

**In the Court of the Chief Judge,  
City Sessions Court, Bichar Bhawan, Calcutta.**

Present: **Shri Siddhartha Kanjilal**  
JO Code No: – WB01057  
Chief Judge, City Sessions Court, Calcutta.

**Sessions Trial No. 02 (07) of 2022**

**Sessions Case No. 12 of 2020**

CNR – WBCS01-000290-2020

(S.T.F Case No. 01 dated 02.02.2018 under sections 121A/467/474/120B of the Indian Penal Code, read with Section 4 and 5 of the Explosive Substances Act, Section 18 and 20 of the Unlawful Activities Prevention Act and 14A(b) of the Foreigner's Act)

**The State of West Bengal**

.....prosecution.

Vs.

**Accused no. (A-1) Shish Mohammad**

..... Accused Person.

**(Charges under sections 121A/120B of the Indian Penal Code, read with Section 4 and 5 of the Explosive Substances Act, Section 18 and 20 of the Unlawful Activities Prevention Act)**

**Ld. Advocates for the Prosecution/ State :**

1. Shri Ganesh Chandra Maity (Ld. Senior P.P)
2. Shri. Debtanu Dutta (Ld. Junior P.P)

**Ld. Advocates for the Accused Person i.e (A-1) Shish Mohammad :**

1. Abu Salim
2. Fazle Ahmed Khan

Date of Offence	2 <sup>nd</sup> day of February, 2018
Date of FIR	2 <sup>nd</sup> day of February, 2018
Date of Charge Sheet	1 <sup>st</sup> day of May, 2018 1 <sup>st</sup> supplementary charge sheet :- 18 <sup>th</sup> day of June, 2018 2 <sup>nd</sup> supplementary charge sheet :- 7 <sup>th</sup> day of Sep, 2018 3 <sup>rd</sup> supplementary charge sheet :- 3 <sup>rd</sup> day of Nov, 2018 4 <sup>th</sup> supplementary charge sheet :- 23 <sup>rd</sup> day of Feb, 2019 5 <sup>th</sup> supplementary charge sheet :- 27 <sup>th</sup> day of April, 2019 6 <sup>th</sup> supplementary charge sheet :- 9 <sup>th</sup> day of July, 2019 7 <sup>th</sup> supplementary charge sheet :- 28 <sup>th</sup> day of Sep, 2019 8 <sup>th</sup> supplementary charge sheet :- 17 <sup>th</sup> day of March, 2020 9 <sup>th</sup> supplementary charge sheet :- 30 <sup>th</sup> day of Nov, 2020
Date of Framing of Charges	21 <sup>st</sup> day of July, 2022
Date of commencement of Evidence	21 <sup>st</sup> day of July, 2022
Date on which Judgement is reserved	NIL
Date of Judgement	27 <sup>th</sup> day of September, 2022
Date of Sentencing Order, if any	27 <sup>th</sup> day of September, 2022

**Accused Details**

Rank of the Accused	Name of Accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428, Cr.P.C
A-1	Shish Mohammad	03.02.2018	Custody since arrest	121A/120B IPC, 4/5 E.S Act and 18/20 UA (P)	Convicted	R.I for five years and six months each	Four years and seven months

				Act		and fine of Rs. 2,000/-each i.d three months imprisonment each for all the offences	
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**Order no. 25 dated 27.09.2022**

The convict namely, **(A-1) Shish Mohammad** is produced before this court at **2:00 p.m.** this day.

Convict namely, **(A-1) Shish Mohammad** submits that he is about 27 years old and student and has old ailing parents and nine brothers and sisters and their brothers are working as a day labourer. He further submits that he belongs to poor family and he prays for mercy and lesser punishment, so that he can return to the mainstream of the society and live a healthy life.

Ld. Advocates Abu Salim and Fazle Ahmed Khan for the convict submits that convict being youth has stepped into the provocation but he is repenting for his misdeeds and he prays that an opportunity be given so that the convict can atone for the misdeeds he has done and he prays for mercy.

Ld. P.Ps of Special Task Force, Shri. Ganesh Maity and Shri. Debtanu Dutta submit that the convict is repenting for his misdeeds and the offence he has committed and now he has pleaded guilty which shows he has admitted their offence but he is also repenting for his acts.

Ld. P.Ps of Special Task Force, Shri. Ganesh Maity and Shri. Debtanu Dutta further submit that such a move by the convict is certainly a step for his repentance and also for reconnecting with the society and the convict is eager to return to the mainstream of the society to lead a normal life.

Ld. P.Ps of Special Task Force, Shri. Ganesh Maity and Shri. Debtanu Dutta further submit that this attitude of the convict be considered at the time of passing sentence.

