding of terrorism. Apart from death or destruction of property, the provision expressly encompasses acts which disrupt

supplies or services essential to the life of the community, as well as acts which threaten the economic security of the nation. This reflects Parliament's recognition that threats to sovereignty and security may arise through conduct that destabilises civic life or societal functioning, even in the absence of immediate physical violence.

89. The Act further recognises that such acts may be the result of collective and coordinated effort. Section 18 makes punishable conspiracy, attempt, abetment, advice, incitement, and knowing facilitation of a terrorist act, as also acts preparatory to its commission. The statutory scheme thus contemplates that terrorist activity may involve multiple actors performing different roles towards a common unlawful objective.

90. Read together, Sections 15 and 18 disclose a legislative design wherein Section 15 defines the nature of acts which Parliament has characterised as terrorist acts, while Section 18 ensures that criminal liability is not confined only to the final execution, but extends to those who contribute to the commission of such acts through planning, coordination, mobilisation, or other forms of concerted action. Whether particular conduct ultimately attracts Section 15 directly, or Section 18 read with Section 15, depends upon the role attributed and the statutory ingredients alleged to be satisfied.

91. At the stage of consideration under Section 43D(5), the Court is not required to finally classify the conduct or determine the precise provision under which liability would ultimately arise. The inquiry is confined to whether, on the prosecution material taken at face value, there are reasonable grounds for believing that the accused's conduct bears a prima facie nexus to a terrorist act as defined under the Act, whether as a direct participant or as a conspirator or facilitator.

92. In light of the foregoing discussion, the plea of delay stands addressed at a general level. The consideration that follows is therefore confined to the individual role attributed to each appellant and the prima facie satisfaction recorded against them under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, without reopening the issue of delay except to the extent it bears upon individual attribution.

93. The Court has thus traversed the submissions on prolonged incarceration and the constitutional framework within which such pleas are to be examined in prosecutions under a special statute. The contours of the statutory restraint contained in Section 43D(5) have been delineated, and the scope and meaning of a "terrorist act" under Section 15 of the Act, read with the allied provisions, have also been clarified.

94. The arguments before us made it evident that while certain submissions were urged on common grounds, the ultimate determination cannot rest on general propositions alone. The application of the law must necessarily turn on the role attributed to each accused, the nature of the material relied upon, and the manner in which the courts below have appreciated the same.

95. It therefore becomes necessary to examine each appeal independently, bearing in mind the statutory framework already discussed, and to assess whether the threshold contemplated under Section 43D(5) is attracted in the case of each appellant and, if so, whether the facts of the individual appeal warrant any departure on constitutional grounds. It is this exercise that the Court would now propose to undertake."

85.3. To prove the commission of conspiracy under section 120 B of IPC or the conspiracy as envisaged in section 18 of UA (P) A, prosecution is required to prove agreement between the parties for achieving their goal of illegal act. The settle position of law on the offence of conspiracy has been propounded by Hon'ble Supreme Court of India in the case titled as ***Gurdeep Singh Vs State of Punjab CRM Criminal***

Appeal No. 705/2024. In this case, it has been, inter-alia, held by Hon'ble Supreme Court of India that:-

> *"17. As regards the second limb of the appellant's contention, it is well established that the offence of criminal conspiracy under section 120B IPC, by its very nature, is seldom capable of being proved by direct evidence. Being a clandestine agreement between two or more persons to commit an unlawful act, or a lawful act by unlawful means, conspiracy is typically established through circumstantial evidence, patterns of conduct, and the cumulative interferences drawn from the interactions of the accused persons.*
>
> *17.1. In State (NCT of Delhi) v. Navjot Sandhu6, this Court underscored that conspiracy is inherently covert and rarely leaves behind direct traces. Its existence can be inferred from the surrounding facts and circumstances, the conduct of the accused before, during, and after the occurrence, and the manner in which the crime unfolds. It was further held that every conspirator need not commit an overt act to be held liable, the agreement itself constitutes the offence. What is required is a concert of purpose and unity of design. It was also emphasized that conspiracy is an independent offence and may be punishable even if the substantive offence contemplated by the conspirators does not ultimately materialize. The following paragraphs are pertinent in this regard:*
>
> *"97. Mostly, conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused (per Wadhwa, J. in Nalini case [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] at p. 516).*

The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible" (Tanviben Pankajkumar case [Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] , SCC p. 185, para 45). G.N. Ray, J. in Tanviben Pankajkumar [Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] observed that this Court should not allow suspicion to take the place of legal proof."

17.2. Similarly, in Ajay Aggarwal v. Union of India7, it was reiterated that conspiracy is a continuing offence, which begins with the formation of the unlawful agreement and continues until the common objective is either achieved or abandoned. The court clarified that the crime is complete with the agreement itself and that no overt act is necessary to sustain a conviction under Section 120B IPC. The relevant paragraphs of the said decision are usefully extracted below:

"10. In Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra [(1981) 2 SCC 443 : 1981 SCC (Cri) 477 : (1981) 3 SCR 68] it was held that for an offence under Section 120-BIPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. In Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra [(1970) 1 SCC 696 : 1970 SCC (Cri) 274 : (1971) 1 SCR 119] it was held that Section 120-BIPC makes the criminal conspiracy as a substantive offence which offence postulates an agreement between two or more persons to do or cause to be done an act by illegal means.

If the offence itself is to commit an offence, no further steps are needed to be proved to carry the agreement into effect. In R.K. Dalmia v. Delhi Administration [(1963) 1 SCR 253 : AIR 1962 SC 1821 : (1962) 2 Cri LJ 805] it was further held that it is not necessary that each member of a conspiracy must know all the details of the conspiracy. In Shivanarayan Laxminarayan Joshi v. State of Maharashtra [(1980) 2 SCC 465 : 1980 SCC (Cri) 493] this Court emphasized that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design."

17.3. *In Sudhir Shantilal Mehta v. CBI8, the Court again affirmed that due to the covert nature of conspiracies, courts must necessarily look to the overall circumstances, the acts of the accused, and the coherence of their conduct to infer a conspiracy. The presence of a common intention and the coordinated acts of multiple persons can give rise to a legitimate inference of an unlawful agreement. The relevant paragraphs read as under:*

"Criminal conspiracy

113. Criminal conspiracy is an independent offence. It is punishable independent of other offences; its ingredients being:

(i) an agreement between two or more persons.
(ii) the agreement must relate to doing or causing to be done either
(a) an illegal act;
(b) an act which is not illegal in itself but is done by illegal means.

It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy.

The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. While however doing so, it must bear in mind that meeting of the minds is

essential; mere knowledge or discussion would not be. As the question has been dealt with in some detail in Criminal Appeal No. 76 of 2004 (R. Venkatakrishnan v. CBI [(2009) 11 SCC 737]), it is not necessary for us to dilate thereupon any further."

116. In K.R. Purushothaman v. State of Kerala [(2005) 12 SCC 631 : (2006) 1 SCC (Cri) 686] this Court held: (SCC pp. 636-38, paras 11 & 13)

"11. Section 120-A IPC defines 'criminal conspiracy'. According to this section when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. In Major E.G. Barsay v. State of Bombay [AIR 1961 SC 1762 : (1962) 2 SCR 195] Subba Rao, J., speaking for the Court has said: (AIR p. 1778, para 31)

'31. The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts.'

13. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy.

While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in the Penal Code.

The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement." (See also P.K. Narayanan v. State of Kerala [(1995) 1 SCC 142 : 1995 SCC (Cri) 215].)"

Thus, it is crystal clear that the offence of criminal conspiracy need not be proved by direct evidence, nor is it necessary that all conspirators participate in every stage of the commission of the offence. What is material is the existence of a prior agreement - express or implied - to commit an unlawful act, or a lawful act by unlawful means. Once such agreement is established, even by way of inference from circumstantial evidence, the legal consequences under Section 120B IPC follow.

86. In **CBI v K. Narayana Rao** (2012) 9 SCC 512, it has been held as under :

"*24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are*

alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

86.1. In **Kehar Singh v State of Punjab (1998) 3 SCC 609,** it has been held as under :

"276. I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their

concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard."

87. Above noted settled position of law on the issue does clearly establish that one of the essential requirement of criminal conspiracy is agreement between two or more persons. The said agreement must be relate to doing or causing to be done an illegal act or an act which is not illegal in itself but is done by illegal means. Section 120 B of IPC is the direct provision in respect of offence of conspiracy and section 18 of UA (P) A is the provision regarding conspiracy to commit a terrorist act or any other act preparatory to the commission of terrorist act. Further, having regard to section 10 of erstwhile Indian Evidence Act, there is no gainsaying to note that the offence of conspiracy can be equated to a moving train. Anyone can board it while still moving and any one, who was earlier a part of it can deboard this train at any time without waiting for reaching the train at its destination i.e. achieving the objective of conspiracy.

