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

NIA RC No. RC-20/2018/NIA/DLI

NIA v. Mohd. Salman & Ors.

21.10.2021

ORDER ON CHARGE

Brief Facts as per Charge sheet

1.1 The brief facts of the case as per the charge sheet are, that the Central Government received an information that a Delhi based individual Mohammad Salman (A-1) was in regular touch with a Dubai based Pakistani National Mohammad Kamran (A-3), who in turn was connected with Shahid Mahmood (A-5), a Pakistani National and Dy. Chief of Falah-I-Insaniat Foundation (FIF). The information also revealed that Mohammad Salman was receiving funds sent by FIF operative Mohammad Kamran (A-3) and his associates, through Hawala operators. Mohammad Salman (A-1) had connections with persons in various countries including Pakistan, UAE etc. The information revealed that proscribed organization FIF had been trying to attract group of

sympathizers and sleeper cells to create unrest in India by sending funds for anti-Indian and terrorist activities.

1.2 On this information, Ministry of Home Affairs, vide Order No. F. No. 11011/40/2018/NIA/CTCR division dated 27.06.2018, directed NIA to take up the investigation of the case. Accordingly, the present case was registered.

1.3 Falah-I-Insaniyat (FIF) is a Pakistan based terror organization established by Jamat-ud-Dawa. It was founded by Hafiz Mohammad Saeed, the head of terrorist organizations Lashkar-e-Toiba and Jamat-ud-Dawa. On 14.03.2012, FIF was declared a terrorist organization by United Nations and Hafiz Mohammad Saeed was also designated as global terrorist by the UN. It is further submitted that on 12.08.2016, the Government of India has designated FIF as terrorist organisation as per schedule-I of UA(P). The main aim of FIF is to provide and collect funds, to create network/ sleeper cells and to motivate youths to join terrorism.

1.4 It is alleged in the charge-sheet that in an around 2012, Hafiz Mohammad Saeed (chief of FIF) alongwith Shahid Mahmood (Dy. Chief of FIF) hatched a conspiracy to create sympathizers/ sleeper cells and logistic base in Delhi and Haryana under the garb of religious work e.g. construction of

mosque, madrasa education and financial assistance for marriage of poor Muslim girls etc. In order to execute the above conspiracy, Shahid Mahmood tasked his another associates namely Mohammad Kamran, a Pakistani national based at Dubai, for re-routing funds from Pakistan to Dubai and further to India through hawala channels. Shahid Mahmood further tasked Mohammad Kamran to identify religious minded Indian Muslims who could be given this fund in the name of construction of mosque, education in Madrasa, marriage of Muslims girls, medical assistance etc. to create it's bases and to motivate sympathizers initially. Accordingly, Mohammad Kamran identified few Indian Nationals in Dubai namely Abdul Aziz Behlim and Mohammad Arif Gulam Bashir Dharampuria etc. Mohammad Kamran also identified one Indian national namely Mohammad Salman for this purpose. He started transferring large amount of funds (through illegal hawala) in the name of religious work. Accused Mohammad Salman had received huge funds from Mohammad Kamran from Dubai for construction of a mosque and marriage of Muslim girls in Uttawar area, Distt. Palwal, Haryana. Accused Mohammad Salman was indoctrinated to carry out "some special work" once initial task of construction of mosque is completed at Uttawar, Palwal, Haryana.

1.5 It is further submitted that during the investigation, the antecedents of Mohammad Salman (A-1) was gathered and it was found that A-1 had no source of earning. It has also revealed during investigation that Mohammad Salman was frequently travelling from his residence at New Delhi to Uttawar, District Palwal (Haryana) for the purpose of construction of a Mosque namely Khulafa-E-Rashideen and he had provided funds in this construction of Mosque. It was also found that Mohammad Salman was active and providing funds for the marriages of local girls at Uttawar and surrounding areas. During the investigation, it was found that A-1 is in communication with one Mohammad Salim @ Mama (A-2) through whom funds were being received from Dubai. The lawful interceptions in respect of mobile numbers of the suspects were taken. Certain calls established close connectivity and transfer of funds from Mohammad Kamram to Mohammad Salman via Mohammad Salim @ Mama. The details of those calls have been given in the charge-sheet.

1.6 It is further submitted that on 25.09.2018, on receipt of information that accused Mohammad Salman was going to collect funds from Mohammad Salim @ Mama at Darya Ganj, New Delhi (which were sent by Mohammad

Kamran from Dubai through Hawala channels), the searches at the house of accused Mohammad Salman , at house-cum-office of Mohammad Salim @ Mama and at the office of Rajaram & Co. (another hawala operator who was in touch with Mohammad Salman) were conducted. During the searches, huge cash amount along with large number of electronics items and incriminating material were seized. On scrutiny of the receipts, documents seized from the house of accused Mohammad Salman, it was found that he received huge funds through hawala from Dubai based Pakistani National accused Mohammad Kamran. The details of the funds mentioned in the receipts/documents have been given in the charge-sheet. During the investigation, mobile phones of Mohammad Salim were sent to CERT-In, New Delhi and from the report received from CERT-In, it was found that Mohammad Salim was in contact with Mohammad Salman. WhatsApp chats between Mohammad Salim and Hakim revealed that Mohammad Salim was giving funds to accused Mohammad Salman. It is further submitted that during the investigation, voice samples of Mohammad Kamran and Shahid Mahmood were obtained. Those voice samples have been sent to CFSL, CBI CGO Complex, New Delhi for comparison and expert opinion.

1.7 It is further submitted that during the investigation, lots of photos and videos of Shahid Mehmood with Mohammad Hafiz Saeed FIF founder were found on open soures which clearly establish that FIF is working under LeT/JuD chief Mohammad Hafiz Saeed. During the investigation, some videos pertaining to FIF were downloaded and these videos establish that FIF with ill intention had been working against India.

1.8 It is further submitted that during the investigation, various searches were carried out at Delhi, Haryana, U.P, Rajasthan, Gujarat and Kerala and cash of Rs.2.07 croes and incriminating documents were seized.

1.9 It is further submitted that the evidences collected during investigation establish that accused persons were conspiring to transfer funds of FIF to India in the garb of charity/ religious work and this was to attract sympathizers and to create bases in the remote areas of India. Evidence has further established that huge funds were received by accused Mohammad Salman (A-1) from Mohammad Kamran (A-3) from Dubai through Mohammad salim @ Mama (A-2) for creating base and sympathizer for FIF operative in the garb of charity/ religious work. After completion of investigation, charge sheet was filed against accused no. 1, 2, and 3.

1.10 Thereafter, further investigation U/s 173(8) CrPC continued to unearth larger conspiracy and to arrest absconding accused.

1.11 During investigation, it has revealed that Mohammad Arif Gulambashir Dharampuria (A-4) who was an employee of Mohammad Kamran (A-3) since the year 2012, was monitoring the distribution and usage of the hawala funds in India. The hawala funds were utilized by Mohammad Salman (A-1) in various activities I.e. construction of Mosque, marriage of Muslim girls and running Madarsa etc to create sympathizers and logistic base in India. It has further revealed that Mohammad Hussain Molani @ Babloo (A-7), a Dubai based Indian and a hawala operator was transferring funds from Dubai to Delhi through his maternal uncle Mohd Salim @ Mama (A-2) for Mohammad Salman on regular intervals.

1.12 It is further submitted that Mohd Hussain Molani @ Babloo (A-7) was arrested on 21.01.2019 when he arrived from Dubai to Jaipur Airport and (A-4) Mohd. Arif Gulambashir Dharampuria was arrested on 12.06.2019 when he arrived from Dubai to New Delhi Airport.

