

IN THE COURT OF SHRI SANJAY SANDHIR, ADDITIONAL
SESSIONS JUDGE, PANCHKULA.
(UID No.HR-0102)

State	Versus	
		1. Surinder Dhiman son of Ram Kishan Dhiman (A-1) 2. Chamkaur Singh son of Harender Singh (A-2) 3. Daan Singh son of Bakhtawar Singh (A-3) (in custody) 4. Govind Ram son of Ram Chander (A-4) 5. Dilawar Insan alias Dilawar Siroha son of Chand Ram (A-5) 6. Pardeep Goyal son of Balwant Rai (A-6) 7. Khairati Lal son of Munshi Ram (A-7) 8. Rakesh Kumar (PA) son of Sunder Lal (A-8) 9. Honeypreet @ Piyanka Taneja daughter of Rama Nand Taneja (A-9) (in custody) 10. Sukhdeep Kaur@ Jindu wife of Bagad Singh (A-10) (in custody) 11. Chinder Pal Arora son of Balwant Rai (A-11) 12. Gopal Krishan son of Dina Nath Bansal (A-12) 13. Sharanjeet Kaur wife of Mohinder Singh (A-13) 14. Gurmeet Singh son of Mohinder (A-14) 15. Gurmeet Singh s/o Sh. Roop Singh (A-15) 16. Ved Parkash Bokan son of Ram Kumar (A-16) 17. Pawan Kumar son of Shiv Narain (A-17) 18. Rajinder Singh Mor son of Pirthi Singh (A-18) 19. Ramesh Kumar@ Taneja son of Ram Kishan (A-19) 20. Bhim Sain son of Dharam Chand (A-20) 21. Balraj son of Har Chand (A-21) 22. Harikesh son of Daviya (A-22) 23. Raj Kumar son of Lala Ram (A-23) 24. Ranbir Singh son of Mukhtiar Singh (A-24) 25. Daljit Singh son of Dhoom Singh (A-25) 26. Mahender Partap Singh son of Gian Singh

		<p>(A-26) 27. Puran Chand son of Bula Ram (A-27) 28. Rakam Singh son of Kanwar Pal Singh (A-28) 29. Ram Singh son of Basakha Singh (A-29) 30. Dalbir Singh son of Nand Lal (A-30) 31. Vikram Singh son of Dhirja Ram (A-31) 32. Umed Insan son of Banwari Lal (A-32) 33. Rakesh Kumar@ Gurleen Insan son of Ram Lal (A-33) 34. Om Pal Sharma son of Lakshman Dass (A-34) 35. Vijay Singh son of Udami Ram (A-35) 36. Paramjit@ Param son of Baldev (A-36) 37. Gulab@ Gulabu Mal son of Ved Parkash (A-37) (in custody) 38. Naveen Nagpal@ Gobi Ram son of Madan Nagpal (A-38) (in custody) 39. Pargat Singh son of Major Singh (A-39) 40. Prithvi Raj@ P.R. Nain son of Ram Nath (A-40) (in custody)</p> <p>Note: All accused except accused A-3, A-9, A-10, A-37, A-38 and A-40 on bail.</p>
		<p>FIR No.345 dated 27.08.2017 Under sections 145, 146, 150, 151, 152, 153, 121, 121-A, 120-B, 120, 216, 201 IPC Police Station Sector 5, Panchkula</p>

Argued By: Sh.Pankaj Raj Garg, District Attorney and Ms. Meera Garwa, Public Prosecutor for the State.

Sh. S.K. Rohilla, Advocate for accused **Surender Dhiman, Raj Kumar and Ranbir Singh (on bail)**.

Sh. R.S. Chauhan, Advocate for accused **Govind Ram, Pardeep Goyal, Gopal Krishan, Balraj, Puran Chand, Dalbir Singh, Vikram Singh, Umed Kumar, Om Pal, Vijay Kumar, Pargat Singh, Rakam Singh, Sharanjeet Kaur, Gurmeet Singh, Dilawar Insan and Pawan Kumar**.

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Sh. N.P.S. Waraich, Sh. S.S. Waraich and Sh. Harish Chabhra, Advocates for accused **P.R. Nain, Daan Singh, Sukhdeep Kaur, Gulab @ Gulabmal** and **Naveen @ Gobi Ram (in custody) & accused Rakesh, Rakesh @ Gurleen, Dr. Mahinder Partap Singh** and **Chinder Pal Arora (on bail)**.

Sh. Tanveer A Mir, Sh.Gurdas Singh, Sh. Dhruv Gupta and Sh. Harish Chabra Advocates for accused **Honeypreet (in custody)**.

