

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

NIA RC No. RC-11/2011/NIA/DLI

National Investigation Agency

Versus

**1. Mohammad Shafi Shah @ Doctor @ Dawood @ Nisar,
son of late Sh. Abdul Gani Shah,
R/o Watmohalla, Papchan,
PS Bandipora, District Bandipora,
Jammu & Kashmir.**

**2. Talib Lali @ Talib Hussain Lali @ Waseem @ Abu Umer,
son of Sh. Khan Zaman,
R/o Marigul, Bazipora, Ajas,
District Bandipora.**

**3. Muzaffar Ahmad Dar @ 19 @ Gaznavi @ Mohd. Ali
son of Sh. Abdul Khaliq Dar,
R/o Chichiloor, Post Office and PS Magam,
District Budgam, Jammu & Kashmir**

**4. Mushtaq Ahmad Lone @ Mushtaq.Aalam
son of Sh. Abdul Hamid Lone,
R/o Kanelwan, Bijbehara, Anantnag,
Jammu & Kashmir.**

.....Convicts

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25.10.2021

ORDER ON SENTENCE

1. Convicts Mohammad Shafi Shah @ Doctor @ Dawood @ Nisar, Talib Lali @ Talib Hussain Lali @ Waseem @ Abu Umer, Muzaffar Ahmad Dar @ 19 @ Gaznavi @ Mohd. Ali and Mushtaq Ahmad Lone @ Mushtaq.Aalam stand convicted for various offences.

2. This case was lodged with allegations that Hizb-ul-Mujahideen (HM), one of the most active terrorist outfit in J&K, had been regularly receiving funds originating from neighbouring countries for carrying out terrorist activities in India and that in the garb of an organization namely, Jammu Kashmir Affectees Relief Trust (JKART), the said terrorist outfit is actively involved in furthering the terrorist activities in India.

3. On 27.09.2021, following charges were framed against the convicts :-

Accused no.	Charges
1,2, 11 and 12	120B IPC, 121A IPC, 18 UAPA

1 Mohd. Shafi Shah @ Doctor	17 UAPA and 40 UAPA/ 17 and 40 UAPA r/w section 120B IPC, section 20 UAPA and in alternative section 38 UAPA
2 Talib Lali	17 UAPA and 40 UAPA/ 17 and 40 UAPA r/w section 120B IPC, 18A, 18B UAPA, 20 UAPA and in alternative section 38 UAPA.
11 Muzzafar Ahmad Dar	17 UAPA and 40 UAPA/ 17 and 40 UAPA r/w section 120B IPC, 20 UAPA and in alternative section 38 UAPA.
12 Mushtaq Ahmad Lone	17 UAPA and 40 UAPA/ 17 and 40 UAPA r/w section 120B IPC, 20 UAPA and in alternative section 38 UAPA.

4. On 27.09.2021, all the above named convicts, after duly understanding the charges and after having legal advise, pleaded guilty to all the charges.

5. Vide judgment dated 04.10.2021, above named convicts were convicted as under:-

Accused no.	Charges
1 Mohd. Shafi Shah @ Doctor	120B IPC, 121A IPC, 18 UAPA, 17 UAPA and 40 UAPA/ 17 and 40 UAPA r/w section 120B IPC, section 20 UAPA and in alternative section 38 UAPA
2 Talib Lali	120B IPC, 121A IPC, 18 UAPA, 17 UAPA and 40 UAPA/ 17 and 40 UAPA r/w section 120B IPC, 18A, 18B UAPA, 20 UAPA and in alternative section 38 UAPA.
11 Muzzafar Ahmad Dar	120B IPC, 121A IPC, 18 UAPA, 17 UAPA and 40 UAPA/ 17 and 40 UAPA r/w section 120B IPC, 20 UAPA and in alternative section 38 UAPA.

12 Mushtaq Ahmad Lone	120B IPC, 121A IPC, 18 UAPA, 17 UAPA and 40 UAPA/ 17 and 40 UAPA r/w section 120B IPC, 20 UAPA and in alternative section 38 UAPA.
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6. Arguments:

6.1. Ld. Sr. PP for NIA has contended that the offence is of very serious in nature. All the convicts had facilitated in transfer of funds and arms and ammunition for carrying out terrorist activities in India and the role of convict Mohd. Shafi Shah and Muzzafar Ahmad Dar is large. He has thus contended that all the convicts should be given maximum punishment.