1.13 It is alleged that Mohammad Hussain Molani @ Babloo (A-7) was the *hawala* conduit in Dubai who used to

message to (A-2) Mohd. Salim @ Mama's mobile numbers, the number of note (token), the mobile number and the name of the person to whom cash had to be delivered or collected and used to give him directions. A large amount of money for (A-1) Mohd. Salman from Dubai was routed through (A-7) Mohammad Husaain Molani @ Babloo and (A-2) Mohd. Salim @ Mama**.** More than 100 such photos of 'tokens' (notes) sent by (A-7) Mohammad Husaain Molani @ Babloo have been retrieved from the photo gallery of the phones of (A-2) Mohd. Salim @ Mama. It has also revealed during investigation that calculation of daily transactions were sent to Mohammad Hussain Molani @ Babloo (A-7) in Dubai and to his father. It has further revealed that on the instructions of Mohammad Hussain Molani (A-7), Mohd. Salim was remitting funds to Mohd. Salman. Mohammad Hussain Molani @ Babloo revealed during examination that he transferred funds on the directions of another hawala dealer at Dubai namely Maqsood. It is further submitted that Mohammad Hussain Molani was a crucial link in the chain of funds transferred from Dubai to Mohd. Salman (A-1). It is further submitted that the evidence collected during investigation prima facie, establishes a case against Mohammad Hussain Molani @ Babloo (A-7) with other accused persons for conspiring and transferring hawala funds to

India in the garb of charity/religious work. This was to attract sympathizers and to create bases in the remote areas in India. They planned to create this system so that sleeper cells/hide outs could be created at later stage for carrying out anti-India activities at opportune time. During investigation, it has established that Mohd. Salman (A-1) had received huge funds from Mohd. Kamran (A-3) from Dubai through Mohd. Hussain Molani @ Babloo (A-7) and Mohd Salim @ Mama (A-2) in India for creating a base of cadres and sympathizers for FIF's operations in the garb of charity/religious work i.e. construction of mosque and marriage of Muslim girls. Mohd. Salman had been indoctrinated to carryout special work once initial task was completed by them. Hence, a charge sheet for offences u/s 120B IPC and u/s 17 and 21 UA(P) Act had been filed against accused Mohd. Hussain Molani @ Babloo.

1.14 Thereafter, a supplementary charge sheet was filed against accsued Mohammad Arif Gulambashir Dharampuria (A-4) wherein it is alleged that Mohammad Arif Gulambashir Dharampuria (A-4) was an employee of Mohammad Kamran (A-3) in his office at Dubai since 2012. Mohammad Kamran (A-3) deputed Mohammad Arif for monitoring/ distributing funds to various Indians including Delhi based Mohammad

Salman (A-1). In this connection Mohammad Arif Gulambashir Dharampuria (A-4) had visited Uttawar, Palwal to monitor the construction work of mosque and marriages of local Muslim girls funded by Mohammad Kamran (A-3) to Mohammad Salman (**A-1**). During the investigation, it has also emerged that Mohammad Arif Gulambashir Dharampuria stayed in Fazar Residency Guest House, Nizamuddin, Delhi during his visit to Uttawar, Palwal. The entry register of Fazar Residency Guest House having signatures of A-4 was seized and sent to CFSL for comparison. During the investigation, it was found that Mohammad Salman was in communication with one Mohammad Salim @ Mama **(A-2)** through whom funds were received from Dubai. During investigation, on 23.01.2018, CD was recovered from the house of Mohammad Arif Gulambashir Dharampuria. The mobile numbers of suspects/accused were taken on lawful interception. The lawful interceptions in respect of known mobile phones of Salman (A-1), Salim @ Mama (A-2), Kamran (A-3) and Arif (A-4) revealed a lot of information specially related to transfer of funds from Dubai and distribution of same in India. It is further submitted that during the investigation, the gist of important lawfully intercepted mobile calls was obtained and this shows the involvement of accused Mohammad Arif Gulambashir Dharampuria (A-4) in

transfer of funds from Mohammad Kamran (A-3) to Mohammad Salman (A-1) via Mohammad Salim @ Mama (A-2). The evidence collected during investigation establishes a case against Mohammad Arif Gulambashir Dharampuria (A-4) with other accused persons for conspiring and transferring funds from Dubai to India through illegal channels on the direction of Mohammad Kamran (A-3) in the garb of charity/religious to create bases/sympathizers with intention to use them in activities of FIF and LeT. Investigation has further established that on the direction of accused Mohammad Kamran (A-3), who has the close contact with Shahid Mehmood (A-5), Dy. Chief of Falah-I-Insaniat Foundation (FIF), accused Mohammad Arif Gulambashir Dharampuria (A-4) used to transfer funds from Dubai to accused Mohd. Salman (A-1) through hawala operator Maqsood and accused Mohd. Hussain Molani @ Babloo (A-7) and utilisation of these funds was closely monitored by accused Mohammad Arif Gulambashir Dharampuria (A-4). This was to attract sympathizers and to create bases in the India so that sleeper cells/hide outs could be created and same may be used for carrying out anti-Indian activities in later stage. Mohammad Salman (A-1) had been indoctrinated to further carryout "special work" once initial task was completed I.e. construction

of a mosque namely Khulafa-E-Rashideen. Hence, a charge sheet for offences punishable u/s 120B IPC and section 17 UA(P) Act has been filed against accused Mohammad Arif Gulambashir Dharampuria.

Arguments

2.1 I have heard ld. Spl. PP of NIA as well as ld. Counsels for accused persons.

2.2 It has been contended by ld. Spl. PP for NIA that FIF is a frontal organization of terrorist organizations Lashkar-e-Toiba and Jamat-ud-Dawa. Both of these organizations were established by globally declared terrorist Hafeez Mohd. Saieed. FIF had been making its base in India in the garb of charity and religious work. It had been designated a terrorist organization by United Nations on 14.03.2012. Government of India has also designated this organization as terrorist organization. LeT seeks to raise funds through FIF to further the terror activities. The main object of FIF is to create network / sleeper cells, to motivate youth to join terrorism in the garb of charity and religious work. This case pertains to the funds sent by FIF to India in the garb of charity and religious work but the real purpose was to create sleeper cells for LeT. A conspiracy was hatched by FIF Chief Hafeez Mohammad Saeed, Deputy Chief

Shahid Mahmood and Dubai based Pakistani National Mohd. Kamran. Pursuant to that conspiracy, Mohd Kamran found an Indian National Mohd. Salman and took him into confidence for this purpose. Mohd. Kamran started sending huge amount to Mohd. Salman for creating sympathizers/sleeper cells in the garb of charity and religious work. Mohd. Kamran is Pakistani national based in Dubai and is working for FIF especially with Shahid Mahmood and both of them were involved in transferring funds to different countries through hawala channels in garb of charity/religious work. It is further contended that Kamran was providing money to Shahid Mehmood and actively smuggling currencies even personally to different countries along with Shahid Mehmood. Kamran along with Mohd. Arif Gulambashir Dharampuria (A-4) was sending these funds to India through various hawala operators such as Mohd. Salim(A-2), Babloo(A-7), Nadeem Paanwala (PW-35) etc.. Mohd. Kamran had sent a huge sum of money to Mohd. Salman (A-1) through hawala operators including Mohd. Salim (A-2). This money was sent for creating base and sympathizers for FIF operatives in garb of charity/religious work i.e. construction of mosques and marriage of Muslim girls. A madarsa was being run to house and indoctrinate young and poor children. Mohd. Kamran was controlling all activities

related to the mosque and other works carried out by Md. Salman who was acting as his agent and working under his directions. It is further contended that D-67 is the call recordings from CD between Shahid and Kamran. It reflects that they are involved in illegal transaction of terror funds. Kamran has connections with Hawala operators in countries where FIF is actively working. It is clear from the conversation that Shahid is taking help of Kamran in sending terror funds to different countries. D-66 is the intercepted call between Kamran and Salman which shows that Kamran was building a mosque in Uttawar with the help of Salman and providing terror funds to Salman along with the instructions as to how those funds shall be utilised. Uzair Khan, owner of an internet cafe, on direction of Salman used to send Kamran all the accounts of the constructions expenses as well as photos of the cash receipts and undergoing construction of the Masjid. Mohd. Arif Gulambashir (A-4) has also stated that Kamran used to send money to Salman for building mosque and other activities through hawala channels (D-115/9). Iftekar Ahsan and Many others have received funds from Kamran (D-46).