Sh. Amit Dudeja, Advocate for accused **Khareti Lal, Harikesh and Ram Singh (on bail)**.

Sh. K.D.S. Hooda, Advocate for accused **Chamkaur Singh (on bail not present today)**.

Sh. Sameer Sethi, Advocate for accused **Ramesh Kumar @ Taneja, Ved Parkash and Daljeet Kumar (on bail)**.

Sh. Manoj Arora, Advocate for accused **Gurmeet Singh (on bail)**.

Sh. Jaswant Singh, Advocate for accused **Paramjeet @ Param (on bail)**.

Sh. N.K. Bajaj, Advocate for accused **Rajinder Singh (on bail)**.

Sh. SPS Parmar, Advocate for accused **Bhim Sain (on bail)**.

ORDER :

Accused Chamkaur Singh is not present today, however, an application for seeking exemption from personal appearance of **accused Chamkaur Singh** filed. Heard. In view of the reasons mentioned in the application, the same is allowed and the personal appearance of **accused Chamkaur Singh** is exempted for today only.

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Accused **Daan Singh, Naveen @ Gobi Ram, Gulab @ Gulabu and Dr. Prithvi (produced before me in custody)**. Accused **Honey Preet and Sukhdeep Kaur (in custody produced through Video Conferencing)**. Remaining accused who are on bail present today.

2. Arguments have been heard on charge. In the present case on 25.08.2017 when complainant Sanjiv Mahajan (Journalist City Dainik Bhaskar) alongwith his colleagues Amit Sharma Journalist and Ashwani Rana Photographer Dainik Bhaskar was present at HAFED Chowk he overheard Aditya Insaan and other Dera followers who were talking to each other and were making planning. With regard to the said incident he published news in the newspaper on 26.08.2017 and in the said news item he had mentioned as to how Aditya Insaan and Surender Dhiman Insaan were planning with their accomplices to instigate riots. He verified that the said news was published by him alongwith pictures.

3. Upon the aforesaid complaint made by complainant Sanjiv Mahajan (Journalist City Dainik Bhaskar) FIR in the present case was registered. During the course of investigation, a supplementary statement of complainant Sanjiv Mahajan was recorded on 27.08.2017 wherein he stated that on 25.08.2017 at about 2.45 PM when he alongwith his colleagues Amit Sharma Crime Reporter Panchkula and Photographer

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Ashwani Rana were present at HAFED Chowk, lot of devotees of Baba Gurmeet Ram Rahim were present. Five persons who were calling each other by the names of Surender Dhiman, Aditya Insaan, Pawan, Mohinder and Govind were planning and discussing with each other that as per the planning done on 17.08.2017 in Dera they should get ready and they fixed their duties and stated that in case the court decision comes against Baba then the devotees gathered at different places should be instigated to burn buildings, vehicles and damage should be caused to Government buildings so that Government should come to know about their power. Thereafter, they told the devotees that Baba was having lakhs of supporters within the country and abroad and that the Government would be destroyed within minutes and would be over thrown. The devotees were sitting patiently but the said persons in order to incite told that Baba Ji has been acquitted upon this devotees started dancing and rejoicing but lateron when Baba was convicted their plan was executed. To the similar effect statements of Amit Sharma and Ashwani Rana were recorded on 27.08.2017.

4. Upon completion of investigation first challan was submitted and the same was received by commitment on 11.12.2017. Thereafter, as many as nine supplementary challans were presented and the last challan was received by commitment on 01.03.2019.

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5. After the main challan and supplementary challans were received by commitment, arguments were heard on framing of charge.

ARGUMENTS ON BEHALF OF PROSECUTION

6. Learned District Attorney argued that in the present case upon conviction of Dera Chief Baba Gurmeet Ram Rahim on 25.08.2017 violence broke out in Panchkula. By placing reliance upon the complaint dated 27.08.2017 made by complainant and the supplementary statements of complainant, his colleagues Amit Sharma and Ashwani Rana, it was argued that conspiracy and planning was done at Dera in Sirsa in meeting held on 17.08.2017.

By placing reliance upon the disclosure statements of accused Rakesh Kumar, it was argued that meeting held on 17.08.2017 in Dera Sacha Sauda Sirsa was presided by Honeypreet, Aditya Insan, other accused and others members of the committee of Dera were present. In the said meeting it was planned that on 25.08.2017 the date of judgment the members of the committee would gather at Panchkula alongwith maximum number of devotees from Haryana, Punjab, Rajasthan, Uttar Pradesh and Utrakhand. They should come with stones, dandas, petrol, diesel etc. and by showing the strength of the followers pressure would be built up on Government of India and Haryana Government and thereby favourable decision would come in favour of Dera Baba Gurmeet Ram

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Rahim. In the said meeting it was also decided that in case decision was against Baba Ji then the devotees gathered at Panchkula and other areas would be instigated for rioting, arson and for causing damage to property as a result of which the attention of police force and administration would get diverted and at that time Guruji would be got freed from the police custody at Court Complex, Panchkula. It was also decided that by instigating the followers and by doing large scale rioting Government of India and Haryana Government would be over thrown. As per the said planning duties were assigned and some persons were assigned the duty to get Baba freed from the police custody.