87.1. The conspiracy can be said to be defined and shaped through object which seeks to achieve. The

common intention/object is the common thread which binds all the conspirators. Therefore, all the persons who become part of the conspiracy or are in agreement with each other with the intention and effort to achieve the common goal of conspiracy are the co-conspirator to achieve this common design. There may be a situation that the group of people so involved may be pooling resources yet they might not known each one of them personally. If the acts of all the persons involved are in tamdem and meant to achieve object of conspiracy, all those persons are co-conspirators. In simple words conspiracy is an act of secretly planing with other people to do something illegal. For germination of conspiracy, there must be an agreement between two or more persons to chalk out of the purpose of said association. Once a conspiracy comes into being a person shall become a conspirator even if he is acting with one or some of them only and not with all the co conspirators.

88. In the present matter, in addition to the material referred above, in the form of videos and posts etc, report of CDR analysis of mobile phones of accused persons is also on record and proved by prosecution in the said CDR analysis. The said report is Ex. PW21/2. The covering letter and call data record (CDR) is Ex. PW21/1. In analysis of Call Data record (CDR) graphic representation in the form of charts have been put whereby connectivity of all the accused persons with each other has been shown. The said report I.e

Ex. PW21/2, there is reflection of connectivity of all three accused persons with few common members of Pakistan. After that from page No.11 to 35 of Ex. PW21/3, there is a tabular representation of connect of accused with the phone number which are purportedly used by Hurriyat Leader and HM terrorist etc. This tabular representation reflect that about both the calls and SMS communication was made by accused with those phone numbers. In chart at Page No. 36 of the said analysis report Ex. PW21/2, phone number of various persons who are known as terrorist and fundamentalists have also been reflected. In addition to this connectivity with each other and with persons located in Pakistan coupled with the fact that accused consistently maintain that Kashmir is not part of India and is a part of Pakistan shows that all the three were in agreement with each other and have been working towards a common goal i.e. secession of Kashmir from India and its consequent merger with Pakistan. The posts shared by accused persons also substantiate this collective work by accused persons towards common design of Kashmir being part of Pakistan and therefore, there should be secession of Kashmir from India.

88.1 Hence, the material on record in the backdrop of settled legal position on conspiracy proves that the accused did conspiracy with each other for the illegal act of secession of Kashmir from India.

88.2 Therefore, as sequel to the above discussion, it is held that prosecution has been able to establish the charge u/s 18 of UA (P) A and u/s 120 B of IPC against all three accused persons.

CHAREGES u/s 38 and 39 of UA (P) A.

89. Now discussion shall be made qua offences punishable u/s 38 and 39 of UA (P) A are being considered.

89.1. For ready reference, section 38 and 39 of UA (P) A is reproduced as under:-

38. ***"Offence relating to membership of a terrorist organisation.—***

(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation: Provided that this sub-section shall not apply where the person charged is able to prove—

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

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

Schedule as a terrorist organisation.

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

Sec. 39: Offence relating to support given to a terrorist organisation.—

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

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

(i) invites support for the terrorist organization; and

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

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

(i) to support the terrorist organization; or

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

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

organisation; or

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

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

89.2. Qua these offences, it has been argued on behalf of accused that they have learnt about DeM having been declared proscribed terrorist organization upon coming into custody of NIA and not before that. It has also been stated that an application under RTI seeking information was filed but no information in particular was supplied by the concerned authorities. It is also argued that the offence is not made out at all. It is further argued on behalf of accused that although prosecution claims that DeM is an organization however, DeM is not being arrayed as an accused neither chargesheet in this case nor charges have been

framed against it. It is further submitted that so much so the phone number of DeM was available in directory, though, said Directory was never seized nor analyzed by NIA and was not produced in evidence. It is also argued that no evidence has been produced to show accused being the active members of DeM or that DeM was formed in 1983 and banned in 2004. That no action has been taken against DeM in all these years. That there is no evidence or investigation to verify the same or details of any alleged member of DeM.

89.3. In this regard, the argument raised on behalf of prosecution is that even if the contention of accused is considered that they come to know about DeM being the terrorist organization during custody of NIA, ignorance of law cannot be a ground to exonerate the accused.

89.4. Prosecution has produced the gazette notification whereby DeM was added to schedule of POTA 2002 and subsequently, it was added in the schedule appended to UA (P) A through an amendment in 2004. The

document proved in this regard is Ex. PW52/16 (D-22). This fact of DeM being added in the schedule is not disputed as such, although, the said addition has been challenged on the ground that there is no material to justify such addition. Alongwith the written arguments of accused, photocopy of certain documents purportedly proceedings/ application/ orders under RTI are placed on record. However, it is a matter of record that during the ample opportunity with defence, these documents have not been brought on record as part of the defence evidence. Thus, these documents cannot be considered for final adjudication in this matter as at this stage only material which has been adduced and produced as an evidence can be considered.

89.5. Still even if these documents are considered, they do not exonerate the accused from their liability. There has been reference to two petitions before Hon'ble High Court of Delhi but no details of those petitions have been given nor order passed in those petitions have been placed on record. Admittedly, one of the petition filed in

Hon'ble High Court of Delhi was disposed of but the said order is not stated to be challenged before Hon'ble Supreme Court of India. The second petition was stated to be pending before Hon'ble High Court of Delhi. As noted above, no details of these petitions or orders have been placed on record. In absence of any details, it cannot be determined if or not any addition in DeM in schedule of UA (P) A as proscribed organization has been challenged or not. Therefore, as on today, it would imply that the said addition and declaration of DeM as a terrorist organisation has remained unchallenged till date. Accordingly, it necessarily follows that DeM shall be considered as a proscribed organization under UA (P) A.

90. An argument is made on behalf of accused that they were not aware if DeM is a proscribed organization and got aware about it only in custody of NIA and another argument made is that DeM is not an organization. It has been argued that there is a difference in movement and organization. That DeM never had any office or had office bearers, stationary, official records etc to give its shape and

colour of a formal organization. However, it seems that accused are blowing there hot and cold in same breath. On one side, they are claiming that DeM is not an organization as such but on the other hand, they are pursuing petitions and application on behalf of DeM.

90.1. For an organization to exist and operate, it is not necessary that such organization should always have any official records or office bearers or members, records etc. Such requirements stems from the legal contours regarding existence of an organization when it is registered or seeks formal approval/recognition. There are many organizations which functions and operates without being registered or having any office or records etc.

90.2 The word '*organization*' has not been defined legally in any of the statues. Therefore, dictionary meaning of word *'organization'* is to be considered to understand the import of this word. As per Oxford dictionary edition the word organization means "a group of people who formed a business, club etc together in order to achieve a particular aim." Hence, once there is a group of people who

work towards a particular common aim, that group can be called as an *'organization.'* It follows that whether a group of person assumes character of organization or not, it depends upon persuasion of common goal by more than one person. It is not the case of accused persons that they did not have common goal. In the written arguments filed on behalf of all three accused persons, they have claimed and admitted to work of seeking one goal of right to self determination for merger of Kashmir with Pakistan and have also stated that they have raised their voice under the banner of DeM. In the material produced by NIA in their evidence which includes videos wherein many people are participating in these rallies and meetings chaired by accused implies that their exists group of people and admittedly, accused were pursuing a common goal. Hence, it is clear that DeM is an organization. Therefore, argument of accused in this regard cannot be accepted.

91. To bring home guilt of accused u/s 38 of UA (P) A, prosecution is required to prove that the person concerned has associated himself with terrorist

organization with intention to further its activities. In this regard, the fact of DeM being a terrorist organization stands established from the material and evidence produced prosecution. It has been proved that DeM was added in the schedule to UA (P)A. The material on record shows that accused were associated and have professed to be associated with the organization concerned i.e. DeM, was with the intention to further its activities.

91.1. PW-26 Faruq Ahmad who is brother of accused Sofi Fehmeeda Sidique has stated that Sofi Fehmeeda Sidique has been adopted by Aasiya Andrabi and they were working for an organization called DeM. He also stated that accused Sofi Fehmeeda Sidique used to live in the house of Aasiya Andrabi at Saura Srinagar.

91.2. The material on record shows that accused are involved in the acts which promote secession of Kashmir from India. It has been claimed repeatedly by accused persons in the videos and their posts that Kashmir belongs to Pakistan and is under forced occupation of India. That Kashmir should be freed from Indian occupation so that it

can become part of Pakistan. The material on record is rife with such speeches as well as various posts by all the accused especially of accused No.1. The other accused persons have been part of the acts wherein such activities of DeM were furthered.

92. As far as, offence u/s 39 of UA (P) A is concerned, one of the aspects required to be proved is that whoever with intention to further activities of terrorist organization, addresses a meeting for the purpose of encouraging or support for terrorist organization or have further activities, said person is liable to be punished u/s 39 of UA (P)A. Videos/posts referred herein above shows such clear acts.

93. Qua the posts and speeches/addresses, an argument is raised on behalf of accused persons that acts of the accused persons, even if considered to be proved, are protected under the Constitution of India as under Article 19 (1) (A) of Indian Constitution freedom of speech and expression is a fundamental right though subject to reasonable restrictions as prescribed under article 2 of

Constitution of India. It was argued that accused only say that Kashmir is an unfinished agenda of partition of Indian Sub-continent and voice of people of Kashmir should be heard. It was argued that merely stating that Kashmir is an unfinished agenda of partition is part of protected speech under Article 19 of the Constitution of India. Reference and reliance has been placed on the judgment titled as ***Kedarnath Vs State of Bihar (1962) and Shreya Singhal Vs Union of India, AIR 2015 SC 1523.***

93.1. The pronouncement in the case titled as ***Shreya Singhal Vs Union of India, AIR 2015 SC 1523*** by Hon'ble Supreme Court of India is a water shed pronouncement on the issue of freedom of speech. In para No. 12 of the said judgment, reference is made to a judgment in the case titled as ***Vitny Vs California, 71 L. ED. 1095*** and the said paragraph is extracted as under:-

"Justice Brandeis in his famous concurring judgment in Whitney v. California, 71 L. Ed. 1095 said:

> *"Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces*

should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law-the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. ***There must be reasonable ground to believe that the danger apprehended is imminent.*** *There must be reasonable*

ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of lawbreaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated."

