IN THE COURT OF DESIGNATED SPECIAL JUDGE (TADA) & ADDITIONAL SESSIONS JUDGE, JAMNAGAR

SPECIAL TADA CASE NO.14 OF 1994 & ORS.

THE STATE OF GUJARAT

VERSUS

OSMAN @ USMAN UMAR KOREJA & OTHERS

INDEX

सत्यमेव जयते

Filed on	14.07.1994
Registered on	14.07.1994
Decided on	04.05.2026
Duration	31Y 09M 20D
Exh.	4082

<u>FORM -A</u>

IN THE COURT OF DESIGNATED SPECIAL JUDGE (TADA)

&

ADDITIONAL SESSIONS JUDGE, JAMNAGAR

[Date of the Judgment : **04/05/2026]**

SPECIAL TADA CASE NO.14 OF 1994

City "B" Division Police Station II-CR No.151 of 1993

Complainant	The State of Gujarat
Represented by	Ld. Special P.P. **Mr.T.M.Gokani** for the State Ld. Assistant Special P.P. Mr.J.K.Bhanderi.
Accused Persons	(1) Osman @ Usman Umar Koreja (2) Mamad Alimamad @ Mamdu Sap (3) Harun Adam Sanghar Vagher (4) Lalji Harji @ Kaliyo Bali Kharva **(Abated as per order passed below Exh.01)** (5) Amirali Sadrudin Khoja (6) Abdul Rasid Valimamad Ansari (7) Yusuf Ismail @ Lavaris Jokhiya Sandhi **(Abated as per order passed Ex. 01)**

	(8) Gulamchisti Sulemanchisti Shekh (9) Iqbal Abdul Hasan Saiyad (10) Mohamad Hanif @ Raju @ Roshan @ Sagar S/o. Husen Jumma Petivala Shekh (11) Alabax Abdul Kadar @ Lala Shekh **(Abate on 19.04.2010)** (12) Ahemad Ismail Oliya (13) Mohammad Iqbal Abdul Gani Mansuri (14) Jaku @ Jakab Bava Padhiyar (15) Salim Aazam Lala Vora (16) Ismile Sale Bafan (17) Sujatmiya Bachumiya Saiyad (18) Chunilal @ Chuniyo Devji Kharva **(Abated as per order passed below Ex.2344)**

Filed on	17.01.1995
Registered on	17.01.1995
Decided on	04.05.2026
Duration	31Y 03M 17D
Exh.	

FORM -A

SPECIAL TADA CASE NO.01 OF 1995	
Accused Persons	(19) Usmangani Noormamad @ Munna Abdulla Merchant Memon (Died) **(Abated as per order passed below Ex.2344)** (20) Abdul Hamid Abdul Majid Shekh (Died) **(Abated as per order passed Ex.2344)**

	(21) Aarif Abdul Rehman @ Aarif Lambu Memon (22) Abdul Kalam Abdul Ajij Ansari **(Abated as per order below Exh.1 & Exh.2841)** (23) Iftekhar Mohmmad Yunus Ansari

Filed on	24.03.1995
Registered on	24.03.1995
Decided on	04.05.2026
Duration	31Y 01M 10D
Exh.	

FORM -A

SPECIAL TADA CASE NO.03 OF 1995	
Accused Persons	(24) Mohammad Ayub Abdul Kayum Sati @ Ayub Taklo (25) Salmankhan Ismilekhan Mansuri (26) Mohammad Arif @ Arif Mota S/o. Abdul Raheman Shekh

Filed on	21.12.1995
Registered on	21.12.1995
Decided on	04.05.2026
Duration	30Y 04M 13D
Exh.	

FORM -A

SPECIAL TADA CASE NO.05 OF 1995	
Accused	(27) Mohmad Safi Mohammad Yusuf Saiyad @ Safi Charsi (28) Ahir Lakhman Hardas

	(29) Ahir Markhi Punja

Filed on	29.01.1997
Registered on	29.01.1997
Decided on	04.05.2026
Duration	29Y 03M 05D
Exh.	

FORM -A

SPECIAL TADA CASE NO.01 OF 1997	
Accused	30. Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta (31) Abdul Kayum Nizamudin Shekh @ Kayum Sajni (Died) **(As per the order passed below Exh.01 based on report of police agency below NBW of accused at Exh.2410)**

Filed on	07.03.2000
Registered on	07.03.2000
Decided on	04.05.2026
Duration	26Y 01M 27D
Exh.	

FORM -A

SPECIAL TADA CASE NO.01 OF 2000	
Accused	(32) Mohammad Kasam Lajporiya @ Chacha @ Mechanic @ Kaliya

Filed on	03.04.2002
Registered on	03.04.2002
Decided on	04.05.2026
Duration	24Y 01M 01D
Exh.	

FORM -A

SPECIAL TADA CASE NO.01 OF 2002	
Accused	(33) Rama Giga Mer

Filed on	05.04.2005
Registered on	05.04.2005
Decided on	04.05.2026
Duration	21Y 00M 29D
Exh.	

FORM -A

SPECIAL TADA CASE NO.02 OF 2005	
Accused	(34) Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari

Filed on	02.09.2016
Registered on	02.09.2016
Decided on	04.05.2026
Duration	09Y 08M 02D
Exh.	

FORM -A

SPECIAL TADA CASE NO.01 OF 2016	
Accused	(35) Istiyak Ahmed Mohammad Yunus Ansari

Filed on	07.04.2017
Registered on	07.04.2017
Decided on	04.05.2026
Duration	09Y 00M 27D
Exh.	

FORM -A

SPECIAL TADA CASE NO.01 OF 2017	
Accused	(36) Jusabmiya @ Dadlimiya S/o. Ismilemiya @ Panjumiya Saiyad

Filed on	29.05.2018
Registered on	29.05.2018
Decided on	04.05.2026
Duration	07Y 11M 05D
Exh.	

FORM -A

SPECIAL TADA CASE NO.01 OF 2018	
Accused	(37) Kadir Ahmad s/o Amir Ahemad Shaikh @ Kadir Haji Shekh
TADA CASE NO.14 OF 1994 WITH 01 OF 1995, 03 OF 1995, 05 OF 1995, 01 OF 1997, 01 OF 2000, 01 OF 2002, 02 OF 2005, 01 OF 2016, 01 OF 2017 AND 01 OF 2018	
Represented by	Ld. Adv. **Mr.P.M.Buch** for the accused Nos.1, 14, 16, 17, 30, 32, 34 & 36. Ld.Adv. **Mr.M.C.Hakim** for the accused No.05, 06, 08, 09, 10, 13, 25 & 26. Ld.Adv. **Mr.V.H.Kanara** for accused No.3, 23, 28, 29, 33, 35 & 37.

	Ld.Adv. **Mr.A.B. Makwana** for accused No.21. Ld.Adv.**Mr.A.M.Ghori** for accused No.2. Ld.Adv.**Mr.H.M.Bhatt** accused No.12, 15, 24, 27.

FORM -B

Date of offence	Around 10.02.1993
Date of FIR	15.07.1993
Date of Charge-sheets	14.07.1994, 17.01.1995, 24.03.1995, 21.12.1995, 29.01.1997, 07.03.2000, 03.04.2002, 02.07.2005, 01.09.2016, 06.04.2017, 29.05.2018
Date of Framing of charges	19.10.1996, 28.01.2019, 04.07.2006, 28.01.2019
Date of commencement of evidence	30.08.2019
Date on which judgment is reserved	17.04.2026
Date of the Judgment	04.05.2026
Date of the Sentencing Order, if any	As per final order

ACCUSED DETAILS

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.PC
TADA CASE NO.14 OF 1994						
(1) Osman @ Usman Umar Koerja	17.07.1993	19.05.1999	U/s. 120(B), 153 and 34 of the IPC, U/s. 25(1A), 25(1AA), 25(1B) of Arms Act, U/s. 9-B of the Explosive Act, U/s.3, 4, 5 and 6 of the Explosive Substance Act and Section 3(3) and 5 of the TADA Act.	Convicted	--	2132 Days
(2) Mamad Alimamad @ Mamdu Sap	17.07.1993	18.05.1999		Convicted	--	2131 Days
(3) Harun Adam Sanghar Vagher	17.07.1993	21.05.1999		Convicted	--	2134 Days
(5) Amirali Sadrudin Khoja	19.07.1993	16.02.1999		Acquitted	--	2038 Days
(6) Abdul Rasid Valimamad Ansari	19.07.1993	30.09.1998		Acquitted	--	1899 Days
(8) Gulamchisti Sulemanchisti Shekh	29.07.1993	28.09.1998		Acquitted	--	1887 Days
(9) Iqbal Abdul Hasan Saiyad	29.07.1993	19.05.1999		Acquitted	--	2120 Days
(10) Mahamad Hanif @ Raju Roshan @ Sagar S/o. Husen Jumma Petivala Shekh.	12.08.1993	25.09.1998		Acquitted	--	1870 Days
(12) Ahemad Ismail Oliya	19.08.1993	25.09.1998		Convicted	--	1863 Days
(13) Mahamad Iqbal Abdul Gani Mansuri	03.09.1993	28.09.1998		Acquitted	--	1851 Days
(14) Jaku @ Jakab Bava	03.09.1993	25.09.1998		Acquitted	--	1848

Padhiyar						Days
(15) Salim Aazam Lala Vora	14.09.1993	25.09.1998		Acquitted	--	1837 Days
(16) Ismile Sale Bafan	18.09.1993	09.03.1999		Acquitted	--	1998 Days
(17) Sujatmiya Bachumiya Saiyad	02.10.1993	09.03.1999		Acquitted	--	1984 Days
TADA CASE NO.1/1995						
(21) Aarif Abdul Rehman Aarif Lambu Meman	11.11.1994	25.09.1998		Convicted	--	1414 Days
(23) Iftekhar Mohammad Yunus Ansari	03.12.1994	15.03.1999		Convicted	--	1563 Days
TADA CASE NO.03/1995						
(24) Mohammad Ayub Abdul Kayum Sati @ Ayub Taklo	24.01.1995	16.03.1999		Convicted		1512 Days
(25) Salmankhan Ismilekhan Mansuri	16.02.1995	25.09.1998		Acquitted		1317 Days
(26)Mohammad Arif @ Arif Mota S/o. Abdul Raheman Shekh	09.03.1995	05.03.1999		Acquitted		1457 Days
TADA CASE NO.5/1995						
(27) Mohmad Safi Mohammad Yusuf Saiyad @ Safi Charsi	26.06.1995	21.05.1999		Acquitted		1425 Days
(28) Ahir Lakhman Hardas	05.10.1995	21.05.1999		Convicted		1324 Days
(29) Ahir Markhi Punja	22.10.1995	19.01.1999		Acquitted		1185 Days
TADA CASE NO.1/1997						

30. Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta	03.08.1996	17.03.2008		Convicted		4244 Days
TADA CASE NO.1/2000						
(32) Mohammad Kasam Lajporiya @ Chacha @ Mechanic @ Kaliya	18.12.1999	12.11.2012		Acquitted		4713 Days
TADA CASE NO.1/2002						
(33) Rama Giga Mer	04.12.2001	16.10.2003		Acquitted		681 Days
TADA CASE NO.2/2005						
(34) Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari	12.01.2005	15.05.2017		Convicted		4506 Days
TADA CASE NO.1/2016						
(35) Istiyak Ahmed Mohammad Yunus Ansari	20.08.2015	06.11.2015		Convicted		78 Days
TADA CASE NO.1/2017						
(36) Jusabmiya @ Dadlimiya S/o. Ismilemiya @ Panjumiya Saiyad	15.10.2016	22.01.2018		Acquitted		464 Days
TADA CASE NO.1/2018						
(37) Kadir Ahmad s/o Amir Ahemad	08.07.2017	08.08.2017		Convicted		31 Days

FORM – C

(A) Prosecution Oral Evidence:-			
Rank	**Name of the Witness**	**Nature of Evidence**	**Exh.**
PW-1	Dilipsinh Gatorsinh Vaghela	Complainant	2104
PW-2	Mansukhbhai Dhanjibhai Dalsaniya	Panch Witness	2181
PW-3	Ambavibhai Devshibhai Kansagra	Panch Witness	2183
PW-4	Rajesh Amrutlal Limbachiya	Panch Witness	2377
PW-5	Kishorkumar Amarshibhai Gandhi	Panch Witness	2432
PW-6	Amin Ismilebhai Meman	Panch Witness	2486
PW-7	Shermamad Hushen Sanghi Notiyar	Panch Witness	2488
PW-8	Pratapsinh Satrajbhai Thakore	Panch Witness	2561
PW-9	Harishbhai Bhailalbhai Bhanushali	Panch Witness	2569
PW-10	Natubhai Ravchabhai Patel	Prime Witness	2654
PW-11	Kiritbhai Shivlalbhai Bhansa	Panch Witness	2674
PW-12	Isub Ismilebhai Sumara	Panch Witness	2676
PW-13	Hemantsinh Shivubha Jadeja	Panch Witness	2693
PW-14	Divyeshbhai Dayalal Nakum	Panch Witness	2695
PW-15	Ajitkumar Kantilal Bharvad	Panch Witness	2697
PW-16	Jayeshbhai Harishbhai Makwana	Panch Witness	2699
PW-17	Dineshbhai Muljibhai Makwana	Panch Witness	2717
PW-18	Amrabhai Hirabhai Khara	Panch Witness	2759
PW-19	Rajubhai Chunibhai Thakkar	Panch Witness	2809
PW-20	Ramchandra Dhyekul Maheto	Panch Witness	2811
PW-21	Iqabhal Yakubbhai Chhipa	Panch Witness	2823

PW-22	Amrutlal Nanjibhai Sonagara	Panch Witness	2825
PW-23	Ajitsinh Mansinh Jadeja	Panch Witness	2827
PW-24	Omprakash Mangtesing Lalsodai	Panch Witness	2863
PW-25	Satar Osman Darzada	Panch Witnes	2865
PW-26	Yogesh Shivlal Thanki	Circle Officer	2867
PW-27	Harish Dhirajlal Dodhiya	Witness	2870
PW-28	Shantiben Nagjibhai Parmar	ASI, Porbandar	2897
PW-29	Puriben Bhimabhai Odedara	Head Constable, Porbandar	2899
PW-30	Kalpaben Vejabhai Makwana	Head Constable, Porbandar	2901
PW-31	Suresh Virambhai Rathod	Head Constable, Porbandar	2903
PW-32	Aziz Ahmadkhan Firozkhan Sindhi	Dy.S.P., Baroda	2913
PW-33	Rameshchandra Bhikhamdas Nimavat	P.I., Okha	2915
PW-34	Abhishek Ashokbhai Savani	P.S.I., R.T.O. Surat	2917
PW-35	Bharatkumar Lakhmanbhai Vadukar	P.I., Gandhinagar	2920
PW-36	Manoj Prakash Suravanshi	Senior Clerk R.T.O., Thane	2938
PW-37	Divyeshbhai Bharatbhai Nandasana	Dy.Mamlatdar, Jamnagar	2940
PW-38	Rameshbhai Jerajbhai Makadiya	Collector/DM	2962
PW-39	Pruthvipal Jagidsh Pandey	I.G.P.	2966
PW-40	Githa Anil Johri	I.G.P.	2967
PW-41	Prashantchandra Prakashchandra Pandey	I.G.P.	2968
PW-42	Vinubhai Popatbhai Patel	Collector/DM	2978
PW-43	Girishchandra Bhagvat Murmu	Collector/DM	2982

PW-44	Sanjay Prasad Vimay Prasad	Collector/DM	2983
PW-45	Mohitkumar Dhirajlal Jani	Dy.S.P.	2998
PW-46	T.Natrajan K. Tiruvekadam	Former Collector/DM	3010
PW-47	Rajesh Ravsaheb Jadav	Office Superintendent RTO, Tardev	3016
PW-48	Arunkumar Jagatnaran Bhargav	I.G.P.	3018
PW-49	Chandrakipratapsingh Birendrasingh	I.G.P.	3019
PW-50	Nipul Vallabhdas Ruparel	Circle Officer	3031
PW-51	Rajkumar James Benjamin	D.I.G.	3043
PW-52	Rajendrasinh Hamirji Jadea	Dy.S.P.	3049
PW-53	Ajit Dalpatram Dubal	Police Constable, S.P. Office, Jamnagar	3064
PW-54	Satishchandra PremchandraPrasad Verma	D.S.P.	3083
PW-55	Ravinshankar Shivharesh Prasad	Collector/DM	3097
PW-56	Rameshchandra Mohanbhai Pandey	Dy.S.P.	4004
PW-57	Umeshkumar Ramanlal Patel	Dy.S.P.,	4009
PW-58	Rahul Nanshewar Sharma	Dy.S.P.	4010
PW-59	Rahul Jagdishnarayan Tripathi	Dy.S.P.	4023
PW-60	Rushikesh Bipinkumar Upadhyaya	Dy.S.P.	4031
PW-61	Pradip Bhimrav Shejul	Former D.S.P.	4032
PW-62	Bavkubhai Suragbhai Jebaliya	Dy.S.P. (I.O.)	4037
PW-63	Manoj Krishnapillai Shashidhar	Former D.S.P. (I.O.)	4044

(B) List of Documentary Evidence of Prosecution:-		
Sr. No.	**PW/Exh. No.**	**Description**
1.	PW-1/2105	Draft Complaint
2.	PW-1/2106	Office covering note
3.	PW-1/2107	Forwarding letter
4.	PW-1/2116	Original Complaint
5.	PW-2/2182	Spot Panchnama
6.	PW-3/2184	Panchnama of place where RDX and weapons were de-boarded
7.	PW-4/2378	Panchnama of recovery of muddamal
8.	PW-4/2379	Muddamal Slip
9.	PW-5/2496	Muddamal Slip
10.	PW-5/2497	Muddamal Slip
11.	PW-5/2498	Muddamal Slip
12.	PW-5/2499	Muddamal Slip
13.	PW-5/2500	Discovery Panchnama
14.	PW-5/2501	Arrest Panchnama of Ismile Juma Dhimar
15.	PW-5/2502	Muddamal Slip
16.	PW-5/2503 Tentative	Discovery Panchnama
17.	PW-6/2487	Panchnama of recovery of Ambassador Car
18.	PW-8/2562	Arrest Panchnama of Salmankhan Ismilekhan Mansuri
19.	PW-9/2570	Panchnama of recovery of muddamal
20.	PW-9/2571 to 2579	Muddamal Slip
21	2619	Forwarding letter

22	2620	Letter in respect of muddamal analysis
23	2621	Muddamal analysis report
24	2622	Muddamal Analysis report
25	2623	Muddamal analysis report
26	2624	Letter in respect of muddamal analysis
27	2625	Muddamal Analysis report
28	2626	Muddamal Analysis report
29	2627	Letter in respect of muddamal analysis
30	2628	Muddamal Analysis report
31	2629	Muddamal Analysis report
32	2630	Letter in respect of muddamal analysis
33	2631	Muddamal Analysis report
34	2632	Muddamal Analysis report
35	2633	Letter in respect of muddamal analysis
36	2634	Muddamal Analysis report of vehicle
37	2635	Muddamal Analysis report
38	2636	Letter in respect of muddamal analysis
39	2637	Letter in respect of muddamal analysis
40	PW-10/3033	Statement of Natubhai Ravchabhai Patel recorded under Section 164 of Cr.P.C.
41	PW-11/2675	Panchnama of place where the weapons were deboarded
42	PW-12/2677	Panchnama of place where the RDX and weapon boarded
43	PW-13/2694	Panchnama of state of body of accused and arrest panchnama
44	PW-14/2696	Panchnama of place where the weapons deboarded
45	PW-15/2698	Arrest panchnama of accused Istiyak Yunus Ansari

46	PW-16/2700	Arrest panchnama of accused Jusabmiya @ Dadlimiya
47	PW-17/2718	Arrest panachnama of accused Lakshmandas Hardas Ahir
48	PW-19/2810	Arrest panchnama of accused Salim Lala
49	PW-21/2824	Panchnama of recovery of car
50	PW-22/2826	Panchnama of place where the weapons were deboarded
51	PW-23/2828	Panchnama of recovery of Havala Notebook
52	PW-24/2864	Panchnama of recovery of muddamal
53	PW-25/2866	Panchnama of place where the RDX and weapons were deboarded
54	PW-26/2868	Forwarding letter and Map
55	PW-26/2869	Village Form No.7, 12 and 8-A
56	PW-28/2898	True copy of FIR of Porbandar
57	PW-29/2900	True copy of FIR, Porbandar
58	PW-30/2902	Copy of extract of FIR register
59	PW-31/2904	Copy of extract of FIR register
60	PW-32/2914	Report regarding arrest of accused Ismile Oliya
61	PW-33/2916	Panchnama of recovery of Truck
62	PW-34/2918	Yadi to Regional Transport Officer
63	PW-34/2919	Extract of Registration Certification
64	PW-35/2921	Letter to appear before the Hon'ble Court
65	PW-35/2922 to 2929	Approval letter
66	PW-36/2939	Papers regarding vehicle No.MCY3551
67	PW-37/2941 to	Approval letter

	2951	
68	PW-38/2963	Letter for approval
69	PW-38/2964	Letter for rectification
70	PW-38/2965	Letter for approval
71	PW-42/2979	Letter to file charge-sheet
72	PW-42/2980 & 2981	Approval letter to file charge-sheet
73	PW-44/2984	Letter to file charge-sheet
74	PW-44/2985	Letter to file charge-sheet
75	PW-44/2986	Letter to file charge-sheet
76	PW-44/2987	Approval letter to file charge-sheet
77	PW-44/2988	Letter to file charge-sheet
78	PW-44/2989	Approval letter to file charge-sheet
79	PW-44/2990	Letter to file charge-sheet
80	PW-44/2991	Approval letter to file charge-sheet
81	PW-44/2992	Letter to file charge-sheet
82	PW-44/2993	Approval letter to file charge-sheet
83	PW-44/2994	Letter to file charge-sheet
84	PW-44/2995	Approval letter to file charge-sheet
85	PW-44/2996	Letter to file charge-sheet
86	PW-44/2997	Approval letter to file charge-sheet
87	PW-45/2999 to 3001	Letter to file charge-sheet
88	PW-45/3002	Letter in respect of documents which have been produced vide Exh.2999 to Exh.3001
89	PW-46/3011	Letter to file charge-sheet