Reliance was also placed upon statements of Norang Ram Ex-Sarpanch and Vinod Kumar MC Panchkula who were witnesses to the disclosure statements of Rakesh Kumar.

Learned District Attorney placed reliance upon statements of Anil Kumar son of Ram Partap, Rajesh Kumar son of Dalip, Usha Rani wife of Om Parkash, Karambir son of Om Parkash, Nirali Devi wife of Surjit, Kulwant Singh son of Darshan Singh and affidavits of HC Vikas Kumar, Pyare Lal son of Karam Chand, Ashok Kumar son of Karam Singh, Bhag Singh son of Tarlok Singh, Naib Singh son of Shamsher Singh and Ved Parkash son of Aroda Ram and also placed reliance upon the transcript of the record of the call interception of Ashok Kumar.

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Learned District Attorney also placed on record a chart containing in tabular form the allegations/charges against the accused persons and argued that:-

- i) **Accused A-1 (Press Reporter/Dera Follower)** had attended meeting at Dera Sacha Sauda Sirsa on 17.08.2017 which was presided over by accused Honeypreet and Aditya Insan. As per the said meeting accused A-1 held meeting with Aditya Insan, Mohinder Insan, Pawan Insan and Govind on 25.08.2017 at HAFED Chowk and when the verdict was given against the Dera Chief he instigated the devotees and got carried out rioting, arson by paying them.
- ii) **Accused A-2 (District President, Panchkula)** also attended the meeting held on 17.08.2017 at Dera Sacha Sauda, Sirsa and had made arrangements for stay and food of the important persons of the Dera. He had also been given ₹1.25 Crores by accused Honeypreet through Rakesh PA for the said purpose and when the verdict was given against the Dera Chief he instigated the devotees and got carried out rioting, arson.
- iii) **Accused A-3 (Member Executive Committee)** had also attended the meeting held on 17.08.2017 at Dera Sacha

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Sauda, Sirsa and as planned in the aforesaid meeting he was present on 25.08.2017 at Panchkula and had given indication to Rakesh PA standing outside Court Complex and had also instigated the devotees for rioting and arson.

iv) **Accused A-4 (Member of 45 Member Committee)**

had also attended the meeting held on 17.08.2017 at Dera Sacha Sauda, Sirsa and as planned in the aforesaid meeting he instigated devotees on 25.08.2017 at Panchkula for rioting and arson.

v) **Accused A-5 (Spokes Person and Administrator MSG Glorious International School and Dera Follower)**

had also attended the meeting held on 17.08.2017 at Dera Sacha Sauda, Sirsa and as planned in the aforesaid meeting he instigated devotees on 25.08.2017 for rioting and arson by staying in Sirsa.

vi) **Accused A-6 (Dera Follower)** had also attended the meeting held on 17.08.2017 at Dera Sacha Sauda, Sirsa and as planned in the aforesaid meeting he instigated devotees on 25.08.2017 for rioting and arson by staying in Sirsa.

vii) **Accused A-7 (Member of 45 Member Committee)**

had also attended the meeting held on 17.08.2017 at Dera

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Sacha Sauda, Sirsa and as planned in the aforesaid meeting he remained at Panchkula from 22.08.2017 to 25.08.2017 and arranged for the food of the devotees. He also got committed rioting and arson.

viii) **Accused A-8 (Sadhu/PA/Joint Secretary Executive Committee)** had also attended the meeting held on 17.08.2017 at Dera Sacha Sauda, Sirsa and as planned in the aforesaid meeting he instigated devotees on 25.08.2017 for rioting and arson.

ix) **Accused A-9 (Adopted daughter and Trustee)** had held the meeting held on 17.08.2017 at Dera Sacha Sauda, Sirsa and had planned in the aforesaid meeting that in the event of decision against Dera Chief rioting is to be done and planning was made to get Dera Chief freed from police custody. She also by giving indication instigated the devotees gathered at Panchkula for arson and damage and attack on security forces.

x) **Accused A-10 (Dera Follower/ Sewadar and Accomplice of A-9)** had planned/ conspired with A-9 and after decision against Dera Chief she instigated the lady devotees gathered at Sirsa and got committed arson and