2.3 It has further been contended that Mohd. Salman [A-1] was clandestinely receiving money through hawala

channels. Despite the fact that Salman had bank accounts, he received this money in cash to avoid detection and to keep involvement of Kamran secret from the government agencies for many years. He had been regularly visiting Dubai and providing logistic support to A-4 when Arif was sent to India by Kamran. The fact that he had multiple visits is reflected from D-37. Mohd. Salman was acting under direct control of Kamran and carrying out his instructions. He was building a network of poor people who were indebted to him and indirectly to Kamran by providing monetary help from funds of FIF received from Kamran (FIF). He was indoctrinated to carry out special work once initial work of construction the Mosque was completed. Intercepted calls between Salman and Kamran (D-65) reflect that Kamran had been instructing Salman the manner in which money was to be used. Salman was also giving Kamran the information about his influence in the locality, number of poor children he had admitted in Madrasa and other local issues. The conspiracy was to create a system where sleeper cells/hide outs could be created at a later stage for carrying out anti Indian activities. The pocket diary (D-30) of Salman shows receiving of funds from Kamran, Bablu and others. Nadeem Paanwala, a hawala operator used to send money to Salman on direction of one Nazir Irani based in Dubai. Incriminating messages found

in the phone of Salman which is, "*ghee ka intezaam ho gaya hai, bombay wali party bhi aayegi…unke hatho bhijwa denge*"

"*Kamran bhai bhi aaye hai Dubai..aap* ***khidmat*** *me the na isliye aapko nahi pata hai*"

2.4 It has been contended by ld. SPP that word '*ghee*' is a code word which may have been used for explosives or other substances and '*khidmat*' is used by Salman and this reflects that he knows the terror links of Kamran and of person to whom he is talking as *khidmat* is an activity which is done by the people to the terrorists who have undergone terror training.

2.5 With regard to Md. Arif Gulambashir Dharampuria, it is submitted that he was was close confidant and accountant of Kamran (A-3) and was monitoring the distribution and usage of the Hawala funds in India. Arif Gulambashir came to India on instructions of Kamran to inspect the work done in the construction of Masjid. On scrutiny of his email id; passport of Kamran, photos of Kamran's family and other details of Kamran were found. The scrutiny report is D-100. Through this report, it is established that he was an accountant of Kamran and very well aware about all the activities of Kamran. In his statement u/s 164, Mohd. Arif

Gulambashir had disclosed all the facts regarding meetings and money transactions of Kamran. The said statement is D-115/9. This accused had also come to India on the instructions of Kamran to inspect the work for which Kamran had been sending funds and had also attended the marriages of poor muslim girls. There are statements of one Jaman Mehar (D-104), Haji Hasam D-106), Aas Mohammad (D-107), Safiquel Islam (D-133) which are incriminating against this accused.

2.6 With regard to Mohd. Hussain Molani @ Babloo (A-7), it has been contended that he was transferring funds from Dubai to Delhi through his maternal uncle **Mohd. Salim [A-2]** for Mohd. Salman (A-1) on regular intervals. He was the hawala conduit in Dubai, used to message Mohd. Salim@mama (A-2)'s mobile numbers, the number of notes(token), the name of the person to whom cash had to be delivered. Hawala transactions carried out by him are recorded in D-23. The transcripts of whatsapp conversations between Salim and Salman reflecting his involvement in this conspiracy are D-65, D-70.26 and D-70/27. The data extracted from a hard drive seized from this accused's premises is also incriminating against this accused and the same is X-89. The intercepted calls between Salman and Salim again reflect his involvement in the

conspiracy. Then there are statements of PW36, PW37, PW84, PW85, PW86 and PW87 which are incriminating against this accused. PW36 and PW37 are the employees of A-2 who prove the existence of Hawala business being carried out by this accused.

2.7 With regard to accused Mohd. Salim @ Mama, it is contended that he was the main person acting as conduit of the funds from Kamran through his nephew Babloo and delivering them to Md. Salman. He has also given false explanation of funds recovered from him to protect his nephew and Kamran who were sending funds to Md. Salman. There is a register D-23 which reflects the entrires of hawala transaction. There are statements of PW36, PW37, PW84, PW85, PW86 an dPW87 which are incriminating against this accused. PW36 and PW37 are the employees of A-2 who prove the existence of Hawala business being carried out by this accused.

2.8 Ld. Spl. PP has further contended that at the time of raids at the premises of accused Mohd. Salman, huge amount of cash was recovered but he has failed to give any explanation to the recovery of this cash. He stated that the cash belonged to Akbar Travels. However, investigation has established that this cash was not belonging to Akbar Travels as can be reflected

from the statements of PW84, PW85 and thus, a false explanation was given that money belonged to a tour and travel business being run in the name of Molani Tours and Travels. Two neighbours of this accused whose statements are PW86 and PW87 have also denied the existence of Molani Travels.

2.9 He has further contended that accused Kamran was helped by his Indian national employee namely Mohammad Arif Gulambashir Dharampuria. These funds were routed through Mohd. Hussain Molani @ Babloo (A-7) and his maternal uncle Mohd. Salim Mama and other illegal Hawala channels.

2.10 He has further contended that the conspiracies are hatched in secret and executed in darkness and therefore, conspiracies are to be established through circumstantial evidence. He has further contended that Mohd. Salman was indoctrinated to carry out some special task on the directions of Mohd. Kamran, who was providing funds for carrying out some charity and religious work, which would subsequently help in creating sleeper cells/ sympathizers. In this regard, he has relied upon the statements of protected witnesses D-53 and D-47. He has further contended that the fact that this was a conspiracy hatched by FIF is established by the close association of A-3

Mohd. Kamran with one Shahid Mahmood who was Deputy Chief of FIF. He has contended that this connection can be established through D-67 and CD marked M-2. D-67 is the transcript of CD marked M-2. The said CD was recovered from accused Mohammad Arif Gulambashir Dharampuria. This CD contains conversation between Mohd. Kamran and Shahid Mahmood, Deputy Chief of FIF. The fact that the voices in this CD are of these accused persons is established by FSL report D-93. The conversation between accused no. 3 and Shahid Mahmood reflects that they were involved in illegal activities. They were sending money throughout the World through Hawala channels. As they were sharing such close relationship, Mohd. Kamran would have known that Shahid Mahmood was FIF as he was declared terrorist in USA and all over the world. As accused no. 3 was working very closely with Shahid Mahmood, it can be implied that A3 was a member of FIF and the money sent by A3 has to be considered as money belonging to FIF. Thus, it was terror money which was being received by these accused persons. He has further contended that money so received was used for building mosque in a village Uttawar area, Distt. Palwal and for marrying poor muslim girls. However, this was merely a ploy and the real purpose was to create sleeper cells. He has further contended that accused

Mohd. Salman was merely operating as agent of Kamran. This fact is established by conversation between Mohd. Kamran and Mohd. Salman, which is D-66. This conversation clearly reflects that it is Mohd. Kamran who was controlling the activities as each small thing was being micromanaged by Mohd. Kamran and Mohd. Salman was reporting to Mohd. Kamran. Control was exercised by Mohd. Kamran is also established by the fact that Mohd. Salman had mailed the receipts of amount received to Mohd. Kamran and at the same time, the fact that Mohd. Salman had tried to hide the identity of the persons whom he was sending these mails reflects that Mohd. Salman was aware that he was not doing right thing. He has further contended that Mohd. Salim and Mohammad Hussain Molani were not merely operating as Hawala operators. It is reflected from the statements of witnesses that Hawala operators normally charge fee from their clients and they are unfamiliar with the persons who were sending money and who were receiving money. However, in this case, they were very familiar with the persons who were sending money and receiving money as can be seen from the statements of witnesses and legally intercepted conversations. He has further contended that usually hawala operators give some token, note or code etc. before sending the money but in this case, no such

code, token etc. were exchanged. This reflects that accsued Mohd. Salim and Mohammad Hussain Molani were also involved in this conspiracy and that is why they were not acting as hawala operators only. The fact that money was coming from Dubai proved by PW36 and PW37 who were the employees of Mohammad Hussain Molani and Salim Mama. He has further contended that at the time of of raids at the premises of accused Mohd. Salman, huge amount of cash was recovered but he has failed to give any explanation to the recovery of this cash. He stated that the cash was belonging to Akbar Travels. However, investigation has established that this cash was not belonging to Akbar Travels and therefore, a false explanation would also show the guilt of the accused and this shows that accused was aware of the conspiracy.