93.2. Further, in para No. 13, it was held by Hon'ble Supreme Court of India as under:-

"***This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.****[3] It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to*

or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most of the arguments of both petitioners and respondents tended to veer around the expression "public order".

93.3. The reading of observations made by Hon'ble Supreme Court of India in above said paragraphs reflects that to understand the reach of most basic of human rights such as freedom of speech and expression, it has been bifurcated into three steps or dimensions. The first dimensions is discussion. Second dimension is advocacy and third dimension is incitement. It has also been held that only when discussion or advocacy reaching at the level of incitement, then article 19 (2) kicks in. comparative reading of said judgment of American Courts in context of Article 19 (A) has been made by Hon'ble Supreme Court of India and it has been further held in para No. 18 is as under:-

"Viewed from the above perspective, American judgments have great persuasive value on the content of freedom of speech and expression and the tests laid down for its infringement. It is only when it comes to sub- serving the general public interest that there is the world of a difference.

This is perhaps why in Kameshwar Prasad & Ors. v. The State of Bihar & Anr., 1962 Supp. (3) S.C.R. 369, this Court held:

> *"As regards these decisions of the American Courts, it should be borne in mind that though the First Amendment to the Constitution of the United State reading "Congress shall make no law.... abridging the freedom of speech..." appears to confer no power on the Congress to impose any restriction on the exercise of the guaranteed right, still it has always been understood that the freedom guaranteed is subject to the police power- the scope of which however has not been defined with precision or uniformly. It is on the basis of the police power to abridge that freedom that the constitutional validity of laws penalising libels, and those relating to sedition, or to obscene publications etc., has been sustained. The resultant flexibility of the restrictions that could be validly imposed renders the American decisions inapplicable to and without much use for resolving the questions arising under Art. 19(1) (a) or (b) of our Constitution wherein the grounds on which limitations might be placed on the guaranteed right are set out with definiteness and precision."*

93.4. In the case of Shreya Singhal (Supra), an argument regarding relaxed stand of reasonableness of restriction by reference being had to the fact that medium of speech being the internet differs from other medium on several grounds was made and in this regard, Hon'ble Supreme Court of India had given following observations:-

"It was argued by the learned Additional Solicitor General that a relaxed standard of reasonableness of restriction should apply regard being had to the fact that the medium of speech being the internet differs from other mediums on several grounds. To appreciate the width and scope of his submissions, we are setting out his written submission verbatim:

"(i) the reach of print media is restricted to one state or at the most one country while internet has no boundaries and its reach is global;

(ii) the recipient of the free speech and expression used in a print media can only be literate persons while internet can be accessed by literate and illiterate both since one click is needed to download an objectionable post or a video;

(iii) In case of televisions serials [except live shows] and movies, there is a permitted pre- censorship' which ensures right of viewers not to receive any information which is dangerous to or not in conformity with the social interest. While in the case of an internet, no such pre-censorship is possible and each individual is publisher, printer, producer, director and broadcaster of the content without any statutory regulation;

In case of print media or medium of television and films whatever is truly recorded can only be published or broadcasted I televised I viewed. While in case of an internet, morphing of images, change of voices and many other technologically advance methods to create serious potential social disorder can be applied.

By the medium of internet, rumors having a serious potential of creating a serious social disorder can be spread

to trillions of people without any check which is not possible in case of other mediums.

In case of mediums like print media, television and films, it is broadly not possible to invade privacy of unwilling persons. While in case of an internet, it is very easy to invade upon the privacy of any individual and thereby violating his right under Article 21 of the Constitution of India.

By its very nature, in the mediums like newspaper, magazine, television or a movie, it is not possible to sexually harass someone, outrage the modesty of anyone, use unacceptable filthy language and evoke communal frenzy which would lead to serious social disorder. While in the case of an internet, it is easily possible to do so by a mere click of a button without any geographical limitations and almost in all cases while ensuring anonymity of the offender.

By the very nature of the medium, the width and reach of internet is manifold as against newspaper and films. The said mediums have inbuilt limitations i.e. a person will have to buy / borrow a newspaper and / or will have to go to a theater to watch a movie. For television also one needs at least a room where a television is placed and can only watch those channels which he has subscribed and that too only at a time where it is being telecast. While in case of an internet a person abusing the internet, can commit an offence at any place at the time of his choice and maintaining his anonymity in almost all cases.

(ix) In case of other mediums, it is impossible to maintain anonymity as a result of which speech ideal opinions films having serious potential of creating a social disorder never gets generated since its origin is bound to be known. While in case of an internet mostly its abuse takes place under the

garb of anonymity which can be unveiled only after thorough investigation.

(x) In case of other mediums like newspapers, television or films, the approach is always institutionalized approach governed by industry specific ethical norms of self conduct. Each newspaper / magazine / movie production house / TV Channel will have their own institutionalized policies in house which would generally obviate any possibility of the medium being abused. As against that use of internet is solely based upon individualistic approach of each individual without any check, balance or regulatory ethical norms for exercising freedom of speech and expression under Article 19[1] [a].

(xi) In the era limited to print media and cinematograph; or even in case of publication through airwaves, the chances of abuse of freedom of expression was less due to inherent infrastructural and logistical constrains. In the case of said mediums, it was almost impossible for an individual to create and publish an abusive content and make it available to trillions of people. Whereas, in the present internet age the said infrastructural and logistical constrains have disappeared as any individual using even a smart mobile phone or a portable computer device can create and publish abusive material on its own, without seeking help of anyone else and make it available to trillions of people by just one click."

93.5. In the said case of Shreya Singhal (Supra) discussion/observations have been made by Hon'ble Supreme Court of India separately an different aspects of the issue. While analyzing the aspect of clear and present

danger, Hon'ble Supreme Court of India has held which is extracted as under:-

"**Clear and present danger - tendency to affect.**

36. It will be remembered that Justice Holmes in Schenck v. United States, 63 L. Ed. 470 enunciated the clear and present danger test as follows:

"...The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. Gompers v. Buck's Stove & Range Co., 221 U. S. 418, 439, 31 Sup. Ct. 492, 55 L. ed. 797, 34 L. R. A. (N. S.) 874. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

This was further refined in Abrams v. Unites States 250 U.S. 616 (1919), this time in a Holmesian dissent, to be clear and imminent danger. However, in most of the subsequent judgments of the U.S. Supreme Court, the test has been understood to mean to be "clear and present danger". The test of "clear and present danger" has been used by the U.S. Supreme Court in many varying situations and has been adjusted according to varying fact situations. It appears to have been repeatedly applied, see- Terminiello v. City of Chicago 93 L. Ed. 1131 (1949) at page 1134-1135, Brandenburg v. Ohio 23 L.

Ed. 2d 430 (1969) at 434-435 & 436, Virginia v. Black 155 L. Ed. 2d 535 (2003) at page 551, 552 and 553[4]."

94. In the present matter, the arguments on behalf of accused is that they were raising only the issue of Kashmir being an unfinished Agenda of partition of Indian Sub-continent. However, it is an incomplete argument as the narrative of accused persons through their speeches, posts and videos is not to restricted to raise this limited aspect of Kashmir being an unfinished agenda of partition. Accused persons have gone to the length claiming that Kashmir is not part of India and is part of Pakistan since beginning and that the people of Kashmir should through right of self determination be given a platform to be part of Pakistan. Further, the words/speeches/posts are not limited as oral support or peaceful demand of right to self determination. Under the veil of this slogan of right to self determination, it has been propagated that India has illegally occupied Kashmir. In the interview published in the news paper Kashmir Ink dated 15.01.2018 and proved as Ex.PW7/3, one of the questions were put by the Interviewer " **what is the**

militances future in Kashmir?; is gun, the only solution to the Kashmir dispute"? and accused No.1 had replied that " I think more and more youth will join the militants and our armed struggle will be stronger by the day. Killing and abuses by Indian occupational forces will only increase the militancy. The gun is one of the means of achieving our goal but we must make our political struggle strong too. I believe the Kashmir issue will only be resolved through a referendum. To get a referendum, though, we need carry on with our struggle and gun is a must for that." The said specific question and pointed replies emphasize that the purported struggle is 'armed struggle' and gun is a must for that. It reflects that accused is clearly not limited their speeches/version in videos to state that Kashmir is an unfinished Agenda of partition. The phrase has been made a base to promote use of gun to achieve the goal of accused of merging Kashmir in Pakistan.