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damage. Thereafter, she helped A-9 to escape and prevented her arrest.

xi) **Accused A-11 (Director Films and Dera Follower); A-12, A-16, A-18 to A-25, A-27, A-30, A-32, A-34, A-35 (Member of 45 members of the Dera Committee/Dera Followers); A-17 (Journalist of Newspaper Sach Kahu/Dera Follower) & A-26 (Dera Follower & SMO Shah Satnam Ji Speciality Hospital, Dera Sacha Sauda, Sirsa)** attended the meeting on 17.08.2017 and instigated devotees and got conducted rioting and arson.

xii) **Accused A-13, A-14, A-15 & A-39 (Dera Followers/ Sewadars)** helped A-9 and A-10 by giving shelter in their house to prevent their arrest.

xiii) **Accused A-28, A-29, A31, A-36 (Dera Followers/Sewadars)** attended the meeting on 17.08.2017 and instigated devotees and got conducted rioting and arson and **A-28** also gave ₹21,000/- to Pawan Insan.

xiv) **Accused A-33 (Sadhu & Trustee Member Executive Committee of the Dera), A-37 (Member & Trustee), A-38 (Vice Chairman/Member Executive**

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Committee) attended the meeting on 17.08.2017 and instigated devotees and got conducted rioting and arson.

xv) **Accused A-40 (Doctor Shah Satnam Ji Hospital & Senior Vice Chaiman of the Management Committee of Dera)** attended the meeting on 17.08.2017 and instigated devotees and got conducted rioting and arson.

Learned District Attorney also placed on record the details of loss and damage said to have been caused at different places during agitation/riots after conviction of Dera Sacha Sauda Chief and argued that there was prima facie case against accused A-1 to A-12, A-16 to A-38 and A-40 for the commission of offences punishable under sections 145, 146, 150, 151, 152, 153, 121, 121-A, 120-B IPC and prima facie case was made out against accused A-13, A-14, A-15 and A-39 for the commission of offences punishable under section 216 IPC and they may be charged accordingly.

DEFENCE ARGUMENTS

ARGUMENTS ON BEHALF OF ACCUSED RAKESH

KUMAR S/O SUNDER LAL (A-8), RAKESH @ GURLEEN (A-33), P R NAIN (A-40), GULAB SINGH (A-37), DAAN SINGH (A-3), NAVEEN @ GOBI RAM (A-38), C.P.ARORA (A-11),

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**SUKHDEEP KAUR (A-10) AND DR. MOHINDER PARTAP
SINGH (A-26).**

7. Learned defence counsel argued that the present case was registered on the complaint made by complainant Sanjiv Mahajan Press Reporter of Dainik Bhaskar. As per his complaint dated 25.08.2017 he is said to have heard conversation between Aditya Insan and other followers of Dera with regard to which he published news on 26.08.2017. It was argued that in the complaint dated 27.08.2017 complainant had mentioned that the accused persons were planning to instigate riots. There was unexplained delay in reporting the matter to the police. It was argued that supplementary statement of complainant Sanjiv Mahajan was recorded which was an attempt to improve the initial complaint and in the said supplementary statement also he had stated that five persons calling themselves as Surender Dhiman, Aditya Insan, Pawan, Mohinder and Govind were planning that as per planning done on 17.08.2017 in case decision was given against Baba Ji they should instigate the crowd to burn buildings, vehicles, Government buildings so as to make the Government realize their power and that they would destroy the Government. It was argued that statements of Amit Sharma and Ashwani Rana colleagues of complainant were hearsay statements. Had they heard the facts given in the supplementary statement of complainant earlier on 25.08.2017 then

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the matter should have been reported to the police or in newspaper.

It was argued that in the statements of Rakesh Kumar son of Sunder Ram, Vinod Kumar Councilor and Norang Ex Sarpanch relied upon by the prosecution, it was mentioned that **“Pitaji Ko Court Panchkula Se Surakshit Frar Karvane Ki Duty Meri Tatha Chalak Phool Singh Vah Private PSO Pritam Singh Vah Punjab Police Ke PSO Karamjit Ki Lagai gai thi”**.

It was argued that even if for the sake of arguments, the version of the complainant is believed still the purpose of instigation of riots was not a general purpose against the Government but was a private purpose only concerned with the decision of case regarding Baba Ji.