2.11 It has been contended by ld. Sr. counsel for accused no. 1 that though it has been claimed by ld. SPP that accused Mohd. Salman is infact a member and representative of FIF, however, this fact is not even mentioned in the entire charge sheet and there is no evidence to show accused Salman is a member of FIF. He has further contended that there is a flow chart of money which has been printed at page 15 as para 16.5. According to this chart, the flow of money started from

Hafeez Mohammad Saeed, the Chief of FIF and then came to accused Shahid Mahmood, from him it came to accused Mohd. Kamran where after, it flowed down and reached to Mohd. Salman through various Hawala operators. However, there is no evidence that how the prosecution has reached to a conclusion that the money flow started from Hafeez Saeed. It has further been contended that the prosecution in para 17.1 has alleged that FIF leaders namely Hafiz Mohammad Saeed along with Shahid Mahmood hatched a conspiracy to create sympathizers/sleeper cell and logistic base in Delhi and Haryana under the garb of religious work. However, there is no evidence at all, either direct or indirect, of hatching of this conspiracy or existence of the conspiracy. Further, the second part of this paragraph is that money was sent for construction of mosque, madrasa education and financial assistance for marriage of poor Muslim girls etc. which in absence of any evidence of the first part of this paragraph regarding a conspiracy being hatched by Hafeez Mohd. Saeed and Shahid Mahmood to create sleeper cells, has to stand alone and what is before the court is, that the money was sent through Hawala channels, which is illegal, but it was sent for construction of mosque, madrasa education and financial assistance for marriage of poor Muslim girls etc. It is further contended that in

para 17.2 of the charge-sheet, it has been alleged by the prosecution that pursuant to the above conspiracy, Shahid Mahmood tasked his another associates namely Mohammad Kamran, a Pakistani national based at Dubai, for re-routing the funds from Pakistan to Dubai and further to India using hawala channels. However, there is no evidence that Shahid Mahmood had given this task to Mohd. Kamran or Mohd. Kamran was acting on the instructions of Shahid Mahmood. Further, there is no evidence that money had originated from Pakistan.

2.12 Ld. Sr. counsel has candidly accepted that the money was transferred through Hawala channels from Dubai to India but at the same time, she has contended this fact has to be seen in its singularity in absence of any evidence of this money originating from Pakistan, or of Mohd. Kamran transferring this money on the instructions of Shahid Mahmood, or of a conspiracy being hatched by Hafiz Mohd. Saeed and Mohd. Shaidm, and these acts being done pursuant there to. It is further contended that in para 17.3, the prosecution has alleged that Shahid Mehmood further tasked Mohammad Kamran to identify religious minded Indian Muslims who could be given this fund in the name of construction of mosque, education in Madrasa, marriage of Muslims girls, medical assistance etc to

create its bases and sympathizers initially. The same persons were intended to be used for creating sleeper cells/hideouts. It is contended that here again, there is no evidence that any such task was given by Shahid Mehmood to Mohd. Kamran or, that pursuant to the instructions of Shahid Mehmood, Mohd. Kamran identified Arif Gulam Bashir Dharampuria and Mohd. Salman. However, it is admitted that he had transferred huge amount through illegal Hawala channels. Ld. Counsel further contends that the main allegation is, that the money was coming from the sources which were related to FIF for which there is no evidence except a CD which is not admissible in evidence and even if its contents are accepted to be correct, the CD does not at all reflect that any money was being sent to India by Mohd. Kamran on the instructions of Shahid Mehmood. It has further been contended that whether Mohd. Kamran had links with FIF is based on tenuous inference and not on legal evidence. It is further contended that the prosecution is heavily relying upon the fact that Mohd. Salman was continuously informing Mohd. Kamran about the development of construction of mosque and was sending him receipts. It is contended that had Mohd. Salman known that these are FIF activities, he would not have kept the receipts safely. Unless it is established that firstly, Mohd. Salman was using FIF funds

and secondly it also has to be established that Salman was aware about the activities of Mohd. Kamran and in absence of same, this fact loses its value to raise a grave suspicion of commission of crime under UA(P) Act. It may be correct that the accused did not try to find out the real source of money but again in absence of any evidence, no criminality cannot be based only on account of this omission. In this regard, reliance has been placed on the judgment of **Kehar Singh and others v. State (Delhi Administration), (1988) 3 SCC 609** wherein it has been held as under:

> 274. It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to secs-120-A and 120-B IPC would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.
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> 275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will of ten rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful

> object. The former does not render them conspirators, but the latter is. It is however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to Prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand (Criminal Law Review I974, 297 at 299 explains the limited nature of this proposition:
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> "Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to PG NO 185 prove that the parties "actually came together and agreed in terms" to pursue the unlawful object; there need never have been in express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done."
>
> 276. I share this opinion, but hasten to add that the relative acts of 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.

2.13 In light of this judgment, ld. Counsel has contended that the prosecution seeks to do exactly what has

been prohibited by Hon'ble Supreme Court in Kehar Singh's judgment because the prosecution is trying to artfully arrange a group of irrelevant fats to give it an appreance of coherence where there is none.

2.14 Ld. Counsel has further relied upon the judgment of **NIA v. Zahoor Ahmad Shah Watali (2019) 5 SCC 1.** Ld. Counsel has further relied upon the judgment of **Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135** wherein in para 12, Hon'ble Supreme Court has held as under:-

> 12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the

> evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India versus Prafulla Kumar Samal & Another (1979 3 SCC 5)].

2.15 Ld. Counsel has contended that the aforesaid pronouncement of Hon'ble Supreme Court and the earlier pronouncement in UOI v. Prafulla Kumar Samal make it very clear that if two view are equally possible then the court, if it does not find sufficient material to raise a grave suspicion, should discharge the accused. It is further contended that the prosecution also seeks to proceed on the alleged confessional statement u/s 164 Cr.P.C of accused Arif Gulam Bashir Dharampuria. However, it has been a well settled law that such evidence is a very weak piece of evidence and the courts should be circumspect while relying upon such evidence. The alleged confessional statement of accused Arif Gulam Bashir is completely exculpatory and it is also well settled that a statement, if it is treated to be a confessional statement and used against the other accused, it should also be inculpatory in nature. In this regard, reliance has been placed on the judgment of **Haricharan Kurmi v. State of Bihar AIR 1964 SC 1184** wherein it has been held as under:

13. As we have already indicated. this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty a confession can only be used to "lend assurance to other evidence against a co-accused". In re. Peryaswami Moopan, Reilly J. observed that the provision of Section 30 goes not further than this : "where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into scale as an additional reason for believing that evidence." In Bhuboni Sahu v. King the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board observed that “a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it

evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case, it can be put into the scale and weighed with the other evidence." It would be noticed that as a result of the provisions contained in s. 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of s. 30, the fact remains that it is not evidence as defined by s. 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh where the decision of the Privy Council in Bhuboni Sahu case has been cited with approval.

…...

15. The statements contained in the confessions of the co- accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the Court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and

found to be satisfactory. The difference in the approach which the Court has to adopt in dealing with these two types of evidence is thus clear, well-understood and well-established. It, however, appears that in Ram Prakash's case(1), some observations have been made which do not seem to recognize the distinction between the evidence of an accomplice and the statements contained in the confession made by an accused person. "An exa- mination of the reported decisions of the various High Courts in India," said Imam J., who spoke for the Court in that case, "indicates that the preponderance of opinion is in favour of the view that the retracted confession of an accused person may be taken into consideration against a co- accused by virtue of the provisions of s. 30 of the Act, its value was ,extremely weak and there could be no conviction without the fullest and strongest corroboration on material particulars." The last portion of this observation has been interpreted by the High Court in the present case as supporting the view that like the evidence of an accomplice, a ,confessional statement of a co-accused person can be acted upon if it is corroborated in material particulars. In our opinion, the context in which the said observation was made by this Court shows that this Court did not intend to lay down any such proposition. In fact, the other evidence against the appellant Ram Prakash was of such a strong character tnat this Court agreed with the conclusion of the High Court and held that the said evidence was satisfactory and in that connection, the confessional statement of the coaccused person was considered. We are, therefore, satisfied that the High Court was in error in this case in taking the view that the decision in Ram Prakash's(1) case was intended to strike a discordant note from the well-established principles in regard to the admissibility and the effect of confessional statements made by co-accused persons.