6.2 Per contra, ld. Counsel for convict Mohd. Shafi Shah has contended that the convict has voluntarily pleaded guilty to the charges. This shows his intention to reformation. It is further submitted that the convict was merely involved in distribution of funds and he was never involved in any bomb blast or killings. The convict has been running in custody since the year 2011. He has further contended that the convict may be given a chance to reform. He therefore prays that the convict may be sentenced for the period

already undergone by him.

6.3 Convict Mohd. Shafi Shah has filed written submissions for being lenient towards him. He has submitted that at the time of offence, he was immature and was in his early age. The environment around him too cause a great effect on his mistakes and he was unable to decide about his future and thus has fallen in this offence. He has prayed that leniency be shown towards him and he will not be involved in any unlawful acts again.

6.4 Ld. Counsel for convict Talib Lali @ Waseem @ Abu Umer has contended that the convict has pleaded guilty to the charges framed against him and has promised that he will never indulge in any criminal activity henceforth. The convict belongs to a very poor family and has his family i.e. his wife and two minor daughters to look after. It is further submitted that the convict has lost his parents because of lack of medical treatment. The convict has spent more than 08 years in jail and further punishment would cause great prejudice to his wife and minor daughters. The convict is the sole bread earner of his family.

6.5 Ld. Counsel for convict Muzzafar Ahmad Dar has contended that the convict has been running in custody since the year 2009 though not in this case. It is further submitted that since the time in custody, there is no complaint against the convict. The convict has

voluntarily pleaded guilty to the charges framed against him which shows his chances of reformation. It is further submitted that the convict has been educating himself in the custody. This points towards his intention to reformation. It is thus prayed that the convict may be sentenced for the period already undergone by them.

6.6 Convict Muazzafar Ahmad Dar has filed written submissions submitting that the long years of imprisonment have badly shattered his family life and economic life and has also affected the psychological health of his old aged and ailing parents. He has further submitted that he has old aged parents who need someone at home to look after them. There is no other male member in his family. Both his parents are suffering from multiple ailments including heart conditions, ortho neural and respiratory issues. He has a minor daughter to look after. Convict himself suffers from multiple diseases. The documents of his ailments have been attached with the written submissions. He further submits that his inclination towards non violence is even supported by certain supplementary and additional documents filed by the NIA where he had urged the militant leaders to shun violence and enter into negotiations with the government. He further submitted that during his stay at Central Jail Srinagar, he had motivated and persuaded many ex-militants not to get recycled and adopt normal social life. He further submits that during his jail period,

he remained engaged in academic activities for most of the time. He was in final semester of his LL.B – 3 years degree course. He has completed his Masters in Political Science while being lodged at Tihar Jail. He regrets and feel remorseful for the unlawful acts or omissions he remained indulged in past and undertakes to work for peace and prosperity of his society.

6.7 Ld. Counsel for convict Mushtaq Ahmad Lone has contended that as per the allegations, this convict was merely an overground worker. There were only 2/3 bank receipts which had the signatures of this convict. The convict was never involved in any direct violence. Even the money allegedly transferred by the convict was never used for any arms and ammunition. The convict has voluntarily pleaded guilty to the charges framed against him which shows his chances of reformation. It is thus prayed that the convict may be sentenced for the period already undergone by them.

6.8 Convict Mushtaq Ahmad Lone has also filed written submissions praying a lenient view towards him. He has submitted that he was arrested in some FIRs in February 2011 and after sustained counselling, he was admitted on bail. He did not indulge in any unlawful activities since 2011. He further submitted that during the long detention, his family suffered a lot. His wife suffers from depression. His father in law, with whom his wife was residing, has

been diagnosed with food pipe cancer. His parents suffers from various ailments. His younger brother is mentally unfit. He further submits that he is remorseful and regret for his acts of omission and for commission of unlawful acts.

7. Findings

7.1 In view of the judgment of Hon'ble Delhi High Court in **Vishal Yadav v. State of Govt of UP in Crl. A. 910/2008**, socio economic reports of the convicts were called for. Reports regarding the conduct of the convicts and their inclination towards reformation were also called from the concerned jail authorities.