It was argued that confessional statements relied upon by the prosecution are inadmissible in evidence and as per section 121 and 121-A IPC to prove the offence of waging war or conspiracy to commit offence under section 121 IPC, the purpose, intention and object is important and the said object and purpose distinguishes the crime of waging war from that of rioting. Reliance in this regard was placed upon commentary by Dr. Hari Singh Gaur 9th Edition on Penal Law of India. It was argued that where the intention was to accomplish some private purpose interesting to those who are engaged in it then the offence under section 121 and 121-A IPC is not made out.

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It was argued that as per commentary of Indian Penal by Rattan Lal and Dheeraj Lal 32nd Edition in order to decide as to offence under section 121 IPC has been committed, it is to be kept in mind that the number of persons and the manner in which they are equipped or armed is not material but the true criteria is that the object of the gathering must be to attain by force and violence an object of general public nature thereby striking directly against the King's authority. It also requires that there must be an insurrection and there must be force accompanying that insurrection which must be for an object of general nature. It was argued that it is neither the number or force but the purpose and intention which constitutes the offence and distinguishes it from riot. It was further argued that in the present case also the object was not of general or public in nature but the same was purely private purpose of either securing a favourable verdict in favour of Baba Ji or in the event the verdict was against Baba then to get him freed from the police custody. Hence, no offence under sections 121 and 121-A IPC was made out.

It was further argued that case bearing FIR No.336 dated 26.08.2017 PS Sector 5, Panchkula u/s 148, 149, 224, 307, 511 IPC & u/s 25/54/59 Arms Act and 121, 121-A, 130, 120-B IPC, 186, 188, 225, 341, 353 IPC was registered with regard to a planned action by certain persons who were in security of Baba for his escape from police custody after

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verdict was given against Baba. It was argued that in said case bearing FIR No.336 dated 26.08.2017 vide order dated 24.08.2018 passed by the court of Shri Rajan Walia, the then learned Additional Sessions Judge, Panchkula no charge under sections 121 and 121-A IPC was framed, the said FIR was registered prior to registration of the present FIR and the present case is also an off shoot of case bearing FIR No.336 dated 26.08.2017. It was argued that planning and intention of accused was to gather large number of public to pressurize the Government to get favourable order in favour of Baba Gurmeet Ram Rahim and to get Baba Ji freed by using force in case of his conviction was to achieve private purpose and none of the objects being of public nature no charge under section 121 and 121-A IPC can be framed against the accused persons.

ARGUMENTS ON BEHALF OF ACCUSED

HONEYPREET (A-9).

8. Learned defence counsel argued that there was no direct act attributable to accused Honeypreet. The disclosure statements relied upon by the prosecution cannot be formed basis for framing of charges under sections 121 and 121-A IPC. In FIR No.336 dated 26.08.2017 which relates to same alleged conspiracy also charges under sections 121 and 121-A IPC were dropped by the court of Shri Rajan Walia, the then learned Additional District Judge, Panchkula. There was no material on

record to establish that the act of the accused persons was an act of waging war or attempting or abetting to wage war against Government of India. It was argued that the sections 121 and 121-A of IPC occur in the chapter Offences against the State and by relying upon the judgment passed in case *State of NCT Delhi vs Navjot Sandhu, (2005) 11 SCC 600*, it was argued that the acts of terrorism constitute the offence of waging war. The unlawful assemblies, riots insurrections are offences which run into each other and in all the said offence normal tranquility of society is disturbed but the expression waging war will not include all the acts of disruption of public peace and order irrespective of their magnitude and repercussion. It was argued that a balanced approach is required to be adopted. The alleged acts can at the most be termed as an acts of desperation, rioting but cannot be termed as an acts challenging the sovereignty of the country.

Learned defence counsel also in support of his arguments placed reliance upon the following findings of the Hon'ble Apex Court given in case titled *Nazir Khan and others vs State of Delhi, 2003(8) SCC 461*, which are as under:-

“34. The expression “waging war” means and can only mean waging war in the manner usual in war. In other words, in order to support a conviction on such a charge it is not enough to show that the persons charged have contrived to

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obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the government troops. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and that their intention in resisting the troops of the Government was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining the possession of the machinery of government or until those in possession of it yielded to the demands of their leaders.”

Besides this reliance was also placed upon the judgments passed in cases *Hardik Bharatbhai Patel vs State of Gujarat and others, 2015(4) Crimes 462 (Guj.)*; *National Investigating Agency vs Wasim Akram Malik, 198 (2013) DLT 296*; *State of Assam vs Javed Wakar, (2013) 5 GauLR 1* and *Sanjeev Bhandari vs Mehrunisa & ors, 2010 SCC Online Del 3095*.

