HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(Through virtual mode)

CRM(M) No. 889/2025

Reserved on: 07.08.2026
Date of pronouncement: 17.09.2026
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Whether the operative part or full judgment is pronounced? **FULL**

Dawood, age 21 years …..Petitioner
S/o Ghulam Nabi Wani
R/o Kalamdanpora, Old Fateh Kadal,
Srinagar

Through: Mr. A. M. Dar, Sr. Advocate with
Mr. Harish Sharma, Advocate.

vs

Union Territory of Jammu & Kashmir ….. Respondent
Through National Investigation Agency
Jammu/Srinagar

Through: Mr. Vishal Sharma, Sr. Advocate(DSGI) with
Mr. Karan Sharma, CGSC.
Mr. Chandan Kumar Singh, PP, NIA.
Mr. Ashwani Verma, PP, NIA.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. Petitioner has invoked inherent jurisdiction of this Court, under Section 528 BNSS, for the quashment of order dated 23.08.2025, passed by learned Additional Sessions Judge, Special Judge designated under NIA Act, Jammu ["the trial Court"], whereby he came to be charged for offences under Sections

13 and 20 of Unlawful Activities (Prevention) Act, 1967[“UA(P)A”] and 201 IPC.

PROSECUTION CASE

02. Before a closer look at the grounds urged in the memo of petition, it shall be expedient to have an overview of background facts of the case.

2.1. As the prosecution story would unfurl, on 07.02.2024 Police Station Shaheed Gunj, Srinagar at about 1900 hours, received a source information that some unknown terrorists in furtherance of intention to revive militancy and terrorise people of the area fired upon two non-locals with illegal weapons, resulting in the on-spot death of a non-local and a critical injury to the other. FIR No. 08/2024 for offences under Sections 302, 307 IPC, 7/27 of Arms Act and Sections 15,16,20 of UA(P)A came to be registered.

2.2. The investigation revealed that The Resistance Front (TRF) and Laskhar-e-Toiba (LeT) conspired to strike terror in the minds of the people of Jammu and Kashmir by targeting the non-local community. It surfaced that in 2023, accused Adil Manzoor Langoo (A-1) after reading a book on jihad namely “Milestones” authored by one Ayoub Qutub and watching jihad videos on YouTube became radicalised. He joined a group on Telegram App called “Kashmir Fighters” whereby he came in contact with one Jahangir @ Peer Sahab (A-4), the group admin and started sharing details with him through Whatsapp and Messenger app.A-4 motivated A-1 to assist members of LeT and TRF.

2.3. The investigation further revealed that on 04.01.2024, A-4 sent some photographs of a location and instructed A-1 to collect a parcel, containing pistol and magazines, along with accused Arhan Rasool Dar (A-2), from Nund Rishi Bund, Bemina. It revealed that A-1 and A-2 were friends and they were working as salesmen in nearby shops. Both of them and accused Dawood (the petitioner) were inspired by the aforesaid book "Milestones", about Jihad.

2.4. As per the investigating agency, on the instructions of A-1, the petitioner collected a polythene bag, which, after collecting the aforesaid parcel, containing pistol and magazines, was thrown by A-1 near Nund Rishi Bund. This bag, according to the investigating agency, came to be recovered on the disclosure and at the instance of the petitioner. According to the investigating agency, petitioner was highly radicalised and was in close contact with both A-1 and A-2 through social media and on 07.02.2024, A-1 targeted non-locals on the instructions of A-4 to terrorise people of Jammu and Kashmir.

2.5. After initial investigation, a SIT came to be constituted on 12.02.2024 and subsequently investigation of the case was taken over by NIA, pursuant to order No. 11011/60/2019/NIA dated 14.06.2024, issued by the Government of India, Ministry of Home Affairs. Accordingly, aforesaid FIR No. 08/2024 came to be re-registered by NIA as RC-01/2024/NIA/JMU.

2.6. The investigating agency besides recording statements of material witnesses under Sections 161 and 164 Cr. P. C, collected the digital data; DVDRs, CDR, CAF, IPDR of the mobile phone numbers, which revealed the involvement of proscribed terrorist organisations LeT and TRF. During investigation, the injured namely Rohit Massi also succumbed to his injuries on 08.02.2024.

2.7. The investigating agency recorded statements of material witnesses, stated to be present at the scene of occurrence, who revealed that they saw a man wearing blue coloured hoody (sweat shirt) following two persons just before the incident. After sometime they heard gun shots. It was dark. They got frightened but they saw the same person running away from the spot. When they reached the spot, they found two men lying in a pool of blood. Pertinently, one of the witnesses identified the said suspect during the Test Identification Parade (TIP).