7.2 The socio economic report of convict Mohd. Shafi Shah shows that the family of the convict has two members i.e. his brother and his wife. However, the economic and social status of the family of the convict is stable.

7.3 The socio economic report of convict Talib Lali reflects that the family of convict is living in a joint single storey house. The family of convict has inherited a land measuring 12 marlas and 05 kanals. Out of this 1/4th share has been inherited by the convict. The economic and social status of the family of the convict is stable and they are running their livelihood through agricultural resources.

7.4 The socio economic report of convict Muzzafar Ahmad Dar shows that the convict had crossed LOC in the year 1990 for

obtaining illegal arms/ ammunition training and he was active with proscribed outfit HM. The convict was arrested in the year 1993 and was released in the year 1996. Thereafter, the convict again joined the proscribed terrorist outfit HM and was arrested in the year 2009. The convict is unmarried. His father is a pensioner of PDD Department. The convict has two brothers and two sisters and all of them are married. Family of convict possesses 04 kanals of agricultural land and 12 kanals of orchard land. The family of the convict is a lower middle class family.

7.5 The socio economic report of convict Mushaq Ahmad Lone shows that the family of the convict is a joint family having 06 members. The family of convict is residing in a two storeyed semi concrete tin roofed ancestral house. The family of convict is having 10 kanals of land. Out of which 04 kanals are under agriculture cultivation and 06 kanals are under apple orchard and this is the main source of income of the family. Further the family members of the convict are not involved in any subversive activities.

7.6 In order to further find the chances of reformation of convicts, I had summoned their conduct report from the concerned jails.

7.7 In the conduct report of convict Mohd. Shafi Shah, it is submitted that during his stay in jail no. 15, nothing adverse has been

recorded against him. However, during his stay in jail no. 4, an FIR no. 390/17 was lodged against him u/s 186/353/332/120B/341 IPC at PS Hari Nagar. His overall conduct is unsatisfactory.

7.8 In the conduct report of convict Talib Lali, it is submitted that the conduct of the convict has been unsatisfactory. He has been punished thrice in the jail as once he was trying to damage the CCTV camera lens installed in his barrack and two times, mobile phone, sim card, improvised mobile charger, mobile data cable etc. were recovered from him. It is further submitted that in an interaction with convict, it was revealed that he had inclination to reform.

7.9 In the conduct report of convict Muzzafar Ahmad Dar, it is submitted that the conduct of the convict has not been satisfactory and he was given punishment in jail for shouting, hooting and abusing on provocation of co-inmates against jail administration. It is further submitted that in an interaction with convict, it was revealed that he had inclination to reform.

7.10 In the conduct report of convict Mushtaq Ahmad Lone, it is submitted that as per the jail records, the conduct of the convict is unsatisfactory due to punishment tickets issued against him in the jail. The punishment tickets are enclosed with the conduct report.

8. I have considered the rival submission and weighed the mitigating and aggravating circumstances.

8.1 Before proceeding to sentence the accused principles upon which these convicts are to be sentenced need to be culled out and guidance in this regard is being drawn from various judicial pronouncements.

8.2 It is now a well settled law that the punishment should be commensurate to the crime. Hon'ble Supreme Court in **Soman v. State of Kerala, (2013) 11 SCC 382**, has held as under:-

17. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness? In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

8.3. Further Hon'ble Supreme Court in **Soman's case (supra)** after considering the earlier pronouncements of the Apex Court had concluded as under:-

27. From the above, one may conclude that:

1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.
2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.
3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.
4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.
5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.

8.4 Further, Hon'ble Supreme Court in **State of M.P v. Mehtab, Crl. Appeal No. 270/2015 dated 13.02.2015** had observed :

We find force in the submission. It is the duty of the Court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society.

8.5 Further, Hon'ble Supreme Court in **Alister Anthony Pereira v. State of Maharashtra, AIR (2012) SC 3802** had held:-

Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and

gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing..... The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

8.6 In **Ankush Maruti Shinde v. State of Maharashtra,**
AIR 2009 SC 2609, Hon'ble Supreme Court had held as under:-

17. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

...

20. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping,

misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

9. In view of the aforesaid pronouncements of the Hon'ble Apex Court, following principles of sentencing emerge:-

- (a) The punishment inflicted for the crime should be proportional to the crime committed;
- (b) What is the proportional punishment is to be decided on the basis of consequences of the criminal action and that what those consequences were intended or not;
- (c) While sentencing the punishment, especially in heinous cases, which have larger effect on the society such as terrorism, should also serve as deterrent;
- (d) The convicts should be given an opportunity to reform and while awarding the punishment, chances of reformation of the convicts are also be considered;
- (e) Aggravating and mitigating circumstances should be balanced to reach at a conclusion that what should be the just punishment in an individual case based on the facts and circumstances of the

case;

(f) For the crimes which have greater social impact and which are against larger public interest, the punishment awarded has to be exemplary in nature so as to serve as a deterrent.

10. The convicts have been convicted for conspiring to commit terror activities in India and of conspiracy of waging war against the Government of India. In furtherance of this conspiracy, the convicts had engaged in the activities of terror financing.

11. It has been argued on behalf of the convicts that there is no case against the convicts where they have actively participated in any terror activities which resulted in loss of life and property and therefore, a lenient view needs to be taken as their actions have not resulted in loss of life or property. On the face of it, this argument seems very powerful. However, I find that the hand which provides the gun or the motivation to take up the gun is equally liable as the hand which ultimately fires that gun. The convicts, in this case, may not have been charged and convicted for any direct terror act leading to loss of life or property however, the proxy war in the State of J&K which has been raging since decades has resulted in loss of numerous lives and destruction of State property.

12. The convicts who have primarily been convicted for terror financing have provided funds for the activities of HM and said

funds have been used for the destruction of property and taking human lives. Thus, merely because, in the present case, the convicts were not directly responsible for loss of life and property, it cannot be accepted that they were not responsible for loss of life and destruction of property because of the terrorist activities of HM. On the contrary, I find that the funding network run by these convicts on the instructions of their handlers sitting in Pakistan had a greater responsibility for the terror acts committed by HM as in absence of such funding, which financed the cadres of HM and provided logistic support, it would not have been possible to commit those terror activities. Thus, I find that the terror funding has to be kept in the same category as that of actual terror acts if not in a higher category. Thus the crimes for which the convicts have been convicted are of very serious nature as they had hatched a conspiracy to strike at the core of this nation and actions were taken to execute that conspiracy. This being said, the principals of sentencing as detailed above are to be applied to each convict in order to award a just and adequate punishment.

13. Convict Mohd. Shafi Shah

13.1 This convict has been found guilty for entering into a criminal conspiracy of waging war against the government of India, for conspiring to commit terror activities and in pursuance to that conspiracy of raising funds for and funding terror activities

as well as being a member / divisional commander of proscribed terrorist organization HM. The crime for which the convict has been found guilty is an act of treason and there can be no greater crime which affects the social order than this crime.

13.2 Thus, the convict deserves to be punished severely but at the same time, while deciding the punishment to be awarded, the aggravating and mitigating circumstances, as is the mandate of law, are to be considered by the court to arrive at a just and fair punishment.

13.3 The mitigating circumstances which the convict has pleaded are:-

- (a) The convict has voluntarily pleaded guilty to the charges and therefore, remorseful of his acts and in view of the same, leniency should be shown to him.
- (b) Convict was merely involved in distribution of funds and was never involved in any kind of blast or killings
- (c) Convict has been in custody since the year 2011 and should be given a chance to reform
- (d) At the time of commission of offence, he was immature and the environment around him caused great effect on his mistakes and he was unable to decide his future which led him to commit the offences.

13.4 I have carefully considered the aggravating and mitigating circumstances.

13.5 It is correct that usually in general crimes, the stress while awarding the punishment has to be on reformative aspect of the theory of sentencing. However, in crimes such as terrorism, the punishment awarded not only has to be proportional to the crime committed but has to be exemplary enough to serve as a deterrent. Convict may have joined the terrorist organization HM at a young age but he continued with his membership with this organization and rose to higher ranks of this proscribed organization and it cannot be accepted that during this long period, he was still an immature person who was not knowing the consequences of his acts or that the funds which he was receiving, generating or distributing for terror activities, were leading to destruction of life and property.

13.6 It is correct that the convict has voluntarily pleaded guilty to the charges and due weightage should be given for this conduct but merely because the convict has pleaded guilty, the court cannot be too lenient so as not to award punishment which is not proportional to the gravest of the crimes committed.