2.16 Ld. counsel for accused has further relied upon the judgment of Hon'ble Supreme Court in **Pancho v. State of Haryana (2011) 10 SCC 165**, wherein it has been held as under:-

> 23. As against A2-Pancho, the prosecution is relying mainly on the extra-judicial confessional statement of A1-Pratham. The question which needs to be considered is what is the evidentiary value of a retracted confession of a co-accused?
>
> 24 The law on this point is well settled by catena of judgments of this court. We may, however, refer to only two judgments to which our attention is drawn by Mr. Lalit, learned senior counsel. In Kashmira Singh v. The State of Madhya Pradesh,2 referring to the judgment of the Privy Council in Bhuboni Sahu v. The King,3 and observations of Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chukerbutty,4 this court observed that proper way to approach a case involving confession of a co-accused is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid.
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> 25. This court further noted that:
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> "…. cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept."

2.17 Ld. Counsel for accused Salim has contended that the accused has been falsely implicated in this case. He has further contended that the knowledge is a prerequisite for offences u/s 17 and 21 UA(P) Act. There is nothing on record to show that the accused had the knowledge that funds, which were to be received from Hawala operators, were to be used for alleged terror actitivites or had originated from FIF. Further this accused did not have the knowledge that these funds would be used for the purposes of construction of mosque etc. Thus, he may have been charged for carrying out illegal activities but there is nothing on record to show that he was a part of the conspiracy. He has further contended that there is no direct contact of this accused with accused Kamran. This accused only had contact with Mohammad Hussain Molani and nobody else. He has further contended that even otherwise NIA has to first establish that the money which was received was terror fund or proceeds of terrorism as there is no link or chain of the alleged money flowing from a terrorist organization and being used for terrorist acts. He has further contended that the prosecution has relied upon the document D-67 which is the transcript of CD material Mark M-2. However, this document does not even

prima facie establish that the money was flowing from a terrorist organization and for the purpose or intent to commit a terrorist act. Even otherwise, this material is inadmissible in evidence. He has further contended that no prima facie case is made out against this accused under UA(P) Act as till date despite the multiple reports u/s 173 Cr.P.C being filed, no alleged sleeper cells have been identified or busted, no alleged sympathizers have been identified or arrested and no covert or overt activity has been shown. Applicant was admittedly a mere conduit and was allegedly acting on the instructions of transferring money through hawala channels on a commission charge. He had no active knowledge of the alleged purpose of transfer of money and therefore, no case is made out against this accused. In this regard, reliance has been placed on the judgment of **Ranjit Singh Brahamjit Singh Sharma v. State of Maharashtra 2005 (5) SCC 294, Wuthikorn Naruenartwanch @ Willy v. NIA Crl. A No. 40/2017** and **State of Kerala v. Raneef 2011 (1) SCC 784**. Relying upon the judgment of **Willy's (supra)**, he has contended that in that case, the accused was a middle man and had merely acted as middle man and not in surreptitious manner. The only allegation against the accused was that he was a privy to the conspiracy hatched between the other accused [being members of NSCN

(IM)]. However, there was nothing in the charge-sheet to show that appellant knew that arms and ammunitions procured were to be used for terrorist activities and Hon'ble Delhi High Court had observed that in these facts, it was unable to find that the allegations against the appellant were prima facie true.

2.18 Ld. Cousnel has further contended that in sections 17 and 21 UA(P) Act, word 'knowing' has been deliberately used by the legislature and unless the knowledge is established on the part of this accused either of the money originating from a terrorist organization or that the money was to be used for terrorist activities, no case can be made out against this accused. He has further contended that there is no evidence that the accused had ever been in touch or contact with Kamran, Shahid Mahmood or Hafeez Saeed. The alleged conversations between the applicant and co-accused Salman do not implicate the accused in any manner whatsoever as these conversations were regarding the transactions and movement of money and nowhere there is an indication that the accused was either aware about the alleged conspiracy or the object of the conspiracy or had the knowledge of funds originating from a terrorist organization or about the purposes of funds to be used for alleged terrorist activities. He has further contended that

accused did not even have the knowledge of the apparent purposes of the funds i.e. construction of mosque, starting madrasa and marriage of poor Muslim girls etc. and even if it is admitted that the accused had the knowledge of it, it cannot be treated as a terrorist act unless the evidence says otherwise. He has further contended that from the alleged recovery of Rs.1.17 crores from the office of the applicant, Rs.80 lacs were admittedly belonging to Sajjad Wani who was exonerated by NIA and remaining Rs.38 lacs belonged to the applicant and the same were duly accounted for by the applicant. Even otherwise, the question of illegality and dubious nature of the aforesaid currency is subjudice in separate independent proceeding pending before this court in an appeal against the order dated 22.11.2018 passed by Joint Secretary, MHA & designated authority where the accused had prayed for release of the said currency seized by them. He has further contended that ld. SPP has vehemently based his argument on the ground that applicant after his arrest had lied about the origin of funds. However, this argument has to be rejected as the truth has to be ascertained by the court on the basis of evidence on record and not on the assertions of investigating agency. Even otherwise, lying by no stretch of imagination can be taken as a ground for prosecuting someone for heinous offences or curtailing his liberty.

2.19 Ld. Counsel for accused Salman has contended that there is no evidence of existence of a conspiracy as stated in paras 17.2 and 17.3 of the charge-sheet. With regard to paras 17.4 and 17.5, he has contended that the only semblance of evidence which the prosecution has managed is that the funds were to be used for some special purpose. However, the word 'special purpose' subjects to many interpretations and the interpretation given by the NIA cannot be accepted as the only interpretation. He has further contended that the accused had no reasons to believe that he was dealing with a man who had links with a terrorist or a terrorist organization. The only fact that this accused was aware of was that, he was dealing with a Pakistani national. Therefore, the accused may be committing an illegality but unless there is evidence that accused had knowledge that Mohd. Kamran had links with terrorist or terrorist organization, no charge u/s 17 and 21 UA(P) Act is made out against this accused. Even with regard to Mohd. Kamran, there is no evidence that he was a member of FIF. Though money was received by this accused but he had no knowledge that it was to be used for terrorist activities. He has further contended that the fact that this accused was keeping receipts only signifies that he was keeping the accounts.

2.20 Ld. Counsel for accused Arif Gulam Bashir Dharampuria has contended that this accused was an employee of Mohd. Kamran. Merely because this accused was an employee of Mohd. Kamran, it cannot be presumed that he had the knowledge of any links of Mohd. Kamran with any terrorist organization or a declared terrorist. He has further contended that his accused was acting on the instructions of his employer. He has further contended that when the file was sent for sanction before the sanctioning authority, only sanction u/s 17 UA(P) Act was given and sanction for section 120 IPC was refused. Thus, in absence of any charge of conspiracy, no charge u/s 17 UA(P) Act can be framed against this acucsed. He has further contended that the prosecution has heavily relied upon the CD recovered from this accused. However, this CD was having the alleged conversations between his employer and Shahid Mehmood. As this accused was in possession of the CD, it cannot be said that accused was a part of the conspiracy. The prosecution had heavily relied upon document D-122 which are the extraction of e-mails of this accused. However, there is nothing incriminating in these extracted e-mails. Further, the fact that this accused had visited the mosque can only be seen as an employee carrying out the orders of his employer. It is further submitted that it has not been shown the accused in any

manner had the knowledge of existence of any conspiracy. Thus in absence of any evidence on record, the accused cannot be charged for the offences for which he has been chargesheeted.

