

**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. 01 (07) of 2022

Sessions Case No. 15 of 2020

CNR – WBCS01-000301-2020

(S.T.F Case No. 06 dated 16.02.2019 under sections 130/465/468/471/120B of the Indian Penal Code, read with section 4/5 of the Explosive Substances Act and Section 19/18/19/20 of the Unlawful Activities Prevention Act)

The State of West Bengal

.....prosecution.

Vs.

Accused no. (A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj

@ Md. Yousuf,

..... Accused Person.

(Charges under sections 130/120B of the Indian Penal Code, read with section 4/5 of the Explosive Substances Act and Section 18/20 of the Unlawful Activities Prevention Act)

Ld. Advocates for the Prosecution/ State :

1. Shri Dipankar Kundu (Ld. Senior P.P)
2. Shri. Biswajit Guha Thakurta (Ld. Junior P.P)

Ld. Advocate for the Accused Person i.e (A-8):

Fazle Ahmed Khan

Order no. 28 dated 04.11.2022

Today is fixed for production of the accused person, namely **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf**, before this Court in physical mode and hearing of the petition dated **28.09.2022** filed on behalf of this accused person praying for pleading guilty.

Accused person namely, **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf**, is produced from J.C in physical mode.

Ld. P.Ps for representing the State and Ld. Advocate for the accused person is present at the time of hearing.

Hazira filed on behalf of State.

Heard the accused person, Ld. Advocate of the State and Ld. Advocate for the accused person.

Perused the record and the relevant documents from where this Court finds that :-

On 16.02.2019 a complaint was lodged by Assistant Commissioner of police, STF who was the I.O of STF P.S case no. 1 of 2018 dated 02.02.2018 under section 120B/121/121A/123/125 of the Indian Penal Code read with section 4/5 of Explosive Substance Act along with Section 18/20 of the Unlawful Activities (Prevention) Act stating interalia that during investigation of STF P.S case no 1 of 2018 it revealed that accused Asif Iqbal @ Nadim belonging to Jamaat-ul-Mujahideen Bangladesh (JMB) a banned Terrorist Organization in Bangladesh being a member and activists of the said JMB in connivance with Kader Kazi, Ariful @ Arif of Assam, Saleheen, Habibur, Mintu, Ijaz, Arif @ Ali of Bangladesh,

Rabiul, Akram, Docter, Sajjad, Kausar @ Baro Bhai, Anowar and others had entered into a criminal conspiracy of aiding, planning, assisting and preparing themselves to take an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai during his transportation from Presidency Correctional Home, Alipore to City Sessions Court, Calcutta and subsequently on 26.02.2019 Mosibur Rahaman and Ruhul Amin @ Saifullah were arrested with huge explosives and being led by these two arrested persons other explosives were also seized.

C.D further reveals that on 27.02.2019 Sajjad Ali @ Assadulah was taken into custody and on 04.03.2019 one paper chit containing some writings in Bengali language mentioning the name of Arif and Kausar, one full white page having drawing of route map mentioning "Karagar" in one end and "Court" in other end along with one EPIC Card were seized from the I.O of STF case no. 1 of 2018 and these documents were originally seized from that accused who is also an accused in this case and thereafter other accused were arrested on different time and place and on different grounds.

Record further reveals that accused Kader Kazi has unveiled that they had a plan to make an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai when he would be produced from Correctional home to Court.

After investigation the I.O of this case was satisfied that as per materials collected, all these accused persons had made greater conspiracy to make an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai and for which the I.O submitted charge sheet being charge sheet no. 19 of 2019 dated 16.05.2019 under section 120B/130 of the Indian Penal Code and later the I.O submitted supplementary charge sheet being charge sheet no. 13 of 2020 dated 18.02.2020 under section 4/5/6 of the Explosive Substance Act and Section 16/18/19/20 of the Unlawful Activities (Prevention) Act against all the accused persons and section 465/468/471 of the Indian Penal Code against accused no. 6) Ariful Islam @ Arif @ Ataur @ Aktretur @ Mota Anas @ Sahid and section 120B/130 of the Indian Penal Code against accused nos. 8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf, 9) Sk. Ashadullah @ Arif @ Rafikul Islam and 10) Jahidul Islam @ Kausar @ Boma Mijan and section 14A of the Foreigners Act against accused no. 10) Jahidul Islam @ Kausar @ Boma Mijan.