13.7 I accordingly find that the mitigating circumstances put forth by the convict can only have an effect that maximum

sentence provided for the offences for which he has been convicted may not be awarded but at the same time, these mitigating circumstances are also not of the nature which would call for the minimum sentence to be awarded as prayed for by the convict.

13.8 I accordingly find that ends of justice shall be served by sentencing convict Mohd. Shafi Shah as under:-

U/s 120B and 121A IPC

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 12 years,
- ii. A fine of Rs.15,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 18 UA(P)A

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 12 years,
- ii. A fine of Rs.15,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 17 and 40 UA(P) Act r/w 120B IPC

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 05 years,

ii. A fine of Rs.5,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of three months.

U/s 17 and 40 UAPA

i. The convict is sentenced to undergo rigorous imprisonment for a period of 12 years,

ii. A fine of Rs.15,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 20 UA(P) Act

i. The convict is sentenced to undergo rigorous imprisonment for a period of 12 years,

ii. A fine of Rs.15,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

All the sentences shall run concurrently. Benefit of section 428 Cr.P.C shall be given to the convict.

14. Convict Talib Lali

14.1 The aggravating circumstances which have emerged from the case are, the gravity of offence where conspiracy was entered to wage war against the government of India, the

conspiracy to commit terror actively and consequent funding of terror activities. These circumstances make the offence very grave and call for punishment which should be proportionate to this crime and exemplary enough to serve as a deterrent.

14.2 The mitigating circumstances which the convict has pleaded are:-

(a) The convict has voluntarily pleaded guilty to the charges and promised that he will never indulge in any criminal activity.

(b) The convict belongs to a very poor family and has his family i.e. his wife and two minor daughters to look after.

(c) The convict has spent more than 08 years in jail and further punishment would cause great prejudice to his wife and minor daughters.

(d) The convict is the sole bread earner of his family.

14.3 I have carefully considered the aggravating and mitigating circumstances.

14.4 The mitigating circumstances which have been put forth by the convict on the basis of which lesser sentence has been sought need to be considered and one positive aspect which has to be kept in mind is that the convict has voluntarily pleaded guilty to the charges framed against him. However, as already discussed, pleading guilty alone and the financial or social condition of the

convict would not call for a sentence which would be completely inadequate and disproportionate to the crime committed by the convict and thus, the prayer of the convict for awarding minimum sentence cannot be accepted. At the same time, the prayer of the prosecution for awarding maximum punishment for the offence for which he had pleaded guilty cannot be accepted. It is also to be kept in mind that the convict was a lower functionary in the organizational structure of HM.

14.5 I accordingly find that ends of justice shall be served by sentencing convict Talib Lali as under:-

U/s 120B and 121A IPC

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 18 UA(P)A

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 18A UA(P)A

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 18B UA(P)A

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 17 and 40 UA(P) Act r/w 120B IPC

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 05 years,
- ii. A fine of Rs.5,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of three months.

U/s 17 and 40 UAPA

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In

default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 20 UA(P) Act

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

All the sentences shall run concurrently. Benefit of section 428 Cr.P.C shall be given to the convict.

15. Convict Muzzafar Ahmad Dar

15.1 The aggravating circumstances which have emerged from the case are, the gravity of offence which has already been discussed.

15.2 The mitigating circumstances which the convict has pleaded are:-

- (a) The convict has been running in custody since the year 2009 and since the time in custody, there is no complaint against the convict.
- (b) The convict has voluntarily pleaded guilty to the charges framed against him which shows his chances of reformation.
- (c) The convict has been educating himself in the custody and this points towards his intention to reformation.

15.3 In his written submissions, he has pleaded that long years

of imprisonment has badly shattered his family life and economic life and has also affected the psychological health of his old aged and ailing parents. He has further submitted that he has old aged parents who need someone at home to look after them. There is no other male member in his family. Both his parents are suffering from multiple ailments including heart conditions, ortho neural and respiratory issues. He has a minor daughter to look after. Convict himself suffers from multiple diseases. He further submitted that he has already shown inclination towards non violence when he had urged the militant leaders to shun violence and enter into negotiations with the government.