2.8. According to the investigating agency, during investigation A-1 admitted that he had committed the occurrence with the assistance and conspiracy of A-2 and A-3, who were served upon notices under Section 41-A Cr. P. C. Both of them in the preliminary questioning confirmed their affiliation with proscribed terrorist organisations namely TRF and LeT and also revealed that they were working as Over Ground Workers (OGWs) on the instructions of their handler A-4.

2.9. It is contention of the investigating agency that the CDR/IPDR analysis of phone numbers of the accused persons including that of the petitioner would show that all of them were not only close friends but closely associated. They conspired with their handler, A-4 and in furtherance of the conspiracy they targeted non-locals to create terror among the masses of J&K, especially in the minds of those who are non-residents of the State.

03. The investigation culminated in the presentation of charge sheet in the trial Court for offences under Sections 302, 307 IPC, 7/27 of Arms Act and Sections 15, 16, 20 of UA(P)A.

ROLE ASCRIBED TO THE PETITIONER

04. Allegations against the petitioner are that he was a closed friend of A-1 and A-2. They used to share secrets. They were inclined towards terror activities after going through the contents of the book "Milestones" which was kept by the petitioner at his home. Petitioner was aware about the activities of both A-1 and A-2 including collection of pistols and bullets by them on 04.01.2024 on the instructions of their handler, A-4. On the next day of the occurrence, A-1 asked the petitioner to go to the spot and rule out any item left behind by him while collecting the pistol and bullets. Accordingly, petitioner went to the scene of occurrence. He filled a pit and also collected a polythene in which pistols and bullets were wrapped at the time of its collection and thrown by A-1 while leaving the spot. The petitioner collected the polythene and dropped it in the nearby land which later came to be recovered on his disclosure and at his instance.

4.1. Further allegation against the petitioner is that in the data recovered from his mobile, some videos and pictures of him and A-1 came to be recovered and in one of the videos he was found walking and on the wall behind him was written ISJK (Islamic State of Jammu and Kashmir) and AGH (Ansar Ghazwat-Ul-Hind), founded by Burhan Wani, an Al-Qaeda affiliated Islamist militant group active in Kashmir, those are respectively mentioned at serial Nos. 38 and 28 of the terrorist organisations listed in the First Schedule of UA(P)A. It is alleged that petitioner is seen raising his hand towards the posters on the wall, thereby promoting the ideology of the said organisations.

4.2. It is also alleged that investigating agency during investigation recorded statements of a protected witness, PW-48 who stated that all the accused persons would come to the mosque to offer namaaz, they were motivated for Jihad and they used to say “Kashmir Fateh Karenge”.

4.3. According to the investigating agency, there is sufficient oral, documentary and scientific evidence available on the record to establish beyond any reasonable doubt that all the accused persons including the petitioner entered into a criminal conspiracy to wage war against the Government of India and commit terror activities in the UT of Jammu and Kashmir.

TRIAL COURT VERDICT

05. Learned trial Court on hearing the rival contentions has come to conclude that there was nothing in the record to show that petitioner was part of conspiracy to kill non-locals. But he was a member of the gang with A-1 and A-2 and his role came to the fore after killing of the non-locals i.e., to destroy the evidence. Accordingly, petitioner came to be discharged by the trial Court for offences under Sections 302, 120-B IPC and offences under Sections 16, 18 and 23 UA(P)A. However, he has been charged by the trial Court for offences under Sections 13 and 20 UA(P)A and 201 IPC.

GROUNDS OF CHALLENGE

06. Petitioner is aggrieved of the impugned order, primarily on the ground that he came to be charged by the trial Court for offences under Sections 13 and 20 UA(P)A, which was neither investigated nor charge sheeted by the investigating agency. According to the petitioner, trial Court while charging the petitioner for the offences, which was not part of the charge sheet has transgressed its powers.

6.1. It is contention of the petitioner that there is nothing in the charge sheet to indicate that he was a member of any terrorist gang or organisation within the meaning of Section 2(1)(m) or as per first schedule of UA(P)A. Therefore, according to the petitioner, finding of the trial Court that he was part of a terrorist organisation is perverse and a result of non-application of mind.

6.2. It is also contention of the petitioner, there is nothing in the charge sheet to suggest that he ever participated in any 'terrorist activity' or he was seen at the scene of occurrence at the time non-locals were targeted by co-accused. Therefore, according to the petitioner, mere allegation of affiliation with a terrorist gang or association would not attract the provisions of Section 20 UA(P)A.

6.3. It is next contended that since book namely "Milestones" alleged to have been recovered from the house of the petitioner is not banned, therefore charge against him for offence under Section 20 UA(P)A reflects total non-application of mind on the part of learned trial Court.