90	PW-46/3012	Letter for rectification
91	PW-46/3013	Reply of letter for rectification
92	PW-46/3014	Approval letter to file charge-sheet
93	PW-46/3015	Approval letter to file charge-sheet
94	PW-47/3017	Certified copy of RC book and other papers regarding the vehicle No.MMK1051
95	PW-50/3032	Map of spot of landing
96	PW-51/3044	Letter to record confession statement of accused Usman Gani Abdulla
97	PW-51/3045	Letter for appearance of accused to record confession statement
98	PW-51/3046	Information letter to District Police Officer regarding that he accused wants to get time to record statement
99	PW-51/3047	Confession statement of Usman Gani
100	PW-51/3048	Forwarding letter
101	PW-52/3050	Identification mark and arrest memo
102	PW-53/3065	Confession statement of Lalji Harji s/o Lohari and certificate
103	PW-53/3066	Confession statement of Amirali Sadrudin Bardai and certificate
104	PW-53/3067	Confession statement of Osman Umar Koreja and certificate
105	PW-53/3068	Confession statement of Harun @ Harko Amad Sanghar and certificate
106	PW-53/3069	Confession statement of Mamad @ Mamdu s/o Alimamad and certificate
107	PW-53/3070	Confession statement of Yusuf Ismile @ Lavaris and certificate
108	PW-53/3071	Confession statement of Salim Azambhai Lala and certificate

109	PW-53/3072	Confession statement of Mohammad Hanif s/o Husen Juma
110	PW-53/3073	Confession statement of Iqbal Sayyed
111	PW-53/3074	Confession statement of Allabaksh @ Lala
112	PW-53/3075	Confession statement of Moh. Arif Abdul Raheman @ Arif Mota
113	PW-53/3076	Confession statement of Jakab Bava Padhiyar and certificate
114	PW-53/3077	Confession statement of Ahemad Ismile Oliya and certificate
115	PW-53/3078	Confession statement of Mahmad Iqbal Abdulgani Mansuri and certificate
116	PW-53/3079	Confession statement of Salman @ Babuji s/o Ismile Hushen Mansuri and certificate
117	PW-53/3080	Order to arrest the accused Abdul Majid Shaikh via FAX
118	PW-53/3081	Order to disposed the muddamal (Hand Grenade) by FSL
119	PW-54/3084	Statement of Abdul Hamid Abdul Majid
120	PW-54/3085	Statement of Arif Abdul Raheman and certificate
121	PW-54/3086	Statement of Iftekar Ahmand s/o Mohammand Yunus Ansari and certificate
122	PW-54/3087	Statement of Abdul Kalam s/o Abdul Aziz Ansari and certificate
123	PW-54/3088	Statement of Mohammad Ayub Kaiyum @ Ansari and certificate
124	PW-54/3089	Forwarding letter
125	PW-54/3090	Statement of Lakhman Hardas and certificate
126	PW-55/3098	Letter to file charge-sheet

Inadvertently, after Exh.3099, instead of giving Exh.3100, the documents were numbered from Exh.4000 onwards. As such there are no documents and /or depositions from Exh.3100 to Exh.3999. The said note has been put in rojkam of dated 17.04.2026 and order has been passed to this effect below Exh.1.		
127	PW-56/4005 to 4008	Arrest memo of accused
128	PW-58/4011	Arrest panchnama of accused Markhi Punja Ahir
129	PW-60/4033	Confession statement of Ishtiyaq Ahmed s/o Mohammad Yunus Ansari and certificate
130	PW-61/4034	Forwarding letter
131	PW-61/4035	Confession Statement of Kadir Ahemad s/o Amir Ahemad Shaikh and certificate
132	PW-61/4036	Forwarding letter
133	PW-62/4038	Spot panchnama
134	PW-63/4045	Yadi to make entry in the station diary

(C) Defence Witness:-			
Rank	**Name of the Witness**	**Nature of Evidence**	**Exh.**
--	**NIL**		--

(D) List of Documentary Evidence of Defence:-		
Sr. No.	**PW/Exh. No.**	**Description**
1.	PW-58/4012	Permission letter to produce evidence and affidavit
2.	PW-58/4013	Copy of bail order of accused Usman Gani Noormamad vide Cr.M.A. No.77 of 1996

J U D G M E N T

(1) Admittedly, this is a case wherein no persons have died and no injuries to anyone have been caused. Moreover, no properties are damaged or destructed. But the case of prosecution is with regard to criminal conspiracy hatched for procuring and transporting prohibited arms and ammunition with a view to facilitate the Terrorist Act and/or the preparation for Terrorist Act in India.

(2) **<u>The case of prosecution in nutshell ;</u>**

(a) That after the demolition of Babari Mosque on 06.12.1992, the absconding accused Daud Ibrahim, deceased accused Mustafa Ahmad Dosa and others known and unknown accused persons with an intention to damage the security and integrity of country and to cause terrorist activities in India, entered into a criminal conspiracy and it was decided to smuggle Arms, ammunition and explosives in India.

(b) Accordingly, a meeting was held between Osman @ Usman (A1), Mamad Alimamad (A2) and Harun Adam (A3) at Bedi, Jamnagar and in furtherance of criminal conspiracy to achieve the above stated object, they visited the convenient place for landing the arms and ammunition and thereafter, they visited Dubai and under the direction of deceased accused Mustafa Dosa @ Majnu Sheth, they went in Sada-Al-Bahar launch (at various places, it is also mentioned as Al-Sada-Bahar) towards Karachi Coast of

Pakistan and the deceased accused Mustafa Dosa used to direct them through satellite phone.

(c) When Sada-Al-Bahar launch reached at Sea Shore at Karachi, a boat of Pakistan Marine Security approached them. The said boat was loaded with Arms, ammunition and RDX. Upon the instruction of deceased accused Mustafa Dosa @ Majnu, the contraband goods loaded in Sada-Al-Bahar from the boat of Pakistan Marine Security and thereafter launch Sada-Al-Bahar was taken into high sea where they waited for almost 48 hours as told to them by Mustafa Dosa.

(d) It is the case of prosecution that two launches namely Bismillah and Marwah approached launch Sada-Al-Bhaar in high sea and out of contraband goods, some arms and ammunition were loaded in Marwah launch. All there launches namely Sada-Al-Bahar, Bismillah and Marwah were owned by Mustafa Dosa @ Majnu. The loading and unloading of contraband goods were opposed by three witnesses, who were threatened to death by Mustafa Dosa @ Majnu. Thereafter, launch Marwah proceeded towards Maharashtra and launch Sada-Al-Bahar proceeded towards Kachchh.

(e) It is the case of prosecution that launch Sada-Al-Bahar reached at Sea Shore of Porbandar and it was stationed at Coastal area of Gosabara, Porbandar, where other accused persons were present, who had transferred the arms, ammunition and explosives from Sada-Al-Bahar launch to trucks. Thereafter, with the help of other accused persons, the said contraband goods were transported to different parts of the country in order to utilize the same for creating terror amongst the people of country.

(f) It is the case of prosecution that the accused persons in connivance with each other hatched the criminal conspiracy and thereby transported the prohibited arms and ammunition from Pakistan and transferred them to different parts of India and many such arms and ammunition were recovered from some of the accused persons. Accordingly, complainant Mr.D.G.Vaghela, P.S.I. drew attention of D.S.P. Shri P.K.Jha towards the facts and in turn Mr.Jha approved the complaint to be filed under the provisions of TADA Act and hence, an FIR came to be filed by P.S.I. Mr.D.G.Vahgela before City "B" Division Police Station, Jamnagar.

Police Investigation and further proceedings:-

(3) After the FIR was registered, police started investigation and various accused persons were apprehended. The confessional statements of some of the accused persons were recorded by higher police officials and panchnama of place of landing as shown by accused persons were drawn, arrest panchnamas, recovery panchnamas, etc. were drawn and upon conclusion of investigation, the first charge-sheet bearing No.279 of 1994 was filed on 01.07.1994 against 21 accused persons, wherein 18 accused persons were shown absconding. The said case was given Special TADA case No.14 of 1994.

(a) Thereafter, first supplementary charge-sheet bearing No.279-A / 1995 was filed on 17.01.1995 against 5 accused persons and the said case was registered as Special TADA Case No.01 of 1995.

(b) The second supplementary charge-sheet bearing No.279 / 1994-B was filed on 15.03.1995 against 4 accused persons, wherein 20 accused persons were shown absconding. The said case was registered as Special TADA Case No.03 of 1995.

(c) The third supplementary charge-sheet bearing No.279 / 94-C/1995 was filed on 20.12.1995 against 3 accused persons, wherein 24 accused persons were shown absconding. The said case was registered as Special TADA Case No.05 of 1995.

(d) The fourth supplementary charge-sheet bearing No.279 / 94-D/97 was filed on 28.01.1997 against 2 accused persons, wherein 23 accused persons were shown absconding. The said case was registered as Special TADA Case No.01 of 1997.

(e) The fifth supplementary charge-sheet bearing No.279 / 94-E/2000 was filed on 04.03.2000 against one accused person, wherein 23 accused persons were shown absconding. The said case was registered as Special TADA Case No.01 of 2000.

(f) The Sixth supplementary charge-sheet bearing No.279 / 94-F/02 was filed on 01.04.2002 against one accused person, wherein 23 accused persons were shown absconding. The said case was registered as Special TADA Case No.01 of 2002.

(g) The Seventh supplementary charge-sheet bearing No.279 / 94-G/05 was filed on 01.07.2005 against one accused person, wherein 22 accused persons were shown absconding. The said case was registered as Special TADA Case No.02 of 2005.

(h) The Eighth supplementary charge-sheet bearing No.279 / 94-I/16 was filed on 01.09.2016 against one accused person, wherein 17 accused persons were shown absconding. The said case was registered as Special TADA Case No.01 of 2016.

(i) The Ninth supplementary charge-sheet bearing No.279 / 94-J/17 was filed on 06.04.2017 against one accused person, wherein 16 accused persons were shown absconding. The said case was registered as Special TADA Case No.01 of 2017.

(j) Thereafter, Tenth supplementary charge-sheet bearing No.279 / 94-K/18 was filed on 28.05.2018 against one accused person, wherein 16 accused persons were shown absconding. The said case was registered as Special TADA Case No.01 of 2018.

(k) The above referred charge-sheets were filed for the offence punishable under Section 120(B), 121, 121(A), 122, 123, 153, 153(a)(b)(c) of Indian Penal Code and 25(1A), 25(1B), 25(1AA), 25(1-AB) of the Arms Act and under Section 9-B of Explosive Act and under Section 3, 4, 5 and 6 of Explosive Substances Act and under Section 3, 4, 5 & 6 of Terrorist and Disruptive Activities (Prevention) Act.

(4) After filing of charge-sheet, the copies of charge-sheet papers were provided to all the accused persons. Thereafter, an application vide Exh.23 was given by the then learned Special Public Prosecutor for consolidating Special TADA Case No.01 of 1995, 03 of 1995 and 05 of 1995 with Special TADA Case No.14 of 1994, which was allowed by my learned Predecessor vide order dated 04.06.1996 and all the above cases were consolidated. Another application Exh.1118 was tendered by the then learned Special P.P. for consolidating Special TADA Case No.1 of 1997, 01 of 2000, 01 of 2002, 02 of 2005 and 01 of 2006 which was allowed by my learned Predecessor vide order dated 05.02.1999 and all the above cases were consolidated.

At this juncture, it would be relevant to note that one another charge-sheet bearing No.279/94/H/06 was filed on 10.08.2006, which was registered and numbered as Special TADA Case No.01 of 2006. The said charge-sheet was filed against 4 accused persons namely (1) Mustafa Amad Umar Dosa @ Mustafa Majnu Sheth Memon, (2) Ahezaz @ Jakir @ Azaz @ Ezaz Pathan Mohammad Sharifkhan Saiyad, (3) Israhul Haq @ Ijju Shaikh Abdul Hamidbhai Shaikh and (4) Amir Gulamhushen Mohammal Ali Bandukwala Daudi Vora. Out of these 4 accused persons, accused No.1 Mustafa Amad Umar Dosa and accused No.2 Ahezaz @ Jakir died during the pendency of the trial, whereas, accused No.3 Israhul Haq and accused No.4 Amir Gulamhushen were discharged on 07.12.2007 by my learned Predecessor and hence, the said case was de-consolidated from main TADA Case No.14 of 1994 and the same was disposed of vide order dated 18.08.2023.

FRAMING OF CHARGE:

(5) After the copies were being supplied to all the accused persons, the learned Special P.P. and the learned advocates for the accused persons were heard on the point of charge and after hearing all the parties my learned Predecessor was pleased to pass an order Exh.49 under Section 228 of Cr.P.C. and the accused persons were charged vide Exh.63 in the following manner;

Charges in TADA Case Nos.14 of 1994, 01 of 1995, 03 of 1995 and 05 of 1995 :-

TADA Case No.14 of 1994		
Accused No.	Name of accused	Charge framed
1	Osman @ Usman Umar Koerja	S.120(B) of IPC r/w S.3(3) of TADA Act
2	Mamad Alimamad @ Mamdu Sap	S.120(B) of IPC r/w S.3(3) of TADA Act
3	Harun Adam Sanghar Vagher	S.120(B) of IPC r/w S.3(3) of TADA Act
4	Lalji Harji @ Kaliyo Bali Kharva	(Died)

5	Amirali Sadrudin Khoja	S.120(B) of IPC r/w S.3(3) of TADA Act
6	Abdul Rasid Valimamad Ansari	S.120(B) of IPC r/w S.3(3) of TADA Act
7	Yusuf Ismail @ Lavaris Jokhiya Sandhi	Died
8	Gulamchisti Sulemanchisti Shekh	S.120(B) of IPC r/w S.3(3) of TADA Act
9	Iqbal Abdul Hasan Saiyad	S.120(B) of IPC r/w S.3(3) of TADA Act
10	Mohamad Hanif @ Raju @ Roshan @ Sagar S/o. Husen Jumma Petivala Shekh	S.120(B) of IPC r/w S.3(3) of TADA Act
11	Alabax Abdul Kadar @ Lala Shekh	Died
12	Ahemad Ismail Oliya	S.120(B) of IPC, S.3(3), 5 of TADA Act, 25(1A), 25(1AA), 25(1B)(b) of Arms Act. S.4(b) & 5 of Explosive Substances Act and S.9(B) of the Explosives Act.
13	Mohammad Iqbal Abdul Gani Mansuri	S.120(B) of IPC r/w S.3(3) of TADA Act
14	Jaku @ Jakab Bava Padhiyar	S.120(B) of IPC r/w S.3(3) of TADA Act

15	Salim Aazam Lala Vora	S.120(B) of IPC r/w S.3(3) of TADA Act
16	Ismile Sale Bafan	S.120(B) of IPC r/w S.3(3) of TADA Act
17	Sujatmiya Bachumiya Saiyad	S.120(B) of IPC r/w S.3(3) of TADA Act
18	Chunilal @ Chuniyo Devji Kharva	Died

TADA Case No.01 of 1995		
Accused No.	Name of accused	Charge framed
19	Usmangani Noormamad @ Munna Abdulla Merchant Memon (Died)	Died
20	Abdul Hamid Abdul Majid Shekh	Died
21	Aarif Abdul Rehman @ Aarif Lambu Memon	S.120(B) of IPC r/w S.3(3) of TADA Act
22	Abdul Kalam Abdul Ajij Ansari	Died
23	Iftekhar Mohmmad Yunus Ansari	S.120(B) of IPC, S.3(3), 5 of TADA Act, 25(1A), 25(1AA), 25(1B) of Arms Act. S. 4 & 5 of Explosive Substances Act and S.9(B) of the Explosives Act,

TADA Case No.03 of 1995		
Accused No.	Name of accused	Charge framed
24	Mohammad Ayub Abdul Kayum Sati @ Ayub Taklo	S.120(B) of IPC r/w S.3(3) of TADA Act
25	Salmankhan Ismilekhan Mansuri	S.120(B) of IPC r/w S.3(3) of TADA Act
26	Mohammad Arif @ Arif Mota S/o. Abdul Raheman Shekh	S.120(B) of IPC r/w S.3(3) of TADA Act

TADA Case No.05 of 1995		
Accused No.	Name of accused	Charge framed
27	Mohmad Safi Mohammad Yusuf Saiyad @ Safi Charsi	S.120(B) of IPC r/w S.3(3) of TADA Act
28	Ahir Lakhman Hardas	S.120(B) of IPC r/w S.3(3) of TADA Act
29	Ahir Markhi Punja	S.120(B) of IPC r/w S.3(3) of TADA Act

The above **charge Exh.63** was read over and explained to accused persons. To which, they pleaded not guilty and claimed to be tried vide their **statements Exh.64 to Exh.92** as envisaged under section 228 of Criminal Procedure Code.

(5.1) My learned Predecessor was further pleased to frame the **charge vide Exh.2001** in the following manner. Before that it would be relevant to note that the charge against accused No.33 namely Rama Gira Mer was framed vide Exh.28 in TADA Case No.01 of 2002 and later his case was consolidated with TADA Case No.14 of 1994. While framing the charge Exh.2001, it was observed by my learned Predecessor that the trial of all the accused persons be conducted jointly alongwith the accused persons of charge Exh.63 framed on 19.10.1996 and accused of charge Exh.28 framed on 04.07.2006.

Charges in TADA Case No.01 of 1997, 01 of 2000, 01 of 2002, 02 of 2005, 01 of 2016, 01 of 2017 and 01 of 2018 :-

TADA Case No.01 of 1997		
Accused No.	Name of accused	Charge framed
30	Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta	S.120(B), 34 of IPC, S.3(3) of TADA Act, S.25(1A), 25(1AA), 25(1B)(a)(b)(c)(f) of Arms Act.
31	Abdul Kayum Nizamudin Shekh @ Kayum Sajni	Died

TADA Case No.01 of 2000		
Accused No.	Name of accused	Charge framed
32	Mohammad Kasam Lajporiya @ Chacha @ Mechanic @ Kaliya	S.120(B), 153, 34 of IPC, S.3(3) of TADA Act

TADA Case No.01 of 2002		
Accused No.	Name of accused	Charge framed
33	Rama Giga Mer	S.120(B) of IPC r/w S.3(3) of TADA Act

TADA Case No.02 of 2005		
Accused No.	Name of accused	Charge framed
34	Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari	S.120(B), 153, 34 of IPC, S.3(3), 5 of TADA Act, S.25(1A), 25(1AA), 25(1B)(a)(b)(c)(f) of Arms Act, S. 4, 5 & 6 of Explosive Substances Act and S.9(B) of the Explosives Act,

TADA Case No.01 of 2016		
Accused No.	Name of accused	Charge framed
35	Istiyak Ahmed Mohammad Yunus Ansari	S.120(B), 34 of IPC, S.3(3), 5 of TADA Act, S.25(1A), 25(1AA), 25(1B)(a)(b)(c)(f) of Arms Act.

TADA Case No.01 of 2017		
Accused No.	Name of accused	Charge framed
36	Jusabmiya @ Dadlimiya S/o. Ismilemiya @ Panjumiya Saiyad	S.120(B), 34 of IPC, S.3(3) of TADA Act

TADA Case No.01 of 2018		
Accused No.	Name of accused	Charge framed
37	Kadir Ahmad s/o Amir Ahemad Shaikh @ Kadir Haji Shekh	S.120(B) of IPC, S.3(3), 5 of TADA Act

The above **charge Exh.28** in TADA Case No.01 of 2002 was read over and explained to accused. To which, he pleaded not guilty and claimed to be tried vide his statement Exh.29 as envisaged under section 228 of Criminal Procedure Code.

Likewise, **charge Exh.2001** in TADA Case No.01 of 1997, 01 of 2000, 02 of 2005, 01 of 2016, 01 of 2017 and 01 of 2018 were read over and explained to accused persons to which, they pleaded not guilty and claimed to be tried vide their statements **Exh. 2003, 2005, 2008, 2009, 2010 and 2011** as envisaged under section 228 of Criminal Procedure Code.

FURTHER STATEMENTS OF ACCUSED PERSONS:

(6) In order to prove the case against the accused persons, prosecution examined as many as 63 witnesses and produced various documentary evidences and thereafter closed its evidence vide **Closing Pursis Exh.4052.** Thereafter, with a view to grant all opportunities, further statements of accused persons were recorded under section 313 of Criminal Procedure Code, wherein the entire incriminating evidence was put before them but they denied the same and stated that false case is registered against them and they have not committed any offence and they are innocent. Some of the accused persons have stated that their confession statements were recorded by police under threat.

(6.1) Accused No.14 Jaku @ Jakab Bava submitted his written further statement, wherein it is contended that he is falsely booked in this case due to rivalry with police. It is contended that a case was registered against him for assault on police officers namely Mr.Odedara and Mr.P.K.Jha, D.S.P. of Jamnagar, who was A.S.P. at Bhuj and therefore, they have wrongly implicated him in the present case. It is further contended that when he was brought to Jamnagar on the basis of transfer warrant from Bhuj Jail, he had declared that he does not know anything about the landing case, however, he was beaten during police remand and his signature was forcefully taken on some papers. All such facts were declared by him by filing application Exh.39. It is further contended that he was in custody at Bhuj Jail from first week of February, 1993 and hence, he is not connected with this case. It is lastly contended that he was booked in Porbandar TADA case and there has been no recovery or discovery of any arms from him. It is contended that he is 70 years old person suffering from cancer and hence, prayed to acquit from the case.

(6.2) Accused No.21 Arif Abdul Rehman submitted his written further statement, wherein it is contended that he is innocent and has not given any confession statement. He was kept under remand from 10.10.1994 to 21.11.1994 and during said period, police had obtained his signature on blank papers and thereafter police had written the confession. It is contended that he is resident of Mumbai and Pune and conversant with Hindi and English languages and does not know Gujarat language, hence, the confession statement which is in Gujarati creates doubt about its veracity. It is contended that no recovery or discovery has taken place from him and he is residing with his family peacefully at Pune. He has produced an application dated 03.12.1994 tendered to my learned Predecessor.