Findings

3.1 I have considered the rival submissions and gone through the record very carefully.

3.2 The case built up by the investigating agency and presented by the prosecution has two aspects. The first is that money which was sent by accused no. 3 Mohd. Kamran to India had originated from FIF and thus, it was the money from a terrorist organization and therefore, should fall within the definition of terror funding.

3.3 The second aspect is that the money which was sent in India was to be used for terrorist activities. The stand of the prosecution is, that apparently this money was to be used for erection of mosque and marriages of poor Muslim girls etc. i.e. for religious and charitable purposes, however, the clandestine and real purpose of this funding was to create sleeper cells for Lashkar-e-Toiba and Jamat-ud-Dawa operators.

3.4 To support the first rung of its submissions that the money had originated from FIF, the prosecution has urged that

Mohd. Kamran i.e. accused no. 3 was a close associate of one Shahid Mahmood, , the Deputy Chief of FIF, who has been designated as terrorist by United States.

3.5 The contention of prosecution is, that accused no. 3 had conspired with Hafeez Mohd. Saieed, a designated terrorist and Shaheed Mahmood to send money in India apparently for charitable purposes but in reality this money was to be used to create sleeper cells. It has been contended by ld. Spl. PP that the conspiracies are always hatched in secrecy and therefore, it is almost impossible to get direct evidence of such conspiracies and thus, conspiracies can be established by circumstantial evidence.

3.6 In order to prove that Mohd. Kamran was acting at the behest of Shahid Mahmood and resultantly, was acting for FIF, the strongest piece of evidence that the prosecution seeks to rely upon is a CD which is material Ex.M-2 and its transcripts which is D-67. On the basis of the contents of the CD, which according to the prosecution contained conversations between Shahid Mahmood and Mohd. Kamran, prosecution seeks to establish that they were closely associated and involved in various illegal activities including transferring

money to various countries through Hawala Channel and other illegal channels.

3.7. It was contended by ld. Spl. PP that although in the said conversation, there is no mentioning of transfer of any money to India but from the circumstances, it could be safely assumed that if they were transferring money to various countries including Sudan etc., the money which was being transferred by Mohd. Kamran to India was also the FIF money and was being sent at the instance of Shahid Mahmood and thus, at the instance of FIF.

3.8 Countering the same, it has been contended on behalf of the accused that this CD and the transcript of this CD which is D-67 are per se inadmissible in evidence and cannot be even used at the stage of charge. It has been contended that the said CD is admittedly not an original piece of electronic evidence and being secondary evidence, this CD cannot be admissible unless there is a certificate u/s 65B of Evidence Act as is the mandate of Hon'ble Supreme Court in **P.V Anvar v. P.K Bashir, (2014) 10 SCC 433.** Even otherwise, the prosecution has tried to build its case on conjectures and surmises. It wants the court to presume that even though there is no evidence to link the money sent by Mohd. Kamran to

FIF/, as he and Shahid Mahmood were sending money to various countries, the court should presume that money sent to India was also at the behest of Shahid Mahmood and thus FIF. However, such presumption cannot be drawn.

3.9 In rebuttal, ld. Spl. PP had contended that the said CD was recovered from accused Mohammad Arif Gulam Bashir Dharampuria. He was an employee of Mohd. Kamran in Dubai and it is during this process that this conversation was recorded and written on CD and came to be in possession of Mohammad Arif Gulam Bashir Dharampuria. Therefore, this CD has come from a source which in natural course of things could have been in possession of this CD. He has further contended that with regard to the certificate u/s 65-B Evidence Act as it is not known to the agency that who is the person who had prepared this CD, or the computer which was used to create this electronic evidence and further as this electronic evidence belongs to the opposite party, the investigating agency or the prosecution cannot be expected to get a certificate u/s 65-B of Evidence Act. In this regard, he has relied upon the judgment of Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, MANU/SC/0521/2020** and has relied upon the following paras:-

> 29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65- B(4) is not always mandatory.
>
> 30. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies."

3.10 Therefore, the first question which needs to be decided is, whether this CD material Ex.M-2 and resultantly its transcript D-67 are admissible in evidence of not.

3.11 The issue of admissibility is electronic evidence has been an intriguing issue before the courts. The first major pronouncement from the Hon'ble Supreme Court on this issue

came in **State (NCT of Delhi)of Navjot Sandhu (2005) 11 SCC 600**. Thereafter, came the judgment of **Anvar P.V v. P.K Bashir (2014) 10 SCC 433**. The said judgment settled the issue but the issue was reopened in **Shafi Mohd. v. State of H.P (2018) 5 SCC 311**. Law on this issue has finally been laid down by Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors (2020) 7 SCC 1**. Though ld. Spl. PP has also relied upon the same judgment, however, probably inadvertently, he has reproduced the portion of the judgment wherein the opinion of Hon'ble Supreme Court in its earlier judgment in **Shafi Mohd (supra)** was reproduced and it was specifically overruled in **Arjun Pandtirao (supra)**.

3.12 Hon'ble Supreme Court while dealing with this issue in **Arjun Panditrao Khotkar (supra),** considering the previous judgments, finally laid down the law governing the admissibility of electronic evidence. Dealing with this issue, Hon'ble Supreme Court has held as under:-

> 21. Section 65 differentiates between existence, condition and contents of a document. Whereas "existence" goes to "admissibility" of a document, "contents" of a document are to be proved after a document becomes admissible in evidence. Section 65A speaks of "contents" of electronic records being proved in accordance with the provisions of Section 65B. Section 65B speaks of "admissibility" of electronic records

which deals with "existence" and "contents" of electronic records being proved once admissible into evidence. With these prefatory observations let us have a closer look at Sections 65A and 65B.

22. It will first be noticed that the subject matter of Sections 65A and 65B of the Evidence Act is proof of information contained in electronic records. The marginal note to Section 65A indicates that "special provisions" as to evidence relating to electronic records are laid down in this provision. The marginal note to Section 65B then refers to "admissibility of electronic records".

23. Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records.

24. Section 65B (2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2)(a) to 65(2)(d) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections 2(a) to 2(d) must be satisfied cumulatively.

25. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the

manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" – whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it". Here, "doing any of the following things…" must be read as doing all of the following things, it being well settled that the expression "any" can mean "all" given the context (see, for example, this Court's judgments in Bansilal Agarwalla v. State of Bihar (1962) 1 SCR 331 and Om Prakash v. Union of India (2010) 4 SCC 172). This being the case, the conditions mentioned in sub-section (4) must also be interpreted as being cumulative.

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33. The non-obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf – Sections 62 to 65 being irrelevant for this purpose. However, Section 65B(1) clearly differentiates between the "original" document - which would be the original "electronic record" contained in the "computer" in which the original information is first stored - and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65B differentiates between the original information contained in the "computer" itself and copies made therefrom –

> the former being primary evidence, and the latter being secondary evidence.
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> 34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). This being the case, it is necessary to clarify what is contained in the last sentence in paragraph 24 of Anvar P.V. (supra) which reads as "…if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act…". This may more appropriately be read without the words "under Section 62 of the Evidence Act,…". With this minor clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

3.13 Further down the judgment, Hon'ble Supreme Court dealing with the pronouncements in **Tomaso Bruno v. State of UP (2015) 7 SCC 178** wherein the Hon'ble Supreme Court had held that the secondary evidence of the contents of a document can also be read u/s 65 of the Evidence Act and then with the earlier judgment of **Shafi Mohd (supra)**.

37. What is clear from this judgment is that the judgment of Anvar P.V. (supra) was not referred to at all. In fact, the judgment in State v. Navjot Sandhu (2005) 11 SCC 600 was adverted to, which was a judgment specifically overruled by Anvar P.V. (supra). It may also be stated that Section 65B(4) was also not at all adverted to by this judgment. Hence, the declaration of law in Tomaso Bruno (supra) following Navjot Sandhu (supra) that secondary evidence of the contents of a document can also be led under Section 65 of the Evidence Act to make CCTV footage admissible would be in the teeth of Anvar P.V., (supra) and cannot be said to be a correct statement of the law. The said view is accordingly overruled.