6.4. According to the petitioner once Section 23 UA(P)A which relates to terrorist organisations and terrorist gang and conspiracy is not established against him, he cannot be charged for the related and interlinked offences under Sections 13 and 20 UA(P)A.

6.5. Another ground urged by the petitioner is that he has been charged for offence under Section 201 IPC in the absence of any material and the FSL report.

6.6. Petitioner has prayed for quashment of the impugned order.

RESPONDENT-NIA's STAND

07. The plea has been resisted on the other side by the UT/NIA that there is sufficient oral and documentary evidence against the petitioner to establish his nexus with co-accused. Statement of a protected witness, recorded by the investigating agency under Section 164 Cr. P. C., according to the respondent, proves association of the petitioner and co-accused and their Jihadi bent of mind.

7.1. It is contention of the respondent that trial Court while considering a plea of charge/discharge and High Court exercising inherent jurisdiction are not required to conduct a mini trial. Exercise of inherent jurisdiction by the High Court is justified only when complaint does not disclose the commission of a cognizable offence.

7.2. According to the respondent, learned trial Court charged the petitioner for offences under Sections 13 and 20 UA(P)A, on the basis of incriminating material available on the record.

7.3. Regarding destruction of evidence, it is contention of the NIA that the polythene in which weapon of offence was delivered to A-1 and A-2 was collected by the petitioner from the location of delivery. He filled the pit from which A-1 had collected the weapon of offence and then took it to some other place to destroy this crucial evidence. The said polythene, according to the respondent came to be recovered on the disclosure and at the instance of the petitioner. The polythene was sent to CFSL for matching with the photo of polythene sent by A-4 to A-1 and A-2 and the CFSL report is positive.

7.4. It is contention of the respondent that the book “Milestones” though not banned, contains incriminating material to instigate one to commit Jihad. After reading the said book, the petitioner and co-accused got radicalised.

7.5. It is contended that in the data recovered from the mobile of the petitioner some videos and pictures of him and A-1 came to be recovered. In one of the videos, petitioner was found in a scene walking and on the wall behind him was written ISJK (Islamic State of Jammu and Kashmir) and AGH (Ansar Ghazwat-Ul-Hind), an Al-Qaeda affiliated Islamist militant group active in Kashmir, founded by Burhan Wani, respectively mentioned at serial Nos. 38 and 28 of the Terrorist Organisations listed in the First Schedule of UA(P)A. Petitioner is seen raising his hand towards the posters on the wall, thereby promoting the ideology of said organisations i.e., ISJK and AGH. As such, according to the respondent, petitioner rightly came to be charged by the trial Court for offence under Section 13 UA(P)A.

7.6. It is next contended that the investigating agency during investigation recorded statement of a protected witnesses PW-48, who stated that all the accused persons would come to the mosque to offer namaaz. They were motivated for Jihad and they used to say “Kashmir Fateh Krenge”.

7.7. Defending the impugned order, it is contention of the NIA that there is sufficient evidence against the petitioner in the form of oral statements under Sections 161 and 164 Cr. P. C., documents i.e., reports of CFSL, Hyderabad and FSL, Srinagar and material exhibits i.e., a polythene bag and book

"Milestones" recovered on the disclosure of the petitioner, which are sufficient to establish nexus of the petitioner with co-accused and his terrorist activities.

7.8. Respondent has prayed for dismissal of the petition.

08. Having heard learned counsels for the parties, I have gone through the record.

CONCEPT OF CHARGE-DISCHARGE

09. Before venturing to scan through the spate of allegations against the petitioner and the material assembled during the investigation in support of such allegations, it shall be appropriate to understand the concept of framing of charge/discharge of accused and the guidelines deducible from judicial precedents in regard to evaluation of material for such purpose.

9.1. Hon'ble Supreme Court in **Niranjan Singh Karam Singh v. Jatinder Bhimaraj and other** reported as **AIR 1990 SC 1962** has held that Court while considering whether to frame charges against an accused or discharge him is required to evaluate the material and documents on record in order to find out whether the facts emerging therefrom, taken at their face value would disclose the existence of all the ingredients constituting the alleged offences or not. For deciding whether there exists sufficient grounds for framing of charge, the enquiry is limited to find out whether the facts emerging from the record and the documents constitute the offence alleged against the accused. The Court may, at this stage, sift the material for such limited purpose and marshalling of evidence with a view to separate the grain from the chaff is not permissible.

9.2. In **State of Bihar v. Romesh Singh** reported in **(1978) 1 SCR 257,** the Apex Court held that at the initial stage of framing of charge if there is strong suspicion arising from the material assembled during investigation that leads the court to think that there is a ground for presuming that accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. But if the evidence, which the prosecutor proposes to adduce to prove the guilt of accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence, does not show that has accused committed the offence, then there will be no ground for proceeding with the trial.