After perusing the C.D this court finds that all the accused persons are already facing trial in another case for the commission of offence for waging war or attempting to wage war against the country and in this particular case, there are documents that these accused persons assisted or aided for the escape of State Prisoner and JMB chief Kausar @ Baro Bhai from the correctional home on the way to court and so there is sufficient ground to form charge against all the ten accused persons under sections 130 read with section 120B of the Indian Penal Code.

The I.O has also submitted charge sheet under section 16/18/19/20 of the Unlawful Activities (Prevention) Act in respect of all the accused persons. The documents as per C.D does not reveal any such act of these ten accused persons that they had committed a terrorist activities as defined u/s 15 of the Unlawful Activities (Prevention) Act nor any of the document reveals that these accused persons have attempted or concealed any person knowing that such person is a terrorist.

The main allegation against this accused person is that he has aided or assisted to make plan for the escape of State Prisoner and JMB chief Kausar @ Baro Bhai from the correctional home on the way to court but this does not attract section 19 of the Unlawful Activities (Prevention) Act.

The documents as reflected in the C.D also reveals that these accused persons are the members of a terrorist gang or terrorist organization which is involved in the terrorist activities have conspired and abets and advises to perform an act which is terrorist in nature. If that be

the so, then there is sufficient ground to frame charge against all the ten accused persons under section 18 and also under section 20 of the Unlawful Activities (Prevention) Act.

The prosecution also submitted charge sheet against all the accused persons under 4/5/6 of the Explosive Substance Act. C.D reveals that huge explosives have been recovered from house of the accused persons and those substances were not kept in accordance with law.

Accumulation of huge quantity of explosive substance from the house of the accused persons, though not from all, are sufficient to hold that those substances were kept to cause explosion which may endanger human life and possessing of huge quantity of explosive substance without any licence is sufficient to give reasonable suspicion. There is no such either documents or statements to hold that the accused persons were either supplying money or materials to abet the offence in respect of either possessing or attempt to cause explosion of explosive substance.

Considering all these, this Court had framed charge against all the ten accused persons under section 4 and 5 of the Explosive Substance Act, 1908.

In respect of accused no. 6) Ariful Islam @ Arif @ Aatur @ Aktretur @ Mota Anas @ Sahid prosecution has submitted charge sheet u/s 465/468/471 of the Indian Penal Code alongwith other sections as mentioned above.

It is the story of the prosecution supported by documents in the C.D that this accused person forged the EPIC Card in the name of Nazrul Islam with an intention for wrongful gain and the said documents were prepared with intend of forgery in electronic record so there is sufficient ground to frame charge under section 465 and 468 of the Indian Penal Code but nowhere in the C.D it reveals that this accused no. 6 has used the said forged EPIC Card fraudulently or dishonestly, so there is sufficient materials to frame charge against this accused no. 6 under section 471 of the Indian Penal Code.

Charges **under sections 130/120B of the Indian Penal Code,1860 read with section 4 and 5 of the Explosive Substances Act and 18/20 of the Unlawful Activities Prevention Act** were framed against the accused (A-1) Asif Iqbal @ Nadeem, (A-2) Mosibur Rahaman @ Faruque, (A-3) Ruhul Amin @ Saifullah, (A-4) Sajjad Ali @ Ashadullah @ Sahid @ Sajjadur Rahman, (A-5) Manirul Islam @ Doctor, (A-7) Kader Kazi @ Mizanur Rahman @ Harun Mondal, **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf**, (A-9) Sk. Ashadullah @ Arif @ Rafikul Islam and Charges under sections 130/465/468/120B of the Indian Penal Code,1860, read with section 4 and 5 of the Explosive Substances Act and 18/20 of the Unlawful Activities Prevention Act were framed against the accused (A-6) Ariful Islam @ Arif @ Aatur @ Aktretur @ Mota Anas @ Sahid and charges under sections under sections 130/120B of the Indian Penal Code,1860 read with section 4 and 5 of the Explosive Substances Act and 18/20 of the Unlawful Activities Prevention Act and under section 14A(b) of the Foreigner's Act were framed against accused (A-10) Jahidul Islam @ Kausar @ Boma Mijan on **02.07.2022**.

The charges were read over and explained to all the abovenamed accused persons to which they abjured their guilt and claimed to be tried. Hence, this trial.

Defence case was that the accused persons did not commit any such offence as alleged and they have been falsely implicated in this case.

In this case Prosecution has examined as many as (01) one witness.

Prosecution has also proved as many as two documents.