94.1. It is not the case of accused persons that Kashmir is part of India and to achieve peace in Kashmir valley, the people of Kashmir be asked to come out to

express theirwill. The case of accused is completely opposite to this and without mincing words, accused are stating and claiming that Kashmir is not part of India and was never a part of India. So much so, in certain videos, accused No.1 is having conversation with a TV channel purportedly based in Pakistan and is seeking support of Pakistan. Such support is sought not only in that interview/conversation but multiple times. The contention or case of accused is that muslims being the majority population in Kashmir, the Kashmir should go to Pakistan. Therefore, it is clear that accused are not merely stating that Kashmir is an unfinished agenda of partition rather above discussion clearly spells out that this aspect is misused by accused persons to support, endorse and propogate that Kashmir is not part of India.

94.2. There is a clear stipulation in article 19 (2) of Constitution of India that as far as reasonable restrictions are concerned, the freedom of speech and expression can always be restricted/limited if it adversely affect the sovereignty and integrity of India. To seek secession of part

of India from the part of India is a clear case of sovereignty and integrity of India having been put under threat.

94.3. As noted above, it has been held by Hon'ble Supreme Court of India that the test for evaluating if any statement is covered by the protection by the freedom of speech and expression, the test laid down is that the said statement, posts or article should be considered as a whole in a fair, free, liberal spirit and thus, then it must be decided what affect would have on the minds of reasonable reader. While raising this argument that the speech and posts etc of accused are protected by freedom of speech, accused have given amiss to the dimensions of considering the speech/article/posts etc as a whole. Only some portion of article, speech, posts etc, cannot be taken out in isolation to indict or exonerate the accused. Accused is not allowed to refer only to a part of her statement/speech/posts to seek protection under article 19 of Constitution of India. Hence, as a sequel to above discussion, argument raised by accused that their speech, posts are protected under article 19 of Constitution of India is concerned, stands rejected.

95. In the present matter, the activities of terrorist organization DeM relates to secession of an integral part of India from India on the pretext of claim of right to self determination. To further these activities, various speeches were made as well as interviews given. There are multiple posts as discussed in preceding paragraphs mentioning the fact of organizing/convening by accused persons to encourage and support of this aim. The accused have attempted to create a Facade that Kashmir is not part of India and is under illegal Indian occupation. **95.1**.

It is trite law that there cannot be a direct evidence of intention a person and it has to be deduced from the acts of an accused. To put it simply, intention for act is what intention does. In this regard, written arguments of accused can be refereed to reflect the mind set/intention of accused in addition to the material on record which establishes various acts of the accused persons whereby they are vociferously claim Kashmir to be part of Pakistan and even making appeal to Pakistan to assist them in achieving their object of secession of Kashmir from India to become part

with Pakistan. In the written arguments filed on behalf of all the accused persons, it is stated that in written 'Indian' Intelligence Agency with word India having been stated in inverted commas to lay emphasis. No doubt, such written arguments cannot replace the requirement of legal proof regarding act of accused, however, these written arguments are referred only to reflect the continuing mind set of the accused persons.

95.2. It was argued on behalf of accused that DeM as an organization has not been made party nor has been chargesheeted. In this regard, suffice is to observe that as far as offence u/s 38 and 39 of UA (P) A is concerned, there is no requirement to chargsheet the organization as well. The language of section 38 and 39 of UA (P) is plain and categorical whereby acts of an individual indulging in the activities envisaged in these provisions are made liable to be punished if so proved by prosecution. The language of these provisions makes it clear that individual concerned is liable in his/her individual capacity and not in a vicarious position representing the terrorist organization.

The contention on behalf of accused of not having made organization concerned, an accused would have had merit, had the offence is concerned is such where accused is made vicariously liable, but as noted above the mischief of section 38 & 39 of UA (P)A is for liability of an individual in his individual capacity. The person found to have committing acts contemplated in these two provisions has been made liable in their individual capacity and not in any vicarious position. Hence, this arguments cannot be accepted.

96. An argument has been raised on behalf of accused that they were not aware of that Dukhtaran-E-Millat (DeM) having been declared as terrorist organization. The fact of Dukhtaran-E-Millat having been incorporated in the schedule mentioning organizations declared as terrorist organization is equivalent to being the law as far as legal status of organization Dukhtaran-E-Millat is concerned. For considering and evaluating the plea of ignorance of law, this Court is guided by judgment titled as ***Just Rights for Children Alliance & Anr Vs S.***

Harish & Ors, Criminal Appeal No. 2161-2162 of 2024, wherein Hon'ble Supreme Court of India has crystallized the position in this regard and the germane portion of the said judgment is extracted as under:-

> "211. *This may be better understood through a four-prong test wherein for a valid defence, there must exist (1) an ignorance or unawareness of any law and (2) such ignorance or unawareness must give rise to a corresponding reasonable and legitimate right or claim (3) the existence of such right or claim must be believed bonafide and (4) the purported act sought to be punished must take place on the strength of such right or claim. It is only when all the four of the above conditions are fulfilled, that the person would be entitled to take a plea of ignorance of law as a defence from incurring any liability.*
>
> 212. *As held in Chandi Kumar Das Karmarkar (supra) a plea of ignorance of law is a valid defence only to the acts said to have been done on the basis of a right or a claim, the existence of which was bona-fidely believed or entertained on the basis of ignorance of law or mistaken notion of law. Thus, for a plea of ignorance of law, the ignorance or mistake of law must be such which legitimately gives rise to a bona-fide belief of the existence of a right or a claim, and the said person commits any act on the strength of such right or claim. This is fortified from the following observation "A claim of right in good faith, if reasonable saves the act [...] where such a plea is raised" in paragraph 7 of Chandi Kumar Das Karmarkar (supra). Thus, a plea of ignorance of law is only valid for the defence of a*

bona-fide claim of right and any acts done thereunder. As such, where a person commits any act on the assertion of a right, the existence of which was bona-fidely believed due to a mistaken notion of law, such person will not be liable due to the honest but mistaken factum of such right or claim stemming from or accompanied by ignorance of law.

213. Similarly, in Motilal Padampat Sugar Mills (supra) this Court only held that a plea of ignorance of law may be a valid defence for bona-fidely believing the existence of a wrong or incorrect right i.e., the right to only a partial concession of sale tax exemption. Accordingly, this Court held that where a person due to ignorance of law was not fully informed about a particular right, there can be no waiver of such right unless it is shown that such person was indeed aware of the said right.

214. Thus, the aforesaid decisions of this Court in Chandi Kumar Das Karmarkar (supra) Motilal Padampat Sugar Mills (supra) are distinguishable for the simple reason that storage or possession of child pornographic material cannot be equated or traced to any right or assertion even if it was a mistaken one. Even if a person is unaware that the possession or storage of such material is punishable, it by no stretch can be considered to give rise to any right or assertion as there exists no such right to either store or possess such material, and thus it is not a valid defence. We say so because, no person of an ordinary prudent mind with the same degree of oblivion or unawareness as to the law, more particularly Section 15 of POCSO could as a natural corollary be led to a belief of existence of a right to store or possess any child pornographic material. The ignorance or unawareness

must have a reasonable nexus with the right or assertion claimed i.e., the ignorance or unawareness must be such which could legitimately and reasonably give rise to a corresponding right or claim the and the existence of which must be bona-fidely believed. Otherwise, anyone could make a bald or blanket claim of having a bonafide belief of any right to wriggle out of any liability arising out of its actions on the touchstone of unawareness of any particular law. Thus, even if the accused was unaware about Section 15 of POCSO, this by itself does not give rise to a corresponding legitimate or reasonable ground to believe that there was any right to store or possess child pornographic material. As such the four-prong test is not fulfilled and the defence of ignorance of law by the accused must fail.

215. Even otherwise, one must be mindful to the fact that such a plea is not a statutory defence with any legal backing, but rather a by-product of the doctrine of equity. Whether such a defence is to be accepted or not, largely depends upon the extant of equity in the peculiar facts and circumstances of each individual cases. It is an equally settled cannon of law that equity cannot supplant the law, equity has to follow the law if the law is clear and unambiguous.

216. This Court in National Spot Exchange Ltd. v. Anil Kohli, Resolution Professional for Dunar Foods Ltd. reported in (2022) 11 SCC 761 after referring to a catena of its other judgments, had held that where the law is clear the consequence thereof must follow. The High Court has no option but to implement the law. The relevant observations made in it are being reproduced below: -

"15.1. In Mishri Lal [BSNL v. Mishri Lal, (2011) 14 SCC 739 : (2014) 1 SCC (L&S) 387], it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it.

15.2. In Raghunath Rai Bareja [Raghunath Rai Bareja v. Punjab National Bank, (2007) 2 SCC 230] , in paras 30 to 37, this Court observed and held as under : (SCC pp. 242-43) "

30. Thus, in Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 SC 1633] (vide para 12) this Court observed: (AIR p. 1637) '12. … [What is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law.'

31. In Council for Indian School Certificate Examination v. Isha Mittal [(2000) 7 SCC 521] (vide para 4) this Court observed: (SCC p. 522)

'4. … Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.'

32. Similarly, in P.M. Latha v. State of Kerala [(2003) 3 SCC 541 : 2003 SCC (L&S) 339] (vide para 13) this Court observed: (SCC p. 546).

'13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law.'

33. In Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413] (vide para 73) this Court observed: (SCC p. 436) .

'73. It is now well settled that when there is a conflict between law and equity the former shall prevail.'