15.4 I have carefully considered the aggravating and mitigating circumstances.

15.5 The convict has claimed certain mitigating circumstances. However, there are no mitigating circumstances which may have led him to commit the offence and which would mitigate the gravity of offence, have been put forth.

15.6 The convict has been convicted of terror activities, being a member of proscribed terrorist organization and not only has he been a member of HM but he was one of the highest functionaries of HM and thus, he is responsible for loss of great many lives and destruction of property.

15.7 The fact that convict has voluntarily pleaded guilty to the charges can be a mitigating circumstance, however, at the same time, the contention of the convict that there is no one to look after the parents of the convict cannot be accepted as a mitigating circumstance especially in view of the fact, that as per the socio economic report, the convict has two more brothers namely G.H. Mohd. Dar and Irfan Ahmad Dar. Not only this, it is reported that the younger brother of convict is taking care of his parents and is residing with them.

15.8 Therefore, considering the fact that convict had committed a crime most foul, the mitigating circumstances as have been put forth by the convict are not of the nature which would call for the minimum sentence as prescribed as it would defeat the ends of justice.

15.9 I accordingly find that ends of justice shall be served by sentencing convict Muzzfar Ahmad Dar as under:-

U/s 120B and 121A IPC

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 12 years,
- ii. A fine of Rs.15,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 18 UA(P)A

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 12 years,
- ii. A fine of Rs.15,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 17 and 40 UA(P) Act r/w 120B IPC

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 05 years,
- ii. A fine of Rs.5,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of three months.

U/s 17 and 40 UAPA

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 12 years,
- ii. A fine of Rs.15,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 20 UA(P) Act

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 12 years,
- ii. A fine of Rs.15,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple

imprisonment for a period of six months.

All the sentences shall run concurrently. Benefit of section 428 Cr.P.C shall be given to the convict.

16. Convict Mushtaq Ahmad Lone

16.1 The aggravating circumstances which have emerged from the case are the gravity of offence as discussed already.

16.2 The mitigating circumstances which the convict has pleaded are:-

(a) He was merely an over ground worker.

(b) He was never involved in any direct violence and the money transferred by the convict was never used for any arms and ammunition

(c) He voluntarily pleaded guilty to the charges.

(d) He was arrested in some FIR in the year 2011 and after sustained counseling, he was admitted on bail. He did not indulge in any unlawful activities since 2011.

(e) During the long detention, his family suffered a lot. His wife suffers from depression. His father in law, with whom his wife was residing, has been diagnosed with food pipe cancer.

(f) His younger brother is mentally unfit.

(g) He is remorseful and regret for his acts of omission and for commission of unlawful acts.

16.3 I have carefully considered the aggravating and mitigating circumstances.

16.4 It is correct that this convict is admittedly was an over ground worker who was transferring funds on the directions of his handlers/ superiors. Therefore, his case has to be treated a differently from the other two convicts namely Mohd. Shafi Shah and Muzzafar Ahmad Dar who were senior functionaries of HM. However, the fact is that it is the over ground workers who maintain the supply chain of terror funds which finally result in terror activities can not be lost sight of. At the same time, as it has not been disputed by NIA that after his initial arrest in the year 2011 in some other FIR where was working as over ground worker, he had not committed any criminal activity till his arrest in this case and thus, I do not find it a fit case to award maximum punishment to this convict.

16.5 I accordingly find that ends of justice shall be served by sentencing convict Mushtaq Ahmad Lone as under:-

U/s 120B and 121A IPC

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple

imprisonment for a period of six months.

U/s 18 UA(P)A

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 17 and 40 UA(P) Act r/w 120B IPC

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 05 years,
- ii. A fine of Rs.5,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of three months.

U/s 17 and 40 UAPA

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,
- ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

U/s 20 UA(P) Act

- i. The convict is sentenced to undergo rigorous imprisonment for a period of 10 years,

ii. A fine of Rs.10,000/- is also imposed upon the convict. In default of payment of fine, the convict shall undergo simple imprisonment for a period of six months.

17. All the sentences shall run concurrently. Benefit of section 428 Cr.P.C shall be given to the convict.

18. Copy of order on sentence be given to the convicts free of cost.

**Announced in open court
today on 25.10.2021.**

(This order contains 32 pages
and each page bears my signatures.)

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