In the course of trial, the accused person **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf**, pleaded guilty by filing petition dated **28.09.2022**.

It reveals from the from the petition dated **28.09.2022** filed on behalf of the above mentioned accused person stating inter alia that **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf,,** is in custody more than three years and two months (**26.08.2019**) and he is repentant on his misdeeds and now he wants to plead guilty.

On the basis of the petition filed on **28.09.2022**, this court has asked the accused person the reason for filing the petition and the accused person stated in the open court voluntarily that he is repenting for his offences and he wants to plead guilty and return back to the mainstream after serving the sentences. The accused person also stated that he is not forced to file the petition for pleading guilty and he has filed the same on his own volition.

This court has also apprised this accused person the consequences of pleading guilty as the allegations against him are serious in nature and charges framed against him has the maximum punishment i.e. imprisonment for life and gave him sufficient time to rethink over the matter.

On the next date of production, this accused person uttered the same words and stated that he wants to plead guilty and he is aware of the consequences.

At this stage, this Court again apprised this accused person that pleading guilty tantamounts to the admission of the charges leveled against him and he can only challenged the quantum of punishment before the upper Court to which this accused person again submitted that still then he wants to plead guilty.

Now the question arises whether accused person can plead guilty in the midst of trial when he has already pleaded not guilty at the time of framing of charge.

Section 229 of Chapter XVIII of the Code of Criminal Procedure, 1973, empowers the accused person to plead guilty before the Court of Sessions Judge.

Section 229 of Cr.P.C. reads as follows:

Conviction on Plea of Guilty:- ‘ *If the accused pleads guilty, the judge shall record the plea and may, in his discretion, convicting.*’

So it is crystal clear that the accused can plea guilty before the Sessions Court as per section 229 of Cr.P.C.

The Hon’ble Division Bench of Allahabad High Court in the case of Ram Kishun Vs. State of Uttar Pradesh held that ‘*there is no reason restrict the applicability of section 229 of the Code of Criminal Procedure to a particular date or occasion but the purport of section is obvious that plea of guilty can be advanced by an accused at any stage of trial after framing of charge.*’

The Hon’ble High Court, Calcutta in Snehalata Mondal vs. State of West Bengal reported in (2008) 1 CALLT 297 HC observed that ‘*the petitioner shall be permitted to plead guilty if so intended, but it would be the absolute discretion of the Ld. Court below to decide the question whether the court would accept an act upon such plea or not.*’

The Hon’ble Apex Court in State of Maharashtra vs. Sukhdeo Singh And Anr. reported in 1992 SCC (Cri) 705 observed that ‘*there is nothing in chapter VIII of the Code of the Criminal Procedure which prevents an accused from pleading guilty at any subsequent stage of trial after framing of charge but the court must act with caution and circumspection before accepting and acting on the plea of guilt and the plea must be clear, unambiguous and unqualified and the court must be satisfied that the accused has understood the nature of the allegation made against him and admits them.*’

All the above judgments clearly indicates that the accused person can plead guilty at any stage of trial and even after framing of charges before a Court of Sessions. It is fact and it is also well settled that Court must act with caution and circumspection before accepting and acting on

the plea of guilty by the accused. It is also the duty of the Court to see the accused persons pleading guilty is aware of the consequences of the same.

This Court has examined the accused person thrice on dock and the accused person was made aware of the contention of the petition and about the consequences of pleading guilty but this accused person stated that he is aware of the same.

Moreover the Ld. Advocate of the accused person stated that the accused person and also his family members repeatedly requested him to file petition for pleading guilty as the accused person is repenting on his offences and he is eager to return to the mainstream of the society and the Ld. Advocate prayed for accepting the petition.

Ld. P.Ps of the State submitted that he has no objection if the petition filed by the accused person praying for guilty is accepted by this Court.

Prior to accepting pleading guilty of the accused person, this Court called this accused person on dock and apprised him the merits and demerits of pleading guilty.

This Court also learnt from the accused person that he has not filed the petition for pleading guilty out of fear and force but he has filed the same on his choice after having detailed discussions with his family members.

Considering all these and also considering that the accused person is aware about the contention of the petition and consequences of pleading guilty, this court accepted the petition and allowed the accused to plead guilty.

Now let us see what are the allegations leveled on the accused person.