34. Similarly, in Nasiruddin v. Sita Ram Agarwal [(2003) 2 SCC 577] (vide para 35) this Court observed: (SCC p. 588)

'35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.'

35. Similarly, in E. Palanisamy v. Palanisamy [(2003) 1 SCC 123] (vide para 5) this Court observed: (SCC p. 127)

'5. Equitable considerations have no place where the statute contained express provisions.'

36. In India House v. Kishan N. Lalwani [(2003) 9 SCC 393] (vide para 7) this Court held that: (SCC p. 398)

'7. … The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations.'…"

(Emphasis supplied).

217. Unawareness or in cognizance of law should not be conflated with ignorance of law. This Court in Motilal Padampat Sugar Mills (supra) duly acknowledged that a plea of unawareness of law is fundamentally different in scope and application from the rule that ignorance of the law does not excuse anyone. The former as explained above, is a byproduct of the doctrine of equity whereas

the latter is a cardinal rule of criminal jurisprudence and no person can claim to be absolved of any criminal offence or liability on a plea of ignorance of law. Thus, where something is specifically made punishable under the law, then in such cases the law would prevail over equity, and no plea of ignorance of law can be taken as a defence to absolve or dilute any liability arising out of such punishable offences. Thus, even if all four preconditions are satisfied, the courts are not bound to accept such a plea, if it is in negation or derogation of any law or the idea of justice.

218. Equity modifies the applicable law or ensures its suitability to address the particular circumstances before a court to produce justice. The modification of general rules to the circumstances of the case is guided by equity, not in derogation or negation of positive law, but in addition to it. It supplements positive law but does not supplant it. In a second sense however, where positive law is silent as to the applicable legal principles, equity assumes a primary role as the source of law itself. Equity steps in to fill the gaps that exist in positive law. Thus, where no positive law is discernible, courts turn to equity as a source of the applicable law. However, where positive law exists, equity will always yield to it. [See M. Siddiq v. Mahant Suresh Das, reported in 2020 1 SCC 1]".

96.1. Therefore, as a sequel to above discussion, it is held that prosecution has proved the charges u/s 39 of UA (P) A also against accused persons.

97. Adverting to the facts of the case, besides

having raised the arguments of ignorance of law by the accused, nothing has been produced as an evidence to indicate accused not being aware of such law. Further, as noted above, to establish the principle of Ignorance of law, the four parameters laid down by Hon'ble Supreme Court of India are to be satisfied. Therefore, even if for the argument, the plea of accused is accepted that they were not aware about the status of organization Dukhtaran-E-Millat, still it does not vest any right in them (accused) to raise the claim of secession an integral part of India from India. The contention of ignorance of a statue by accused should also be seen in the back ground that the defence and case of accused is based in knowledge of resolution of United Nation i.e. International law. But as far as laws of their own country is concerned, they are pleading an ignorance. Hence, since, accused could not satisfy the test laid down by Hon'ble Supreme Court of India, argument regarding ignorance of accused that Dukhtaran-E-Millat has been declared terrorist organization cannot be accepted.

Hence, above discussion shows that prosecution has been able to establish and prove charge u/s 38 & 39 of UA (P) A against all the accused persons.

CHARGE UNDER SECTION 153 A of IPC AND U/S 505 OF IPC.

98. Before commencing the deliberation on applicability of the provision contained in section 153A IPC and section 505 of IPC in the factual matrix of present case, said provision is extracted as under:-

SECTION 153A

Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc. , and doing acts prejudicial to maintenance of harmony.

Whoever:-

1. *by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racials, language or regional groups or castes or communities, or*
2. *commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or*

communities, and which disturbs or is likely to disturb the public tranquility, or

3. *organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.*

Offence committed in place of worship, etc —

Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."'

Section 505 of IPC

Statements conducing to public mischief:-

(1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, 3 [sailor or airman] in the Army, 4 [Navy or Air Force] 5 [of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to 6 [three years], or with fine, or with both.

(2) Statements creating or promoting enmity, hatred or ill-will between classes.—

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc.—

Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious

ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

98.1. On this issue, Hon'ble Supreme Court of India in case titled as ***Javed Ahmad Hazam Vs State of Maharashtra Cri. 886/2020 (2024) 3 SCR 317; 2024 INSC 187*** referred and reiterated the Law settled in the case titled as ***Manzar Sayeed Khan Vs. State of Maharashtra & Anr. (2007) 5 SSC 1*** and while interpreting section 153 A IPC, it has been held that the gist of the offence (153 A IPC) is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under section 153 A of IPC and the prosecution has to prove primafacie the existence of means rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of section 153 A must be read as a whole. One cannot rely on strongly worded and isolated passes for proving the charge

nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning. Hon'ble Apex Court has approved the view taken in its decision in the case titled as ***Ramesh Vs Union of India, (1988), SCC 668.*** Hon'ble Supreme Court of India dealt with the issue of applicability of section 153 A IPC. In para No. 13, of case titled as Ramesh Vs. Government of India (Supra) it was held that *"thus, the effect of the words must be judged from the standards of reasonable, strong-minded firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English law'the man on the top of a Clapham omnibus."* It is further held that the yardstick laid down by Hon'ble Apex Court that will have to be applied while judging the effect of the words, spoken or written, in the context of section 153 A IPC.

98.2. In para No.7 of Javed Ahmad Hazam (Supra) it was further held that:-

"We may also make a useful reference to a decision of this Court in the case of Patricia Mukhim v. State of Meghalaya & Ors4 . Paragraphs 8 to 10 of the said decision read thus: 8. "It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society."— Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. Speech crime is punishable under Section 153-A IPC. Promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony is punishable with imprisonment which may extend to three years or with fine or with both under Section 153-A. As we are called upon to decide whether a prima facie case is made out against the appellant for committing offences under Sections 153-A and 505(1)(c), it is relevant to reproduce the provisions which are as follows:

……
……
……
……
……
…… 9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public

tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove the existence of mens rea in order to succeed.

10. The gist of the offence under Section 153-A IPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417].”

98.3. Therefore, to demonstrate guilt of accused persons qua offence punishable U/s 153 A IPC, the first thing which prosecution needs to establish is that the words spoken or written are intentional. In the present case, there are multiple videos and posts on twitter/facebook wherein the accused persons have stated that there are two communities i.e. Muslim and non -muslim. It has also been claimed and stated by accused that on the basis of this theory

premised based in religion, people of Kashmir are entitled to become part of the Pakistan. So much so, it has been stated that since beginning the people of Kashmir is also part of Pakistan on the basis of their religion I.e. Islam. Alongwith this claim, the method adopted by other individuals or organization including the method of violence and of stone pelting have been endorsed and encouraged by the accused persons. The section 153 A IPC requires that through spoken or written words disharmony or feeling of enmity, hatred or ill will is promoted or attempted to be promoted between different religions, language or racial groups, caste or communities. Continuous claims by the accused that people of Kashmir being Muslim are not part of India is a clear attempt to promote ill will, to say the least between Muslims or non -Muslims.

98.4 The accused are specific and categorical in their contentions/acts/speeches/posts that the distinction so drawn by them is on religious lines. Accused seems to be not mincing words and have not attempted to veil the reason of distinction being on religious grounds. The accused are

candidly stating in the speeches/posts/videos that the said distinction, is purely on the religion basis. It is not the case of accused that there are no people from other religion i.e. non-Muslim living in the area in which speeches are made. Infact as per the case of accused itself about 90% of the people of Kashmir are Muslims. Therefore, admittedly about 10% of the people of Kashmir are non muslims. The claim of accused that there should be a secession of the part of India from India and its amalgamation with the Pakistan on religious lines amounts to promoting disharmony and ill will in the different groups who resides in Kashmir.

98.5 Further, the posts/videos etc are made on the internet. One major characteristic of internet is that it operates beyond the geographical boundaries and the persons who are geographically located at far off locations can also access such information through internet. This aspect is important as once any message or video is posted online, they immediately become available to public at large. Therefore, such videos, messages, posts etc after having been posted online will have vast effect and will not be

limited to the certain geographical areas ordinary termed as local area. Hon'ble Supreme Court of India has in the case of Shreya Singhal (Supra) emphasised this distinct feature of internet.

98.6. An argument was raised on behalf of accused that the video/posts in question have not been proved by the prosecution. It is also argued that the videos are doctored by misuse of Artificial Intelligence. It is also argued that there is no evidence of said videos having been posted by accused persons.

98.7. As far as, this argument i.e. videos having been doctored or misused with the help of Artificial Intelligence is concerned, it is an argument/contention which is raised by accused in their written arguments and besides that Ld. Counsel for accused has not raised this argument. There is no bar that an argument which is not raised by Ld. Counsel for accused, cannot be raised by accused, yet it becomes important to note for the reason that such argument is primarily based in understanding grounded in common parlance rather than apparently having any legal backing.

98.8 For any oral argument to sustain in the material on record, such case by accused has to be put forth in the evidence either at the time of cross examination of the witness of prosecution or at the time of adducing evidence in defence. In the present matter, at both the instances I.e cross examination of PWs or at the time of adducing defence evidence, there is no contention or suggestion that the videos in question are doctored. It is an argument which has now been raised for the first time by the accused. Hence, this contention having not been raised any time during recording of evidence, remains a bald assertion without any material on record to give strength and credence to this argument.