Ld. P.Ps of Special Task Force, Shri. Ganesh Maity and Shri. Debtanu Dutta further submit that the matter is totally upon the discretion of this Court regarding quantum of sentence.

Heard all the sides.

*“I do not punish you for stealing the ship but so that the ship may not be stolen”, said a Judge. “Penalty keeps the people under control, penalty protects them, penalty remains awake when people are asleep, so the wise have regarded the punishment (Danda) as a source of righteousness”, said Manu.* The chief end of the law of Crime is to make the evil-doers an example and a warning to all that are like-minded with them. The primary consideration which generally weighs with the Courts in the matter of sentence on the accused is to face their sentence imposed in such an effectively impression on the accused that the life of crime does not pay. Judge William J.Campbell of American Federal Court pointed out: Where the law

violation is a matter of principle, the offenders must be sentenced as examples otherwise human nature being what it is, we would most assuredly face with great number of less stable Citizens.

Now let us the punishment provided as per ***Indian Penal Code 1860, Unlawful Activities (Prevention) Act, 1967 and Explosive Substances Act, 1908.***

**Indian Penal Code 1860:**

**Section 121A:-** Whoever within or without India conspires to commit any of the offences punishable by section 121, or 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.

**Section 120B. Punishment of criminal conspiracy.** – (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two year or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

**Unlawful Activities (Prevention) Act, 1967:**

**Section 18. Punishment for conspiracy, etc.** – Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directs or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

**Section 20. Punishment for being member of terrorist gang or organization.** – Any person who is a member of terrorist gang or a terrorist organization, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

**Explosive Substances Act, 1980**

**Section 4 in The Explosive Substances Act, 1908**

[4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.—Any person who unlawfully and maliciously—1[4. Punishment for attempt to cause explosion, or for making or

keeping explosive with intent to endanger life or property.—Any person who unlawfully and maliciously—"

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India, shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,—

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.]

#### **Section 5 in The Explosive Substances Act, 1908**

1[5. Punishment for making or possessing explosives under suspicious circumstances.—Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—1[5. Punishment for making or possessing explosives under suspicious circumstances.—Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—" ‘

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.]

#### **Fact found from the case record are as follows :-**

This convict along with other accused persons on or before 02.02.2018 being the members of banned terrorist organization namely JMB entered into criminal conspiracy with each other within India and/or outside India conspired to launch

terrorist attack on the Buddhist religious leaders such as Dalia Lama at Buddha Gaya, Monasteries, other communities or wage war against Government establishments of India, Government of Bangladesh/Government of Myanmar for taking vengeance against the oppression inflicted upon Rohingya Muslims by the Myanmar Government troops by means of criminal force or show of force or collecting of explosives, explosive substances, detonators, materials to prepare IED and other incriminating articles such as Books, papers.

Moreover, this convict along with other accused had also acquired and/or possessed special category explosive substance viz IED in a concealed manner with intent to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property.

Not only that this convict along with other accused persons had also committed or attempted to commit or advocated or abetted, knowingly facilitate a terrorist act or any preparatory to commission of a terrorist act.

No doubt that the convict pleaded guilty and the Court should also need to take a positive aspect. The statement of the convict show that he has realized his mistakes and he is repenting his deeds.

If that be the so, then the Court should take a pragmatic approach giving the convict an opportunity to reform himself to be a dutiful citizen of the country.

Hence, this Court finds that there is necessity to show some leniency while imposing punishment on the convicts but that should not go a wrong message to the society.

The convicts have prayed guilty stating that due to immaturity they have stepped into an illegal act and now are repenting for their misdeeds and want to return in the mainstream of the society and also want to lead a healthy life.

Considering all these, **convict (A-1) Shish Mohammad** is directed:

(a) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs 2,000/- (Rupees Two Thousand only)** in default rigorous imprisonment for **three months** for the offence punishable under section **121A of the Indian Penal Code, 1860.**

(b) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs 2,000/- (Rupees Two Thousand only)** in default rigorous imprisonment for **three months** for the offence punishable under section **120B of the Indian Penal Code, 1860.**

(c) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs.2,000/-(Rupees Two Thousand)** in default rigorous imprisonment for **three months** for the offence punishable under section **18 of the Unlawful Activities (Prevention) Act, 1967.**

(d) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs.2,000/-(Rupees Two Thousand)** in default rigorous imprisonment for **three**

**months** for the offence punishable under section **20 of the Unlawful Activities (Prevention) Act, 1967.**

(e) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs.2,000/-(Rupees Two Thousand)** in default rigorous imprisonment for **three months** for the offence punishable under section **4 of The Explosive Substances Act,1908.**

(f) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs.2,000/-(Rupees Two Thousand)** in default rigorous imprisonment for **three months** for the offence punishable under section **5 of The Explosive Substances Act,1908.**

Sentences of imprisonment of all the offences would run concurrently.