(6.3) Accused No.30 Mohammad Salim Mir submitted his written further statement, wherein it is contended that he was initially arrested by Bombay police in connection with BBC Case No.1 of 1993 regarding Bombay Blast Cases, which was investigated by C.B.I. in 1993 and he was charge-sheeted and tried by designated Court Bombay and convicted under TADA Act and the same judgment of designated Court Bombay was confirmed by

Hon'ble Supreme Court in Criminal Appeal and at present, he is undergoing imprisonment of life sentence under TADA Act and therefore, again he cannot be punished for Section 3(3) of TADA Act. It is contended that when he was produced before Jamnagar Court on the basis of transfer warranted from Bombay Jail, he had declared that he is not aware about alleged landing case and he does not know anything. It is contended that on last day of remand, he was brutally beaten and forcibly his signatures were obtained on some papers written by police and on some blank pages. He stated that he is not booked in Porbandar TADA case and there is no recovery or discovery from him. Accordingly, he has prayed to acquit him from the present case.

(6.4) Accused No.32 Mohammad Kasam Lajporiya submitted his written further statement, wherein it is contended that he was initially arrested by Bombay Police in connection with BBC Case No.01 of 1993 regarding Bombay Blasts Cases, which was investigated by C.B.I. in 1993 and he was charge-sheeted and tried by designated Court Bombay and convicted under TADA Act and the same judgment of designated Court Bombay was confirmed by Hon'ble Supreme Court in Criminal Appeal and he has already fully served the sentence under 3(3) of TADA Act and hence, he cannot be again punished for the same offence. It is further contended that his custody was obtained illegally by transfer warrant in this case from

Bombay Jail and he is not connected in any manner with this case. It is contended that he is not aware about any landing place and he has never shown such place to police. It is contended that he is very old person and partly paralyzed and not in position to walk and stand. Accordingly, it is prayed to acquit him from the present case.

(6.5) Accused No.34 Umarmiya @ Mamumiya submitted his written further statement, wherein it is contended that he is resident of Porbandar and in January, 1993, a case was registered against him for assault on police officer Mr.Agat and therefore, he is falsely implicated in this case. It is contended that when he was brought before this Court on the basis of transfer warrant from Porbandar Jail he had declared that he does not know anything about the landing. He further declared that he does not want to make any confession however, he was brutally beaten by police and his signatures were obtained on some papers. It is contended that he has never made any statement under Section 27 of Evidence Act to investigating Officer Mr.Manoj Shashidhar. It is contended that alleged recovery was done in 2005 i.e. after 12 years of so called landing in 1993. One Ismile Juma co-accused had filed an application to transfer the case to Porbandar from where the arms were recovered, which was allowed by the designated Court Jamnagar with finding that there is no legal evidence and proof that alleged recovered arms were part of 1993 landing at Porbandar. The said findings were confirmed by Hon'ble Supreme Court in appeal. It is contended that while releasing him on bail Hon'ble Supreme Court observed that there is no prior approval of DSP under Section 20(A)(1) of TADA Act. It is contended that C.B.I. had extensively investigated the Bombay Blasts case, wherein the accused was not arraigned. Accordingly, it is prayed to acquit him from the present case.

(7) <u>Arguments by Ld.Special Public Prosecutor Mr.T.M.Gokani :-</u>

(7.1) The Ld.Special P.P. Mr.Gokani submitted that mainly the case of prosecution rests upon the confessional statements of accused persons recorded under Section 15 of TADA Act, which is substantial piece of evidence and the accused can be convicted only on the basis of his confessional statement. It is further submitted that such confessional statements can be used to convict the co-accused whose name and role reflects in the confessional statements of such accused.

(7.2) It is submitted that apart from confessional statements of accused persons, prosecution has established its case through the witness Natubhai Raviyabhai Patel (PW-10), who was present in Sada-Al-Bahar launch alongwith other accused persons. It is submitted that perusing the evidence of Natubhai, it clearly appears that the accused persons in connivance with each other had visited Pakistan Sea

Coastal area and a boat from Pakistan had loaded contraband goods in the form of Arms and ammunition in their Sada-Al-Bahar Launch. It is submitted that the evidence of Natubhai further corroborates the fact with regard to transfer of contraband goods from Al-Sada-Bahar to Bismillah and Marwah launch and proceeding of Al-Sada-Bahar launch towards Porbandar coastal area. Though the witness Natubhai was initially declared hostile by prosecution, later on when he was confronted with his police statement, he has admitted all the facts stated by him before the police. Moreover, the witness had also given his statement under Section 164 of Cr.P.C. before the learned Magistrate and the witness had also admitted the contents of the same. Thus, the conspiracy hatched by accused persons is duly proved through the evidence of said witness Natubhai Patel.

(7.3) It is submitted that the confessional statements recorded under Section 15 of TADA Act is substantive piece of evidence and only on the basis of such statements, the accused persons can be convicted. It is further submitted that most of the confessional statements were recorded by D.S.P. Mr.P.K.Jha, however, due to his demise the said statements are duly proved by his personal secretary Mr.Ajit Dubal (PW-53). It is further submitted that even if such confessional statements are not believed then also the same can be used as corroborative evidence to complete the chain of circumstance.

(7.4) It is submitted that none of the accused persons have retracted their confessional statements when they were produced before the Hon'ble Court after completion of remand period. It is submitted that initially the investigation had been carried out by Mr.Jebaliya (PW-62) and at that time, Mr.P.K.Jha had recorded the confessional statements of accused persons and thereafter, when the investigation was transferred to Mr.P.K.Jha he had not recorded any confessional statement, which shows that he was not biased.

(7.5) It is submitted that the complaint was filed by Mr.D.G.Vaghela based on the statements made by Osman @ Usman, Mamad Alimamad and Harun Amad. It is submitted that when the above referred persons had disclosed the facts about the criminal conspiracy they were not accused. It is submitted that even if the complaint is considered as a statement of accused then also as per the settled principle of law, reiterated by Hon'ble Apex Court in its various pronouncements, the same would be admissible in law.

(7.6) It is submitted that before filing an FIR, the complainant Mr.D.G.Vaghela (PW-1) had discussed about the information with Mr.P.K.Jha and after his written approval as per Section 20-A(1) of TADA Act, the complaint was filed. It is submitted that such approval was as per law and it produced vide Exh.2105, wherein the complainant has identified the signature and writing of

Mr.P.K.Jha. The signature of Mr.P.K.Jha in Exh.2105 is also identified by his P.A. Mr.Ajit Dubal (PW-53). It is further submitted that the stand taken by defence that the approval was concocted is baseless and the observations made by Special Designated Court with regard to filing of complaint without approval were made in bail order and therefore, the same cannot be relied.

(7.7) It is submitted that the conspiracy was initially hatched in Dubai and thereafter, at Bedi, Jamnagar. It is submitted that as a part of the conspiracy Sada-Al-Bahar launch was landed at Gosabara coastal area of Porbandar and all the arms and ammunition were de-boarded and transferred to various places in India. It is submitted that perusing the confessional statement of deceased accused Usmangani Noor Mohammad vide Exh.3047 recorded by PW-51 Mr.Benjamin, it clearly appears that the present accused persons more particularly accused No.1 Osman, accused No.34 Umarmiya @ Mamumiya had taken active part in procuring and transporting arms and ammunition as a part of their criminal conspiracy. The said confessional statement Exh.3047 elaborately states about the criminal conspiracy hatched by Daud Ibrahim and other accused persons and the contents of Exh.3047 are corroborated by the contents of complaint.

(7.8) It is submitted that the prosecution has successfully proved that after Sada-Al-Bahar launch was stationed at Gosabara coastal area the accused persons had deboarded the arms and ammunition from the launch and in various truck the same were sent in different parts of the country. All such facts are duly corroborated by the confessional statements of accused persons. It is submitted that looking to the contents of the confessional statement, the facts narrated therein can be known by only the accused persons and hence, it was not possible for police to concoct such confessional statements.

(7.9) It is submitted that various arms and ammunition have been found at the instance of Ahmad Ismile Oliya (A12), Iftekhar Ansari (A23) and Umarmiya @ Mamumiya (A34) and such discovery and recovery panchnama are duly proved by the panch witnesses. It is submitted that the arms and ammunition were thereafter delivered to other accused persons through Mohammad Salim Mir Mohammad (A30), Mohammad Arif @ Arif Mota (A26) and deceased accused Abdul Kalam Abdul Aziz (A22).

(7.10) It is submitted that Osman @ Usman (A1), Jakab Bava (A14) and Lakhman Hardas (A28) had shown the place of landing and panchnama to that effect were drawn and duly proved by prosecution.

(7.11) It is submitted that the confessional statement of accused would be binding to other co-accused and such amendment was being done in Section 15 of TADA Act on 22.05.1993. It is submitted that the FIR was registered after the amendment on 15.07.1993 and therefore, such amendment would be applicable in the present case and the confessional statements of accused persons can be relied upon against co-accused also. It is further submitted that all the cases had been consolidated and by framing a joint charge, trial of all the accused persons was conducted together and hence, there would be no bar for considering confessional statement of accused for implicating co-accused.

(7.12) It is submitted that the prosecution has successfully proved through the District Magistrates/Collectors about the sanction being granted as per Section 39 of the Arms Act and Section 7 of the Explosive Substances Act. It is further submitted that all the sanctions required as per Section 20A(2) are duly produced and proved by concerned I.G.P. It is further submitted that all the accused persons were involved in transportation and possession of prohibited arms and hence there was no requirement for obtaining any sanction, however, as a rule of caution, such sanctions are obtained and proved by the prosecution.

(7.13) It is lastly submitted that the prosecution has successfully proved its case beyond all reasonable doubts that all the accused persons as a part of criminal conspiracy hatched at Dubai and Jamnagar, in connivance with each other had brought the prohibited arms and ammunition in Sada-Al-Bahar launch from Pakistan and thereafter, divided such prohibited goods into Bismillah and Marwah launch and half of the prohibited goods were retained in Sada-Al-Bahar launch, which was landed at Gosabara coastal area and from there, such prohibited arms and ammunition were transferred to various parts of country. It is further submitted that all the accused persons had conspired and knowingly facilitated the Terrorist Act and their such preparation for terrorist act makes them liable for lifetime conviction.

(7.14) Based on above submissions, the learned Special P.P. Mr.Gokani has prayed to convict all the accused persons. The learned Special P.P. has relied upon various pronouncements of Hon'ble Apex Court, which would be discussed at later part of this judgment.

(8) Arguments on behalf of Ld. Advocate Mr.P.M.Buch & Mr.M.C.Hakim for accused Nos.1, 5, 6, 8, 9, 10, 13, 14, 16, 17, 25, 26, 30, 32, 34, 36.

The Ld.Advocate Mr.P.M.Buch has submitted written arguments vide Exh.4078 and Ld.Advocate Mr.M.C.Hakim has submitted his arguments vide Exh.4079. In support of written arguments, Ld.Advocate Mr.P.M. Buch further argued as under;

(8.1) It is firstly submitted that the complaint is filed on the basis of statement of accused and therefore, the same would be a confession and hence, there would be a bar of Section 25 of Evidence Act. In such circumstance, the complaint cannot be considered in evidence.

(8.2) It is submitted that the complainant (PW-1) in his complaint has stated that he came to know from his informant in June, 1993, whereas the present case is pertaining to the landing of February, 1993. It is submitted that the accused mentioned in complaint namely Osman (A1), Mamad (A2) and Harun (A3) were not accused in Bombay Bomb Blasts Case. They were accused in Porbandar case which was pertaining to the same landing and in Porbandar case they have been acquitted.

(8.3) It is submitted that the police has not investigated about Al-Sada-Bahar Launch and nothing is brought on record about its existence. It is submitted that the prosecution has not proved that in the Bomb Blasts which had taken place at Mumbai any of the arms and ammunition which were landed at Gosabara Porbandar through Al-Sada-Bahar launch were used. It is submitted that the prosecution could not bring the exact date of landing.

(8.4) It is submitted that the accused Umarmiya @ Mamumiya was released on regular bail by this Designated Court and in said bail order which is produced at Exh.4013, the then Designated Court had observed about violation of Section 20A(1) of TADA Act. It is submitted that the said order was challenged before the Hon'ble Apex Court by the State, however, the Hon'ble Apex Court dismissed the petition of State and confirmed the order of Designated Court. It is submitted that after the observations of

Designated Court, the Investigating Agency had concocted the draft complaint wherein, false endorsement of approval was made by D.S.P. Mr.P.K.Jha. It is submitted that at the time of forwarding FIR to Designated Court, the same was not appended with the so called prior approval. Moreover, no contention is made in FIR that prior approval of DSP Mr.Jha was obtained. It is further submitted that Mr.Jha's evidence has not come on record with regard to approval and therefore, it has not come on record that on what basis and in which circumstance, prior approval was given.

(8.5) It is submitted that admittedly there is no recovery or discovery of any arms and ammunition from Jamnagar. Moreover, the landing has also not taken place at Jamnagar, however, only with a view to create a false case, the theory of conspiracy is being made by investigating agency.

(8.6) It is submitted that the accused persons are charged with Section 3(3) of TADA Act, however, in absence of Section 3(1) and 3(2) of TADA Act, the case for Section 3(3) of TADA Act cannot be established. It is submitted that none of the witness states about commission of any terrorist act and therefore, Section 3(3) of TADA Act cannot be made applicable. It is submitted that for proving the offence under Section 5 of TADA Act the prosecution has to prove that the accused persons were in possession of arms and ammunition unauthorizedly in notified area, however, the prosecution could not bring the notified areas on record.

(8.7) It is submitted that the case of prosecution is of the year 1993 whereas the discovery from accused Umarmiay @ Mamumiya was effected in the year 2005. Moreover, prosecution has not proved that the arms and ammunition discovered at the instance of Umarmiya @ Mamumiya were part and parcel of prohibited consignment which was landed from Sada-Al-Bahar in the year 1993. It is submitted that the place from where Umarmiya @ Mamumiya had discovered the arms was an open space and hence, such discovery becomes highly doubtful.

(8.8) It is submitted that most of the confessional statements were recorded by DSP Mr.P.K.Jha and the investigation was being carried out by Mr.Jebaliya, Dy.S.P. who was working under Mr.Jha. Therefore, such confessional statements cannot be relied upon especially when the same are exhibited qua the signatures of Mr.Jha. It is submitted that Mr.Ajit Dubal (PW53) is concocted witness, who is represented as P.A. of Mr.Jha. It is submitted that looking to the cross-examination of Mr.Dubal, it clearly appears that there is no proof on record which would confirm that Mr.Dubal was P.A. of Mr.Jha. It is submitted that Mr.Dubal who was police constable cannot prove the contention of confessional statements. It is submitted that even this Court had exhibited such confessional statements qua the signature of Mr.Jha. Therefore, the confessional statements recorded by DSP Mr.Jha cannot be considered as evidence against the accused.

(8.9) It is submitted that some of the confessional statements were recorded by Mr.Satish Verma, DSP, Porbandar and the conduct of Mr.Verma was predetermined. It is submitted that Mr.Verma in his cross-examination has admitted that there was only one landing at Porbandar. Based on which, it is argued that for such landing one case was already registered at Porbandar, wherein accused persons were acquitted and hence, for the same offence, they cannot be convicted again.

(8.10) It is submitted that looking to the cross-examination of Mr.Rahul Sharma (PW18), it appears that he had not investigated about the ownership of Al-Sada-Bahar launch and had not investigated at Merchant Marine Department (M.M.D.) regarding registration of Al-Sada-Bahar launch. It is submitted that firstly Lakhman Hardas (A28) had shown the place of landing and a panchnama to that effect was drawn by Mr.Jebaliya. It is submitted that after the place of landing came on record by accused Lakhman Hardas, other accused persons had also shown the same place and thereby, the investigating agency had concocted a false evidence against such accused persons.

(8.11) It is further submitted that the sanctions given under Section 39 of the Arms Act and under Section 7 of the Explosive Substances Act are not in consonance with law and the same are given in mechanical manner. It is further submitted that the sanctions given under Section 20A(2) of TADA Act are also given without proper application of mind and without going through any documents and hence, the same are invalid. It is submitted that perusing Section 7 of the Explosive Substances Act, it is necessary to obtain the consent of District Magistrate. Here, the word Central Government was substituted with word District Magistrate in the year 2000. In present case, the sanction under Section 7 for accused Ismile Oliya (A12) was obtained prior to the year 2000 and therefore, it was necessary for investigating agency to obtain consent of Central Government, however, in present case no such consent has been obtained.

(8.12) It is further submitted that the confession is very weak piece of evidence and in absence of corroboration, the same cannot be used in evidence. It is submitted that the confessional statements of accused persons are recorded during remand period by torturing and threatening them. It is further submitted that as per various pronouncements of Hon'ble Apex Court, confessional statements recorded under Section 15 of TADA Act will not be useful against co-accused persons, in absence of any corroborative evidence.

(8.13) It is submitted that the prosecution has failed to establish complete chain of circumstance and there is no evidence with regard to conspiracy hatched by accused persons. It is further stated that the discovery panchnama of arms at the instance of accused Umarmiya @ Mamumiya is concocted and even if it is believed that Umarmiya had knowledge of concealed arms then also it would not amount to physical possession. Moreover, prosecution could not prove that the arms recovered at the instance of Umarmiya were connected with the landed arms in 1993.

(8.14) Based on above submissions, the Ld. Advocate Mr.P.M.Buch has prayed to acquit the accused persons as the prosecution utterly failed to prove its case beyond all reasonable doubts against the accused persons. The Ld.Advocate relied upon various judgments of Hon'ble Supreme Court, which would be discussed at an appropriate stage in this judgment.

(9) Arguments on behalf of Ld. Advocate Mr.V.H.Kanara for accused Nos.3, 23, 28, 29, 33, 35 and 37.

(9.1) The Ld.Advocate has adopted the submissions made by Ld.Advocate Mr.P.M.Buch and further submitted that the confessional statements recorded under Section 15 of TADA Act would not be binding to co-accused, as the amendment in Section 15 of TADA Act with regard to co-accused, abettor or conspirator came into force on 22.05.1993, whereas in present case, the incident has occurred in February, 1993 i.e. prior to amendment. It is further submitted that the prosecution has mostly relied upon the confessional statements of accused persons, however, such statements were recorded contrary to the guidelines of Hon'ble Apex Court in Kartarsingh's case. It is further submitted that any amendment would not be applicable retrospectively and therefore, the amendment with regard to insertion of co-accused, conspirator would not be applicable in present case.

(9.2) It is submitted that the investigating Office Mr.Jebaliya (PW-62) was junior officer to DSP Mr.P.K.Jha and therefore, there are all reasons to believe that the entire investigation more particularly recording of confessional statements of accused is at the instance of Mr.Jha and he himself had recorded such statements. Further in absence of evidence of Mr.Jha, such confessional statements would not be helpful to prosecution.

(9.3) It is submitted that the compliant was filed on the basis of secret information received from the informant of Mr.D.G.Vaghela - complainant. It is stated that if the complainant had received such information regarding landing of unauthorized arms and ammunition at Porbandar, then he could have registered the FIR with '0' number at Jamnagar and forwarded it to concerned police station at Porbandar, however, only with a view to implicate accused persons in false case, the present FIR is filed with concocted facts.

(9.4) It is submitted that apart from confessional statements, there is no evidence against the accused persons and name of some of the accused persons is revealed in confessional statements, however, no corroborative evidence against such accused persons is found, hence, they are entitled for acquittal.

(9.5) It is further submitted that since the muddamal was seized by investigating agency and till it was produced before the Designated Court, there is no disclosure about where the muddamal was lying and this important link of evidence is missing. It is submitted that the confessional statements of accused persons who have died cannot be taken into consideration against the present accused persons.

(9.6) Based on above submissions, the Ld. Advocate Mr.V.H.Kanara has prayed to acquit the accused persons as the prosecution has failed to prove its case beyond all reasonable doubts against the accused persons. The Ld.Advocate relied upon various judgments of Hon'ble Supreme Court, which would be discussed at an appropriate stage in this judgment.

(10) Arguments on behalf of Ld. Advocate Mr.H.M.Bhatt for accused Nos.12, 15, 24 and 27.

(10.1) The Ld.Advocate has adopted the submissions made by Ld.Advocate Mr.P.M.Buch and further submitted that the accused No.27 Mohammad Safi has not given any confessional statement and there is no recovery or discovery from him but he is implicated on the basis of statements of co-accused.

(10.2) It is submitted that Mr.Satish Verma (PW54) had recorded statements of accused No.24 Mohammad Ayub under threat during remand period. As such there is no recovery or discovery from the said accused. Moreover, the muddamal recovered from accused persons is from the consignment deboarded at Gosabar coastal area is not proved by prosecution.

(10.3) It is lastly submitted that the accused are not named in any criminal conspiracy and there is no evidence to that effect have been brought on record by prosecution.

(10.4) Based on above submissions, the Ld. Advocate Mr.H.M.Bhatt has prayed to acquit the accused persons as the prosecution has failed to prove its case beyond all reasonable doubt against the accused persons.

(11) Arguments on behalf of Ld. Advocate Mr.A.B.Makwana for accused No. 21 and Ld.Advocate Mr.A.M.Gori for the accused No.2.

(11.1) The Ld.Advocates have adopted the submissions made by Ld.Advocate Mr.P.M.Buch and further submitted that the prosecution could not prove that the accused persons had in any manner facilitated the terrorist activity. Moreover, there is no recovery of discovery from any of the accused. The prosecution could not prove that these accused persons have played any active role in the crime. Moreover, no criminal conspiracy has been proved against them. Hence, it is prayed to acquit the accused persons.

(12) Upon hearing arguments and considering the above facts and circumstances of the case, following issues arise for my consideration.

ISSUES

(1) Whether prosecution proves that the prior approval for applying the provision of TADA Act as required under Section 20-A(1) of the TADA Act and sanction to take cognizance of the offence as required under Section 20-A(2) of the TADA Act are valid?