98.9. It has also been argued that there is no proof of such videos having been uploaded by the accused persons. As per the evidence of prosecution, videos in question have been downloaded from open sources and some of the videos were downloaded form the YouTube channel of one of the accused. The contention of not proving as to who uploaded the video in question has implicit admission to the effect that the videos in question are existing and are available online.

It is not the case of accused that they are not appearing in those videos or the contents/utterances therein have not been said by them. Even if the contention of accused is accepted that fact of uploading the videos by accused is not proved, still the contents of the videos have been proved by prosecution or not disputed by accused, to say the least. Rather, the accused persons have been saying and admitted that they have raised their voices regarding right to determination under the banner of DeM.

98.10. Further, qua the videos downloaded from internet and data regarding posts of accused on twitter and facebook being downloaded, multiple witnesses have been examined by prosecution. Ms. Aparna Panickar, Cyber Forensic Examiner was examined as PW-22 by prosecution. She has stated that upon being directed to investigate for incriminating and propaganda posts relating to accused and DeM, IO had shared phone numbers of accused persons. She further stated that on the basis of these phone numbers, she searched facebook and found phone number of accused Aasiya Andrabi to be connected with one account in the

name of Aasiya Andrabi. That the same account was accessed and screen shorts of same were taken. She further stated that in the said facebook account, there was a link provided to twitter account of Aasiya Andrabi and accessed them by clicking on. Then, she found two other accused i.e. Sofi Fehmeeda and Nahida Nasreen following Aasiya Andrabi. That she clicked on accounts of these two accused persons as well and accessed it. That she prepared a report in this regard which was proved as Ex. PW22/1.

98.11. To connect the said phone numbers on the basis of Cyber Tracking report Ex. PW22/1 was prepared; other witnesses have also been examined by prosecution in this regard.

98.12. On behalf of prosecution, Mr. Pawan Singh was examined as PW-25 in respect of mobile Number 9779631302, in the name of Nahida Nasreen. Mr. Ajay Kumar, Nodal Officer of Bhartiya Airtel was examined as PW-33. He deposed that he had provided Customer Application Form (CAF). Qua phone number 9622557081, 9906536565, 9797812699 and 9906566565. The original

Customer Application Form were brought in original of phone number ending with 7081 and was proved as Ex. PW33/1. Voter ID Card of accused Nahida Manjoor was submitted at the time of subscribing of said mobile number. The copy available with the company bearing stamp of company was proved as Ex. PW33/2. Similarly, documents regarding phone number ending with 6565 was proved as Ex. PW33/3 and Ex. PW33/4. The said number is stated to be subscribed by Fehmeeda Sidique. The phone number ending with 0691 was also subscribed in the name of Fehmeeda Sidique and documents were proved as Ex. PW33/6. Customer Application Form and copy of DL of Fehmeeda Sidique is Ex. PW33/7. This witness also proved documents regarding number ending with 2699 and deposed that the same to be subscribed in the name of Aasiya Andrabi. The CAF was proved as Ex. PW33/8. Copy of Voter Id Card was proved as Ex. PW33/9. That certificate u/s 65 of Indian Evidence Act was also submitted and proved as Ex. PW33/10. The CDR in respect of above mobile phone were proved as Ex. PW33/11 to Ex. PW33/14.

98.13 This witness was not cross examined on behalf of accused persons despite opportunity having been given to the accused and therefore, the deposition of this witness remains unrebutted both in terms of oral testimony as well as documents proved by him. Qua PW-25 Sh. Pawan Singh, it has not been put that the CAF in the name of Nahida Nasreen is forged or manufactured document.

98.14 Further, to prove the process of downloading the videos from the URLs, transferring the same in the blank DVDs which were duly sealed at that time, independent witnesses have been examined by prosecution. These witnesses have given details of the process conducted in this regard. It has been stated that the URLs were downloaded in the original at NIA and from there, it were transferred in blank DVDs; the officials who have carried out the said process have given certificate u/s 65 B of Indian Evidence Act. Alongwith the testimonies/examination of officials of NIA, independent witnesses have also been examined who have witnessed this process.

98.15. Qua the process conducted on downloading the

videos on 27.04.2018 and 31.07.2018, Mr. Saurbh has been examined as PW-3. PW-3 in addition to the fact of deposing about the process conducted by NIA, has also proved the documents by identifying his signatures on them. The said witness was duly cross examined but nothing came out in the cross examination in order to shake the credit worthiness of witness or put his testimony under clouds of doubts. Mr. Abhay Kumar was examined as PW-6 regarding the process carried out in July 2018. He proved the memo drawn in this respect as Ex. PW6/1. Therefore, the above witness has proved the videos and posts by deposing about the process. Despite cross examination of all these witnesses, nothing could be pointed out about to indicate any short coming in the process carried out by NIA nor anything could be pointed out that there has been any kind of tempering with the videos. The presence of independent witnesses fortify the case of prosecution and further negates the oral bald assertion of accused that video in question was doctored.

98.16 Further, it needs to be evaluated whether to prove the contents of the videos which are available on

online, is it mandatory for the prosecution to prove and bring on record the source of uploading the videos on internet. To answer this question one needs to be understand the process of uploading of videos. A video is recorded through a recording device including mobile phone. As long as the videos so recorded are stored in the device by using which it was recorded, the data/video remains located on that device only. For uploading such videos, one needs to connect with internet and after completing the process, the video is available on internet. The term uploading the video, thus, implies that the said video is now available on online and can be accessed by any one. Such videos, unless otherwise prohibited can be downloaded on other device or can be further shared. Such uploading the videos can be done by the person who has created the videos or recorded or such uploading that may be done by any other person. In both these situations, the video and the contents remains the same, unless it is proved that the video in question has been tempered with. Copies of the all the videos which are on record in this case were supplied to accused persons,

however, during recording of evidence of person concerned, no question has been put that the video in question is doctored or tempered with.

98.17 The argument raised on behalf of accused is that video which is available on online cannot be proved unless it is shown that the uploading the video or the device through which voice was recorded is produced. This argument which falls under its own weight. The uploading of a video is only a mechanism to make the video available to public on internet from its availability to limited set of people having access to the recording device. Even if the recording device is produced and at the same time, it is shown that the video in question is doctored or tempered with, the fact of having produced the original device will be of little consequence. Hence, to sum up deliberation on this contention, the primarily consideration in this regard will be if or not the video in question is doctored or tempered with or not. In this regard, other than raising an oral argument of misuse of Artificial Intelligence is creating false video, no material has been produced on record to show that video in

question are not genuine. Hence, this argument is rejected.

98.18 Further, another aspect which require careful consideration is:- who is responsible for the contents of a video or any post or article. Is it the person who uploads the videos or the person who gives such speeches/ is author of the contents of such videos / posts / article / interview? The answer to this question should be a No. The person who is making speeches/giving interviews cannot take shelter under an argument that since it is not shown that it was him/her who put these speeches/videos online, he/she is not responsible for the contents. Holding so will create a situation where the creator of the contents can take a route of only giving speeches/interviews etc and getting it uploaded from somebody else to circumvent the penal consequences of his/her acts. It cannot be made permissible. Needless to state that any person who deliberately uploads the videos etc with the requisite mens-rea, they shall be liable as per law for their acts.

99. The contention raised on behalf of accused is that the video and posts could not be authenticated by

prosecution as they have not brought any material to show as to who uploaded those videos. The said contention seems to suggest that it is the person who has uploaded the video is the person who is responsible for those videos. Needless to state that role of said person can be considered through the prism of being an abettor but the fact that it was someone else other than accused who have uploaded the videos, does not exonerate the accused from the contents of the videos. It is a matter of record that some of the videos which are part of record of the case are from from the TV interviews having been telecasted and therefore, does it mean that source of such videos being known, in any way dilute the responsibility of accused persons qua the contents of those videos. If this argument is accepted then the actual creator of the contents will have to be let go off and the person who uploaded the video become responsible for the contents which are not his/her. Needless to state that had the prosecution has brought material on record as to who uploaded the video in question, the same would have been corroborative piece of evidence but absence of said

corroborative piece of evidence cannot be said to be such which will render the contents of video negatory. Therefore, the argument of accused cannot be accepted.

99.1 As far as charge against accused u/s 505 of IPC is concerned, it is apposite to refer judgment of Hon'ble Supreme Court of India titled as ***Bilal Ahmad Kalu Vs State of Andhra Pradesh, AIR 1997, Supreme Court 3483.*** The relevant portion of this judgment is extracted as under:-

"The common ingredient in both the offences is promoting feeling of enmity, hatred or ill-will between different religious or racial or linguistic or regional groups or castes or communities. Section 153A covers a case where a person by "words, either spoken or written, or by signs or by visible representations" promotes or attempts to promote such feeling. Under Section 505(2), promotion of such feeling should have been done by making and publishing or circulating any statement or report congaining rumour or alarming news.

This Court has held in Balwant Singh and another vs. State of Punjab (1995 3 SCC 214) that mens rea is a necessary ingredient for the offence under Section 153A. Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section.