9.3. A similar view has been expressed by Supreme Court in **Union of India v. Prafulla Kumar and another** reported in **(1979) 2 SCR 229**.

9.4. In **Sajjan Kumar vs. CBI** reported as**(2010) 3 SCC (Cri) 1371** Hon'ble Apex Court summed up the principles underlying framing of charge as follows:

> ***"(i) The Judge while considering the question of framing the charges under section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purposes of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.***
> ***(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.***
> ***(iii) The Court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider whether the facts at their face value disclosed the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.***
> ***(iv) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he isnot to see whether the trial will end in conviction or acquittal."***

10. It is in the backdrop of these legal considerations that present case for framing of charge against the petitioner has to be considered. The investigating agency, in the present case, on the basis of investigation, has minutely detailed the individual role of each accused in the commission of the crime.

11. Petitioner is primarily aggrieved of the impugned order of the trial Court, whereby he came to be discharged for offences under Sections 302, 120-B IPC and Sections 16, 18, and 23 UA(P)A and charged for offences under Section 201 IPC and Sections 13 and 20 UA(P)A on the following grounds that;

(i) once Section 23 UA(P)A, which relates to "terrorist organizations" and "terrorist gang" and "conspiracy" is not found established against him, he could not be charged by the trial Court for the co-related and inter-linked offences under Sections 13 and 20 of the Act. His discharge for offences under Sections 18, 16 and 23 UA(P)A is sufficient to indicate that Sections 13 and 20 UA(P)A are not made out against him; and

(ii) since the book namely "Milestones" alleged to have been recovered from his house is not banned, charge against him for offence under Section 20 UA(P)A was not attracted because mere allegation or affiliation with a terrorist gang or association would not attract the provisions of Section 20 UA(P)A.

<u>RELEVANT PROVISIONS</u>

12. Before we proceed to dilate upon the grounds urged in the memo of petition, it shall be expedient to extract relevant provisions of UA(P)A, the application of which shall be required to be examined having regard to the facts and circumstances obtaining the present case:

> **"2. <u>Definitions</u>.— (1) In this Act, unless the context otherwise requires,—**

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(k) "<u>terrorist act</u>" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

XXXXXXXXXXX

(m) "<u>terrorist organisation</u>" means an organisation listed in the [First Schedule] or an organisation operating under the same name as an organisation so listed;

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(o) "<u>unlawful activity</u>", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

13. <u>Punishment for unlawful activities</u>.—(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

15. <u>Terrorist act</u>.— (1) 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 17 | P a g e (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 [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.

16. <u>Punishment for terrorist act</u>.—(1) Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to 18 | P a g e imprisonment for life, and shall also be liable to fine.

18. <u>Punishment for conspiracy</u>, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs 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.

20.<u>Punishment for being member of terrorist gang or organisation</u>.—Any person who is a member of a terrorist gang or a terrorist organisation, 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.

23. <u>Enhanced penalties</u>.—(1) ^{38}[If any person with intent to aid any terrorist or a terrorist organisation or a terrorist gang contravenes] any provision of, or any rule made under the Explosives Act, 1884 or the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959, or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or ^{39}[chemical substance of warfare or high quality counterfeit Indian currency, he shall], notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, 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.

(2) ^{40}[Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang], attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years."

RIVAL CONTENTIONS, ANALYSIS AND FINDINGS

13. Mr. Dar, learned senior counsel appearing for the petitioner, at the foremost, has assailed the impugned order, whereby petitioner came to be charged for offence under Section 20 UA(P)A. Mr. Dar has vehemently argued that there is nothing in the charge-sheet to suggest that petitioner was a member of a terrorist gang or association within the meaning of Section 2(1)(m) of UA(P)A or as per the first schedule of the Act, or that he was seen at the scene of occurrence at the time when non-locals were targeted by co-accused. According to Mr. Dar, mere affiliation or association with a terrorist gang, or a terrorist organization, in the absence of any incriminating material, would not attract the provisions of Section 20 UA(P)A.

LEGAL POSITION OF SECTION 20 UA(P)A

14. The controversy with respect to the application of Section 20 UA(P)A, for testing as to who would be a member of a terrorist gang or a terrorist organization came to be set at naught by Hon'ble Supreme Court in **Vernon vs. State of Maharashtra and Anr.; (2023) 15 SCC 56**, whereby the interpretation given to Section 20 of the Act by Bombay High Court in **Dr. Anand Teltumbde vs. National Investigation Agency; 2022 SCC Online Bom 5174** came to be approved.

14.1. It was held by the Bombay High Court in **Dr. Anand Teltumbde** that Section 20 cannot be interpreted to mean that merely being a member of a terrorist gang would entail such a member liable for punishment. Court is required to analyse the material to show that such a person was involved in or has indulged in a terrorist act within the meaning of Section 15 of the Act.