38. We now come to the decision in Shafhi Mohammad (supra).

In this case, by an order dated 30.01.2018 made by two learned Judges of this Court, it was stated:

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23. In Tomaso Bruno v. State of U.P. [(2015) 7 SCC 178], a three- judge Bench observed that advancement of information technology and scientific temper must pervade the method of investigation. Electronic evidence was relevant to establish facts. Scientific and electronic evidence can be a great help to an investigating agency. Reference was made to the decisions of this Court in Mohd. Ajmal Amir Kasab v. State of Maharashtra [(2012) 9 SCC 1] and State (NCT of Delhi) v. Navjot Sandhu.

24. We may, however, also refer to the judgment of this Court in Anvar P.V. v. P.K. Basheer, delivered by a three- Judge Bench. In the said judgment in para 24 it was observed that electronic evidence by way of primary evidence was covered by Section 62 of the Evidence Act

to which procedure of Section 65-B of the Evidence Act was not admissible. However, for the secondary evidence, procedure of Section 65-B of the Evidence Act was required to be followed and a contrary view taken in Navjot Sandhu that secondary evidence of electronic record could be covered under Sections 63 and 65 of the Evidence Act, was not correct. There are, however, observations in para 14 to the effect that electronic record can be proved only as per Section 65-B of the Evidence Act.

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29. The applicability of procedural requirement under Section 65-B (4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65B (4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(4) is not always mandatory.

30. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B (4) of the Evidence Act. The applicability of

requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies."

…..

40. Much succour was taken from the three Judge Bench decision in Tomaso Bruno (supra) in paragraph 23, which, as has been stated hereinabove, does not state the law on Section 65B correctly. Anvar P.V. (supra) was referred to in paragraph 24, but surprisingly, in paragraph 26, the Court held that Section 65A and 65B cannot be held to be a complete Code on the subject, directly contrary to what was stated by a three Judge Bench in Anvar P.V. (supra). It was then "clarified" that the requirement of a certificate under Section 64B (4), being procedural, can be relaxed by the Court wherever the interest of justice so justifies, and one circumstance in which the interest of justice so justifies would be where the electronic device is produced by a party who is not in possession of such device, as a result of which such party would not be in a position to secure the requisite certificate.

41. Quite apart from the fact that the judgment in Shafhi Mohammad (supra) states the law incorrectly and is in the teeth of the judgment in Anvar P.V. (supra), following the judgment in Tomaso Bruno (supra) - which has been held to be per incuriam hereinabove - the underlying reasoning of the difficulty of producing a certificate by a party who is not in possession of an electronic device is also wholly incorrect.

……

……

61. We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and

> incorrectly "clarified" in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor (1876) 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.

3.14 Thereafter, the Hon'ble Supreme Court answered the reference in **Arjun Panditrao (supra)** as under:-

> 73. The reference is thus answered by stating that:
>
> 73.1 Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.
>
> 73.2 The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes

impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V. (supra) which reads as "…if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act…" is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,…" With this clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

73.3 The general directions issued in paragraph 62 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

73.4 Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice's Conference in April, 2016.

3.15 Thus, the law which has been finally settled by Hon'ble Supreme Court is very clear that an electronic record produced before the court as evidence, if the primary source is not produced, is only admissible on production of a certificate u/s 65- B Evidence Act and the admissibility of such document is completely governed by the provisions of section 65-B of Evidence Act.

3.16 In the present case, the CD in question is stated to be recovered from Mohammad Arif Gulam Bashir Dharampuria. It is quite possible that prosecution may not be in a position to obtain certificate u/s 65-B of Evidence Act. There is nothing either on record or in submissions that what and if any efforts were made by the NIA to trace or find out the person who prepared this CD. It is also to be seen that despite having the police custody of accused no. 4, the chargesheet does reveal that any efforts were made in this direction. However, at the same time, even the source of this CD is not clear or when it was prepared or the time frame in which it has been prepared. Thus, in absence of certificate u/s 65-B of Evidence act, this CD is not admissible in evidence and the contents of the said CD cannot be considered.

3.17 However, even if for the sake of arguments it is accepted that the CD is admissible in evidence, let us evaluate the contentions of prosecution on facts which emerge through this CD.

3.18 It has been contended by ld. Spl. PP that this conversation in CD reflects that Mohd. Kamran and Shahid Mahmood were working in close association with each other and they were engaged in sending money to various countries. As Shahid Mahmood is Deputy Chief of FIF, it can be presumed that the money which these accused were sending was FIF money. He has further contended that as they were sending money to various countries, though there is no reference to India, it can be presumed that the money which Mohd. Kamran was sending was also being sent on the instructions of Shahid Mahmood and thus, was FIF money. He has further contended that as it was FIF money, it can be presumed that it was sent to achieve the cause of FIF and Jamat-ud-Dawa i.e. creation of sleeper cells.

3.19 If the contents of the CD are considered, these are reflecting conversations between accused no. 3 and Shahid Mahmood, who is stated to be Deputy Chief of FIF. These conversations reflect that both these individuals are engaged in

many illegal activities and transmission of funds in many countries. This far the contentions of ld. Spl. PP is correct. However, there is no reference by any of the accused of any money being sent or to be sent to India or any charitable activities being carried out in India. Therefore, even if the contents of the CD are taken in totality, the said CD cannot be used to link money sent by accused no. 3 to India with FIF or Shahid Mahmood**.**

3.20 However, a contention has been raised by ld. SPP that as accused no. 3 Mohd. Kamran was working very closely with Shahid Mahmood, he should have known that Shahid Mahmood was working for FIF and therefore, by his association with Shahid Mahmood, a further conclusion can be drawn that money which was being sent by Kamran belonged to FIF.

3.21 I find that the contention reproduced above itself shows that there are many 'ifs' involved before this contention can be accepted and this contention is not based on facts but on presumptions which leads to a final presumption that Mohd. Kamran was a member of FIF. However, in my considered opinion, for presumptions to be raised, the basis for such presumptions has to emerge on facts. Meaning thereby, it is

from a fact that we can move towards a presumption but if the starting point of journey which leads to final presumption is a presumption itself, then drawing the final presumption on the basis of initial presumption is a very dangerous proposition.

3.22 I accordingly find that the conclusion raised on behalf of ld. SPP fails the test of applying logical, deductive or inductive reasoning to reach at a conclusion that Kamran was a member of FIF and further that money sent by Mohd. Kamran belonged to FIF. I accordingly find that CD in question and the transcripts thereof, even if read in evidence, fail to raise a grave suspicion that accused Mohd. Kamran was a member of FIF or that the mony set by Mohd. Kamran belonged to FIF.

3.23 The facts, which are now before the court, are:-

i. That Mohd. Kamran is a Pakistani national who is arraigned as accused no. 3.

ii. That Mohd. Kamran came into contact of accused Salman or vice versa that Salman came into contact with Mohd. Kamran.

iii. That Mohd. Kamran and Salman came to an understanding that Mohd. Kamran would remit funds through Hawala Channels to India, which of course is an illegal act, for

construction of mosque in village Uttawal and for other charitable purposes as marriages of poor Muslim girls.

iv. These funds were sent through Hawala and received by Mohd. Salman from accused Salim and Mohammad Hussain Molani.

v. These funds were utilized in construction of mosque and marriage of poor muslim girls.

vi. That accused Arif Gulam Bashir Dharampuria was an employee of Mohd. Kamran in Dubai and on the instructions of Mohd. Kamran, this accused had visited Uttawar to oversee the costruction of mosque and had reported back about the developments to Mohd. Kamran.

vii. That Mohd. Salman was keeping the record/ accounts of money received and has been and was regularly reporting to Mohd. Kamran and working on his instructions with regard to construction of mosque, starting of madrasa in that mosque and marriages of poor Muslim girls.

viii. That Mohd. Salman had sent his regular reports/ records/ accounts to Mohd. Kamran through e-mail. However, he had tried to hide this fact and got the e-mail sent from somebody else.

3.24 From the aforesaid facts, which more or less are undisputed, it is apparent that on the face of it, an illegality was being committed where money was being received from Hawala channels. Thus far, even the accused have not disputed that an illegal act was being committed and have contended that the accused may be prosecuted for those acts but not for terrorism or under UA(P) Act as there is no evidence for those offences.