9. On behalf of the remaining accused the learned defence counsel reiterated the aforesaid arguments regarding the offences punishable under sections 121 and 121-A IPC and argued that no prima facie case was made out against the accused persons for commission of offences punishable under sections 121 and 121-A IPC. Besides this some

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following additional submissions with regard to some accused were made:-

ARGUMENTS ON BEHALF OF ACCUSED

PARAMJEET SINGH (A-36).

10. Learned defence counsel argued that the accused was not named in disclosure statement of any other accused. As per CDR his location was not of Ambala and no Consumer Application Form was produced, no statement of any witness was recorded that the accused was seen at Panchkula.

ARGUMENTS ON BEHALF OF ACCUSED

BHIM SAIN (A-20)

11. Learned defence counsel argued that there was no allegation against the accused in the FIR and there was no connecting evidence with specific allegations.

ARGUMENTS ON BEHALF OF ACCUSED RAMESH

TANEJA (A-19), VED PARKASH (A-16) AND

DALJEET KUMAR (A-25).

12. Learned defence counsel argued that in the present case purpose/aim/objective behind the occurrence was personal/ private. There was difference in riot and waging war because of the difference in mensrea and in the present case the occurrence was neither a Terrorist Act

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nor an Act which would amount to waging war because the purpose was purely personal/private hence no case for commission of offences under sections 121 and 121-A IPC was made out.

ARGUMENTS ON BEHALF OF ACCUSED GOVIND RAM (A-4), PARDEEP GOYAL (A-6), GOPAL KRISHAN (A-12), BALRAJ (A-21), PURAN CHAND (A-27), DALBIR SINGH (A-30), VIKRAM SINGH (A-31), UMED KUMAR (A-32), OM PAL (A-34), VIJAY KUMAR (A-35), PARGAT SINGH (A-39), RAKAM SINGH (A-28), SHARANJEET KAUR (A-13), GURMEET SINGH(A-14), DILAWAR INSAN (A-5) AND PAWAN KUMAR (A-17).

13. Learned defence counsel submitted same arguments as were advanced by other defence counsel regarding there being no prima facie case under sections 121 and 121-A IPC and also submitted that accused A-13 and A-14 were not named as 45 member committee.

ARGUMENTS ON BEHALF OF ACCUSED

SURENDER DHIMAN (A-1), RAJ KUMAR (A-23), RANBIR SINGH (A-24).

14. Learned defence counsel argued that statements under section

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161 CrPC and disclosure statements were relied upon but nothing was recovered and they are of no consequence. Accused Surender Dhiman was not in the list of governing body.

ARGUMENTS ON BEHALF OF ACCUSED

CHAMKAUR SINGH (A-2)

15. Learned defence counsel argued that with regard to incident of HAFED Chowk FIRs No.343, 345 and 337 were registered and accused Surender Dhiman and Chamkaur Singh were facing prosecution in all the three FIRs which shows that there was false implication.

ARGUMENTS ON BEHALF OF ACCUSED

RAJINDER SINGH (A-18).

16. Learned defence counsel argued that no call details regarding the accused were produced to show his involvement.

ARGUMENTS ON BEHALF OF ACCUSED KHARETI

LAL (A-7), HARIKESH (A-22) AND RAM SINGH (A-29).

17. Learned defence counsel argued that complaint of Sanjiv Mahajan was silent of waging war. There was no evidence regarding the alleged meeting dated 17.08.2017.

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ARGUMENTS ON BEHALF OF ACCUSED

GURMEET SINGH SON OF ROOP SINGH (A-15).

18. Learned defence counsel argued that only charge under section 216 IPC is liable to be framed against accused A-15.

FINDINGS

19. In the present case as per prosecution the most serious allegations are regarding commission of offences of waging of war against government punishable under Section 121 I.P.C., and conspiracy to commit offence punishable under Section 121, which is an offence punishable under Section 121-A I.P.C. Before proceeding further the sections 121 and 121-A of IPC are reproduced hereunder:-

“121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.-

Whoever wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life], [and shall also be liable to fine].

121A. Conspiracy to commit offences punishable by Section 121

Whoever within or without [India] conspires to commit any of the offences punishable by Section 121, or

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conspires to overawe, by means of criminal force or the show of criminal force, [the Central Government or any State Government[***]], shall be punished with [imprisonment for life], or with imprisonment of either description which may extend to ten years, [and shall also be liable to fine].

Explanation. To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.”