14.2. Relevant excerpt of **Vernon** (supra), for the ease of reference is extracted below:

> ***"30.So far as application of Section 20 of the 1967 Act is concerned, the Bombay High Court in the case of Dr. Anand Teltumbde (supra) construed the said provision in the following manner:-***
>
> > ***"52.Section 20 cannot be interpreted to mean that merely being a member of a terrorist gang would entail such a member or the above punishment. What is important is the terrorist act and what is required for the Court to see is the material before the Court to show that such a person has been involved in or has indulged in a terrorist act. Terrorist act is very widely defined under Section15.In the present case, seizure of the incriminating material was alluded to hereinabove does not in any manner prima facie leads to draw an inference that, Appellant has committed or indulged in a 'terrorist act' as contemplated under Section 15 of the UAP Act."***
>
> ***31. This judgment has not been interfered with by this Court and we also affirm this interpretation given to Section 20 of the 1967 Act for testing as to who would be a member of terrorist gang or terrorist organisation. Moreover, no material has been demonstrated by the NIA before us that the appellants are members of the terrorist organisation. AF's involvement with IAPL as a frontal organisation of the Communist Party of India (Maoist) is sought to be established, and that has been referred to in the chargesheet as well. But the link between IAPL and the CPI (Maoist) has not been clearly demonstrated through any material. Reference to AF and VG as members of the CPI (Maoist) appears from the statement of protected witness, but that link is made in relation to events between the years 2002-2007, before the organisation was included in the First Schedule to the 1967 Act. No evidence of continued membership after the party was classified as a terrorist organisation has been brought to our notice. Nor is there any reliable evidence to link IAPL with CPI (Maoist) as its frontal organisation. We have already dealt with the position of the appellants vis-à-vis terrorist acts in earlier paragraphs of this judgment and we prima facie do not think that Section 20 can be made applicable against the appellants at this stage of the proceeding, on the basis of available materials."***

14.3. It is evident from a plain reading of the afore-quoted excerpt that a "terrorist act" as defined under Section 2(1)(k) UA(P)A is to be construed having regard to the meaning assigned to it in Section 15 of the Act and to invoke Section 20 of the Act, prosecution is obliged to prove that accused was a member of a terrorist gang or an organization that carries on or indulges in terrorist acts as defined in Section 15 of the Act.

15. If the present case is approached with the aforesaid interpretation accorded to Section 20 by the Bombay High Court and approved by the Apex Court, there is nothing in the record to suggest that petitioner has committed or indulged in a "terrorist act" as defined under Section 2(k) UA(P)A, which carries the meaning assigned to it in Section 15 of the Act because no covert or overt terrorist act has been attributed to him.

15.1. Having regard to the aforesaid, there is total absence of ingredients necessary to constitute offence under Section 20 UA(P)A. Standard legal thresholds are not met. Consequently, the impugned order, whereby petitioner came to be charged for offence under Section 20 UA(P)A being legally flawed is required to be set aside.

16. Mr. Dar, learned senior counsel appearing for the petitioner has next questioned the impugned order on the ground that charge under Section 13 UA(P)A is not only bad for want of requisite sanction under Sub-Section 2 of Section 45 of the Act but discharge of the petitioner for offences under sections 18, 16 and 23 of the Act is sufficient to indicate that offence under Section 13 of the Act is not made out. He has relied upon **Mahesh Kariman Tirki and Ors. vs. State of Maharashtra(Criminal Appeal Nos. 136&137 of 2017**

decided by High Court of judicature at Bombay on 05.03.2024) and **Rambhai Nathabhai Gadhvi and Ors. vs. State of Gujarat; AIR 1997 SC 3475**.

SECTION 13 UA(P)A and SANCTION U/S 45 of the Act

17. I shall first take up first limb of Mr. Dar's submission that charge under Section 13 UA(P)A against the petitioner is bad for want of sanction under Section 45(2) of the Act.

Section 45 for the facility of reference is extracted below:

> "**45. Cognizance of offences.— [71][(1)] No court shall take cognizance of any offence—**
> **(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;**
>
> **(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and [72][if] such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.**
>
> **[73][(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government.]"**

17.1. There is no dispute to the statutory position. Sub-Section 1 of Section 45 UA(P)A bars the Court from taking cognizance of any offence under Chapter-III without previous sanction of the central government or any officer authorized by the central government in this behalf. Under sub-Section 2 such sanction for prosecution under Sub-Section 1 can be given only after considering the report of such authority appointed by the government which makes an independent review of the evidence gathered in the course of investigation and make a recommendation to the government.