This accused person along with other accused persons on 16.02.2019 a complaint was lodged by Assistant Commissioner of police, STF who was the I.O of STF P.S case no. 1 of 2018 dated 02.02.2018 under section 120B/121/121A/123/125 of the Indian Penal Code read with section 4/5 of Explosive Substance Act along with Section 18/20 of the Unlawful Activities (Prevention) Act stating interalia that during investigation of STF P.S case no 1 of 2018 it revealed that accused Asif Iqbal @ Nadim belonging to Jamaat-ul-Mujahideen Bangladesh (JMB) a banned Terrorist Organization in Bangladesh being a member and activists of the said JMB in connivance with Kader Kazi, Ariful @ Arif of Assam, Saleheen, Habibur, Mintu, Ijaz, Arif @ Ali of Bangladesh, Rabiul, Akram, Docter, Sajjad, Kausar @ Baro Bhai, Anowar and others had entered into a criminal conspiracy of aiding, planning, assisting and preparing themselves to take an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai during his transportation from Presidency Correctional Home, Alipore to City Sessions Court, Calcutta and subsequently on 26.02.2019 Mosibur Rahaman and Ruhul Amin @ Saifullah were arrested with huge explosives and being led by these two arrested persons other explosives were also seized.

C.D further reveals that on 27.02.2019 Sajjad Ali @ Assadulah was taken into custody and on 04.03.2019 one paper chit containing some writings in Bengali language mentioning the name of Arif and Kausar, one full white page having drawing of route map mentioning "Karagar" in one end and "Court" in other end along with one EPIC Card were seized from the I.O of STF case no. 1 of 2018 and these documents were originally seized from that accused who is also an accused in this case and thereafter other accused were arrested on different time and place and on different grounds.

Record further reveals that accused Kader Kazi has unveiled that they had a plan to make an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai when he would be produced from Correctional home to Court.

After investigation the I.O of this case was satisfied that as per materials collected, all these accused persons had made greater conspiracy to make an attempt for securing escape of

State Prisoner and JMB chief Kausar @ Baro Bhai and for which the I.O submitted charge sheet being charge sheet no. 19 of 2019 dated 16.05.2019 under section 120B/130 of the Indian Penal Code and later the I.O submitted supplementary charge sheet being charge sheet no. 13 of 2020 dated 18.02.2020 under section 4/5/6 of the Explosive Substance Act and Section 16/18/19/20 of the Unlawful Activities (Prevention) Act against all the accused persons and section 465/468/471 of the Indian Penal Code against accused no. 6) Ariful Islam @ Arif @ Ataur @ Aktretur @ Mota Anas @ Sahid and section 120B/130 of the Indian Penal Code against accused nos. 8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf, 9) Sk. Ashadullah @ Arif @ Rafikul Islam and 10) Jahidul Islam @ Kausar @ Boma Mijan and section 14A of the Foreigners Act against accused no. 10) Jahidul Islam @ Kausar @ Boma Mijan.

After perusing the C.D this court finds that all the accused persons are already facing trial in another case for the commission of offence for waging war or attempting to wage war against the country and in this particular case, there are documents that these accused persons assisted or aided for the escape of State Prisoner and JMB chief Kausar @ Baro Bhai from the correctional home on the way to court and so there is sufficient ground to form charge against all the ten accused persons under sections 130 read with section 120B of the Indian Penal Code.

The I.O has also submitted charge sheet under section 16/18/19/20 of the Unlawful Activities (Prevention) Act in respect of all the accused persons. The documents as per C.D does not reveal any such act of these ten accused persons that they had committed a terrorist activities as defined u/s 15 of the Unlawful Activities (Prevention) Act nor any of the document reveals that these accused persons have attempted or concealed any person knowing that such person is a terrorist. The main allegation against the accused persons is that they have aided or assisted to make plan for the escape of State Prisoner and JMB chief Kausar @ Baro Bhai from the correctional home on the way to court but this does not attract section 19 of the Unlawful Activities (Prevention) Act.

The documents as reflected in the C.D also reveals that these accused persons are the members of a terrorist gang or terrorist organization which is involved in the terrorist activities have conspired and abets and advises to perform an act which is terrorist in nature. If that be the so, then there is sufficient ground to frame charge against all the ten accused persons under section 18 and also under section 20 of the Unlawful Activities (Prevention) Act.

The prosecution also submitted charge sheet against all the accused persons under 4/5/6 of the Explosive Substance Act. C.D reveals that huge explosives have been recovered from house of the accused persons and those substances were not kept in accordance with law.