(2) Whether prosecution proves that after demolition of Babri Mosque at Ayodhya on 06.12.1992 to take revenge against particular community and with a view to damage the security and integrity of country and to cause terrorist activities in India, a conspiracy was hatched at Dubai by absconding accused Daud Ibrahim, deceased accused Mustafa Dosa @ Majnu and other known and unknown accused persons and accordingly, on and around in February, 1993, Osman @ Usman(A1), Mamad Alimamad (A2) and Harun Sanghar (A3) boarded in Sada-Al-Bahar launch and visited the Karachi Coastal area of Pakistan, from where a boat of Pakistan Marine Security loaded prohibited arms and ammunition in Sada-Al-Bahar launch and thereafter, said Sada-Al-Bahar launch went into high sea, where Bismillah and Marwah launches approached Sada-Al-Bahar launch, from where some arms and ammunition were transferred and Sada-

Al-Bahar launch with remaining arms and ammunition came towards village Gosabara coastal area, Porbandar?

(3) Whether prosecution proves that as a part of criminal conspiracy and facilitate the commission of Terrorist Act and preparatory to Terrorist Act, the accused persons namely Osman @ Usman (A1), Mamad Alimamad (A2) and Harun Adam (A3) gathered at resident of Osman @ Usman (A1) situated at Bedi, Jamnagar entered into a criminal conspiracy with other accused persons mentioned in charge and brought the prohibited arms and ammunition in Sada-Al-Bahar launch and landed it at Gosabara coastal area, Porbandar and in connivance with other charged accused persons transported it to various parts of country and possessed such prohibited arms and ammunition with a view to facilitate the commission of Terrorist Act?

(4) Whether the prosecution proves that the accused persons committed the offence as alleged in charge bearing Exh.63, Exh.2001 and Exh.28 (TADA Case No.1 of 2002)?

(5) What order?

(13) My answers to the aforesaid issues are as under:

(1) In Affirmative.

(2) In Affirmative.

(3) In Partly Affirmative.

(4) In Partly Affirmative.

(5) As per final order.

REASONS & FINDINGS

Issue No.1 :-

(14) It would firstly be relevant to refer Section 20A of the TADA Act which is as under;

Section 20A of TADA Act

> 20-A. Cognizance of offence –
> (1) Notwithstanding, anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.
> (2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police.]

As per sub-section 1 of Section 20-A of TADA Act, there must be prior approval of District Superintendent of Police before an information about the commission of offence under the TADA Act could be recorded by police. Before discussing merit of this case, it would be relevant to refer the following pronouncements of the Hon'ble Apex Court;

(15) The prosecution has relied upon the judgment of **Mohd. Jalees Ansari and others vs. Central Bureau of Investigation reported in (2016) 11 SCC 544** wherein it is observed as under;

> "43. In Rangku Dutta v. State of Assam, (2011) 6 SCC 358 this Court found the requirement of prior approval under Section 20-A(1) to be mandatory in following words:-
> 18. <u>It is obvious that Section 20-A(1) is a mandatory requirement of law.</u> First, it starts with an overriding clause and, thereafter, to emphasise its mandatory nature, it uses the expression "No" after the overriding clause. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Reference in this connection can be made to G.P. Singh's Principles of Statutory Interpretation, 12th Edn., at pp. 404-05,

the learned author has stated:

"As stated by CRAWFORD: 'Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience.' As observed by SUBBARAO, J.: 'Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative.' Section 80 and Section 87-B of the Code of Civil Procedure, 1908; Section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; Section 213 of the Succession Act, 1925; Section 5-A of the Prevention of Corruption Act, 1947; Section 7 of the Stamp Act, 1899; Section 108 of the Companies Act, 1956; Section 20(1) of the Prevention of Food Adulteration Act, 1954; Section 55 of the Wild Life (Protection) Act, 1972; the proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 (as amended in 1956); Section 10-A of the Medical Council Act, 1956 (as amended in 1993), and similar other provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory."

We are in respectful agreement with the aforesaid statement of law made by the learned author.

19. So there can be no doubt about the mandatory nature of the requirement of this Section. Apart from that, since the said Section has been amended in order to prevent the abuse of the provisions of TADA, this Court while examining the question of complying with the said provision must examine it strictly.

20. <u>Going by the aforesaid principles, this Court finds that no information about the commission of an offence under the said Act can be recorded by the police without the prior approval of the District Superintendent of Police.</u> <u>Therefore, the requirement of prior approval must be satisfied at the time of recording the information.</u> If a subsequent investigation is carried on without a proper recording of the information by the DSP in terms of Section 20-A(1), that does not cure the inherent defect of recording the information without the prior approval of the District Superintendent of Police.

44. <u>In Ashrafkhan v. State of Gujarat, (2012) 11 SCC 606 the effect of non- compliance of Section 20 A(1) of TADA Act was considered by this Court.</u> This Court also dealt with submission advanced on behalf of the State that once cognizance was taken and the Designated Court had decided to try the case by itself, any prior defects would be rendered irrelevant. This Court stated in clear terms that even if the case is tried by the Designated Court, the non-compliance of Section 20 A(1) can be raised as a ground and it would not prevent the accused to challenge the

trial or their conviction on that ground. Paragraph 38 of the judgment of this Court is relevant and is quoted hereunder:-

38. As regards submission of the State that the Designated Court having taken cognizance and decided to try the case by itself in exercise of the power under Section 18 of TADA, the prior defects, if any, are rendered irrelevant and cannot be raised, has only been noted to be rejected. Section 18 of TADA confers jurisdiction on the Designated Court to transfer such cases for the trial of such offences in which it has no jurisdiction to try and in such cases, the court to which the case is transferred, may proceed with the trial of the offence as if it had taken cognizance of the offence. The power of the Designated Court to transfer the case to be tried by a court of competent jurisdiction would not mean that in case the Designated Court has decided to proceed with the trial, any defect in trial, cannot be agitated at later stage. Many ingredients which are required to be established to confer jurisdiction on a Designated Court are required to be proved during trial. At the stage of Section 18 the Designated Court has to decide as to whether to try the case itself or transfer the case for trial to another court of competent jurisdiction. For that, the materials collected during the course of investigation have only to be seen. The investigating agency, in the present case, has come out with a case that prior approval was given for registration of the case and the allegations made do constitute an offence under TADA. In the face of it, the Designated Court had no option than to proceed with the trial. However, the decision by the Designated Court to proceed with the trial shall not prevent the accused to contend in future that they cannot be validly prosecuted under TADA. We hasten to add that even in a case which is not fit to be tried by the Designated Court but it decides to do the same instead of referring the case to be tried by a court of competent jurisdiction, it will not prevent the accused to challenge the trial or conviction later on.

45. Further, this Court in Ashrafkhan (supra) went on to consider whether confession so recorded could be used, for establishing guilt in respect of offences under other enactments in following words:-

41. We have held the conviction of the accused to have been vitiated on account of non-compliance with Section 20-A(1) of TADA and thus, it may be permissible in law to maintain the conviction under the Arms Act and the Explosive Substances Act but that shall only be possible when there are legally admissible evidence to establish those charges. The Designated Court has only relied on the confessions recorded under TADA to convict the accused for offences under the Arms Act and the Explosive Substances Act. <u>In view of our finding that their</u>

conviction is vitiated on account of non-compliance of the mandatory requirement of prior approval under Section 20-A(1) of TADA, the confessions recorded cannot be looked into to establish the guilt under the aforesaid Acts. Hence, the conviction of the accused under Sections 7 and 25(1-A) of the Arms Act and Sections 4, 5 and 6 of the Explosive Substances Act cannot also be allowed to stand.

46. In the light of the aforesaid principles, the effect of order dated 21.05.1996 of Metropolitan Sessions Judge, Hyderabad and Designated Court is required to be considered. The Designated Court had found that there was no proper and valid invocation of the provisions of TADA Act while dealing with Sessions Case Nos. 438 of 1994, 584 of 1994, 13 of 1995 and 14 of 1995. Sessions Case No. 48 of 1994 arose from FIR No.336 of 1993 in which crime, confessions of accused Nos. A9, A10, A11 and A13 were recorded. Though the State had preferred an appeal in this Court, on 17.07.2001 at the request of the State, the appeals were allowed to be withdrawn. Consequently, the order of the Designated Court that there was no valid invocation of provisions of TADA Act, attained finality. Not a single witness was examined in the present matter in connection with invocation of TADA Act in said crime No.336 of 1993 nor any document in that behalf was placed on record. What we have on record is only the testimony of those officials who had recorded the confessions of said accused in crime No.336 of 1993 and nothing more. In the face of the order that the provisions of TADA Act were not validity and properly invoked, such confessions on the strength of law declared by this Court in Rangku Dutta and Ashrafkhan cases (Supra), must suffer the inevitable consequence. As declared by this Court, if there is no valid prior approval under TADA Act, subsequent steps or stages initiated under TADA Act are rendered invalid. Consequently, the confessions of Accused Nos.A9, A10, A11 and A13 are without any legal sanction and cannot be relied upon.

(16) The prosecution has relied upon the judgment of **Manjit Singh @ Mange vs. C.B.I. reported in 2011 (0) AIJEL-SC 49334** wherein it is observed as under ;

"49. The next argument of Shri K.T.S. Tulsi and Shri Amrendra Sharan, learned senior counsel, is with regard to the procedural irregularities in the investigation conducted by the prosecution which, according to them, is not properly appreciated by the learned Designated Court. The learned counsel contends that under Section 20A of the TADA, the sanction of the District

Superintendent of Police is required to be obtained before the police record any information about the commission of an offence under the TADA. Since the same has not been obtained, the conviction of the accused cannot be sustained. In the instant case, according to the learned senior counsel, the sanction has been obtained from the S.P., C.B.I. It is urged that the Act does not envisage an officer of an equivalent rank, but requires the sanction from the authority that is envisaged in the Statute. It is further urged that the provisions of the TADA Act require to be strictly construed and interpreted, and for this reason also, an officer of S.P., C.B.I. would not mean the Superintendent of Police of the District.

50. The learned senior counsel relies on several judgments of this court in support of his submissions that penal provisions require to be strictly interpreted and we should not interpret the plain language of the statute or that words having an ordinary meaning cannot be given a different interpretation. It is also brought to our notice that the plain and simple language of a statute best describes the intention of the Legislature. The decision on which reliance was placed are: Nasiruddin V/s. Sita Ram Agrawal, (2003) 2 SCC 577, Firoz Dotiwala V/s. P.M. Wadwani, (2003) 1 SCC 433, Union of India V/s. Hansoli Devi, (2002) 7 SCC 273, Dadi Jaganadham V/s. Jamulu Ramulu, (2001) 7 SCC 71, Union of India V/s. Elphinstone Company Ltd., (2001) 4 SCC 139, Whirpool of India V/s. ESI Corporation, (2000) 3 SCC 185, Mohd. Ali Khan V/s. CWI, (1997) 3 SCC 511.

52. <u>Section 20A (1) of TADA Act commences with the words "notwithstanding anything", hence it is a non-obstante clause.</u> As regards non-obstante clause, a Constitution Bench of this court in the case of Ashwini Kumar Ghosh V/s. Arabinda Bose and Anr. AIR 1952 SC 369 opined:-

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."

53. In the case of Vishin N Khanchandani & Another v Vidya Laxmidas Khanchandani & Another, (2000) 6 SCC 724, this court laid down:-

<u>"The non obstante clause is used to avoid the operation and effect of all contrary provisions. But to attract the applicability of a non obstante clause, the whole of the Section, the scheme, the objects and reasons for the enactment of the Act must be kept in mind."</u>

54. We are of the view that the phrase "District SP" has been used in order to take the sanction of a senior officer of the said district, when the prosecution wants to record any commission of a offence under the Act, the reason appears to be that the Superintendent of Police of the District is fully aware of necessity to initiate the proceedings under the stringent criminal law like the TADA Act. In the instant case, the State Government, in exercise of the power conferred by Section 3 of the Delhi Police Special Establishment Act, 1946, has handed over the investigation to CBI. The Superintendent of Police, CBI, has authorized his subordinate officer to record the confessional statements of K.K. Saini and Mange after following the procedure prescribed under the Act and the Rules framed thereunder. Since investigation was done by CBI, in our view, Superintendent of Police could authorize the Police to record the information about the commission of the offence under the Act.

55. In the case of Ahmad Umar Saeed V/s. State of U.P (1996) 11 SCC 61, a similar fact situation arose. In that case, the accused contended that `cognizance of the offence' as required under Section 20A(1) were not followed as the FIR was recorded by a Sub-Inspector of Police. The accused therein were charged for multiple offences both under the Penal Code and TADA as is the case in the present appeals. <u>This court held that Section 20A(1) does not prohibit the officer from recording the complaint and instituting investigation as a statutory right is conferred on him under the Code with respect to non TADA offences.</u> Hence if the charges are framed with regard to an act, which in the same transaction can be under TADA and any other criminal provisions, then the mere fact that the filing of FIR by anyone other than the District Superintendent would not vitiate the whole process.

56. In the instant case, the cognizance/`prior permission' was granted by the S.P. of CBI. The accused contended that the District Superintendent appointed by the concerned State Government cannot be equated to the post of Superintendent of the Central Investigation Bureau who is appointed directly by the Central Government. We have been apprised of the fact that it was at the behest of the State Government, the case was transferred to the CBI and, therefore, this distinction has hardly any relevance. After careful consideration of the submission on the question of equation of rank, we are inclined to hold that in matters concerning national security, as is the case of terrorist acts, the Centre and an autonomous body functioning under it would be better equipped to handle such cases. Therefore, `prior approval' by the SP of CBI would adequately satisfy the requirements under Section 20A(1). We also note that there is

no prejudice caused to the accused as a result of the authorization being granted by the SP of the CBI.

(17) The defence has relied upon the judgment of Hon'ble Apex Court in the case of **Seeni Nainar Mohammed Versus State Rep.By Deputy Superintendent Of Police reported in 2017 (0) AIJEL-SC 60124,** wherein the Hon'ble Apex Court held as under;

> 10. We, without hesitation, are of this considered opinion that the answer to this question is in the negative for settled principle of non-application of mind by sanctioning authority while granting approval for taking cognizance under TADA Act and undermining the objective of the Act. This relevant provision was inserted by Act 43 of 1993 which came into force on 23.05.1993 which is prior to the date of commission of the offence i.e., 10.10.1994 disputed in instant appeal which makes it crystal clear that Section 20-A(1) of TADA must be construed by indicating that prior approval from the competent authority is mandatory for taking cognizance of offence punishable under TADA. However, it shall always be borne in mind by the sanctioning authority that application of such provisions which forms part of penal statues requires strict interpretation and failure to comply with the mandatory requirement of sanction before cognizance is taken, as mentioned in TADA, may vitiate the entire proceedings in the case. In the recent past, it has been observed by this Court in respect of Section 20-A of TADA in the case of Hussein Ghadially @ M.H.G.A Shaikh & Ors. Vs. State of Gujarat, (2014) 8 SCC 425, at para 21, as follows: "A careful reading of the above leaves no manner of doubt that the provision starts with a non obstante clause and is couched in negative phraseology. It forbids recording of information about the commission of offences under TADA by the Police without the prior approval of the District Superintendent of Police."

(17.1) Thus, as per the provision of 20-A and as per the above pronouncements of Hon'ble Apex Court, it is mandatory that when information about the commission of offence under TADA Act is received then the complaint can be recorded only after the prior approval of District Superintendent of Police.

(17.2) In this case to decide this issue with regard to whether prior approval of D.S.P. Mr.P.K.Jha was obtained, it would be relevant to firstly refer the evidence of PW-1 (Exh.2104) Dilipsinh Gatorsinh Vaghela, who is the complainant. As per his evidence, in 1993 he was serving as PSI, local Intelligence Branch, Jamnagar, when in around 09th or 10th of June, he came to know that some persons are trying to bring RDX, Arms and Ammunition in India with a view to spread terror and hence, he conveyed this information in person to Mr.Jha, DSP, Jamangar. Thereafter, said Mr.Jha instructed him to investigate deeply and to work out in that direction. Hence, he stayed connected with his informant and kept watch on suspicious persons. During which, based on the information received by him, he interrogated suspicious persons namely Osman (A1), Mamad (A2) and Harun (A3). Thereafter, he put a note and kept a draft FIR before DSP Mr.Jha and got it approved and then on 15.07.1993, he filed a complaint before City "B" Division Police Station, Jamnagar. In his evidence, he has produced a draft complaint vide Exh.2105. At the time of recording of his deposition, the objection was being raised by defence for exhibiting the said draft compliant and with a note, to decide it at the stage of final hearing, it was given tentative Exh.2105. During the course of final hearing, it was submitted that the draft complaint is not in the handwriting of the complainant and the name of writer is also not coming on record. Further the endorsement made by Mr.Jha with regard to approval is concocted. In support whereof the defence has submitted that in bail application of deceased Usmangani Noormamad (A19), an order was passed by the then learned Designated Judge in Cr.M.A. No.77 of 1996 on 13.03.1996 wherein it was observed by the Court that "It is crystal clear from the record that there was no prior approval of D.S.P. before recording information about the commission of offences under TADA Act". The said order is produced vide Exh.4013 in deposition of Mr.Rahul Sharma (PW-58 - Exh.4010). It is further submitted that the said order was assailed before Hon'ble Apex Court and the order was confirmed. Based on above submissions, it is argued by defence that the endorsement with regard to prior approval made by Mr.Jha in draft complaint is concocted. As against which, the Ld.Special P.P. submitted that the purpose of draft complaint is only to obtain prior approval under Section 20-A of TADA Act and hence, there cannot be signature of complainant. Moreover, the complaint is filed as per the draft complaint and the contention of draft complaint and the complaint are similar and when the complainant gives detailed evidence with regard to obtaining of prior approval of Mr.Jha on draft complaint, tentative Exh.2105 be given final exhibit and be read in evidence. Upon hearing the Ld.Advocates for the parties, it appears that the draft complaint contains the same ingredients mentioned in the complaint. Moreover, the witness has identified the endorsement and signature of D.S.P. Mr.Jha. Admittedly, said Mr.Jha has expired and hence, his evidence has not come on record. In absence thereof, the complainant who was in constant touch with Mr.Jha after receipt of the information about the transportation of prohibited arms and ammunition has identified the signature of Mr.Jha. Further, the observation made by the then designated Court were in bail order and at that time, there was no evidence of complainant recorded. As of now, there is detailed evidence of complainant with regard to obtaining prior approval of D.S.P.Mr.Jha and the defence has also thoroughly cross-examined the complainant, wherein nothing has come on record which would substantiate the argument of defence that the endorsement with regard to prior approval is concocted. Interestingly, the Ld.Special P.P. has drawn attention of this Court towards date 10th February, 1992 written in draft complaint Exh.2105 and submitted that if the draft complaint is concocted document then the date should have been written as 10th February, 1993 as narrated in complaint Exh.2116. I am in full agreement with the Ld.Special P.P. that if the draft complaint could have been written later on i.e. after filing of complaint Exh.2116 then in draft complaint the date should have been 10th February, 1993 and not 10th February, 1992. The witness has further produced an office note Exh.2106, wherein he has identified his signature and looking to its contents, it appears that he had requested the D.S.P. for granting approval to the draft and ordered to file an FIR. The witness has identified his signature in Exh.2107, which is a forwarding note made to P.I. City "B" Division Police Station, Jamnagar for registration of complaint, wherein it is clearly mentioned that he had discussed with DSP Mr.Jha for further investigation.

(17.3) Based on above discussion, I hold that the defence has failed to prove that the draft complaint is concocted and no approval of Mr.Jha was obtained before filing the complaint, whereas the prosecution has successfully proved that the complainant had obtained prior approval of D.S.P. Mr.Jha before filing the complaint for the offences of TADA Act.

(18) The defence had also objected the exhibiting of complaint and hence, at the relevant time my learned Predecessor had given Exh.2116 to the complaint with objection to be decided at the time of final arguments.

(18.1) At this juncture, it would be relevant to refer the judgment of Hon'ble Apex Court in case of **Brajendrasingh vs. State of Madhya Pradesh reported in (2012) 4 SCC 289** wherein it is observed as under ;

> "12. As we have already noticed in the narration of facts above that the FIR was recorded by Sub-Inspector Mohan Singh Maurya, PW16 based on the statement of the appellant itself, made in the Police Station. <u>This cannot be treated, in law and in fact, as a confessional statement made by the accused and it would certainly attain its</u>

admissibility in evidence as an FIR recorded by the competent officer in accordance with law."

(18.2) It would further be relevant to refer judgment of Hon'ble Andhra Pradesh High Court in case of **Akula Bhoomaiah and another vs. The State of A.P. reported in 2012 SCC Online AP 118** wherein it is observed as under;

"7. The above sections deal with proof of evidence of confession. They make such confession ineligible for proof against a person accused of any offence. The question of proving a statement, be it a confession or otherwise, arises during the course of trial before a Court. In the present case, the case is yet to reach the precincts of a Court and it is pending investigation with the police after registration of the crime. During investigation, the Police Officer simply collects pieces of evidence for placing the same before the Court during trial. It is only during trial, the Court where the trial goes on decides whether a particular piece of evidence is admissible or relevant or capable of being proved. Until the case reaches the stage of trial in a Criminal Court, applicability of Sections 25 and 26 of the Evidence Act may not arise. It is no doubt true, trial includes the stage of framing of charges against the accused or discharging an accused who is charge-sheeted.