20. In the judgment passed in case titled *Hardik Bharatbhai Patel v. State of Gujarat 2016(1)RCR Criminal 542*, the position of law regarding offences punishable under Sections 121 and 121-A IPC was discussed and held:

“31. The most important is the intention or purpose behind the defiance or rising against the Government. The intention and purpose of the warlike operations directed against the Governmental machinery is an important criterion. If the object and purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contradistinction to a private and a particular purpose; it is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force, arms and by defiance of Government troops or armed personnel deployed to maintain the public tranquility. The number of force, the manner in

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which they are arrayed, armed or equipped is immaterial. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or fire arms. Then, the other settled proposition is that there need not be the pomp and pageantry usually associated with war such as the offenders forming themselves in the battleline and arraying in a war like manner. Even a stealthy operation to overwhelm the armed or other personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war.

33. Section 121 of the I.P. Code embraces every description of war whether by insurrection or invasion. The true criterion is the purpose or intention with which the violent acts are alleged to have been committed. The object of such violent acts must be to attain by force and violence, an object of a general public nature thereby striking directly against the Government's authority.

38. The Apex Court in the case of **State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru, 2005(11) SCC 600** has explained in details as to what amounts to waging war or abetting or attempting to waging war, punishable under Section 121 of the I.P.C. and has held as under:

272. Sections 121 and 121A occur in the chapter "Offences against the State". The public peace is

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disturbed and the normal channels of the Government are disrupted by such offences which are aimed at subverting the authority of the Government or paralyzing the constitutional machinery. The expression "war" preceded by the verb "wages" admits of many shades of meaning and defies a definition with exactitude.

276. Unlawful assemblies, riots, insurrections, rebellions, levying of war are offences which run into each other and not capable of being marked off by perfectly definite boundaries. All of them have in common one feature, namely, that the normal tranquility of a civilised society is, in each of the cases mentioned, disturbed either by actual force or at least by the show and threat of it.

277. To this list has to be added "terrorist acts" which are so conspicuous nowadays. Though every terrorist act does not amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war. Terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government, tantamount to waging war irrespective of the number involved or the force employed.

282. The intention and purpose of the warlike operations directed against the governmental machinery is an important criterion. If the object and

purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contradistinction to a private and a particular purpose, that is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force and arms and by defiance of Government troops or armed personnel deployed to maintain public tranquility.

284. The court must be cautious in adopting an approach which has the effect of bringing within the fold of Section 121 all acts of lawless and violent acts resulting in destruction of public properties, etc., and all acts of violent resistance to the armed personnel to achieve certain political objectives. The moment it is found that the object sought to be attained is of a general public nature or has a political hue, the offensive violent acts targeted against the armed forces and public officials should not be branded as acts of waging war. The expression "waging war" should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government. A balanced and realistic approach is called for in construing the expression "waging war" irrespective of how it was viewed in the long past. An organised movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal

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of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of levying war.”

39. The Supreme Court in the case of **Jamiludin Nasir v. State of West Bengal [2014 (7) SCC 443]** considered the decision of *Navjot Sandhu Alias Afsan Guru (supra)* and culled out the following general principles to be applied:

"(a).The most important is the intention and purpose behind the defiance or raging against the government.

(b) Though the modus operandi of preparing for the offensive act against the Government may be quite akin to the preparation in a regular war, it is often said that the number of force, the manner in which they are arrayed, the arm and or equipments are immaterial.

(c) Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or firearms.

(d) There need not be the pomp or pageantry usually associated with war such as the offenders forming themselves in battle line and arraying in a warlike manner.

(e) The Court must be cautious in adopting an approach which has the effect of bringing within the fold of Section 121 all acts of lawless near and violent acts resulting in destruction of public property, etc.

(f) The moment it is found that the object sought to be

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attained is of a great public nature or has a political hue the offensive violent act targeted against the armed force and public officials should not be branded as acts of 'waging war'.

(g) The expression 'waging war' should not be stretched too far to hold that all acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of 'waging war' against the government.

(h) A balanced and realistic approach is called in construing the expression 'waging war' irrespective of how it was viewed in the long past.

(i) An organised movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of 'waging war'.

(j) Neither the number engaged nor the force employed nor the species of weapon with which they may be armed is really material to prove the offence of waging war.

(k) The single most important factor should be to think that in a case that is being considered of waging or attempting to wage war against the Government of India, what is the target of attack chosen by the conspirators and the immediate objective sought to be achieved thereby.

(l) The planned operations if executed what is the

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extent of disaster spelt out to the whole nation. Whether a war like situation lingering for days or weeks would have prevailed and such offensive acts of unimaginable description and devastation would have posed a challenge to the Government and the democratic institutions for the protection of which the Government of the day stands.

(m) Was it mere desperate act of a small group of persons who were sure to meet with death is to ignore the obvious realities and to stultify the wider connotation of the expression of war chosen by the drafters of IPC.

(n) The undoubted objective and the determination of the offenders was it to impinge on the sovereign authority of the nation and its government."