Accumulation of huge quantity of explosive substance from the house of the accused persons, though not from all, are sufficient to hold that those substances were kept to cause explosion which may endanger human life and possessing of huge quantity of explosive substance without any licence is sufficient to give reasonable suspicion. There is no such either documents or statements to hold that the accused persons were either supplying money or materials to abet the offence in respect of either possessing or attempt to cause explosion of explosive substance.

Considering all these, this Court finds that there is sufficient materials to frame charge against all the ten accused persons under section 4 and 5 of the Explosive Substance Act, 1908.

In respect of accused Ariful Islam @ Arif @ Ataur @ Aktretur @ Mota Anas @ Sahid prosecution has submitted charge sheet u/s 465/468/471 of the Indian Penal Code alongwith other sections as mentioned above.

It is the story of the prosecution supported by documents in the C.D that this accused person forged the EPIC Card in the name of Nazrul Islam with an intention for wrongful gain

and the said documents were prepared with intend of forgery in electronic record so there is sufficient ground to frame charge under section 465 and 468 of the Indian Penal Code but nowhere in the C.D it reveals that this accused no. 6 has used the said forged EPIC Card fraudulently or dishonestly, so there is no sufficient materials to frame charge against this accused no. 6 under section 471 of the Indian Penal Code.

A-6 had also prepared one forged Aadhar Card in the name of Jamal Sheikh and also forged one EPIC Card in his own name with intention for wrongful gain and possessed the said EPIC Card knowing to be forged with an intention to use the same as genuine.

On **02.07.2022** charges were framed against this accused person **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf**, along with others with an allegation that these accused persons having criminal conspiracy abetted or tried to abet war against the country and also accumulated special category explosive substances i.e IED. Moreover, there is an allegation against A-6 he has forged one Aadhar card and also one EPIC card for wrongful gain.

It is fact that on the date of hearing of the charges the accused person pleaded not guilty and the case proceeded for evidence.

However, in the midst of trial, this accused person **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf**, came up with a petition for pleading guilty and the same was accepted by this court after taking all measures and precautions.

It is fact plea of guilt tantamounts to an admission of the charges leveled against him and the plea of guilt of the accused person has been accepted by this court.

Now let us see the role of the above mentioned accused persons in the commission of offence.

This accused person along with others on on 16.02.2019 a complaint was lodged by Assistant Commissioner of police, STF who was the I.O of STF P.S case no. 1 of 2018 dated 02.02.2018 under section 120B/121/121A/123/125 of the Indian Penal Code read with section 4/5 of Explosive Substance Act along with Section 18/20 of the Unlawful Activities (Prevention) Act stating interalia that during investigation of STF P.S case no 1 of 2018 it revealed that accused Asif Iqbal @ Nadim belonging to Jamaat-ul-Mujahideen Bangladesh (JMB) a banned Terrorist Organization in Bangladesh being a member and activists of the said JMB in connivance with Kader Kazi, Ariful @ Arif of Assam, Saleheen, Habibur, Mintu, Ijaz, Arif @ Ali of Bangladesh, Rabiul, Akram, Docter, Sajjad, Kausar @ Baro Bhai, Anowar and others had entered into a criminal conspiracy of aiding, planning, assisting and preparing themselves to take an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai during his transportation from Presidency Correctional Home, Alipore to City Sessions Court, Calcutta and subsequently on 26.02.2019 Mosibur Rahaman and Ruhul Amin @ Saifullah were arrested with huge explosives and being led by these two arrested persons other explosives were also seized.

C.D further reveals that on 27.02.2019 Sajjad Ali @ Assadulah was taken into custody and on 04.03.2019 one paper chit containing some writings in Bengali language mentioning the name of Arif and Kausar, one full white page having drawing of route map mentioning "Karagar" in one end and "Court" in other end along with one EPIC Card were seized from the I.O of STF case no. 1 of 2018 and these documents were originally seized from that accused who is also an accused in this case and thereafter other accused were arrested on different time and place and on different grounds.

Record further reveals that accused Kader Kazi has unveiled that they had a plan to make an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai when he would be produced from Correctional home to Court.