8. In Nisar Ali v. The State of U.P., AIR 1957 SC 366 the Supreme Court considered value of a First Information Report during trial and held as follows:

'A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under S.157, Evidence Act, or to contradict it under S.145 of the Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence. 'When a First Information Report is not a substantive piece of evidence, the question of proving the same for being used as evidence against the maker, say in this case, one of the accused does not arise at all. During the course of trial, the prosecution is not going to examine an accused person as a prosecution witness, in order to use his statement contained in First Information Report to contradict or to corroborate his/her evidence. After all, a First Information Report is only useful for the purpose of putting the

Criminal Law missionary into motion on commission of an offence.
9. In Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119 also the Supreme Court dealt with value of a First Information Report during trial and more particularly if such First Information Report offends Section 25 of the Evidence Act. It was held therein:
"10. Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under S.157 of the Evidence Act or to contradict him under S.145 of the Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under S.8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under S.21 of the Evidence Act and is relevant, see Faddi v. State of Madhya Pradesh, Crl.Appeal No.210 of 1963, dated 24-1-1964: (AIR 1964 SC 1850), explaining Nisar Ali v. State of U.P.,(S) AIR 1957 SC 366 and Dal Singh v. King Emperor, 44 Ind App 137: (AIR 1917 PC 25). But a confessional first information report to a police Officer cannot be used against the accused in view of S.25 of the Evidence Act.
18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S.25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S.25 is lifted by S.27."

(18.3) Thus, as per the above pronouncements, it is clear that the information received from proposed accused persons can be treated as complaint and the same can be considered as evidence. Moreover, it appears that when the complainant had interrogated the three accused persons, they were not made accused and hence, the contentions of FIR cannot be considered as statement of accused. It would further be relevant to observe that the First Information Report is not substantive evidence but is only useful for the purpose of putting criminal law into motion. For the forgoing reasons, the objection for not exhibiting the complaint is overruled and the contentions of complaint are being considered for the just decision of the case.

(19) As provided in Section 20-A(2) of TADA Act, no Court shall take cognizance of any offence under this Act without the previous sanction of the Inspector General of Police, or as the case may be, Commissioner of Police. In this case, the prosecution has examined Mr.Bharatkumar Lakhmanbhai Vadukar as PW-35 (Exh.2920). The said witness is discharging his duty as Police Inspector at Crime Table in Police Bhavan, Gandhinagar. The witness has produced the authority letter Exh.2921 issued by the office of Inspector General of Police. The witness has produced the sanctions given by different Inspector General of Police for different accused persons vide Exh.2922 to Exh.2929.

(20) The prosecution has examined Mr.Pruthvipal Jagdish Pandey, Inspector General of Police as PW-39 (Exh.2966) who has granted sanction under Section 20-A(2) of TADA Act for accused Jusabmiya @ Dadlimiya s/o Ismilemiya @ Panjumiya Saiyyad Bukhari (A36). He has identified his signature in sanction Exh.2928. In cross-examination, he admitted that at the time of granting sanction the TADA Act was not in existence. He further admitted that no documents of Mumbai

Bomb Blasts Case were produced before him. Perusing his entire evidence, the defence could not bring on record that the sanction was granted in mechanical manner and it appears that the sanction Exh.2928 granted by witness was valid and issued after proper application of mind.

(21) The prosecution has examined Mrs.Geetha Anil Johri, Inspector General of Police as PW-40 (Exh.2967) who has granted sanction under Section 20-A(2) of TADA Act for accused Kadir Ahemad s/o Amir Ahmad Shaikh @ Kadir Hazi Shaikh (A37). She has identified her signature in sanction Exh.2929. She has not been cross-examined by defence. Therefore, it appears that the sanction Exh.2929 granted by witness was valid and issued after proper application of mind.

(22) Perusing entire above evidence with regard to sanction granted under Section 20-A(2) of TADA Act, it appears that the defence has not much disputed with regard to its validity. Therefore, it would be just and proper to hold that the sanction granted under Section 20-A(2) of TADA Act is just and valid.

(23) Based on the above discussion and the pronouncements of Hon'ble Apex Court, I hold that the complainant (PW-1) Mr.D.G.Vaghela had in due course obtained prior approval from Mr.P.K.Jha, D.S.P. Jamnagar for applying the provision of TADA Act as required under Section 20-A(1) of the TADA Act and the sanction granted by concerned Inspector General of Police, to take cognizance of the offence as required under Section 20-A(2) of the TADA Act are valid. Accordingly, I answer issue No.1 in **Affirmative.**

Issue No.2 :-

(24) The case of the Prosecution as also the arguments advanced on behalf of the Ld.Special P.P. which is to the effect that the procurement and transportation of prohibited arms and ammunition was on account of a conspiracy, which was hatched post demolition of Babri Mosque at Ayodhya and that in furtherance of the conspiracy, the prohibited arms and ammunition were landed at Gosabara coastal area, Porbandar.

In my opinion, it would, therefore, be necessary to firstly decide as to whether there was a conspiracy, a pre-planned conspiracy and that the landing of arms and ammunition at Gosabara coastal area, Porbandar was in furtherance of and in execution of the pre-planned conspiracy that was arrived between the accused persons. To make it more clear, first part of conspiracy was with regard to procurement of prohibited arms and ammunition in Sada-Al-Bahar launch and the landing of such prohibited goods at Gosabara coastal area, Porbandar and the second part of conspiracy was with regard to transportation of such arms and ammunition to various parts of country. Firstly, it would be relevant to refer Section 120A of Indian Penal Code which is as under;

"Section 120A. Definition of Criminal Conspiracy.

When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

It would further be relevant to refer Section 120B of Indian Penal Code which is as under;

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 years 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."

At this juncture, the case law with regard to criminal conspiracy is required to be considered.

(25) The Hon'ble Supreme Court has right since the landmark judgment delivered in the case of **Masalti & others v. State of Uttar Pradesh as reported in AIR-1965-SC-202**, has consistently held that there must be a prior concert, meaning to say, a prior meeting of minds between the persons to have agreed directly or indirectly to commit and perpetrate the offence ultimately committed. The agreement can be explicit or implicit, but there must be an agreement.

(26) The Hon'ble Supreme Court has in number of judgments, more particularly in the landmark judgment of **Mohd. Khalid v. State of West Bengal as reported in (2002) 7 SCC 334**, held as under:

"Offence of conspiracy can be proved by either direct or circumstantial evidence. <u>However, conspiracies are not hatched in the open, by their nature, they are secretly planned. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct</u>

evidence in proof of a conspiracy is therefore seldom available. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. It can in some cases be inferred from the acts and conduct of the parties."

(27) The Hon'ble Supreme Court in the case of **Devendar Pal Singh v. State of NCT of Delhi as reported in (2002) 5 SCC 234** has held thus:

"For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done an illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means. The ingredients of the offence of conspiracy are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means, an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act. The elements of a criminal conspiracy have been stated to be; (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, (d) in the jurisdiction where the statute required an overt act.

Privacy and secrecy are more characteristics of a conspiracy, than of aloud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out; all this is necessarily a matter of inference. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence; it can be established by direct or circumstantial evidence or both."

(28) The Hon'ble Supreme Court in the case of **P.K.Narayanan v. State of Kerala** as reported in **(1995) 1 SCC 142,** has held that:

The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inference from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence. Motive and preparation by themselves do not amount to conspiracy."

(29) It would be relevant to refer the judgment of Hon'ble Apex Court in case of **State vs. Nalini and others reported in (1999) 5 SCC 253,** it is observed as under;

> 662. The ingredients of the offence of criminal conspiracy are : (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. The proviso and the explanation are not relevant for the present discussion.
>
> 663. Though the meeting of minds of two or more persons for doing/or causing to be done an illegal act or an act by illegal means is a sine qua non of the criminal conspiracy, yet in the very nature of the offence which is shrouded with secrecy no direct evidence of the common intention of the conspirators can normally be produced before the court. Having regard to the nature of the offence, such a meeting of minds of the conspirators has to be inferred from the circumstances proved by the prosecution, if such an inference is possible.
>
> 669. From a survey of cases, referred to above, the following position emerges :
>
> 670. In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences (even if some of them have not actively participated in the commission of those offences.
>
> 671. The agreement, sine qua non of conspiracy, may be proved either by direct evidence which is rarely available in such cases

> or it may be inferred from utterances, writings, acts, omissions and conduct of the parties to the conspiracy which is usually done. In view of Sec. 10 of the Evidence Act anything said, done or written by those who enlist their support to the object of conspiracy and those who join later or make their exit before completion of the object in furtherance of their common intention will be relevant facts to prove that each one of them can justifiably be treated as a conspirator."

(30) It would further be relevant to refer the judgment of Hon'ble Apex Court in case of **Yakub Abdul Razak Memon vs. State of Maharashtra reported in (2013) 13 SCC 1**, it is observed as under;

> 64. The offence under Section 120B is a crime between the parties to do a particular act. Association or relation to lead conspiracy is not enough to establish the intention to kill the deceased. To make it clear, to bring home the charge of conspiracy within the ambit of Section 120B, it is necessary to establish that there was agreement between the parties for doing an unlawful act. It is difficult to establish conspiracy by direct evidence.
>
> 65. Since conspiracy is hatched in secrecy, to bring home the charge of conspiracy, it is relevant to decide conclusively the object behind it from the charges level against the accused and the facts of the case. The object behind it is the ultimate aim of the conspiracy. Further, many means might have been adopted to achieve the ultimate object. The means may even constitute different offences by themselves, but as long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy.
>
> 77. In the present case, the conspiracy might have been started in Dubai but ultimately it continued here in India and a part of the object was executed in India and even in the conspiratorial meetings at Dubai, the matter was discussed with respect to India and amongst Indian citizens. Further, as far as the present accused is concerned, the fact that he was constantly present at Al-Hussaini building, where the major part of the plans have been made and executed, is established, and his active involvement has also emerged from the evidence on record as to how he was dealing with the so called men of Tiger, managing the ill gotten money of Tiger, booking tickets and actively working for confirming them for the conspirators. Further, there is enough evidence of meeting with co-accused and his actively working in furtherance of the conspiracy. The present accused

need not be present at each and every meeting for being held to be a part of the conspiracy.”

(31) It can, therefore, be seen that to establish the element of criminal conspiracy, the statute as also the law laid down by the Hon'ble Supreme Court, has made it incumbent for the prosecution to establish by direct or circumstantial evidence as the case may be, that there was a meeting of minds between the alleged co-conspirators and such meeting of minds was with full knowledge that the offence for which the conspiracy is alleged to have been hatched, was to be committed.

(31.1) Criminal conspiracy can be proved largely by conduct and inference and is required to be established when a set of circumstances comes to light wherein the only inference that can be drawn by a prudent man is that there was a conspiracy and meeting of minds and the offence that took place was a consequence of such conspiracy and in execution thereof.

(32) As per the case of prosecution, the incident of Babri Mosque demolition had taken place at Ayodhya on 06.12.1992 and to take revenge of the same against a particular community and to spread terror amongst the citizen of India, a conspiracy was hatched at Dubai. As per the above pronouncements of Hon'ble Apex Court, seldom there is any direct evidence available to prove the conspiracy.

(32.1) In present case, the prosecution has alleged that the conspiracy was hatched at Dubai and as a part of that conspiracy some of the accused persons had gathered at

Jamagar and agreed in connivance with each other to get the arms and ammunition landed at Gosabara coastal area of Porbandar and then transferred it to various parts of India. Firstly, it would be most important to refer the evidence of PW-10 (Exh.2654) Natubhai Raviyabhai Patel. This witness had deposed that he used to work in the launch of Mustafa @ Majnu Dosa at Dubai in the year 1993. Said Mustafa @ Majnu had various launches named Bismillah, Marwah, Al-Sada-Bahar etc. Once, they had left Dubai in Sada-Bahar Laucnh in the year 1993, where-after, they were transferred from Sada-Bahar to Bismillah in the middle of sea where they stayed for 2-3 days in sea. He deposed that goods were also transferred between two launches, those goods were other than silver bricks, however, he does not remember the goods. He deposed that he had given his statement in that regard before police and the Magistrate. However, he exactly does not remember the statement. Thereafter, the Ld.Special P.P. had sought permission to declare him hostile and then, cross-examined him. In cross-examination, he admitted the facts stated by him in his police statement as well as statement recorded under Section 164 of Cr.P.C. before the Magistrate vide Exh.3033. He admitted that all the contentions stated by him in both the above statements. More particularly, a fact that he went in a trip in Bismillah launch wherein Shantu, Kishan, Osman (A1), Khandu, Bhanabhai and Iqbal were accompanying him. Osman

(A1) and Iqbal used to deliver silver bricks in small speed boat. He stated that in Sada-Bahar launch, Osman (A1), Mamdu(A2) and Harun (A3), Hazi, Dani and Toni were present. He stated about going in Marwah launch and met Sada-Bahar launch and Bismillah launch in the middle of the sea and transferred diesel and eatables to both the launches. He stated that alongwith sliver bricks, in Sada-Bahar, there were wooden boxes, guns covered in Jute cloth and grain like things were filled in thick palm leaves. Out of these things, wooden boxes were kept in Bismillah launch and the guns covered in jute cloth were left in Sada-Bahar launch. While transferring the things to Bismillah Launch the witness Natu and Kishan had en-lighted *bidi* and hence, Osman (A1) from Sada-Bahar launch informed them to not smoke as there were bombs and hence, they had stopped smoking. He further stated that after the transfer of goods, Yunus Chikna informed the witness and Shantu and Kishan Kagdi and Mangu that they shall go in Bismillah launch, however, as there were bombs in launch they refused to go. Therefore, Yunus Chikna had called upon Mustafa Majnu and said Mustafa Majnu had ordered to shoot them. Thereafter, Mustafa Majnu called on the phone fixed in Sada-Bahar launch and inquired with Osman(A1) that whether the four persons are shot or not. To which, Osman informed Mustafa Majnu that they are not doing this work but they will do next assignment and hence, requested to leave them and accordingly, they were not shot. The witness has reiterated that all the above facts were also stated by him in the statement recorded by the Magistrate. Moreover, he admitted that in January, 1993, Captain Osman (A1), Mamdu (A2), Harun (A3), Toni and one Pakistani took the vacant Sada-Bahar launch and went to sea. He further stated that he alongwith Captain Yunus Chikna, Shantu, Kishan, Rahim Salemamad, Bachu, Bhabhabhai went in Bismillah launch and Anvar Sambha, Kasam Vaniya, Iqbal Isuk, Raju Khima, Magu, Vertu went in Marwah launch. Both Bismillah and Marwah launch left together and after 4 - 5 days in Karachi coastal area, Pakistan met Sada-Bahar launch which was standing there. Thereafter, three captain talked *inter-se* and at that time, Osman (A1) said that this time there is no silver but something different is found. The witness stated that from Sada-Al-Bahar goods were transferred in Bismillah launch. While goods were being deboarded, the witness saw that there were Jute bags around 125 in numbers containing powder, 45 jute bags containing Pistol, Revolver etc. and around 40 - 50 wooden boxes. He further stated that when he went to take money after 2 - 3 days, he came to know that Al-Sada-Bahar had gone towards Porbandar and Bismillah had gone towards Bombay and later, after 2 - 3 days, he had heard about Bomb Blast in Mumbai. Thereafter, in April, he returned to India by plane. He admitted that whichever facts were stated by him before police and before the learned Magistrate were true. He further admitted that he has deposed all the facts which he knew but as considerable long time has passed, he does not remember some of the facts.

(32.2) In cross-examination, he admitted that a case of Silver Smuggling is registered against him at Valsad. He denied that TADA case was registered against him at Porbandar wherein he was acquitted. He denied that he had not stated any facts to police or the Magistrate.

(32.3) Perusing the entire above evidence of witness Natubhai (PW10), it appear that he was present in Bismillah launch and he saw Osman (A1), Mamad (A2) and Harun (A3) in Al-Sada-Bahar laucnh when his launch had approached Al-Sada-Bahar at Karachi coastal area, Pakistan. He has also witnessed transfer of arms and ammunition between Al-Sada-Bahar and Bismillah launch. The witness also states about the active participation of above three accused persons in procuring and transferring the prohibited arms and ammunition. The witness states about Al-Sada-Bahar had gone towards Porbandar. It is true that the witness had been declared hostile, however, when his attention was drawn towards his statement recorded by police as well as learned Magistrate Exh.3033, he has admitted all the facts stated by him. It is trite law that only because the witness is declared hostile, his entire evidence cannot be thrown away. Therefore, through the evidence of this witness, the facts clearly reveal that the three accused namely Osman, Mamad and Harun were working under Mustafa Dosa @ Majnu and upon his direction, they had gone in Al-Sada-Bahar Launch at Karachi, Pakistan and received the prohibited arms and ammunition and transferred some of the goods to Bismillah and taking the remaining goods in Al-Sada-Bahar approached Porbandar.

(33) Alongwith the evidence of PW-10 Natu Raviyabhai Patel, it would be relevant to refer the confessional statement of deceased accused Usmangani Noormamad Abdulla (A19). Before the confessional statement of Usmangani is evaluated, it would be relevant to discuss about whether the confessional statement of deceased accused can be relied upon as evidence. The defence has relied upon the judgment of Hon'ble Apex Court in case of **State of Gujarat vs. Mohammad Atik reported in (1998) 4 SCC 351.**

> “10. Even if the fourth respondent-Abdul Latif were alive his confession could have been used as against another person only under the strict parameters fixed in the proviso to Sec.15(1) of the TADA Act. The proviso reads thus :- "Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused." But the moment the maker of the confession dies before conclusion of the trial, the above proviso sinks into disuse because then it would be impossible to try the two persons together."
> 17. Thus, the principle is no longer res integra that any statement made by an accused after his arrest, whether as confession or otherwise, cannot fall within the ambit of Sec.10 of the Evidence Act. The corollary of it is that the confessional statement of 4th respondent (Abdul Latif Abdul Wahab Sheikh) who is no more alive now thus vanishes from the ken of evidentiary use. "

(33.1) At this juncture, it would be relevant to refer the judgment of Hon'ble Apex Court relied by prosecution in case of **Mohd. Jalees Ansari and others vs. C.B.I. reported in (2016) 11 SCC 544** wherein it is observed as under;

> "50. It is neither contended that there was no valid invocation of the provisions of TADA Act in Bombay Bomb Blast case nor it is submitted that on the date when A1 Dr. Jalees Ansari made his cnfession in Bombay Bomb Blast matter he was not accused of having committed offences punishable under TADA Act. Subsequent discharge of the accused at the instance of the prosecution under Section 169 Cr.P.C. would not in any way dilute or diminish the value of such confession, if it is otherwise admissible in law. In our view, therefore, merely because the confession of A1 Dr. Jalees Ansari was recorded in a different matter and/or that he was discharged from that matter would not cause any inhibition for using such confession in the present matter, if the confession otherwise passes the test of admissibility in accordance with law."

(33.2) Perusing both the pronouncements of Hon'ble Apex Court, in Mohammed Atik (Supra), it was held that the confessional statement of accused who is no more alive vanishes from ken of evidentiary use. Whereas, in Mohd. Jalees Ansari (Supra), it was held that the confessional statement of accused even it discharged from the matter could not cause any inhibition for using such confession. The Judgment of Mohd. Jalees Ansari is at later point of time and therefore, the ratio laid down with regard to usage of confessional statement of accused even if he is discharged would hold the field. Therefore, in present case, Usmangani Noormamad (A19) though died, if his confessional statement satisfies that it was recorded without any force or coercion and after following due process of law then the same can be utilized in evidence.

(34) It would be relevant to refer the evidence of Mr.Rajkumar James Benjamin examined as PW-51(Exh.3043). This witness had recorded the statement of accused Usmangani Noormamad Abdulla, which is produced at Exh.3047. The witness has deposed that between the year 1993 to 1995, he was D.I.G. of Rajkot Range and he received a confidential letter on 31.08.1994 from D.S.P. Jamnagar Mr.Jha for recording the confessional statement of accused Usmangani Noormamad. The said letter is produced vide Exh.3044. Accordingly, the witness had visited the office of D.S.P. Jamnagar on 01.09.1994 and informed the D.S.P. Jamnagar to produce accused Usmangani for recording his confessional statement. The said letter is produced vide Exh.3045. He further deposed that pursuant to letter Exh.3045, accused was produced before the witness and showed his willingness to give confessional statement and hence, the witness had informed the accused to think over and during this period, the D.S.P. Jamnagar was informed to not interrogate him. The said letter is produced vide Exh.3046. Thereafter, on second day, i.e. 02.09.1994, the accused was produced before the witness and his confessional statement was recorded. Perusing the confessional statement Exh.3047, it is narrated therein that yesterday i.e. 01.09.1994, the accused met the witness and showed his willingness to give confessional statement regarding his involvement and his knowledge about the conspiracy hatched in Dubai. The accused also stated that his conscience feels that he must tell the whole truth about the conspiracy which was hatched in Dubai in January, 1993. It further appears that the witness had informed the accused that if he gives any such statement, it may be used against him and he is not bound to give any such statement. However, the accused wanted to clear his conscious and that is why he wanted to make a confessional statement regarding the conspiracy in Dubai in 1993 and other related facts which he knew about the arms and explosives smuggling. It further appears that the witness, after his satisfaction had recorded the statement in the word of accused in presence of Stenographer of D.S.P. Jamnagar office Mr.John Alexander. The confessional statement Exh.3047, signature of accused Usmangani was obtained on each and every page and an endorsement that "I have read the above statement given by me and it contents full facts in my version and my words" was made and thereafter, he put his signature with name and date. The witness has also put his signature with Rubber stamp of his name and office and round seal on each page. The statement is appended with detailed certificate issued by the witness. The witness has produced a forwarding letter written to the Chief Judicial Magistrate, Jamnagar vide Exh.3048, whereby the accused Usmangani alongwith confessional statement was produced before the learned Magistrate Court. Thus, the witness has followed the guidelines of Hon'ble Apex Court in case of Kartar Singh vs. State of Punjab reported in (1994) 3 SCC 569 and has also followed Rule 15 of the TADA Rules.

Moreover, there is no retraction of accused Usmangani when produced before the learned Magistrate. Therefore, the confessional statement of accused Usmangnai (Exh.3047) is recorded in accordance with law and hence, the same can be relied upon.