17.2. There can be no exception to the observation of Bombay High Court in **Mahesh Kariman Tirki** that statute provides twin safeguards against the misuse of stringent law of UA(P)A as it has engrafted an additional filter of review by an independent authority before granting conventional executive sanction.

17.3. The High Court in the said case, in the light of the statutory requirement, pertinently after the trial, when examined the report (Exh. 358) of the Director of Prosecution, found that said report only indicates in cryptic manner as to what the authority had perused and there was nothing more than a mere green signal and there was no independent opinion of the independent authority. High Court also examined cross-examination of the prosecution witness, who accorded sanction and noticed that entire papers were not placed before the sanctioning authority and sanction was accorded without any application of mind.

17.4. The fact situation of the case on hand is clearly distinguishable from that of **Mahesh Kariman Tirki**, in that the High Court in the said case had had an occasion to examine the prosecution evidence recorded during the trial, which is not the case here. This Court while exercising inherent jurisdiction, to consider a plea of charge/discharge does not have the power to conduct a mini trial. The enquiry, in such cases, as stated is limited to evaluate the material assembled during investigation to find out whether the facts emerging therefrom, taken at their face value, would disclose the existence of all the ingredients constituting the offences or not.

17.5. In the present case, a perusal of the sanction order would transpire that the Central Government in terms of the provisions of Section 45(2) UA(P)A submitted the investigation report of the case along with list of documents collected and witnesses examined during the course of investigation to the authority comprising of two members for making an independent review of the evidence gathered in the course of examination and the authority after being satisfied with the material available on record and facts and circumstances therein, recommended for sanction for prosecution of the petitioner. The Central Government thereafter, after carefully examining the entire material placed on record and the recommendations of the authority, being satisfied that a *prima facie* case was made out against the accused persons under the relevant sections of law, accorded sanction for prosecution of the petitioner-Dawood under Sections 16, 18, 20 and 23 UA(P)A.

ADDITION/ALTERATION OF CHARGE AFTER THE SANCTION

18. Mr. Dar is of the view that since the sanctioning authority has accorded sanction for the prosecution of the petitioner for offences under Sections 16, 18, 20 and 23 of the Act and not for offence under Section 13, the impugned order, whereby charge came to be altered and petitioner came to be charged for offence under Section 13 of the Act is bad for want of sanction and required to be set aside.

18.1. Mr. Vishal Sharma, learned senior counsel, representing the respondent-NIA has relied upon **Ashok Kr. Todi vs. C.B.I.** and connected matters; reported as **2017 SCC Online Cal 7067** to submit that if sanction is granted by the sanctioning authority for the prosecution of an accused, court has the power to add or alter the charge in respect of a specific offence provided it is based on the same facts and no fresh sanction is required for the addition or alteration of charge in terms of Section 239 BNSS, corresponding to Section 216(5) Cr.P.C.

18.2. Section 239(5) BNSS reads as below:

> ***"If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded".***
>
> ***(Emphasis Supplied)***

18.3. If sub-Section 5 of Section 239 BNSS is carefully glanced over, it is manifest that if the offence stated in the altered or added charge is the one for the prosecution of which previous sanction has already been obtained on the same facts on which the altered or additional charge is founded, no fresh sanction is necessary for the addition or alteration of the charge.

18.4. Calcutta High Court in **Ashok Kr. Todi** has observed that sanction confers a jurisdiction on the Court to trial and Court can proceed with the altered or added charge without fresh sanction, provided it is founded on the same facts those were already considered by the sanctioning authority.

18.5. It is trite in law that each and every Section of the penal law is not required to be mentioned by the sanctioning authority in the sanction order. It is facts of the case those must be clearly referred. Hon'ble Supreme Court in

Parkash Singh Badal and Anr. vs. State of Punjab and Ors.; 2007 (1) RCR (Criminal) 1 has clearly ruled that sanction order need not specify each of the offences for which the accused is to be prosecuted and that what is required is application of mind and *prima facie* satisfaction that accused has committed the wrong. The relevant extract reads as under:

> ***"68. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard."***

18.6. In the present case, since the independent authority after examining the investigation report of the case along with list of documents and the witnesses examined during the course of investigation recommended for the statutory sanction of the accused persons and the sanctioning authority after being satisfied with the material available on record and the facts and circumstances, therein has recommended for sanction for the prosecution of the accused persons, including the petitioner, no fresh sanction for the prosecution of the petitioner for offence under Section 13 UA(P)A was required on the same set of facts and circumstances, those were considered by the independent authority and the sanctioning authority.

18.7. Viewed thus, contention of the petitioner that charge against him for offence under Section 13 UA(P)A is bad for want of sanction is not tenable.