Convict namely, **(A-1) Shish Mohammad** was in custody from **03.02.2018** till **27.09.2022 (four years and seven months)** will be set off **under Section 428 of Cr.P.C.**

Considering all this I do not think that the convict should not get the benefit of section 360 of the Criminal Procedure Code or section 4 of Probation of Offenders Act.

Hence, it is,

**O r d e r e d**

That the : **Convict (A-1) Shish Mohammad** is directed:

(a) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs 2,000/- (Rupees Two Thousand only)** in default rigorous imprisonment for **three months** for the offence punishable under section **121A of the Indian Penal Code,1860.**

(b) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs 2,000/- (Rupees Two Thousand only)** in default rigorous imprisonment for **three months** for the offence punishable under section **120B of the Indian Penal Code,1860.**

(c) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs.2,000/-(Rupees Two Thousand)** in default rigorous imprisonment for **three months** for the offence punishable under section **18 of the Unlawful Activities (Prevention) Act, 1967.**

(d) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs.2,000/-(Rupees Two Thousand)** in default rigorous imprisonment for **three months** for the offence punishable under section **20 of the Unlawful Activities (Prevention) Act, 1967.**

(e) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs.2,000/-(Rupees Two Thousand)** in default rigorous imprisonment for **three months** for the offence punishable under section **4 of The Explosive Substances Act,1908**.

(f) to suffer rigorous imprisonment for **five years** and **six months** and fine of **Rs.2,000/-(Rupees Two Thousand)** in default rigorous imprisonment for **three months** for the offence punishable under section **5 of The Explosive Substances Act,1908**.

Sentences of imprisonment of all the offences would run concurrently.

Convict namely, **(A-1) Shish Mohammad** was in custody from **03.02.2018** till **27.09.2022 (four years and seven months)** will be set off **under Section 428 of Cr.P.C.**

Sentences of imprisonment of all the offences of the above mentioned convict would run concurrently.

Personal documents and belongings of the convict be returned to the convicts after serving the period of sentence and also after taking proper verification and identification.

All the documents and properties of this case be retained and preserved till the period of appeal.

***The quantum of punishment will be adjusted with the punishment passed in Sessions case no. 35 of 2018 and the convict had to suffer the highest punishment after the quantum of punishment be adjusted with Sessions case no. 35 of 2018.***

The above mentioned convict was made aware that he can prefer an appeal before the Hon'ble High Court through legal aid and on the quantum of sentences and in response, the convict stated that he has already engaged lawyer and he may prefer an appeal before the Hon'ble High Court through his Ld. Advocate as appointed by him after discussing with his family members.

Let a copy of this judgment be given to the Secretary, High Court Legal Services Committee, Calcutta for appointing Advocate on behalf of the convict for preferring appeal before the Hon'ble High Court.

Let a copy of this judgment be sent to the Secretary, High Court Legal Services Committee, Calcutta under section 365 of Criminal Procedure Code.

The Superintendent of Presidency Correctional Home, Alipore where the convicts are received upon conviction shall also communicate to them of such right to prefer an appeal with legal aid in the record of the jail.

In the event the convict desire to prefer an appeal through the Legal Aid, The Superintendents of Presidency Correctional Home, Alipore shall forth remit necessary papers not only to the registry of the High Court Calcutta but also to the

Secretary, High Court Legal Services Committee, Calcutta for taking necessary steps in the matter.

Let a certified copy of this order be given to the convict free of cost under section 363 (2) of Criminal Procedure Code.

Let a copy of this order be sent to the Commissioner of Police, Calcutta Branch, under section 365 of Criminal Procedure Code.

The The Superintendents of Presidency Correctional Home, Alipore where the convict has been received after conviction shall also communicate to him of such right to prefer an appeal with legal aid in the record of the jail.

In the event the convict desire to prefer an appeal through the Legal Aid, The Superintendent of Presidency Correctional Home, Alipore shall forth remit necessary papers not only to the registry of the High Court Calcutta but also to the Secretary, District Legal Services Authority, City Civil Court, Calcutta for taking necessary steps in the matter.

At the time of passing judgement, Ld. Advocate for the **convict namely (A-1) Shish Mohammad** verbally submits that the abovenamed convict be transferred to the **Beherampur Correctional Home, Murshidabad** so that he can interact with his family members.

*The **Superintendents of Presidency Correctional Home, Alipore** be directed to take a sympathetic approach so that the **convict namely (A-1) Shish Mohammad** be transferred to **Beherampur Correctional Home, Murshidabad** maintaining all the guidelines of the Jail Code.*

Dictated and corrected by me.

Chief Judge,  
City Sessions Court, Calcutta

Chief Judge,  
City Sessions Court, Calcutta