(34.1) Now, if the confessional statement of accused Usmangani is perused then, it appears that he was closely associated and had family relations with absconding accused Daud Ibrahim and the relations had developed when he was at Dubai. It further appears that deceased accused Mustafa Majnu had invested in property of Daud Ibrahim and Daud Ibrahim had numbers of Pakistani friends and associates. It appears that Usmangani had friendly relationship with Mohammad Dosa who was brother of Mustafa and through him, he came in contact with Mohammad Kaliya (A32), Firoz, Salim Kutta (A30), Usman (A1) and Yakub who were the Tandels of launches. Deceased accused Mustafa Majnu had boats namely Marwah, Roshia, Insha Allah, Masha-Allah, Joshiq, Kadri, Sada-Al-Bahar and Bismillah which were used for smuggling activities. It further appears that accused Usmangani used to attend meetings wherein they used to discuss about taking revenge after the demolition of Babri Mosque. One such meeting was held between 11th and 15th January, 1993 which was attended by accused Usmangani alongwith Daud Ibrahim, Mustafa Majnu and others, wherein, it was discussed to take revenge against Hindus who had committed atrocities over Muslims in Mumbai. Daud Ibrahim told that arms, explosives, automatic riffles, cartridges and hand-grenades etc. had been received from Pakistan to take revenge on Hindus and these had been sent to India in the lauches of Mustafa Majnu. Tiger Memon, Hazi Ahemad Memon, Chhota Shakil, Anish Ibrahim, Ezaz Pathan and deceased accused Mustafa Majnu took the responsibility of arranging of man power. After a week of said meeting, accused Usmangani went to meet Mustafa Majnu in his office where Mustafa told him that on the instructions of Daud Ibrahim he had sent the arms in India, however, Mustafa did not discuss the destination of arms with Usmangani. When Usmangani was sitting there, Usman (A1), who is captain of one of his boats, also came there and reported to Mustafa Majnu that arms and ammunition had reached India. Mustafa further told Usmangani that captain Usman (A1) had taken the arms and ammunition to India and that the arms etc. had been provided by Pakistan Navy and were delivered to boats of Mustafa Majnu at high sea.

(35) Perusing the above confessional statement of deceased accused Usmangani (A19), it clearly appears that the conspiracy was hatched to done away the Hindu community for taking the revenge of Babri Mosque demolition and as a part of it, launches of Mustafa Majnu were sent at Pakistan and prohibited arms and ammunition were obtained. These facts are duly corroborated by the evidence of PW-10 Natubhai Raviyabhai Patel and complaint Exh.2116. Thus, the prosecution has clearly established chain of circumstances which is as under;

(a) Osman (A1), Mamad (A2) and Harun (A3) had gone in Sada-Al-Bahar launch of Mustafa Majnu and obtained prohibited arms and ammunition from Pakistan.

(b) Said Sada-al-Bahar Launch was take to high sea where Bismillah and Marwah launches had approached and some of the prohibited goods were transferred to said launches and some arms and ammunition were kept in Sada-Al-Bahar launch.

(c) Said Sada-Al-Bahar launch was then taken to Gosabara coastal area of Porbandar.

(35.1) Thus, based on the above discussion, it clearly appears that the prosecution has successfully proved that a criminal conspiracy was hatched by the absconding accused Daud Ibrahim in connivance with deceased accused Mustafa Majnu and Osman @ Usman (A1), Mamad (A2) and Harun (A3), who went in Sada-Al-Bharar launch of Mustafa Majnu and procured arms and ammunition from Pakistan and were then landed at Gosabara in Sada-Bahar launch and thus, the prosecution successfully proved the charge of conspiracy against the above referred accused persons and hence, I answer Issue No.2 in **Affirmative.**

<u>Issue Nos.3 & 4:-</u>

(36) As discussed earlier, the prosecution has successfully proved the conspiracy hatched with regard to procurement and landing of prohibited arms and ammunition and now it is required to be seen that whether the accused persons as a part of criminal conspiracy hatched at Bedi Jamnagar had received the prohibited arms and ammunition from Sada-Al-Bahar launch at Gosabara coastal area, Porbandar.

(37) The prosecution has heavily relied upon the confessional statements of accused persons recorded under Section 15 of TADA Act. Before going through the confessional statements of accused persons, it would firstly be relevant to see **case law with regard to evidentiary value of confessional statements recorded under Section 15 of TADA Act.**

(38) It would be firstly refer the Judgment of Hon'ble Apex Court in case of **Kartar Singh vs. State of Punjab reported in (1994) 3 SCC 569** wherein the Hon'ble Apex Court laid down certain guidelines with regard to confessional statement which is as under;

> 263. However, we would like to lay down following guidelines so as to ensure that the confession obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any vice but is in strict conformity with the well-recognised and accepted aesthetic principles and fundamental fairness :
> (1 The confession should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;
> (2 The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5)

along with the original statement of confession, written or recorded on mechanical device without unreasonable delay;
(3 The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon;
(4 Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a police officer of equivalent rank, should investigate any offence punishable under this Act of 1987.
This is necessary in view of the drastic provisions of this Act. More so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorise only a police officer of a specified rank to investigate the offences under those specified Acts.
(5 The police officer if he is seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay, if any, in seeking the police custody;
(6 In case, the person, taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so, the said statement may be used against him as evidence, asserts his right to silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure;
The central government may take note of these guidelines and incorporate them by appropriate amendments in the Act and the Rules.
264. Though it is entirely for the court trying the offence to decide the question of admissibility or reliability of a confession in its judicial wisdom strictly adhering to the law, it must, while so deciding the question should satisfy itself that there was no trap, no track and no importune seeking of evidence during the custodial interrogation and all the conditions required are fulfilled."

(39) In **Lalsingh Vs. State of Gujarat and another reported in (2001) 3 SCC 221**, it is observed as under;

22. <u>The Court finally held that it is entirely for the Court trying the offence to decide the question of admissibility and reliability of confession in its judicial wisdom strictly adhering to the law,</u>

it must, while so deciding the question, should satisfy itself that there was no trap, no track and no importune seeking of evidence during the custodial interrogation and all the conditions required are fulfilled.

23. In view of the settled legal position, it is not possible to accept the contention of learned senior Counsel Mr. Sushil Kumar that as the accused were in police custody, the confessional statements are either inadmissible in evidence or are not reliable. Custodial interrogation in such cases is permissible under the law to meet grave situation arising out of terrorism unleashed by terrorist activities by persons residing within or outside the country. The learned Counsel further submitted that in the present case the guidelines suggested by this Court in Kartar Singh (supra) were not followed. In our view, this submission is without any basis because in the present case confessional statements were recorded prior to the date of decision in the said case, i.e. before 11th Mar. 1994. Further, despite the suggestion made by this Court in Kartar Singh's case, the said guidelines are neither incorporated in the Act or the Rules by the Parliament. Therefore, it would be difficult to accept the contention raised by learned Counsel for the accused that as the said guidelines are not followed, confessional statements even if admissible in evidence, should not be relied upon for convicting the accused. Further, this Court has not held in Kartar Singh's case (supra) that if suggested guidelines are not followed then confessional statement would be inadmissible in evidence. Similar contention was negatived by this Court in S. N. Dube V/s. N. B. Bhoir and Others [JT 2000 (1) SC 220 = (2000) 2 SCC 254] but holding that police officer recording the confession under Sec. 15 is really not bound to follow any other procedure and the rules or the guidelines framed by the Bombay High Court for recording the confession by a Magistrate under Sec. 164 Cr. P.C.; said guidelines do not by themselves apply to recording of a confession under Section 15 of the TADA Act and it is for the Court to appreciate the confessional statement as the substantive piece of evidence and find out whether it is voluntary and truthful. Further, by a majority decision in State V/s. Nalini and Others [JT 1999 (4) SC 106 = (1999) 5 SCC 253] the Court negatived the contentions that confessional statement is not a substantive piece of evidence and cannot be used against the co-accused unless it is corroborated in material particulars by other evidence and the confession of one accused cannot corroborate the confession of another, by holding that to that extent the provisions of Evidence Act including Sec. 30 would not be applicable. The decision in Nalini's case was considered in S. M. Dube's case (supra). The Court observed that Sec. 15 is an important departure from the ordinary law and

must receive that interpretation which would achieve the object of that provision and not frustrate or truncate it and that the correct legal position is that a confession recorded under Sec. 15 of the TADA Act is a substantive piece of evidence and can be used against a co-accused also.

24. In the present case, undisputedly when the accused were produced before the Magistrate they did not make a complaint that the confessional statements were recorded under coercion. Further, Rule 15 of the TADA Rules is complied with and each accused making the confession was explained that he was not bound to make it and in case he makes it, it could be used against him as evidence. Further, the officer had also verified that accused was making the confessional statement voluntarily and certificate to that effect is also attached to the said confessional statement. For its reliability and truthfulness, prosecution has produced on record other corroborative evidence, which we would discuss hereinafter.

25. Once it is held that confessional statements are admissible in evidence, for deciding - to what extent such statements are reliable and truthful on the basis of corroborative evidence, we have to refer to the same. The prosecution story revolves around accused Nos. 1 and 2 and all charges against remaining accused are inter se connected with both these accused. Therefore, we would first refer to some parts of the confessional statements of A1-Lal Singh and A2-Mohd. Sharief.

(40) In **Jameel Ahmad vs. State of Rajasthan reported in (2003) 9 SCC 673**, it is observed as under;

"26. The next question for our consideration in this regard would be whether confession recorded under section 15 of the TADA Act can be solely relied upon for basing a conviction on the maker of that confession. Learned counsel for the appellants have argued that the confessional statement especially one that is made to the Police Officer being a very weak piece of evidence it is necessary that the court even if it is satisfied that the confession is made voluntarily and truthfully must seek corroboration before it could base a conviction on the maker of the confession. We are unable to accept this argument advanced on behalf of the appellants. The Sting 'if any' in this argument is taken away by the wording of section 15 of TADA Act. This section provides that if an accused person is voluntarily willing to make a confessional statement under section 15 of the TADA Act, the same can be made to an officer not below the rank of a Superintendent of Police. The section further provides that such statement made to the police officer shall be admissible in evidence. Once the statement is admissible in evidence then like any other evidence, it is for the court to consider whether such statement can be relied on solely or with necessary corroboration. Therefore, the argument that as a matter of rule such statement under section 15 of the TADA Act should not be relied upon without corroboration cannot be accepted. We have already noticed that this provision of law is a departure from the provision of sections 25 to 30 of the Evidence Act. As a matter of fact, section 15 of the TADA Act operates independent of the Evidence Act and the Code of Criminal Procedure. The validity of this provision has been upheld by a Constitution Bench of this Court in Kartar Singh etc. v. State of Punjab etc., JT 1994 (2) SC 423 ; (1994 3 SCC 569) Therefore if the legislature had thought it fit that in a given set of facts when an accused is charged with an offence punishable under the provisions of the TADA Act is voluntarily willing to make a confessional statement and if such statement is made to and recorded by an officer not below the rank of Superintendent of Police in a manner provided in that section, the same is admissible in evidence, and if the same is proved in a court of law to be voluntary and truthful in nature, we cannot see why such a statement should be treated as a weak piece of evidence requiring corroboration merely because the same is made to and recorded by a Police Officer. Answering a similar argument raised as to the acceptability of a confession made to a police officer without the support of any corroborative evidence in a TADA case this Court in Devender Pal Singh V/s. State of NCT of Delhi & Anr., JT 2002 (3) SC 264 ; (2002 5 SCC 234) by a majority judgment held:

"The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of police administration. See Aher Raja Khima V/s. State of Saurashtra (AIR 1956 SC 217)."

27. Therefore, the argument of learned counsel that merely because the statement has been recorded by a Police Officer the same should be treated as a weak type of evidence and should not be accepted without corroboration, cannot be countenanced.

28. At this stage we may also notice that the court in a series of cases has held that the confessional statement recorded under section 15 of the TADA Act if found by the courts to be truthful and voluntary, the same becomes a substantive piece of evidence which do not require any corroboration and a conviction can be based without there being any such corroboration so far as the maker of the confession is concerned.

See D. P. Singh (supra) - (para 33), Jayawant Dattatraya Suryarao etc. v. State of Maharashtra, JT 2001 (9) SC 605 ; 2001 10 SCC 109 Lal Singh v. State of Gujarat & Anr., JT 2001 (1) SC 410 ; 2001 3 SCC 221 and S N Dube v. N.B. Bhoir & Ors., JT 2000 (1) SC 220 ; 2000 2 SCC 254 Therefore the argument that a confessional statement being a weak type of evidence must always be corroborated before basing a conviction, cannot be accepted."

(41) In **Mohd. Ayub Dar Vs. State of Jammu and Kashmir reported in (2010) 9 SCC 312**, it is observed as under;

"28. All these cases suggest that the only test which the Court has to apply is whether the confession was voluntary and free of coercion, threat or inducement and whether sufficient caution is taken by the police officer who recorded the confession. <u>Once the confession passes that test, it can become the basis of the conviction.</u> We are completely convinced that the confession in this case was free from all the aforementioned defects and was voluntary.

33. Even otherwise, we are fully satisfied that the confession was indeed made by the appellant and the details given in the confession and the meticulous planning that went behind committing murder of Moulvi Farooq, which has been reflected in the confession, not only render it voluntary, but truthful also. We are thoroughly convinced that this confession is not only a good, voluntary and truthful confession but a reliable one also and the trial Court has committed no mistake whatsoever in relying upon the said confession. Once we accept the confession made u/s. 15 of the TADA Act, there is no necessity of any other evidence being required."

(42) In **Yakub Abdul Razak Memon vs. State of Maharashtra reported in (2013) 13 SCC 1** (Bombay Bomb Blast Case), it is observed as under;

105. To sum up, it can easily be inferred that the position of law on the evidentiary value of confession is as under:-

(i) If the confessional statement is properly recorded satisfying the mandatory provision of Section 15 of TADA and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base conviction on the maker of the confession.

(ii) Whether such confession requires corroboration or not, is a matter for the court to consider on the basis of the facts of each

> case.
> (iii) With regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base conviction on the basis such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be us against a co-accused.
> (iv) The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.
> (v) The requirement of sub-rule (5) of Rule 15 of the Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case direct transmission of the confessional statement to the Designated Court should satisfy itself on the facts of each case whether such direct transmission of the confessional statement creates any doubt as to the genuineness of the said confessional statement.

(43) Looking to the above pronouncements of Hon'ble Apex Court, it appears that if the Court satisfies that the confessional statement of accused is recorded without any force and coercion and in accordance with law then such statement can be used as substantial evidence for convicting the accused and no further corroboration is required.

(44) Now once, it is decided that the confessional statements recorded under Section 15 of TADA Act is substantial piece of evidence against the maker of the statement, **now it is required to be seen whether such confessional statements of**

accused can be used against the co-accused. For which, following pronouncements of Hon'ble Apex Court are required to be considered;

(45) In **State Vs. Nalini reported in (1999) 5 SCC 253**, it is observed as under;

> "92. This means, the court should have treated the confession of one accused as against a co-accused to be substantive evidence against the latter, and in the absence of proof to the contrary, the Designated court would have full power to base a conviction of the co-accused upon the confession made by another accused.
> 93. But the amendment of 1993 has completely wiped out the said presumption against a co-accused from the statute book. In other words, after the amendment a Designated court could not do what it could have done before the amendment with the confession of one accused against a co- accused. Parliament has taken away such empowerment. Then what is it that Parliament did by adding the words in Sec. 15(1) and by inserting the proviso. After the amendment the Designated court could use the confession of one accused against another accused only if two conditions are fulfilled:
> (1 The co-accused should have been charged in the same case along with the confessor. (2 He should have been tried together with the confessor in the same case. Before amendment the Designated court had no such restriction as the confession of an accused could have been used against a co-accused whether or not the latter was charged or tried together with the confessor.
> 422. When Sec. 15 TADA says that confession of an accused is admissible against co-accused as well it would be substantive evidence against the co-accused. It is a different matter as to what value is to be attached to the confession with regard to the co-accused as that would fall in the realm of appreciation of evidence.
> 423. The term 'admissible' under Sec. 15 has to be given a meaning. When it says that confession is admissible against a co-accused it can only mean that it is substantive evidence against him as well as against the maker of the confession.
> 431. In view of the above discussions, we hold the confessions of the accused in the present case to be voluntarily and validly made and under Sec. 15 of TADA confession of an accused is admissible against co-accused as a substantive evidence. Substantive evidence, however, does not necessarily mean substantial evidence. It is the quality of evidence that matters. As to what value is to be attached to a confession will fall within

the domain of appreciation of evidence. As a matter of prudence court may look for some corroboration if confession is to be used against a co-accused though that will again be with the sphere of appraisal of evidence.

(46) In **Sukhwant Singh @ Balwinder Singh vs. State reported in (2003) 8 SCC 90**, it is observed as under;

> "3. In the present case we are aware of the fact that the appellant has not made any confessional statement nor there is any corroboration of the confessional statement of the co-accused implicating this appellant from any other independent source but then we have held in the above reported case that if confessional statement of a co-accused is acceptable to the court even without corroboration then a confession of a co-accused can be the basis of conviction of another accused so implicated in that confession. Therefore the fact that the appellant herein has not confessed or the confessional statements made implicating him by A-1 and A-2 are not independently corroborated, will not be a ground to reject the evidence produced by the prosecution in the form of confessional statement of co-accused provided the confession relied against the appellant is acceptable to the court."

(47) The Hon'ble Apex Court in case of **Prakash Kumar @ Prakash Bhutto vs. State of Gujarat reported in (2005) 2 SCC 409** held that the confessional statement of accused recorded under Section 15 of TADA Act would continue to remain admissible for the offence under any other law which were tried alongwith TADA offences under Section 12 and observed as under;

> 16. The primary question referred to this Bench for determination is, as to whether the confessional statement duly recorded u/s. 15 of TADA would continue to remain admissible as for the offences under any other law which were tried along with TADA offences u/s. 12 of the Act, notwithstanding the fact that the accused was acquitted of offences under TADA in the said trial.
>
> 17. The questions posed before us for the termination are no more res integra. In our view, the same have been set at rest by

the three-Judge Bench decision rendered in Nalini (supra). The rigours of Ss. 12 and 15 were considered in Nalini's case and rendered a finding in paragraphs 80, 81 and 82 (SCC p.304) as under:-

"80. Section 12 of TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence "with which the accused may be charged" as per the Code of Criminal Procedure. Sub-sec. (2) thereof empowers the Designated Court to convict the accused, in such a trial, of any offence "under any other law" if it is found by such Designated Court in such trial that the accused is found guilty of such offence. If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law, it does not mean that there was only a trial for such other offence under any other law.
81. Section 15 of TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, if there was a trial of any offence under TADA together with any other offence under any other law, the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences."
(emphasis supplied)
82. The aforesaid implications of Sec. 12 vis-a-vis Sec. 15 of TADA have not been adverted to in Bilal Ahmed case. Hence the observations therein (at SCC p.434, para 5) that "while dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA" cannot be followed by us. The correct position is that the confessional statement duly recorded u/s. 15 of TADA would continue to remain admissible as for the other offences under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial." (emphasis supplied) We are in respectful agreement with the findings recorded by a three-Judge Bench in Nalini's case.
39. For the reasons aforestated, we are of the view that the decision in Nalini's case has laid down correct law and we hold that the confessional statement duly recorded u/s. 15 of TADA and Rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with TADA offences u/s. 12 of the Act, notwithstanding that the accused was acquitted of offences under TADA in the same trial.

(48) In **Yakub Abdul Razak Memon vs. State of Maharashtra reported in (2013) 13 SCC 1**, it is observed that -

> 147. In view of the above, it can easily be inferred that <u>with regard to the use of such confession as against a co-accused, as a matter of caution, a general corroboration should be sought for</u> but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

(49) Thus, as per the above pronouncements a principle is settled that the statement of accused recorded under Section 15 of TADA Act would be binding to the co-accused for offences committed and tried in the same case together with accused who makes confession. However, as a rule of prudence, there should be corroborative evidence against the co-accused.