The main distinction between the two offences is that publication of the word or representation is not necessary under the former, such publication is sine qua non under Section 505. The words "whoever makes, publishes or

circulates" used in the setting of Section 505(2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, any one who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153A also and then that Section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction."

99.2 In view of above settled position of law in respect of culpability u/s 505 of IPC, it is clear that prosecution is required to prove both making of the statement and publication of the statement by accused persons. The distinction has been drawn between these two offences on the ground that publication of statement is sine qua non for establishing guilt u/s 505 of IPC. The statements on the basis of which charge of promoting feeling of enmity, hatered or ill will is sought to be proved is the statements made in the videos or the posts made at various social media platforms. The above discussion reflects that prosecution has been able to establish both making of statement by accused persons as well as publication of same by accused persons.

99.3 Hence, as sequel to above discussion, it is held that prosecution has been able to establish the charge against accused persons u/s 153A and 505 of IPC.

CHARGES U/S 121 & 121 A IPC.

100. Accused have been charged u/s 121 IPC and section 121 A IPC as well. These charges are taken up together as the ingredients in these charges are inter-twined.

100.1 In the case titled as **NCT of Delhi v Navjot Sandhu (2005) 11 SCC 600,** Hon'ble Surpeme Court of India has, inter-alia, observed qua the phrase 'waging war' as under :

> *"275. War, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them, but one thing is certain, the concept of war embedded in Section 121 is not to be understood in the international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence days, the*

Illustration to Section 121 itself makes it clear that "war" contemplated by Section 121 is not conventional warfare between two nations. Organising or joining an insurrection against the Government of India is also a form of war. "Insurrection" as defined in dictionaries and as commonly understood connotes a violent uprising by a group directed against the Government in power or the civil authorities. "Rebellion, revolution and civil war" are progressive stages in the development of civil unrest the most rudimentary form of which is "insurrection" — vide Pan American World Air Inc. v. Aetna Cas & Sur Co. [505 FR 2d 989 (2nd Cir, 1974)] (FR 2d at p. 1017). An act of insurgency is different from belligerency. It needs to be clarified that insurrection is only illustrative of the expression "war" and it is seen from the old English authorities referred to supra that it would cover situations analogous to insurrection if they tend to undermine the authority of the Ruler or the Government.

282. On the analysis of the various passages found in the cases and commentaries referred to above, what are the highlights we come across? The most important is the intention or purpose behind the defiance or rising against the Government. As said by Foster, "The true criterion

is quo animo did the parties assemble?" In other words the intention and purpose of the warlike operations directed against the governmental machinery is an important criterion. If the object and purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contradistinction to a private and a particular purpose, that is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force and arms and by defiance of government troops or armed personnel deployed to maintain public tranquillity. Though the modus operandi of preparing for the offensive act against the Government may be quite akin to the preparation in a regular war, it is often said that the number of force, the manner in which they are arrayed, armed or equipped is immaterial. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or firearms. Then, the other settled proposition is that there need not be the pomp and pageantry usually associated with war such as the offenders forming themselves in battle line and arraying in a warlike manner. Even a stealthy operation to overwhelm the armed or other

personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war.

285. The learned Senior Counsel Mr Ram Jethmalani also contended that terrorism and war are incompatible with each other. War is normative in the sense that rules of war governed by international conventions are observed whereas terrorism is lawless, according to the learned counsel. This contention presupposes that the terrorist attacks directed against the institutions and the machinery of the Government can never assume the character of war. The argument is also based on the assumption that the expression "war" in Section 121 does not mean anything other than war in the strict sense as known in international circles i.e. organised violence among sovereign States by means of military operations. We find no warrant for any of these assumptions and the argument built up on the basis of these assumptions cannot be upheld. In the preceding paras, we have already clarified that the concept of war in Section 121 which includes insurrection or a civilian uprising should not be understood in the sense of conventional war between two nations or sovereign entities. The normative phenomenon of war as

understood in the international sense does not fit into the ambit and reach of Section 121."

100.2. In respect of conspiracy punishable u/s 121 A, this court is enlightened by judgment of Hon'ble Supreme Court of India in case titled as ***Mohd. Irfan Vs State of Karantaka, (2022) 8 SCC 856***. The relevant portion of said judgment is extracted as under:-

> *"150. So, in order to attract Section 120-B, it is clear from the above said provision that, the prosecution has to establish that the accused persons are more than two in number and they have entered into an agreement and that agreement is designed for the purpose of commission of an illegal act or doing an act by illegal means and such illegal acts amounts to commission of offences under the provisions of IPC and other laws. So far as Section 121 of IPC is concerned, the prosecution has to prove that the accused persons have actually waged war against the Government or attempted to wage war against the Government.*
>
> *151. From the above provisions, it is abundantly clear that if the conspiracy relied upon by the prosecution is with reference to Section 121 of IPC, then the said conspiracy is exclusively and specifically punishable under Section 121-A. Under such*

circumstances Section 120-A and 120-B of IPC cannot be invoked. If it is done, the same amounts to imposing double punishment. Hence, we are of the opinion that the conviction and sentence under Section 120B is not sustainable.

152. It is abundantly clear that, if the conspiracy relied upon by the prosecution is with reference to Section 121 of IPC, the said conspiracy is exclusively and specifically punishable under Section 121 of IPC, the said conspiracy is exclusively and specifically punishable under Section 121-A, but under such circumstances, Sections 120-A and 120-B cannot be invoked."

H) After considering the de12 ptcisions of this Court in State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru11 and Nazir Khan & Ors.10, the High Court concluded that the ingredients of Section 121 of the IPC were absent in the instant case but the provisions of Section 121-A of the IPC were attracted. It was observed:

100.3. The Hon'ble Supreme Court of India has made it categorical and crystal clear that the act which is punishable u/s 121 A of IPC is of the conspiracy to commit an act punishable u/s 121 of IPC. To prove offence of conspiracy u/s 121 A IPC, it is not required that it should also be proved

that any overt or covert act has also taken place pursuant to that conspiracy. The first thing which prosecution requires to prove is that an agreement between the parties was effected. As far as, this aspect is concerned, material on record shows that all three accused persons have agreed to work for the common goal of seeking secession of Kashmir from India. The agreement between the accused persons is reflected from their acts. Prosecution has produced multiple posts, tweets, videos of accused persons and connectivity with each other through mobile phone which is established by analysis of CDR. Tweet/post of one accused has been re-tweeted/posted by other accused persons. Although, it has been argued on behalf of accused that the prosecution has failed to prove posting of such tweets and re-tweet, yet the material on record shows that this arguments does not hold water. While referring the testimony of one of the witness, it was argued on behalf of accused that said witness has stated that any one can create an account on twitter or Facebook or any other social media account and name it after the name of accused persons. However at the same time, it has also been

stated by said prosecution witness that an account can be operated by any one who knows the User Id and Password and but by no one else.

100.4. As far as social media account of accused are concerned, testimony of PW-18 is relevant. During his testimony, PW-18, Mohd. Saqlain Sakhi has stated that accused Nahida Nasreen is his Mausi. He further stated that he has identified facebook profile and Twitter profile of Nahida Nasreen as downloaded from the internet. The print out of downloaded facebook page of Nahida Nasreen and identification by PW-18 is proved as Ex. PW18/2. This witness has also identified two phone numbers of Nahida on which she could have been contacted. The said phone numbers are part of the statement of witness which was put to him. Further the witness also stated that he did not remember the full number and one of the phone number was ending with 2571. The cross examination of the witness was in the form of suggestion only and no question has been put. It has not been put to witness that the phone numbers identified or detailed by him in his examination in chief do

not belong to accused Nahida Nasreen.

101. Section 121 of IPC punishes waging the war against Government of India or attempt to wage such war or abets waging of such war punishable death penalty or with life imprisonment and also with fine. In the judgment of Navjot Sandhu (Supra), Hon'ble Supreme Court of India has defined the phrase 'waging war' as incorporated in section 121 of IPC. It has been held that this phrase is not to be understood in the international law since of inter country war involving military operations by and between two or more hostile countries. That section 121 IPC is not conventional warfare between two nations. Organizing or joining an insurrection against the Govt. of India is also a form of war. Insurrection as defined in dictionaries and commonly understood connotes a violent apprising by a group directed against the government in power or the civil authorities. It has further being made a touchstone to assess the culpability of a person qua charge u/s 121 IPC and 121A of IPC that most important is the intention or purpose behind the defines or rising against government. If the object and purpose is to

strike at the sovereign authority of ruler or the government to achieve a public and general purpose in contradiction to a private and particular purpose, that is an important indica of waging war. It is further laid down as test that purpose must be intended to achieve by use of force and arms and by defines of government troops or armed personnel deployed to maintain public tranquility.

101.1 In the present matter, prosecution has not brought on record any material or has not examined any witness in respect of any actual incident involving use of force or arms by accused or any other person at their instance. The material on record is limited regarding the speeches/videos/interviews/posts on social media. Section 121 of IPC contemplates commission of actual act of war or attempt to wage war against government of India. The language of section 121 of IPC is crisp wherein it is laid down in plain words that whoever wages war or attempt to wage such war or abets waging of war against government of India, he/she shall be liable. Hence, it is clear that to inflict culpability u/s 121 IPC against accused, either of the

above three acts have to be shown to have been committed by accused persons. As noted above, the material on record falls short on this account to reflect direct or guided involvement of accused in any actual act of use of force as laid down by Hon'ble Supreme Court of India.