21. From the facts, circumstances and record of the case including the sanction orders passed by the Government it has emerged that regarding judgment of the CBI Court, Panchkula which was to be pronounced on 25.08.2017 a meeting was said to have been held on the night of 17.08.2017 by accused A-9 and was attended by other accused in which it was said to have been decided/planned that:-

- i) The repute, honour of Baba was to be maintained in every situation.
- ii) More and more Dera followers were to be gathered at

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Panchkula and other places on 25.08.2017 i.e. the date of decision/ judgment by CBI Court, Panchkula.

iii) In case the decision/judgment was pronounced against Baba then rioting/ arson was to be got carried out and Baba Gurmeet Ram Rahim Singh was to be rescued from the police custody and for the said purpose the followers from different States were to be instructed to gather at Panchkula with stones, dandas, lathis, petrol and chatris and force was to be attacked in case of obstruction to Baba who was to be rescued by attacking the police even at the cost of lives or overturning the Government.

22. As per the aforesaid discussed position of law in cases involving offences under sections 121, 121-A IPC the most important element is the intention and purpose behind the defiance or uprising against the Government and the object and intention must be to attain by use of criminal force and violence an object of general public nature striking directly against the Government Authority. Till the judgment was pronounced by the CBI Court, Panchkula against Baba there was no use of any criminal force by the devotees/ followers to overawe the Government.

In the present case also at this stage the material question

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which has arisen at this stage is as to whether the alleged planning in the aforesaid meeting dated 17.08.2017 and the violence, rioting, arson after pronouncement of the judgment by the CBI Court, Panchkula makes a prima facie case of waging war against the Government and under sections 121 and 121-A IPC.

23. It has been held in the case *Hardik Bharatbhai Patel v. State of Gujarat (supra)* that:-

“The offence of waging war against the Government and committing a mammoth riot may often run into each other but at the same time there is a fine distinction between them. Where the rising or tumult is merely to accomplish some private purpose, interesting only to those engaged in it, and not resisting or calling in question the Government authority or prerogative, then the tumult, however, numerous or outrageous the mob may be, is only a riot. But wherever the rising or insurrection has for its object a general purpose, not confined to the peculiar interests of the persons concerned in it, but common to the whole community, and striking directly the Government authority, then it assumes the character of treason.”

In judgment passed in the case *State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru (supra)*, it was held by the Hon'ble Apex Court that unlawful assembly, riots, insurrections, rebellions are offences which run into each other and do not have perfectly definite

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boundaries. All of them have common feature that tranquility of the society is disturbed.

The Hon'ble Apex Court in the case of **Jamiludin Nasir v. State of West Bengal (supra)** held that:

“the expression “waging war” should not be stretched too far to hold that all acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of “waging war” against the Government.”

24. In the present case as discussed hereinabove as per the planning of the alleged meeting dated 17.08.2017, the object was of private nature and the primary object was to gather the devotees in large numbers for favourable decision for Baba and in case the decision was given against Baba, it was allegedly planned to carry out rioting, arson and to attack the police to get the Baba freed from police custody. The object was thus confined to the interest of the Dera followers/ devotees and not common to the whole community and the object sought to be attained was not of a great public nature.

25. The learned District Attorney submitted documents regarding loss and damage said to have been caused by rioting/ arson but the said record is not part of the challan and this case do not relate to causing injury, death of any person or causing loss damage of public or private property. Admittedly FIR No.336 dated 26.08.2017 was registered for

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attempt to get Baba freed from police custody after pronouncement of verdict against him but even no charge under sections 121 and 121-A IPC was framed against the accused in the said case.

26. In view of the aforesaid discussion, therefore, the accused are discharged from the offences punishable under Sections 121 and 121-A IPC. Since the remaining offences are triable by the Magistrate, therefore, the present case is sent back to learned Chief Judicial Magistrate, Panchkula for further proceedings in accordance with law. Necessary entry be made in CIS. The file of the present case alongwith record thereof be sent to the said court. **The accused who are on bail are directed to appear before the said court on 06.11.2019. The accused who are in custody shall also be produced in the said court on the next date. The accused A-9 (Honeypreet) & A-10 (Sukhdeep Kaur) who are being produced through video conferencing be produced through video conferencing before the said court on the next date.**

Pronounced in open Court.

Dated: 02.11.2019.

(satish)

(Sanjay Sandhir),
Additional Sessions Judge,
Panchkula. UID NO.HR-0102

Note: All the thirty three pages of this order have been checked and signed by me.

(Sanjay Sandhir),
Additional Sessions Judge,
Panchkula. UID NO.HR-0102