(50) The Ld.Advocate Mr.Kanara for accused has submitted that the amendment in Section 15 of TADA Act with regard to admissibility of confessional statement against co-accused, abettor or conspirator came into existence on 22.05.1993, whereas, in present case, the offence is stated to be committed in February, 1993 which is prior to amendment. Moreover, the effect of amendment cannot be given retrospectively and hence, the confessional statement of accused cannot be looked into against the co-accused and abettor. As against which, Ld.Special P.P. submitted that the FIR was registered on 15.07.1993 and thereafter, the confessional statement of accused persons came to be recorded and hence, such confessional statements would be admissible against the co-accused. Ld.Advocate Mr.Kanara relied upon the judgment of Hon'ble Apex Court in case of ***Trilok Chand vs. State of H.P. reported in (2020) 10 SCC 763*** wherein it is observed as under;

> "**5.** Learned counsel for the State has opposed the appeal submitting that there are concurrent findings of misbranding in accordance with the law, as it then stood on the date of occurrence.
> **6.** We have considered the respective submissions. In Criminal Appeal No.214 of 2006, this Court relied on a decision in T. Barai Vs. Henry Ah Hoe and Another [(1983) 1 SCC 177] wherein it was opined that since the amendment was beneficial to the accused persons, it could be applied with respect to earlier cases as well which are pending in the Court observing:
> "22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7 th Edn., at pp. 388-89: A retrospective statute is different from an ex post facto statute. "Every ex post facto law...." said Chase, J., in the American case of Calder v. Bull "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly

retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

(51) As against which, the Ld.Special P.P. relied upon the judgment of Hon'ble Apex Court in case of **State of Rajasthan vs. Ajit Singh and others reported in (2008) 1 SCC 601,** wherein it is observed as under;

15. It has accordingly been emphasized that the statement made by the accused could be used one against the other. Mr. Sodhi has however pointed out that the decision in Jamil Ahmed's case had been rendered without noticing that the words in sec. 15(1) of the Act (which have been underlined above) that is "or co-accused, abettor or conspirator" had been inserted in the Act in 1993 and as such could not be retrospectively applied to an incident of 12.08.1991. He has also referred us to State (NCT of Delhi) V/s. Navjot Sandhu, 2005 11 SCC 600 to submit that this issue had been specifically raised and while noticing the addition made in 1993 it had been observed that a confessional statement recorded u/s. 15 would be sufficient to base a conviction on the maker of the confession but on the other proposition whether such a confession could be used against a co-accused was another matter. This Court distinguished Jamil Ahmed case and observed thus in Paragraph 49:

"It is, however, the contention of the learned counsel Shri Gopal Subramanium that Sec. 32(1) can be so construed as to include the admissibility of confession of the co-accused as well. The omission of the words in POTA "or co-accused, abettor or conspirator" following the expression "in the trial of such person" which are the words contained in Sec. 15(1) of TADA does not make material difference, according to him. It is his submission that the words "co-accused", etc. were included by the 1993 Amendment of TADA by way of abundant caution and not because the unamended section of TADA did not cover the confession of the co-accused. According to the learned Senior Counsel, the phrase "shall be admissible in the trial of such person" does not restrict the admissibility only against the maker of the confession. It extends to all those who are being tried jointly along with the maker of the confession provided they are also affected by the confession. The learned Senior Counsel highlights the crucial words "in the trial of such person" and argues that the confession would not merely be admissible against the maker but would be admissible in the trial of the maker which may be a trial jointly with the other accused persons. Our attention has been drawn to the provisions of Cr.P.C. and POTA providing for a joint trial in which the accused could be tried not only for the offences under POTA but also for the offences under IPC. We find no difficulty in accepting the proposition that there could be a joint trial and the expression "the trial of such person" may encompass a trial in which the accused who made the confession is tried jointly with the other accused. From that, does it follow that the confession made by one accused is equally admissible against others, in the absence of specific words- The answer, our view, should be in the negative. On a plain reading of Sec. 32(1), the confession made by an accused before a police officer shall be admissible against the maker of the confession in the course of his trial. It may be a joint trial along with some other accused; but, we cannot stretch the language of the section so as to bring the confession of the co-accused within the fold of admissibility. Such stretching of the language of law is not at all warranted especially in the case of a law which visits a person with serious penal consequences [vide the observations of Ahmadi, J.(as he then was) in Niranjan Singh V/s. Jitendra, SCC at p.86, which were cited with approval in Kartar Singh case]. We would expect a more explicit and transparent wording to be employed in the section to rope in the confession of the co-accused within the net of admissibility on a par with the confession of the maker. An Evidentiary rule of such importance and grave consequence to the accused could not have been conveyed in a deficient language. It seems to us that a conscious departure was made by the framers of POTA on a consideration of the pros and cons, by dropping the words "co-accused", etc. These specific words consciously added to Sec. 15(1) by the 1993 Amendment of TADA so as to cover the confessions of the co-accused would not have escaped the notice of Parliament when POTA was enacted. Apparently, Parliament in its wisdom would have thought that the law relating to confession of the co- accused under the ordinary law of evidence, should be allowed to have its sway taking a cue from the observations in Kartar Singh case at para 255. The confession recorded by the police was, therefore, allowed to be used against the maker of the confession without going further and transposing the legal position that was obtained under TADA. We cannot countenance the contention that the words "co- accused", etc. were added in Sec. 15(1) of TADA, *ex majore cautela*."

(52) Upon hearing both the Ld. Advocates and perusing above judgment of Hon'ble Apex Court in Ajit Singh (Supra) the Hon'ble Apex Court has specifically dealt with this issue and answered that even if the incident would have occurred prior to amendment in the Act in 1993, the statement made by accused can be used against the others.

(53) Thus, the Hon'ble Apex Court in the above referred judgments has laid down that the confessional statement of accused shall be binding to the co-accused unless they are tried jointly and there should be corroborative evidence qua such accused. In this case, admittedly as discussed in foregoing paragraphs, all the trials are being consolidated and the evidence has been recorded in Special TADA Case No.14 of 1994 considering it as a main matter. Now it would be appropriate to discuss the evidence with regard to confessional statements of accused by keeping the settled principle of law laid down by Hon'ble Apex Court in the above referred judgments.

(54) It is not disputed that the first charge-sheet was filed by Mr.P.K.Jha, D.S.P. Jamnagar. As per the submission of Ld.Special P.P. initial investigation was carried out by Mr.B.S.Jebaliya (PW-62) and at that time, when accused persons showed their willingness to give confessional statements, they were produced before the D.S.P. Jamnagar Mr.P.K.Jha and accordingly after following due process of law, Mr.Jha had recorded the confessional statements of such accused persons. Admittedly, Mr.Jha has expired and his evidence has not come on record. Therefore, the prosecution had tendered an application under Section 311 of Cr.P.C. to summon Mr.Ajit Dubal, who at the relevant time was P.A. of Mr.P.K.Jha. The said application was allowed and Mr.Ajit Dalpatram Dubal was examined as PW-53 (Exh.3064). Before his evidence was initiated, a note was made by this Court that Ld.Advocates for both the parties had made the submissions with regard to exhibiting the confessional statements recorded under Section 15 of TADA Act. It was observed that Mr.Jha had expired and hence, the statements recorded allegedly in presence of the witness were given exhibits qua the signature of Mr.Jha and the evidentiary value of such statements was agreed to be decided at the time of final hearing. Therefore, firstly it would be relevant to refer the deposition of Mr.Ajit Dubal (PW-53). As per his evidence, he joined as police constable in the year 1986 and from 1987, he discharged his duty as Typist and P.A. of D.S.P. in D.S.P. Office, Jamnagar and has retired in the year 2023. It is deposed that in the year 1993, when he was serving at D.S.P. Office, Jamnagar Mr.Pramod Kumar Jha was the D.S.P. who has expired. He deposed that as he was discharging his duty with Mr.Jha, at the time of recording of certain statements, he was present with Mr.Jha and he can identify his signature and hand writings. Accordingly, the confessional statements of following accused persons were produced, which were recorded by Mr.Jha.

Accused No.	Name of the Accused	Exh.
A-4	Lalji Harji @ Kaliyo Bali Kharva (Died)	3065

A-5	Amirali Sadrudin Khoja	3066
A-1	Osman @ Usman Umar Koreja	3067
A-2	Mamad Alimamad @ Mamdu Sap	3068
A-3	Harun Adam Sanghar Vagher	3069
A-7	Yusuf Ismail @ Lavaris Jokhiya Sandhi (Died)	3070
A-15	Salim Aazam Lala Vora	3071
A-10	Mohamad Hanif @ Raju @ Roshan @ Sagar S/o. Husen Jumma Petivala Shekh	3072
A-9	Iqbal Abdul Hasan Saiyad	3073
A-11	Alabax Abdul Kadar @ Lala Shekh (Died)	3074
A-26	Mohammad Arif @ Arif Mota S/o. Abdul Raheman Shekh	3075
A-14	Jaku @ Jakab Bava Padhiyar	3076
A-12	Ahemad Ismail Oliya	3077
A-13	Mohammad Iqbal Abdul Gani Mansuri	3078
A-25	Salmankhan Ismilekhan Mansuri	3079

(55) Thus, the witness Mr.Ajit Dubal had identified signature of Mr.P.K.Jha in above referred confessional statements. The prosecution has tried to submit that while recording some of the confessional statements the witness was present with Mr.Jha and some typed statements of accused persons were typed by him. Based on such submissions, it is argued by the

Ld.Special P.P. that the contents of the above referred confessional statements are duly proved and hence, can be read in evidence. Therefore, it would be necessary to go through the cross-examination of the witness wherein he admitted that he has not maintained a personal diary for his work carried out in office at the relevant time. He admitted that he has not seen Mr.Jha writing the contents of the statements of present case in case diary. He stated that he has studied upto B.com and when joined the police department he was police constable in S.P. Office. There was no written order in his favour to discharge his duty as P.A. of D.S.P. He admitted that to become P.A. of S.P. examination is taken by Gujarat Police and thereafter, State Police Recruitment Board recruits P.A. He admitted that he has not cleared such examination and he has also not cleared any examination for stenographer. He stated that at later point of time, George Alexander was appointed as P.A. of Mr.Jha. However, he does not remember the date. He admitted that he has not produced any certificate showing his typing skills in Gujarati, English and Hindi. He admitted that there was no written order in his favour that he has to work as typist in S.P. Office. He admitted that his name or signature is not narrated in the confessional statements. Thereafter, various questions were asked by defence with regard to presence of accused persons, regarding time given to them for thinking, from whose custody accused were brought etc. however, he has shown his unawareness about such facts. He admitted that he was not shown as witness in any of the charge-sheet.

(55.1) Perusing the above evidence of witness, it clearly appears that he was not shown as charge-sheet witness but was called as witness by passing an order under Section 311 of Cr.P.C. It further appears that nothing from the evidence of said witness, it reveals that he was working as a P.A.-cum-typist of Mr.Jha, D.S.P. Moreover, the witness was police constable and in absence of any certificate/skills, it is highly improbable that he was appointed as P.A. of D.S.P. For the sake of argument, if it is believed that he was present with Mr.Jha at the time of recording of confessional statements, then also the contents of such statements remain unproved in view of the provision of 15 of TADA Act. Therefore, the confessional statements of accused narrated hereinabove cannot be considered in evidence. The Ld.Special P.P. Mr.Gokani submitted that even if these confessional statements are not considered in evidence then also they can be used as corroborative evidence to complete the chain of circumstances. I do not agree with such submissions because when the contents of confessional statements are not proved and they were exhibited qua the signature of Mr.Jha only, then it cannot be used as corroborative evidence. Moreover, the Ld.Special P.P. has failed to produce pronouncements of Hon'ble Apex Court in support of his such submission. Therefore, such confessional statements cannot be even looked into as corroborative evidence.

(56) Before discussing, confessional statements of other accused persons recorded by Mr.Satish Verma (PW54) and Mr.Pradip Sejul (PW61), it would be relevant to refer the following pronouncements of the Hon'ble Apex Court with regard to object of TADA Act.

(57) In Kartar Singh vs. State of Punjab reported in (1994) 3 SCC 569, it is observed that -

> "21. From the recent past, in many parts of the world, terrorism and disruption are spearheading for one reason or another and resultantly great leaders have been assassinated by suicide bombers and many dastardly murders have been committed. Deplorably, determined youths lured by hard-core criminals and underground extremists and attracted by the ideology of terrorism are indulging in committing serious crimes against the humanity. In spite of the drastic actions taken and intense vigilance activated, the terrorists and militants do not desist from triggering lawlessness if it suits their purpose. In short, they are waging a domestic war against the sovereignty of their respective nations or against a race or community in order to create an embryonic imbalance and nervous disorder in the society either on being stimulated or instigated by the national, transnational or international hard-core criminals or secessionists etc. Resultantly, the security and integrity of the countries concerned are at peril and the law and order in many countries is disrupted. To say differently, the logic of- the cult of the bullet is hovering the globe completely robbing off the reasons and rhymes. <u>Therefore, every country has now felt the need to strengthen vigilance against the spurt in the illegal and criminal activities of the militants and terrorists so that the danger to its sovereignty is averted and the community is protected.</u>
>
> 22. Thus, terrorism and disruptive activities are a worldwide phenomenon and India is not an exception. Unfortunately in the recent past this country has fallen in the firm grip of spiralling terrorists' violence and is caught between the deadly pangs of disruptive activities. As seen from the Objects and Reasons of the Act 31 of 1985, "Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh" and then slowly they expanded their activities to other parts of the country i.e. Delhi,

Haryana, U.P. and Rajasthan, At present they have outstretched their activities by spreading their wings far and wide almost bringing the major part of the country under the extreme violence and terrorism by letting loose unprecedented and unprovoked repression and disruption unmindful of the security of the nation, personal liberty and right, inclusive of the right to live with human dignity of the innocent citizens of this country and destroying the image of many glitzy cities like Chandigarh, Srinagar, Delhi and Bombay by strangulating the normal life of the citizens. Apart from many skirmishes in various parts of the country, there were countless serious and horrendous events engulfing many cities with blood-bath, firing, looting, mad killing even without sparing women and children and reducing those areas into a graveyard, which brutal atrocities have rocked and shocked the whole nation."

(58) In **Madan Singh vs. State of Bihar reported in (2004) 4 SCC 622,** it is observed as under;

18. Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised and orderly society. "Terrorism" though has not been separately defined under TADA there is sufficient indication in section 3 itself to identify what it is by an all inclusive and comprehensive phraseology adopted in engrafting the said provision, which serves the double purpose as a definition and punishing provision nor is it possible to give a precise definition of "terrorism" or lay down what constitutes "terrorism". It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the government or disturb the harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb the even tempo, peace and tranquility of the society and create a sense of fear and insecurity."

(59) In **Praksh Kumar @ Prakash Bhutto vs. State of Gujarat reported in (2005) 2 SCC 409**, it is observed that -

> "10. Thus, this type of extra ordinary laws are made to contain the extraordinary situation by providing harsh, drastic and stringent provisions, prescribing special procedure, departing from the procedure prescribed under the ordinary procedural law for the reasons that the prevalent ordinary procedural law was found to be inadequate and not sufficiently effective to deal with the offenders indulging in terrorist and disruptive activities. The preambles and statements of objects and reasons as referred to above are manifestly evident that such extra-ordinary Act was made to deal with extraordinary situation for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto.
>
> 13. The more stringent the Law, the less is the discretion of the Court. Stringent laws are made for the purpose to achieve its objectives. This being the intendment of the legislature the duty of the court is to see that the intention of the legislature is not frustrated. If there is any doubt or ambiguity in the statutes, the rule of purposive construction should be taken recourse to, to achieve the objectives."

(60) In **Lal Singh vs. State of Gujarat and another reported in (2001) 3 SCC 221,** it is held that for convicting the accused under Section 3(3) of TADA Act, it is not necessary that he should be convicted under Section 3(2) of TADA Act for commission of a terrorist act. It would be profitable to refer following observations;

> 19. The aforesaid Section provides for various acts which would be considered as terrorist acts and punishment thereof. It also provides for punishment of acts which are not terrorist acts. Sec. 3 (1) enumerates various activities which are considered to be terrorist acts and sub-sec. (2) provides for punishment of such acts. sub-sec. (3) contemplates acts which are not terrorist acts by themselves, but activities prior or subsequent to the terrorist act. Under this Section, a person can be convicted if it is proved that he - (a) conspired, (b) advocated, (c) abetted, (d) advised, (e) incited, or (f) knowingly facilitated - the commission of a terrorist act or any act preparatory to a terrorist act. Any of these acts by itself constitutes an offence. Therefore, for conviction under Sub-section (3), it is not necessary that there should be a conviction under Sub-section (2) for a terrorist act. The aforesaid activities are not only abetment of terrorist act, but

include other acts which are not covered by the concept of abetment as provided under Indian Penal Code, namely, "advocates", "advises" and "any act preparatory to a terrorist act". Further, under TADA Act Sec. 2 (1)(a) defines the word "abet" in the wider sense as under -

["2. Definitions -

[(1) In this Act, unless the context otherwise requires -

[(a) "abet", with its grammatical variations and cognate expressions, includes -

[(i) the communication or association with any person or association with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists;]

[(ii) the passing on, or publication of, without any lawful authority, any information likely to assist the terrorists or disruptionists and the passing on, or publication of, or distribution of any document or matter obtained from terrorists or disruptionists;]

[(iii) the rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists."]]]]

20. This concept of making such activities as offence is new to the criminal jurisprudence. Chapter V of the Indian Penal Code provides for abetment and punishment for the same. Sec. 115 deals with punishment in case where abetted offence is not committed. It inter alia provides that whoever abets the offence punishable with death or imprisonment for life shall, if that offence is not committed in consequence of the abetment, be punished as provided thereunder. Similarly, Sec. 116 provides for punishment in case where abetted offence punishable with imprisonment is not committed. Sec. 118 also contemplates punishment in case where offence is not committed. It inter alia provides for punishing a person who conceals design to commit an offence punishable with death or imprisonment for life inter alia by any act or illegal omission. Similar provisions are there under Secs. 119 and 120. Hence, in our view, for convicting the accused under Sec. 3 (3), it is not necessary that someone should be convicted under Sec. 3 (2) for commission of a terrorist act. Therefore, the contention of the learned Counsel for the accused that except accused No. 1-Lal Singh, no other accused can be convicted under Sec. 3 (3) is without any substance.

(61) In this case, the prosecution has examined Mr.Satish Chandra Prem Chandra Prakash Verma as PW-54 (Exh.3083), who had recorded the confessional statements of the following accused persons.

Accused No.	Name of the Accused	Exh.
A-20	Abdul Hamid Abdul Majid Shekh (Died)	3084
A-21	Aarif Abdul Rehman @ Aarif Lambu Memon	3085
A-23	Iftekhar Mohmmad Yunus Ansari	3086
A-22	Abdul Kalam Abdul Ajij Ansari (Died)	3087
A-24	Mohammad Ayub Abdul Kayum Sati @ Ayub Taklo	3088
A-28	Ahir Lakhman Hardas	3090

(62) Perusing the evidence of Mr.Verma (PW-54), it appears that at the relevant time, he was D.S.P. Porbandar and the above referred accused persons were sent to him on different dates for recording their statements under Section 15 of TADA Act. The witness in his deposition has narrated the facts stated by accused persons before him. It further appears that before the confessional statements of concerned accused persons were recorded, they were given sufficient breathing time to think over about whether they wish to give confessional statement or not. It further appears that the accused persons were explained that the statements can be used against them and they are not bound to give the same. However, upon willingness of accused the witness had recorded the statements in their language and obtained their signatures on each and every pages and countersigned the same. The witness had also issued certificate about explaining the statements to the witness and thereafter, the same were sent to the Chief Judicial Magistrate, Jamnagar and Designated Court, Jamnagar. In Jameel Ahmed vs. State of Rajasthan reported in (2003) 9 SCC 673, the Hon'ble Apex Court observed that the transmission of the confessional statement which is recorded under Section 15 of TADA Act to the CMM or the CJM under Rule 15(5) is only directory and not mandatory, however, the Court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case whether such transmission of the confessional statements in the facts of the case creates any doubt as to genuineness of the said confessional statement. Hence, even if the statement is directly sent to Designated Court it would not make the confessional statement doubtful. In cross-examination, the witness admitted that he has not written proof about the accused being produced before him before 24 hours. He admitted that he has not written proof that the DSP Jamnagar had informed the witness to record the confessional statement of accused persons. Perusing the confessional statements recorded by this witness, in statement itself it is stated that the accused persons were brought before 24 hours and thereafter, their statements were recorded. From the cross-examination of witness, nothing is coming on record which would suggest that the confessional statements of accused are not recorded by following due process of law.

(63) Likewise, Mr.Pradip Bhimrao Sejul is examined as PW-61 (Exh.4032), who has recorded confessional statements of following accused persons;

Accused No.	Name of the Accused	Exh.
A-35	Istiyak Ahmed Mohammad Yunus Ansari	4033
A-37	Kadir Ahmad s/o Amir Ahemad Shaikh @ Kadir Haji Shekh	4035

(63.1) Perusing the evidence of Mr.Sejul (PW-61), it appears that at the relevant time, he was D.C.P. Jamnagar and he had recorded the confessional statements of above referred accused persons. The witness in his deposition has narrated the facts stated by accused persons before him. It further appears that before the confessional statements of concerned accused persons were recorded, they were given sufficient breathing time to think over about whether they wish to give confessional statement or not. It further appears that the accused persons were explained that the statements can be used against them and they are not bound to give the same. However, upon willingness of accused the witness had recorded the statements in their language and obtained their signatures on each and every pages and countersigned the same. The witness had also issued certificate about explaining the statements to the witness and thereafter, the same were sent to the Designated Court, Jamnagar. As discussed earlier, even if the statements are directly sent to

Designated Court would not make the confessional statements doubtful. In cross-examination, the witness admitted that the place where confessional statement were record is not stated in the statement and the statements are not recorded in question answer form. He showed his unawareness about sending of confessional statement to Magistrate Court. But by referring Exh.4034 and Exh.4036 letters he stated that the statements were sent to the Designated Court through Investigating Officer. Perusing the confessional statements recorded by this witness, in statement itself it is stated that the accused persons were brought before one day and thereafter, their statements were recorded. From the cross-examination of witness, nothing is coming on record which would suggest that the confessional statements of accused are not recorded by following due process of law. Thus, prosecution has successfully proved that the confessional statements recorded by Mr.Satish Verma (PW54) and Mr.Pradip Sejul (PW-61) were recorded as per the guidelines of Hon'ble Apex Court and following Rule 15 of TADA Rules.

(64) Therefore, the above referred confessional statements of accused namely A-20 Abdul Hamid Abdul Majid Shekh (Died), A-21 Aarif Abdul Rehman @ Aarif Lambu Memon, A-23 Iftekhar Mohmmad Yunus Ansari, A-22 Abdul Kalam Abdul Ajij Ansari (Died), A-24 Mohammad Ayub Abdul

Kayum Sati @ Ayub Taklo, A-28 Ahir Lakhman Hardas can be looked into as evidence.