101.2 It may be argued that the acts of accused amounts to abetting the waging of war against Government of India. To understand the meaning of abetment, reference can be made of section 107 of IPC. Section 107 IPC lists three mechanism by virtue of which abetment to an offence can be made. The mechanism contemplated in clause a of section 107 IPC seems applicable in the present matter. The material on record does indicate and bring forth the endorsement, encouragement, support and promotion of armed struggle i. e. use of force for seeking secession of Kashmir from India. However, these supports/ encouragement/ promotion of use of force was ordinarily post incidence. No witness is examined which could place on record the fact whereby such abetment is directly associated with any particular incidence involving use of

force. Therefore, not having any material on record regarding actual incidence of use of force against Government of India, the requisite ingredients to demonstrate the guilt of accused u/s 121 IPC could not be established. One may argue that while abetting, an offence commission of said offence is not required. Needless to state that this is position of law in respect of abetment of an offence as contemplated in IPC. However, the evidence on record in the form of endorsement of violent act by use of force being post incidence and there being, no evidence of actual incidence involving accused which may be termed as incidence covered by mandate of section 121 IPC, the evidence led by prosecution is relevant for considering the culpability of accused u/s 121 A IPC. But material on record does not prove commission of an offence u/s 121 IPC by accused.

102. As noted above, that there has been agreement between accused persons regarding their activities seeking secession from India the Kashmir in the name of religion and their advocacy of Kashmir to become part of Pakistan is

coupled with their support to other activities leading to physical violence. Hon'ble Supreme Court of India has settled the position of law in respect of section 121 (A) of IPC that for holding guilty under the offence, it is to be shown there was a conspiracy to wage war against India. Another settled position of law in respect of offences of conspiracy is that there is no documentary evidence available of conspiracy and it has to be deduced from the attending circumstances.

103. In the present matter, the material on record in the form of testimonies of witness regarding videos and posts/re-post, it is clear that accused persons were working in tandem towards common goagenerall of secession of Kashmir from India in the name of Religion. The activities of accused were towards common goal. The evidence in this regard is not disputed especially on the aspect of all three accused were working together. On the other hand, accused have never stated that they do not know each other or that they were not working together. It is trite law that to prove its case, prosecution has to stand on its own legs. However,

at the same time, the cross examination of the witness and statement of accused is important to adjudicate on the aspect if or not prosecution has been able to establish charges.

104. As per section 58 of Indian Evidence Act, any fact which has admitted need not to be proved. This admission of a fact can be an express admission of said fact or tacit admission of the fact. The ambit of express admission of a fact is self explanatory and doesgeneral not need any detailed elaboration to convey its meaning. However, as far as, tacit or indirect admission is concerned, analysis of material on record shall be required. In this regard, the first thing which needs to be considered as if or not accused has ever refuted the material produced by prosecution. One may argue that if the prosecution has been able to prove its material/charges as per law, there is no need to dispute the same. On aspect of proof of material, prosecution will not depend on the technical proof of same. For instance, it is trite law that if any document is to be proved, the same is to be required to be produced in original and photocopy of same is not admissible in evidence except

as envisaged under law. In a situation, on production of photocopy, if no objection is taken by other party, subsequently, on the basis of mode of proof in the form of non general production of original document, accused cannot make an argument that such documents cannot be considered being photocopies. The objection in respect of mode of proof are required to be taken at the very first instance and once the objection is not so taken, the same objection cannot be taken afterwords. Needless to state that there are certain legal impediments in accepting the evidence/material even if no objection has been taken on behalf of the other party and said evidence still cannot be accepted. For instance, material/testimony reflecting hearsay evidence. A witness deposing about a fact which has not been witnessed by him and is deposing about the fact after hearing it from other, cannot be accepted as there is a legal bar in this regard. Similarly, another example can be a confession made to police being admissible in section 25 of Indian Evidence Act. However, in respect of other proof of documents or facts, wherein there is no absolute legal bar in accepting the

document coupled with the express or tacit of the fact, it cannot be argued that later on that the fact or document or videos have not been proved properly. Aspects admissibility and impact of videos has already been discussed in proceeding paragraphs. Hence, in view of above discussion, it is held that prosecution could not prove its case u/s 121 IPC but has been able to establish charge u/s 121 A IPC.

CHARGE U/S 153 B OF IPC.

105. For ready reference, section 153 B is extracted as under:-

> *"[153B. Imputations, assertions prejudicial to national integration.-- (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,--*
>
> *(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or*
>
> *(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by*

reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,
shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section

(1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

105.1. The plain reading of the provision reflects that one who makes or publishes any imputation reflecting that they cannot bear the faith and allegiance to the

Constitution of India as by law established or uphold the sovereignty and integrity of India, shall be liable u/s 153 A IPC. In the present case, the allegations against accused persons are that they have been making and publishing imputation through spoken and written words whereby they are claiming that being Muslim by religion, they cannot uphold the sovereignty and integrity of India as Kashmir was never part of India and should merge with Pakistan.

105.2. In this regard, it is important to fathom the scope of Phrase 'sovereignty and integrity of India' used in provision. A similar phrase is used in article 19 of Constitution of India. Therefore, cue can be drawn on the scope of this phrase from the judgments on this aspect while adjudicating or interpreting issue under Article 19 of Constitution of India. In this regard, this court is guided by judgment passed by Hon'ble Supreme Court of India in case titled as ***Sardar Govind Ramesh Vs State of Madhya Pradesh 1982 AIR 1201 SC***. It was held by Hon'ble

Supreme Court of India that according to blacks legal dictionary 5th edition 1 to 5, the legal conception of sovereignty is stated, thus all the supreme, absolute and uncontrollable power by which any part of state is governed; supreme political authority paramount control of constitution and framed and of government and its administration, the sufficient source of political power from all specific political are derived the international independence of State, combined with right and power regulation to that international affairs without force dictation and also a political society or state for free and independent".Sovereignty means supremacy in respect of power domain or rank supreme dominion authority or rule.

105.3. The term integrity has not been defined any where in any statue. Therefore, it is ordinary connotation and dictionary meaning is to be considered in context of a nation. Hence, integrity would mean the state of being united and undivided. It is clear that the term integrity

include physical unification of the nation. Hence, when any one intends to claim secession of integral part of a nation on the basis of religion, the provision of section 153 B shall be attracted.

106. Further, the material on record reflects the contention on behalf of accused and shows that they (accused) are claiming that Kashmir is to be part of Pakistan on the basis of religion. In their narrative, accused have claimed that there was partition of sub continent on the basis of two nations theory premised in religious back ground. It is the narrative of the accused that partition was on the ground of land for Hindus and land for Muslims. Therefore, Kashmir having population of about 90% of Muslim should go to Pakistan. However, although, accused protects to base her claim of secession of Kashmir from India and merging the same in Pakistan on the basis of religion yet accused are conspicuously quiet on the status of other muslims in India including the area where muslim population may be in majority. The

entire focus of the narrative of accused is Kashmir and nothing else. Interestingly, the accused are claiming that they have a right to self determine on the basis of resolution of UN, however, at the same time, they are claiming that Kashmir is already a part of Pakistan and India has illegal occupation the Kashmir. Therefore, it is clear that the accused do not bear an allegiance to constitution of India and they do not believe in Constitution of India and are also not ready to uphold it and the sovereignty of India as they are seeking secession of an integral part of India. Hence, above discussion shows that prosecution has been able to bring home guilt of accused u/s 153 B of IPC.

CONCLUSION:-

107. In view of above discussion, the decision in respect of each of the charge is as under:-

1. Charge u/s 17 UA(P) A	All the accused persons are acquitted.
2. Charge u/s 18 of UA (P)A	All the accused persons are convicted.
3. Charge u/s 124 A IPC	Kept in abeyance qua all the

		accused persons.
4.	Charge u/s 121 IPC	All the accused persons are acquitted.
5.	Charge 120-B IPC	All the accused persons are convicted.
6.	Section 20 of UA (P)A	All the accused persons are convicted.
7.	Charge 153-A IPC	All the accused persons are convicted.
8.	Charge 153-B IPC	All the accused persons are convicted.
9.	Charge 505 IPC	All the accused persons are convicted.
10.	Charge 38 UA (P) A	All the accused persons are convicted.
11.	Charge 39 UA (P) A	All the accused persons are convicted.
12.	Charge u/s 121A of IPC	All the accused persons are convicted.

Copy of judgment be given accused persons at free of cost.

Before parting of this judgment, this Court acknowledges and appreciate the assistance given by Sh. Satish Tanta, Ld. Sr. counsel and Sh. Shariq Iqbal, Ld. counsel for accused persons and Ms. Kanchan, Ld. DLA, NIA and Sh. Abhinav Kajla, Dy. S.P. (IO), NIA.

Pronounced in the open court
ON 14TH DAY OF JANUARY 2026

(**CHANDER JIT SINGH**)
JUDGE, FAMILY COURT-02,
NORTH-EAST, KARKARDOOMA
COURTS, DELHI