After investigation the I.O of this case was satisfied that as per materials collected, all these accused persons had made greater conspiracy to make an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai and for which the I.O submitted charge sheet being charge sheet no. 19 of 2019 dated 16.05.2019 under section 120B/130 of the Indian Penal Code and later the I.O submitted supplementary charge sheet being charge sheet no. 13 of 2020 dated 18.02.2020 under section 4/5/6 of the Explosive Substance Act and Section 16/18/19/20 of the Unlawful Activities (Prevention) Act against all the accused persons and section 465/468/471 of the Indian Penal Code against accused no. 6) Ariful Islam @ Arif @ Ataur @ Aktretur @ Mota Anas @ Sahid and section 120B/130 of the Indian Penal Code against accused nos. 8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf, 9) Sk. Ashadullah @ Arif @ Rafikul Islam and 10) Jahidul Islam @ Kausar @ Boma Mijan and section 14A of the Foreigners Act against accused no. 10) Jahidul Islam @ Kausar @ Boma Mijan.

After perusing the C.D this court finds that all the accused persons are already facing trial in another case for the commission of offence for waging war or attempting to wage war against the country and in this particular case, there are documents that these accused persons assisted or aided for the escape of State Prisoner and JMB chief Kausar @ Baro Bhai from the correctional home on the way to court and so there is sufficient ground to form charge against all the ten accused persons under sections 130 read with section 120B of the Indian Penal Code.

The I.O has also submitted charge sheet under section 16/18/19/20 of the Unlawful Activities (Prevention) Act in respect of all the accused persons. The documents as per C.D does not reveal any such act of these ten accused persons that they had committed a terrorist activities as defined u/s 15 of the Unlawful Activities (Prevention) Act nor any of the document reveals that these accused persons have attempted or concealed any person knowing that such person is a terrorist. The main allegation against the accused persons is that they have aided or assisted to make plan for the escape of State Prisoner and JMB chief Kausar @ Baro Bhai from the correctional home on the way to court but this does not attract section 19 of the Unlawful Activities (Prevention) Act.

The documents as reflected in the C.D also reveals that these accused persons are the members of a terrorist gang or terrorist organization which is involved in the terrorist activities have conspired and abets and advises to perform an act which is terrorist in nature. If that be the so, then there is sufficient ground to frame charge against all the ten accused persons under section 18 and also under section 20 of the Unlawful Activities (Prevention) Act.

The prosecution also submitted charge sheet against all the accused persons under 4/5/6 of the Explosive Substance Act. C.D reveals that huge explosives have been recovered from house of the accused persons and those substances were not kept in accordance with law.

Accumulation of huge quantity of explosive substance from the house of the accused persons, though not from all, are sufficient to hold that those substances were kept to cause explosion which may endanger human life and possessing of huge quantity of explosive substance without any licence is sufficient to give reasonable suspicion. There is no such either documents or statements to hold that the accused persons were either supplying money or materials to abet the offence in respect of either possessing or attempt to cause explosion of explosive substance.

Considering all these, this Court finds that there is sufficient materials to frame charge against all the ten accused persons under section 4 and 5 of the Explosive Substance Act, 1908.

In respect of accused no. 6) Ariful Islam @ Arif @ Ataur @ Aktretur @ Mota Anas @ Sahid prosecution has submitted charge sheet u/s 465/468/471 of the Indian Penal Code alongwith other sections as mentioned above.

It is the story of the prosecution supported by documents in the C.D that this accused person forged the EPIC Card in the name of Nazrul Islam with an intention for wrongful gain and the said documents were prepared with intend of forgery in electronic record so there is sufficient ground to frame charge under section 465 and 468 of the Indian Penal Code. but nowhere in the C.D it reveals that this accused no. 6 has used the said forged EPIC Card fraudulently or dishonestly, so there is no sufficient materials to frame charge against this accused no. 6 under section 471 of the Indian Penal Code.

A-6 had also prepared one forged Aadhar Card in the name of Jamal Sheikh and also forged one EPIC Card in his own name with intention for wrongful gain and possessed the said EPIC Card knowing to be forged with an intention to use the same as genuine.

Considering all these and also considering the materials on record, this Court convict the accused person namely, **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf,,** invoking section 235(2) of the Cr.P.C in the following manner:-

Accused person namely, **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf,** is convicted **under sections 130/120B of the Indian Penal Code,1860 read with section 4 and 5 of the Explosive Substances Act and 18/20 of the Unlawful Activities Prevention Act.**

The above named convict, namely, **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf,** is remanded to J.C with a direction to be produced on **05.11.2022** for hearing on the point of sentence.

The Superintendent of Presidency Correctional Home is directed to keep the above named convicts in segregation cell and produced before this Court on **05.11.2022** positively at 10.30 a.m.

Dictated and Corrected by me

Chief Judge
City Sessions Court, Calcutta

Chief Judge
City Sessions Court, Calcutta

**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.

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.....prosecution.