19. Second limb of Mr. Dar's submission, insofar as Section 13 UA(P)A is concerned, is that after petitioner came to be discharged for offences under

Sections 18, 16 and 23 of the Act, he could not be charged by the trial Court for the offence, which was neither investigated nor charge sheeted by the investigating agency, i.e., offence under Section 13 of the Act.

CHARGE IS A JUDICIAL FUNCTION

19.1. The argument of learned senior counsel is legally flawed for the simple reason that final report or the charge sheet submitted by the police under Section 173 Cr. P. C, now Section 193 BNSS, is a collective opinion of the investigating agency and the conclusion drawn is merely an executive function. Framing of charge is the judicial function and it is the judicial authority alone who holds the final power to decide whether to accept, reject or modify the conclusions of the investigating agency based on its own independent application of mind. Courts cannot act as a rubber stamp or mouthpiece of the police or the prosecution. It must evaluate the facts on its own merits.

19.2. Supreme Court of India has consistently maintained distinct boundaries between the police investigation and judicial evaluation during framing of the charge. When a case reaches the stage of framing of charge, the Court, irrespective of the conclusion of the investigating officer, has four primary course available to it; (i) court may accept the conclusion of the investigating officer in *toto*; (ii) court may add, delete or alter the Sections of law proposed by the IO, provided the raw evidence i.e., witnesses statements, documents, scientific evidence, etc. points to a different offence; (iii) court may discharge the accused, if it finds “no sufficient ground for proceeding” or a lack of strong suspicion, even if IO concludes that accused committed a crime and files charge sheet; (iv) in case, the IO concludes that no crime was committed and files the closure report, Court is not bound to drop the matter. It may reject the closure report and independently summon the accused to face the trial provided the material on record reflects a *prima facie* case.

19.3. In view of the above, under the criminal procedural law, such as Section 216 Cr. P. C., corresponding to Section 239 BNSS, Court has the absolute authority to add, modify or frame charges for different or additional offences than those recommended by the police, provided the material assembled during investigation supports the same. The police opinion in the charge sheet about which Sections apply is merely advisory or recommendatory in nature. Court independently looks at the actual facts and ingredients of the offences revealed by the case diary and documents.

19.4. Reverting back to the case, allegations against the petitioner is that on the instructions of A-1, he collected an envelope thrown by A-1 near Nund Rishi Bund, Bemina after collecting the weapon which was wrapped in the said envelope. This envelope came to be recovered by the investigating agency on the disclosure of the petitioner. Petitioner is also alleged to be a close friend of A-1 and A-2. They used to share secrets. They were inclined towards terror activities after going through the contents of a book namely "Milestone", which also came to be recovered at his instance from his residence. It is also alleged that petitioner was aware about the activities of both A-1 and A-2, including the collection of pistols and bullet by them on 04.01.2024, which was used in the killing of non-locals at the instance of their handler A-4. Petitioner on the next day of the killing was asked by A-1 to go to the spot and rule out the trace of any item left behind by him while collecting the pistols and bullets. Petitioner went to the scene of occurrence, filled the pit and collected a polythene, in which pistols and bullet were wrapped at the time of its collection.

19.5. Pertinently, during investigation, the investigating agency besides recording statements of material witnesses, collected the digital data; DVDRs, CDR, CAF and IPDR of the relevant mobile phone numbers and when Mobile data of the petitioner was analyzed, it was found to contain a video of the petitioner where he was seen posing before a banner of Ansar Ghazwat-Ul-Hind, stated to be an Al-Qaeda affiliated Islamist militant group and ISJK, respectively appearing at serial Nos. 28 and 38 of the terrorist organisations listed in the first schedule of UA(P)A. The polythene alleged to have been recovered on the disclosure of the petitioner, was sent to CFSL for matching with the photo of the polythene, sent by A-4 to A-1 and A-2 and CFSL report is positive. In the data alleged to have been recovered from the mobile of the petitioner, some videos and pictures of him and A-1 also came to be recovered. In one such video, petitioner was found in a scene walking and on the wall behind him was written ISJK and AGH founded by Burhan Wani and petitioner is seen raising his hand towards the posters on the wall, thereby promoting the ideology of the banned organizations. The investigating agency during investigation also recorded statement of a protected witness PW-48, who stated that all the accused persons including the petitioner would come to the mosque to offer Namaaz and they used to say “Kashmir Fateh Krenge”. Therefore, facts and circumstances of **Vernon** (supra) are distinguishable from the facts and circumstances obtaining the present case because in this case, in addition to the recovery of book namely “Milestone” on Jihad, the investigating agency has made recovery of incriminating materials on the disclosure of the petitioner. Petitioner is also seen in one of the videos propagating the ideology of a militant organisations and there is statement of the protected witness in support of the allegations.