3.25 However, the prosecution has alleged that there was a secret purpose and a long term plan to these charitable activities and that purpose was to create sleeper cells/ hide outs for terrorists of LeT/JuD/FIF.

3.26 These facts bring us to the next rung of the case of the prosecution that the apparent purposes for which the money was sent and used for was not the real purpose but the real purpose was creation of sleeper cells or support base for LeT/ FIF.

3.27 There is no evidence on record that any sleeper cell or hide outs or base for FIF or LeT had come into existence by use of these funds.

3.28 However, it has been contended by ld. SPP that there are testimonies of the witnesses to the effect that Mohd.

Salman had stated that these funds were being sent or that the mosque was being built for a 'special purpose'. He has contended that this 'special purpose' was none other than creation of sleeper cells. In this regard, reliance has been placed on the testimonies of protected witnesses PWX1 and PWX2.

3.29 PWX1 was involved in construction of the mosque. He has stated that one day, Mohd. Salman misbehaved with him and stated that he had arranged funds from Gulf countries for some special purpose and this mosque only belonged to him. He further stated that the donor of the funds had some different plans which would be revealed at right time. Mohd. Salman further told him to work silently and identify local sympathizers who could be connected with him for any kind of work. Realizing that Samlan was not going to give importance to his advice, he stopped working with Salman and handed over all the records of mosque to Mohd. Salman.

3.30 PWX2 was also somewhat connected to the construction of this mosque. He stated that when he was working at the / on the mosque, he heard Salman talking with someone in abroad about the construction of mosque and the number of the followers who could be trusted for any work. He used to state that the funds were being used properly and used

to say on phone that villagers believed them, listened to and accepted their orders.

3.31 So what has emerged from these statements is, that according to Mohd. Salman, he had raised these funds for some special purpose; the donor had different plans which would be revealed at right time, that local sympathizers should be identified who could be connected with Salman for doing any kind of work and that, Mohd. Salman informed somebody on telephone that villagers believed him, listened to him and accepted his orders and that there could be a number of followers who could be trusted for any kind of work.

3.32 It has been contended by the prosecution that 'the special purpose' referred to by Mohd. Salman in his conversation was none other than the creation of sleeper cells and logistic support / hide outs for the members/ terrorists of LeT. The fact that Mohd. Salman stated that the donor of the funds had different plants for this mosque reflects that these plans included creating support base and sleeper cells for LeT. The fact that Mohd. Salman stated that they were finding sympathizers/ followers who would carry out any kind of work reflect that the work could be of any kind including the terror activities. Thus, the case of the prosecution rests on use of

words : ‘special purpose’, ‘different plans’ and ‘any kind of work’.

3.33 The prosecution has tried to impress that meaning of these words which is to be deciphered is that the special purpose, different plans and any kind of work could only mean terror activities or creation of sleeper cells/ hideouts for terrorists. However, there is no evidence on record on the basis of which such meaning can be given to these words. There is nothing on record to show that there was any code that was being used and has been deciphered wherefrom the meaning which the prosecution seeks to attach to these words can be accepted. Unless there is evidence that there was any hidden meaning to these words and the said meaning is the one which the prosecution seeks to attach to these words, these words have to be taken in their literal meaning. Though there may be some suspicion raised as to what this special purpose was or what those different plans were, however, mere suspicion cannot substitute evidence and it is only the evidence that can be used to assign the meaning which the prosecution seeks to assign to these words. In absence of any evidence that there was a hidden meaning to these words, the meaning which the prosecution seeks to assign can only be assigned to these words if, that is

the only meaning that can be drawn from these words and if there is a possibility of any other meaning being drawn, then the contention of prosecution that use of these words indicate plans of terrorist activities or creation of sleeper cells or providing base for terrorist acts cannot be accepted. On the face of it there can be many interpretations and meanings that these words can have and the imputation which the prosecution seeks to assign can at the most be accepted as one probable explanation and not the sole explanation.

3.34 Ld. Spl. PP has also contended that there were two incriminating messages found in the phone of Mohd. Salman. These are: "*ghee ka intezaam ho gaya hai, bombay wali party bhi aayegi…unke hatho bhijwa denge*"

"*Kamran bhai bhi aaye hai Dubai..aap* ***khidmat*** *me the na isliye aapko nahi pata hai*"

3.35 It has been contended by ld. SPP that word '*ghee*' is a code word which may have been used for explosives or other substances and '*khidmat*' is used by Salman and this reflects that he knows the terror links of Kamran and of person to whom he is talking as *khidmat* is an activity which is done by the people to the terrorists who have undergone terror training.

3.36 It is correct that the alleged incriminating message found in the phone of Mohd. Salman which states that *ghee ka intezam ho gaya hai* is definitively using certain code where the word '*ghee*' stands for something which is not the literal meaning of this word. However, on what basis the prosecution states that the word '*ghee*' is a code for explosives has not been specified. The cipher on the basis of which this code has been deciphered has also not been disclosed before the court. Even the ld. Spl. PP in his own submissions has stated that it could mean explosives or other substances. Therefore, the word '*ghee*' even according to the prosecution could not be taken to only mean explosives. Other substances could be any other substances or things and thus, on the basis of this message, no grave suspicion can be raised linking accused Mohd. Salman to any terror activities.

3.37 Similarly, the word '*khidmat*' has been deciphered by the prosecution as the service of persons who have undergone terrorist training. This could be one meaning which could be assigned to this word but the literal meaning of this word is service and it could be any service. Unless there are surrounding circumstance or any conversation prior to this sentence or after this sentence which would reflect that use of

word *khidmat* in this sentence meant service of persons who had undergone terrorist training, this meaning can not be assigned to this word. Here again the word '*khidmat*' is capable of two interpretations and unless the prosecution establishes that the interpretation which it seeks to give to the word can be the only interpretation that can be drawn, the interpretation put forward by the prosecution cannot be accepted.

3.38 In view of the above discussion, I find that although the activities of accused Mohd. Salman were suspicious in nature and he alongwith other co-accused was engaged in illegal activities of Hawala transactions, however, the prosecution has failed to bring forth any evidence which would raise a grave suspicion that either the funds that were being sent from Dubai and were being received by accused Mohd. Salman through other accused were terror funds / funds originated from terrorist organization or that these funds were intended to be used for terror activities i.e. creation of sleeper cells/ sympathizers / hideouts/ logistic support for the terrorists of LeT/ JuD and FIF.

3.39 Similarly, the other pieces of evidence which have been relied upon by the prosecution such as accused Mohd. Salman keeping a detailed account of the activities of

construction of mosque etc., his regular reporting to Mohd. Kamran and, the personal details of Mohd. Kamran and his family such as passport etc. being found in the mail box of accused Arif Gulam Bashir Dharampuria cannot be said to be of much evidentiary value unless, by evidence on record, a grave suspicion that is raised that Mohd. Kamran was acting on the instructions of FIF or that money which was being sent to India was FIF money and that the said money was to be used for the purposes of FIF. The mere fact the accounts were being maintained or receipts/ reports were being sent to accused Mohd. Kamran by Mohd. Salman cannot be of much consequence. Similarly, as it is the prosecution case only that accused Arif Gulam Bashir Dharampuria was an employee of accused Mohd. Kamran then mere discovery of certain personal records of accused Mohd. Kamran and his family, in the mail box of accused Arif Gulam Bashir Dharampuria, alone cannot raise a grave suspicion of this accused being involved in any conspiracy as has been alleged by the prosecution.

3.40 I accordingly find that the material placed before the court is not sufficient to raise grave suspicion of commission of offences punishable u/s 17, 20 and 21 of UA(P) Act and u/s 120B IPC by accused Mohd. Salman(A-1), Mohd.

Saleem (A-2), Arif Gulam Bashir Dharampuria(A-4) and Mohd. Hussain Molani(A-7). The accused are accordingly discharged for these offences.

PRAVEEN SINGH

Digitally signed by PRAVEEN SINGH
Date: 2021.10.21 04:24:22 +0530

Announced in open court
today on 21.10.2021
(This order contains 67 pages
and each page bears my signatures.)

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