Vs.

(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md.

Yousuf Accused Person.

(Charges under sections 130/120B of the Indian Penal Code, read with section 4/5 of the Explosive Substances Act and Section 18/20 of the Unlawful Activities Prevention Act)

Ld. Advocates for the Prosecution/ State :

1. Shri Dipankar Kundu (Ld. Senior P.P)
2. Shri. Biswajit Guha Thakurta (Ld. Junior P.P)

Ld. Advocate for the Accused Person i.e (A-8):

Fazle Ahmed Khan

Date of Offence	16 th day of February, 2019
Date of FIR	16 th day of February, 2019
Date of Charge Sheet	16 th day of May, 2019 and 18 th day of February, 2020
Date of Framing of Charges	2 nd day of July, 2022
Date of commencement of Evidence	17 th day of August, 2022
Date on which Judgement is reserved	NIL
Date of Judgement	5 th day of November, 2022
Date of Sentencing Order, if any	5 th day of November, 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-8	(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf	26.08.2019	Custody since arrest	130/120B IPC, 4/5 E.S Act and 18/20 UA (P) Act	Convicted	R.I for five years and six months each and fine of Rs. 2,000/-each i.d three months imprisonment each for all the offences	Three years and three months

Order no. 29 dated 05.11.2022

The convict namely, **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md.Yousuf** is produced before this court at **2:00 p.m.** this day.

Convict namely, **(A-8)** submits that he is aged about 33 years and belongs to a poor family has old aged widow mother, six married sister and three brothers and he studied upto twelve wants to more studies. He also submitted that he is married and four minor daughters and his wife is a seriously ill. He prays for mercy and lesser punishment, so that he can return to the mainstream of the society and live a healthy life and and his sentence can run concurrently with the other cases.

Ld. Advocate Fazle Ahmed Khan for the convict submit that convict being young had 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. Dipankar Kundu and Shri. Biswajit Guha Thakurta 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 his offence but he is also repenting for his acts.

Ld. P.Ps of Special Task Force, Shri. Dipankar Kundu Shri. Biswajit Guha Thakurta 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. Dipankar Kundu Shri. Biswajit Guha Thakurta further submits that this attitude of the convict be considered at the time of passing sentence but he prays for highest punishment.

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 130 in The Indian Penal Code

130. Aiding escape of, rescuing or harbouring such prisoner.—Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with 1[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. Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in 2[India], is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

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 accused person along with others on on 16.02.2019 a complaint was lodged by Assistant Commissioner of police, STF who was the I.O of STF P.S case no. 1 of 2018 dated 02.02.2018 under section 120B/121/121A/123/125 of the Indian Penal Code read with section 4/5 of Explosive Substance Act along with Section 18/20 of the Unlawful Activities (Prevention) Act stating interalia that during investigation of STF P.S case no 1 of 2018 it revealed that accused Asif Iqbal @ Nadim belonging to Jamaat-ul-Mujahideen Bangladesh (JMB) a banned Terrorist Organization in Bangladesh being a member and activists of the said JMB in connivance with Kader Kazi, Ariful @ Arif of Assam, Saleheen, Habibur, Mintu, Ijaz, Arif @ Ali of Bangladesh, Rabiul, Akram, Docter, Sajjad, Kausar @ Baro Bhai, Anowar

and others had entered into a criminal conspiracy of aiding, planning, assisting and preparing themselves to take an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai during his transportation from Presidency Correctional Home, Alipore to City Sessions Court, Calcutta and subsequently on 26.02.2019 Mosibur Rahaman and Ruhul Amin @ Saifullah were arrested with huge explosives and being led by these two arrested persons other explosives were also seized.

C.D further reveals that on 27.02.2019 Sajjad Ali @ Assadulah was taken into custody and on 04.03.2019 one paper chit containing some writings in Bengali language mentioning the name of Arif and Kausar, one full white page having drawing of route map mentioning "Karagar" in one end and "Court" in other end along with one EPIC Card were seized from the I.O of STF case no. 1 of 2018 and these documents were originally seized from that accused who is also an accused in this case and thereafter other accused were arrested on different time and place and on different grounds.

Record further reveals that accused Kader Kazi has unveiled that they had a plan to make an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai when he would be produced from Correctional home to Court.