19.6. No doubt, it has been consistent view of the Courts that possession of a literature alone that propagates a particular religious philosophy, would not constitute a crime unless there is concrete evidence of its intent or execution and unless the investigating agencies can produce the material evidence that said philosophy was actively being executed to commit terrorist acts. Supreme Court in **Vernon Gonsalves** (supra), known as **Bhima Koregaon case** also held that mere possession of literature which inspires or propagates violence by itself does not amount to a terrorist act or other serious offences under Chapter-IV or Chapter-VI of UA(P)A.

19.7. While owning a book is generally protected, its material can be used as evidence to support charges, if prosecution succeeds to establish specific links that book is used to advocate, abet, incite or plan an unlawful or terrorist act or it is used to recruit or raise funds for a banned terrorist organisation or intended to further the violent activities of a terrorist gang. Therefore, while passive possession of an unbanned material may not trigger UA(P)A charges, however, actively sharing inflammatory propaganda online, operating social media toolkits for radicalisation or recruiting others to further the ideology of a banned organisation would certainly attract the charges.

19.8. Definition of unlawful activity, (Section 2(1)(o) UAPA), has been quoted in earlier part of this judgment, which means any action taken by an individual or association (whether by committing an act or by words, either spoken or written or by signs or by visible representation or otherwise), intended or supporting any claim to bring about on any ground whatsoever the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about cession or secession. In other words, Section 13 of the Act is required to be construed and understood within the meaning assigned to it by Section 2(1)(o) of UA(P)A.

19.9. Coming back, it is not only a case of passive possession of the book namely "Milestone", containing jihad material, which is alleged to have been recovered from the house of the petitioner, but as discussed, in the data recovered from the mobile of the petitioner, some videos and pictures of him and A-1 were also recovered by the investigating agency and as stated, in one of the videos he was found in a scene walking and on the wall behind him was written ISJK, a terrorist organisation figuring at serial No. 38 of the first schedule and Ansar Ghazwat-Ul-Hind, an Al-Qaeda affiliated Islamist militant group active in Kashmir which is mentioned at serial No. 28 of the first schedule of UA(P)A. Not only this, petitioner is seen raising his hand towards the posters on the wall to promote the ideology of the said organizations. That aside, a polythene bag came to be recovered on his disclosure, in which pistols and bullets were wrapped at the time of its collection by A-1 and A-2 and there is statement of protected witness PW-48, who has stated that all the accused persons including the petitioner would come to the mosque to offer Namaaz and say “Kashmir Fateh Krenge”.

19.10. If the role ascribed to the petitioner is approached within the meaning of Section 2(1)(o) UA(P)A, this Court finds sufficient material including statement of the protected witness and the scientific evidence to disclose a *prima facie* case against the petitioner that he has committed, advocated and incited the commission of unlawful activities by signs and visible representation, which is intended to bring about the cession of a part of the territory of India from the Union, punishable under Section 13 of the Act. Therefore, there is no illegality or infirmity in the lower Court’s order framing charge against the petitioner under Section 13 UA(P)A.

OFFENCE UNDER SECTION 201 IPC

20. Petitioner has also been charged by the trial Court for destruction of evidence, under Section 201 IPC.

20.1. According to the respondent/NIA, the petitioner on the instructions of A-1 collected a polythene bag, which after collecting the parcel containing pistol and magazines, was thrown by A-1 near Nund Rishi Bund. The petitioner, as per the investigating agency, filled the pit from which A-1 had collected the weapon of offence, took it to some other place to destroy this crucial piece of evidence.

21. Mr. Dar, learned senior counsel for the petitioner has argued that petitioner has been charged for offence under Section 201 IPC in the absence of any material or scientific evidence.

22. A perusal of the charge sheet reveals that polythene bag sent by the investigating agency to CFSL for matching with the photo of the polythene which was sent by A-4 to A-1 and A-2 and the FSL report in this respect is positive. Therefore, this Court also finds sufficient evidence on record to disclose *prima facie* offence under Section 201 IPC against the petitioner.

ORDER

23. For what has been observed, analysed and discussed above, present petition is allowed in part. As a result, the impugned order to the extent of framing of charge against the petitioner under Section 20 UA(P)A is set aside. However, the impugned order concerning charge against the petitioner for offences under Sections 13 UA(P)A and 201 IPC is upheld.

24. Learned trial Court is directed to regulate its procedure and proceed with the trial, in accordance with law.

25. Before parting, it is made clear that nothing observed in the present order shall be construed as an expression of opinion on the merits of the case and learned trial Court shall be at liberty to proceed with the trial uninfluenced by any observation made in this order.

26. ***Disposed of***.

(Rajesh Sekhri)
Judge

Srinagar
17.09.2026
Sushant

Whether the judgment is speaking? **Yes**
Whether the judgment is reportable? **Yes**