After investigation the I.O of this case was satisfied that as per materials collected, this accused (A-4) and other accused persons had made greater conspiracy to make an attempt for securing escape of State Prisoner and JMB chief Kausar @ Baro Bhai and for which the I.O submitted charge sheet being charge sheet no. 19 of 2019 dated 16.05.2019 under section 120B/130 of the Indian Penal Code and later the I.O submitted supplementary charge sheet being charge sheet no. 13 of 2020 dated 18.02.2020 under section 4/5/6 of the Explosive Substance Act and Section 16/18/19/20 of the Unlawful Activities (Prevention) Act against all the accused persons and section 465/468/471 of the Indian Penal Code against accused Ariful Islam @ Arif @ Aatur @ Aktretur @ Mota Anas @ Sahid and section 120B/130 of the Indian Penal Code against accused nos. 8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf, 9) Sk. Ashadullah @ Arif @ Rafikul Islam and 10) Jahidul Islam @ Kausar @ Boma Mijan and section 14A of the Foreigners Act against accused no. 10) Jahidul Islam @ Kausar @ Boma Mijan.

After perusing the C.D this court finds that all the accused persons are already facing trial in another case for the commission of offence for waging war or attempting to wage war against the country and in this particular case, there are documents that these accused persons assisted or aided for the escape of State Prisoner and JMB chief Kausar @ Baro Bhai from the correctional home on the way to court and so there is sufficient ground to form charge against all the ten accused persons under sections 130 read with section 120B of the Indian Penal Code.

The I.O has also submitted charge sheet under section 16/18/19/20 of the Unlawful Activities (Prevention) Act in respect of all the accused persons. The documents as per C.D does not reveal any such act of these ten accused persons that they had committed a terrorist activities as defined u/s 15 of the Unlawful Activities

(Prevention) Act nor any of the document reveals that these accused persons have attempted or concealed any person knowing that such person is a terrorist. The main allegation against the accused persons is that they have aided or assisted to make plan for the escape of State Prisoner and JMB chief Kausar @ Baro Bhai from the correctional home on the way to court but this does not attract section 19 of the Unlawful Activities (Prevention) Act.

The documents as reflected in the C.D also reveals that these accused persons are the members of a terrorist gang or terrorist organization which is involved in the terrorist activities have conspired and abets and advises to perform an act which is terrorist in nature. If that be the so, then there is sufficient ground to frame charge against all the ten accused persons under section 18 and also under section 20 of the Unlawful Activities (Prevention) Act.

The prosecution also submitted charge sheet against all the accused persons under 4/5/6 of the Explosive Substance Act. C.D reveals that huge explosives have been recovered from house of the accused persons and those substances were not kept in accordance with law.

Accumulation of huge quantity of explosive substance from the house of the accused persons, though not from all, are sufficient to hold that those substances were kept to cause explosion which may endanger human life and possessing of huge quantity of explosive substance without any licence is sufficient to give reasonable suspicion. There is no such either documents or statements to hold that the accused persons were either supplying money or materials to abet the offence in respect of either possessing or attempt to cause explosion of explosive substance.

Considering all these, this Court finds that there is sufficient materials to frame charge against all the accused persons under section 4 and 5 of the Explosive Substance Act, 1908.

Charges **under sections 130/120B of the Indian Penal Code,1860 read with section 4 and 5 of the Explosive Substances Act and 18/20 of the Unlawful Activities Prevention Act** were framed against the accused **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf** along with other sections in other accused persons in this case on **02.07.2022**.

No doubt that the convict pleaded guilty and the Court should also need to take a positive aspect. The statements 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 convict but that should not go a wrong message to the society.

The convict have prayed guilty stating that due to immaturity he has stepped into an illegal act and now is repenting for his misdeeds and wants to return in the mainstream of the society and also want to lead a healthy life.

Considering all these and also considering his age, **convict (A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md.Yousuf** 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 **130 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-8)** was in custody from **26.08.2019** till **05.11.2022 (Three years and three 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 convict **(A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf** 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 **130 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-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf** was in custody from **26.08.2019** till **05.11.2022 (Three years and three 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.

All 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 lawyers 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 convicts 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 convict is received upon 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, 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 Superintendent of Presidency Correctional Home, Alipore and Dum Dum Correctional Home 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 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, 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-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf** verbally submits that the abovenamed convict be transferred to the **Burdwan Correctional Home**, so that he can interact with his family members.

The Superintendent of Presidency Correctional Home, Alipore be directed to take a sympathetic approach so that the convict namely (A-8) Izaj Ahmed @ Moti Ahmed @ Jitu @ Izaj @ Md. Yousuf be transferred to Burdwan Correctional Home 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