(65) Now, it would be relevant to see further evidence with regard to what happened after the prohibited arms and ammunition were landed from Sada-Al-Bahar at Gosabara, Porbandar. For which, it would be firstly relevant to refer the confessional statement of Ahir Lakhman Hardas (A28) produced at Exh.3090 which was recorded by Mr.S.C.Verma (PW-54). Perusing his confessional statement Exh.3090, at the end of January or in the first week of February, 1993, he went to meet deceased accused No.4 Laji Harji @ Kaliyo Bali, at Porbandar where he came to know that he is required to arrange truck and he would get double fare at this time as it is more dangerous. Accordingly, he asked Markhi Punja (A29) to come with him and hence, Markhi Punja (A29) took his Truck No.GTK2249 and they were accompanied by deceased accused Yusuf @ Lavaris (A7), Rama Gira Mer (A33), deceased accused Chunilal (A18) and others and they went in bushes situated at Gosabara at around 10:00 in the night. Thereafter, Markhi stayed in his Truck and Lakhman (A28), Rama Giga (A33) and deceased Chunilal went near sea shore and at some distance there was a Dargah where Mamumiya Panjumiya (A34), his brother Dadli (A36), deceased accused Kaliyo Bali (A4) were present with two unknown persons and some labourers were deboarding silver bricks, wooden boxes, jute bags and they also helped them in deboarding the goods. All the goods were gathered near acacia bushes. The goods were deboarded from a boat stationed in sea and Mamumiya (A34) and one another person had walkie talkie sets with them. At 01:00 o'clok in the night all the goods were deboarded and thereafter, Lakhman (A28), deceased Kaliyo Bali (A4), Rama Giga (A33), deceased Chunilal (A18), Dadli (A36) and two unknown persons came at the place where Markhi (A29) had come with truck. There were silver bricks and five to six wooden boxes which were covered with jute cloths and black powder was filled in jute bags. Thereafter, Mamumiya (A34) asked Lakhman (A28), deceased Chunilal (A18), deceased Lavaris (A7) and Markhi (A29) to come to his home at Porbandar and thereafter, deceased Kaliyo Bali (A4), two unknown persons and Rama Giga (A33) left from the place. Thereafter the truck was driven by deceased Lavaris (A7) and Lakhman was sitting in front whereas deceased Chunilal (A18) and Dadlimiya (A36) were sitting on back side and at around 03:00 o'clock, they reached at Mamuniya's house, where Mamumiya was present and all the goods from truck was deboarded at his home. At that time, Mamuniya (A34) opened the wooden boxes wherein long riffles were there and in iron boxes, cartridges were there. Accordingly, Lakhman (A28) came to know that alongwith sliver bricks, weapons and cartridges were also deboarded and hence, deceased Kaliya Bali (A4) had told him to give more money. Thereafter, Mamumiya (A34) asked Lakhman (A28) to go on patrolling upto Ranavav and verify whether police or customs checking is there or not. Therefore, Lakhman (A28) took two rounds upto Ranavan on Mamumiya's motorcycle and returned at 06:00 o'clock in morning at Mamuniya's house where Mamumiya (A34) told him that the boxes and bags are loaded in Ambassador car brought by Dadli (A36) and the same is required to be delivered to Dadli (A36) at Dhoraji. To which, Lakhman (A28) denied but deceased Kaliya (A4) told him that for said purpose only he has given double money and if he would deny then he would not get any money. Therefore, he took Ambassador car No.MSG416 and left alone from Porbandar and reached at Dhoraji highway at around 09:30 where he delivered the car to Dadli and Dadli took away that car and left. Thereafter, he informed the same to deceased Kaliya (A4) and after two days, deceased Kaliya Bali (A4) gave him Rs.1,00,000/- cash, out of which he gave Rs.25,000/- to Markhi (A25). Thereafter, at the same place, Mamumiya (A34), Dadli (A36), deceased Kaliya Bali (A4), deceased Lavaris (A7) and deceased Chuniyo (A18) and Savdas Mer were landing the silver bricks and the truck was being taken by Lakhman (A28) and Markhi (A29). The said truck was driven away by deceased Lavaris (A7) and after vacating the goods, Lavaris returned back on the road where all above named accused persons were standing, who thereafter, sat in truck and left for Porbandar. At that time, the truck was stopped by PSI Aagath and hence, Markhi (A29) who was driving the truck had stopped the truck and at that time, Mamumiya (A34) and deceased Chuniya (A18) had started firing from the pistol and then, all the accused persons had run away, however, he and Markhi (A29) were apprehended with truck.

(66) From the above confessional statement of accused Lakhman (A28) (Exh.3090), it clearly appears that in the end of January or in the first week of February, 1993, Lakhman (A28), Markhi (A29), Rama Giga (A33), Mamumiya (A34), Dadlimiya (A36) and deceased accused namely Kaliya Bali (A4), Lavaris (A7), Chunilal (A18) had received the goods from Sada-Al-Bahar at Gosabara, Porbandar. Therefore, it clearly appears that the accused Lakhman (A28) was very well aware about the conspiracy being hatched by accused persons with regard to landing and transport of illegal arms and ammunition. Further, the other evidence against said accused Lakhman (A28) would be discussed at later part of this judgment when the evidence against each accused persons discussed separately.

(67) Before the evidence against each accused persons is discussed separately, it would be relevant to discuss as to whether offences under the provisions of the Explosives Act, 1884 and Explosive Substances Act, 1908 are made out. The prosecution has examined PW-3 (Exh.2183) Ambavibhai Devshibhai Kansagara, who is a panch witness and in whose presence the deceased accused Yusuf Ismile @ Lavaris (A7) had shown the police a place situated near Dargah at Sea shore, where arms alongwith RDX was landed. The said witness had produced the panchnama vide Exh.2184. Through said panchnama, the police had seized around 2 Kg. sample of sand mixed with grass and sent it for FSL examination. The FSL report of said sample is produced vide Exh.2621 and as per said report, the Organonitro explosive compound (RDX-Cyclonite) could not be detected from the sample. Moreover, admittedly there is no recovery of RDX from any of the accused persons. Further perusing Section 7 of the Explosive Substances Act, it is held that no Court shall proceed to the trial of any person for an offence against this act except with the consent of the District Magistrate. The word "Central Government" was substituted by the word "District Magistrate" by an amendment in the Act 54 of 2001 on 11.12.2001. Therefore, prior to 11.12.2001, to try the accused under the said Act, the consent of Central Government was mandatory. In this case, PW-37 (Exh.2940) Divyeshbhai Nandasana, Dy.Mamlatdar from Collector office, Jamnagar has produced sanction for filing charge-sheet against some of the accused persons, under Section 7 of Explosive Substance Act vide Exh.2942. This sanction is dated 02.07.1994 given by Mr.Sanjay Prasad, District Magistrate, Jamnagar against accused persons namely Osman (A1), Mamad (A2), Harun (A3), Abdul Rashid (A6), Amirali Sadrudin (A5), Gulamchisty (A8), Iqbal Abdul (A9), Mohammad Hanif (A10), Ahmad Ismile (A12), Jakab Bava (A14), Mahamad Iqbal (A13), Salim Azam (A15), Ismile Sale (A16), Sujatmiya (A17).

(67.1) Likewise, the sanction against accused Mohammad Kasam (A32) was obtained on 28.01.2000 which is produced vide Exh2943.

(67.2) The prosecution agency was required to obtain consent of Central Government, which is not done in the case of above referred accused persons and therefore, these sanctions (Exh.2942 and Exh.2943) would be invalid and hence, the charge of Explosive Substance Act cannot be said to be proved against above referred accused persons.

(67.3) After the above detailed discussion, if the evidence of each accused person is discussed separately then it would be much easier and convenient to see the role played by accused persons in alleged crime.

(68) So far as **accused No.1 Osman @ Usman Umar Koreja, Accused No.2 Mamad Alimamad and accused No.3 Harun Adam Sanghar** are concerned the evidence against them are discussed in detailed in Issue No.2 wherein they are found actively involved in the conspiracy hatched by absconding accused Daud Ibrahim, deceased accused Mustafa Majnu and other known and unknown accused persons. Moreover, they were also actively involved in hatching the conspiracy at Bedi, Jamnagar, whereby they went in Sada-Al-Bahar launch from Dubai to Pakistan and procured prohibited arms and ammunition and landed the same at coastal area of Gosabara, Porbandar. All these accused persons are named in complaint at Exh.2116.

(69) PW-10 Natubhai Raviyabhai Patel's evidence together with his statements recorded under Section 164 of Cr.P.C. (Exh.3033) also confirms the active participation of all above three accused persons. As the evidence of said Natubhai has been discussed elaborately earlier the same is not reiterated here.

(70) Perusing the evidence of PW-11 (Exh.2674) Kiritbhai Shivlalbhai Bhansa, it appears that he is a panch witness and he deposed that he was called at Dy.S.P. Office before 30 years, where an accused named Osman Umar Koreja was present who was introduced as TADA accused by police and thereafter, his signature was obtained and then they left Khambhaliya, from where they went to Porbandar, where a Dargah was situated. The accused had asked them to get down there and he had talked about launch. The information given by the accused with regard to sea shore and Dargah were narrated in panchnama. The panchnama is produced at Exh.2675. In his cross-examination, nothing has come on record which would create doubt on the evidence of said panch witness. Thus, accused No.1 had shown the place where the landing had taken place. At this juncture, it would be relevant to refer map (Exh.3032) produced by PW-50 (Exh.3031), this is the witness who was Circle Officer at Porbandar and at the instance of police, he had prepared a map of a place where a landing had taken place. Perusing this map (Exh.3032), it corroborates the evidence of PW-11 and in said Map the Dargah and sea shore as mentioned by accused before PW-11 are seen.

(71) In confessional statement of deceased Usmangani Noormamad (A19) produced at Exh.3047 recorded by Mr.Benjamin (PW-51), there is mention of Osman (A1) who was captain in the launches of Mustafa Majnu and role played by him. The confessional statement of Usmangani has been elaborately discussed earlier & hence, the same is not repeated again.

(72) Moreover, so far as the charge of Section 3(3) of TADA Act is concerned the above evidence clearly suggest that all the three accused persons were actively involved in procuring and transporting the prohibited arms and ammunition as a part of criminal conspiracy and thereby, they had facilitated in preparatory act of terrorism.

(73) The confessional statements of Osman (A1) (Exh.3067), Mamad Alimamad (A2) (Exh.3068) and Harun Adam (A3) Exh.3069), which were recorded by Mr.P.K.Jha are not relied upon as discussed earlier in the evidence of PW-53 (Exh.3064) Ajit Dalpatram Dubal.

(74) Based on above discussion of evidence, the prosecution has successfully proved its case of conspiracy and facilitation in preparatory act of terrorism against accused **Osman (A1), Mamad (A2) and Harun(A3)**. Therefore, the said three accused persons are found guilty for the offence punishable under Section 3(3) of TADA Act read with 120B of Indian Penal Code.

<u>Accused No.5 Amirali Sadrudin Khoja :-</u>

(75) The accused No.5 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(75.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941.

(75.2) The evidence against the accused is his confessional statement vide Exh.3066 recorded by Mr.P.K.Jha which is produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statement recorded by Mr.Jha is not proved against the accused persons and therefore, the same cannot be considered against present accused. Moreover, the present accused is not named by any other co-accused or deceased accused in their confessional statements. Therefore, there is nothing on record which would associate **accused No.5 Amirali Sadrudin Khoja** with present crime. Therefore, he is required to be acquitted from all the charges leveled against him.

Accused No.6 Abdul Rasid Valimamad Ansari :-

(76) The accused No.6 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(76.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however, there is no charge of Arms Act against said accused.

(76.2) The accused has not given any confessional statement but his name is given by Osman @ Usman (A1) in his confessional statement Exh.3067, Amirali Sadrudin (A5) in his confessional statement Exh.3066 and Mohammad Hanif @ Raju (A10) in his confessional statement Exh.3072, which were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements. Therefore, there is nothing on record which would associate **accused No.6 Abdul Rasid** with present crime. Therefore, he is required to be acquitted from all the charges leveled against him.

Accused No.8 Gulamchisti Sulemanchisti Shekh :-

(77) The accused No.8 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(77.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however there is no charge of Arms Act against said accused.

(77.2) The accused has not given any confessional statement but his name is given by Osman @ Usman (A1) in his confessional statement Exh.3067 and Mohammad Hanif @ Raju (A10) in his confessional statement Exh.3072, which were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements. Therefore, there is nothing on record which would associate **accused No.8 Gulamchisti Sulemanchisti Shekh** with present crime. Therefore, he is required to be acquitted from all the charges leveled against him.

<u>Accused No.9 Iqbal Abdul Hasan Saiyad :-</u>

(78) The accused No.9 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(78.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however, there is no charge of Arms Act against the said accused.

(78.2) The evidence against the accused is his confessional statement Exh.3073 recorded by Mr.P.K.Jha which is produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statement recorded by Mr.Jha is not proved against the said accused and therefore, the same cannot be considered against him. Moreover, the present accused is not named by any other co-accused or deceased accused in their confessional statements.

(78.3)PW-10 Natu Patel (Exh.2654) in his evidence in para-5 has stated that after 15 days of first trip at Dubai, in second trip they went in Bismillah Launch, where Shantu, Kishan, Osman, Khandu, Bhanabhai were there and Iqbal was driver and in Bismillah launch, they had taken 175 silver bricks and delivered it at Goa. In para-6, the said witness stated that the third trip was in Ajmeri Launch, wherein they had left from Diba with 200 silver bricks and there were Anvar Sambha, Jusub, Mangu, Toni, Saale Mohammad and driver Iqbal. Apart from above the witness has not stated anything about present accused Iqbal and has not implicated him in procuring and landing the prohibited arms and ammunition. Therefore, there is nothing on record which would associate **accused No.9 Iqbal Abdul Hasan Saiyad** with present crime. Therefore, he is required to be acquitted from all the charges leveled against him.

Accused No.10 Mohamad Hanif @ Raju @ Roshan @ Sagar S/o. Husen Jumma Petivala Shekh :-

(79) The accused No.10 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(79.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however there is no charge of Arms Act against said accused.

(79.2) The confessional statement of accused Exh.3072 was recorded by Mr.P.K.Jha which was produced by PW-53

(Exh.3064) Mr.Ajit Dubal. Moreover, his name is given by Osman @ Usman (A1) in his confessional statement Exh.3067, Mohammad Iqbal (A13) in his confessional statement Exh.3708, Ahmad Ismile Oliya (A12) in his confessional statement Exh.3077, deceased accused Alabax (A11) in his confessional statement Exh.3074, Mohd. Arif (A26) in his confessional statement Exh.3075 and Salman Ismile (A25) in his confessional statement Exh.3079, which were recorded by Mr.P.K.Jha and produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused.

(79.3) Perusing the confessional statements of accused Arif Abdul Rehman @ Arif Lambu (A21) Exh.3085 and deceased accused Abdul Hamid Abdul Majid Shekh (A20) Exh.3084, which were recorded by Mr.Satish Verma (PW-54), they have stated that **Mohammad Hanif @ Raju** was looking after the office work of Mohamad Amad Umar Dosa and apart from this, there is nothing mentioned against the present accused which would associate him with the present case and therefore, this confessional statement wold not be helpful to prosecution. Therefore, **Accused No.10 Mohammad Hanif @ Raju** is required to be acquitted from all the charges leveled against him.

Accused No.12 Ahemad Ismail Oliya :-

(80) The accused No.12 is facing a charge of Section 120(B) of IPC, Section 3(3), 5 of TADA Act, Section 25(1A), 25(1AA), 25(1B)(b) of Arms Act, Section 4(b) & 5 of Explosive Substances Act and Section 9(B) of the Explosives Act.

(80.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941.

(80.2) The confessional statement of present accused Exh.3077 was recorded by Mr.P.K.Jha which was produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused.

(80.3) Moreover, his name is given by accused Arif Abdul Rehman @ Arif Lambu (A21) Exh.3085. Perusing confessional statement of Arif, he stated that he alongwith Afzal Garbad (Absconding accused) in his Jeep went to village Masla situated at Mumbai Goa road where, they went to one house, where Salim Kutta (A30) and Firoz were present who had given riffles and three iron boxes filled with cartridges and hand-grenades in plastic bag to Afzal. Thereafter, he i.e. Arif and Afzal reached near Surat in the Jeep and called on phone to **Ahmad Oliya**

(A12) of Surat and talked about where they shall meet. Thereafter, Arif and Afzal went near village Variyav of Surat where they met **Ahmadbhai Oliya (A12)** who came on scooter and thereafter, they went behind Ahmad Oliya at one house situated near Mosque in Variyav village and all the goods from the Jeep was removed there. Thereafter, both of them left for Bombay in the Jeep. Thus, perusing the confessional statement of Arif (Exh.3085), it clearly appears that riffles, cartridges and hand grenade were transported to **Ahmad Ismile Oliya (A12)** at Variyav village of Surat.

(80.4) It would be relevant to refer the evidence of PW-4 (Exh.2377) Rajesh Amrutlal Limbachiya who is a panch witness. He stated that on 19.08.1993, he was called by Mr.Jebaliya and was told that they have to visit a place that may be disclosed by an accused of TADA. Thereafter, they went at Variyav village where the accused had shown dilapidated house situated near Tapi river and upon digging therein, boxes filled with cartridges and hand grenades were found. He has identified his signatures in panchnama Exh.2378. He has also identified the cartridges and hand-grenades. However, He could not identify the accused as 30 years had been passed. In cross-examination, he admitted that he came to know the name of the place by police. He stated that he has not noted the date of panchnama anywhere and till date, he has not read panchnama. He shown his unawareness about the number of cartridges. He admitted that the digging work was done by police and he alongwith another panch was standing outside.

(80.5) Perusing the entire evidence of panch witness, it appears that he is an independent witness and in his presence the accused had shown the place and recovery of weapons had taken place by panchnama Exh.2378. Moreover Mr.Jebaliya (PW-62) has also confirmed in his deposition, that a panchnama Exh.2378 was executed by him in presence of two panchas when accused Ahmad Oliya had agreed to show the concealed muddamal.

(80.6) The weapons discovered by present accused No.12 are prohibited weapons and therefore, there is no requirement of any sanction, however, sanction under Section 39 of Arms Act is produced vide Exh.2941 by PW-37 (Exh.2940). It further appears that large number of riffles, hand-grenades and cartridges were found from the possession of present accused No.12 which itself shows that he had conspired with the other accused persons for facilitating to terrorist act. Therefore, the charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act stands proved against **Ahemad Ismail Oliya (A-12)**.

(80.7) So far as Section 5 of TADA Act is concerned the same is with regard to possession of unauthorized arms in specified areas. The prosecution had to prove that the accused No.12 found in possession of arms, bombs etc.

unauthorizedly in a notified area. The definition of notified area is given in Section 2(f) of the TADA Act which states that "notified area" means such area as the State Government may, by notification in the official gazette, specify. In this case, no such notification has been produced on record and prosecution failed to show that the place from where unauthorized arms were found from accused No.12 was in notified area. Therefore, the charge of Section 5 of TADA Act is not proved against the accused No.12.

(80.8) As discussed above, large number of riffles, cartridges and hand-grenades were found from accused No.12, which were prohibited arms and were acquired by accused No.12. However, it is not proved that the accused No.12 had further transferred or sold the same. Therefore, the charges of Section 25(1A), 25(1B)(b) of Arms Act stand proved but charges of Section 25(1AA) is not proved against accused No.12 Ahmad Ismile Oliya.

(80.9) So far as charges of Explosive Substances Act and Explosives Act are concerned, it would be relevant to note that neither explosives were delivered or transported to present accused No.12 nor the same were recovered from him. Moreover, as discussed earlier the prosecution agency was required to obtain consent of Central Government, as the sanction under Section 7 of Explosive Substances Act produced vide Exh.2942 is granted by District Magistrate on 02.07.1994 i.e. before the amendment in Section 7 of Explosive Substances Act was made and hence, the charges of Explosive Substances Act and Explosives Act cannot be said to be proved against present accused Ahmad Ismile Oliya.

Accused No.13 Mohammad Iqbal Abdul Gani Mansuri :-

(81) The accused No.13 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(81.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however there is no charge of Arms Act against said accused.

(81.2) The confessional statement of present accused is produced vide Exh.3078 and the accused Mohammad Hanif @ Raju (A10) in his confessional statement Exh.3072 has given name of accused No.13. Both the above confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements. Therefore, there is nothing on record which would associate **accused No.13 Mohammad Iqbal Abdul Gani**

Mansuri with present crime. Therefore, he is required to be acquitted from all the charges leveled against him.

Accused No.14 Jaku @ Jakab Bava Padhiyar :-

(82) The accused No.14 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(82.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however there is no charge of Arms Act against said accused.

(82.2) The confessional statement of present accused is produced vide Exh.3076 and the accused Mohammad Hanif @ Raju (A10) in his confessional statement Exh.3072 and Iqbal Abdul Saiyad (A9) in his confessional statement Exh.3073 have given name of accused No.14. All the above confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements.

(82.3) As per the case of the prosecution, the present accused had shown the place of landing of arms and ammunition to police. The said panchnama is produced vide Exh.4038 in the deposition of Investigating Officer Mr.Jebaliya (PW-62), however, the panchas of said panchnama are not examined and hence, the said panchnama cannot be relied upon. Therefore, there is nothing on record which would associate **accused No.14 Jaku @ Jakab Bava Padhiyar** with present crime. Therefore, he is required to be acquitted from all the charges leveled against him.

Accused No.15 Salim Aazam Lala Vora :-

(83) The accused No.15 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(83.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however there is no charge of Arms Act against said accused.

(83.2) The confessional statement of present accused is produced vide Exh.3071 and the accused Ahmad Ismile Oliya (A12) in his confessional statement Exh.3077 has given name of present accused No.15. Both the above confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements.

(83.3) The prosecution has examined Rajubhai Chunibhai Thakkar as PW-19 (Exh.2809) who is a panch witness. As per the deposition of said witness, he was called by Vadodara police on 14.09.1993 as one accused was found and he was required to be arrested. In presence of said panch witness, the accused was found from Jahangirpura area of Surat, whose name was Salim Lala. The witness had identified his signature in panchnama Exh.2810. Perusing the entire evidence of said panch witness, nothing incriminating found from the accused and in absence of any substantial evidence, this panchnama would be of no help to prosecution.

(83.4) Therefore, there is nothing on record which would associate **accused No.15 Salim Aazam Lala Vora** with present crime. Hence, he is required to be acquitted from all the charges leveled against him.

Accused No.16 Ismile Sale Bafan :-

(84) The accused No.16 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(84.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however there is no charge of Arms Act against said accused.

(84.2) The present accused has not given any confessional statement, however, the accused Jaku @ Jakab Bava

(A14) in his confessional statement Exh.3076 and accused Iqbal Abdul Hasan (A9) in his confessional statement Exh.3073 have given name of present accused No.16.

(84.3) Both the above confessional statements of co-accused were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements.

(84.4) Therefore, there is nothing on record which would associate accused No.16 Ismile Sale Bafan with present crime. Hence, he is required to be acquitted from all the charges leveled against him.

<u>Accused No.17 Sujatmiya Bachumiya Saiyad :-</u>

(85) The accused No.17 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(85.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2941, however there is no charge of Arms Act against said accused.

(85.2) The present accused has not given any confessional statement, however, the accused Jaku @ Jakab Bava (A14) in his confessional statement Exh.3076 and accused Mohammad

Hanif @ Raju (A10) in his confessional statement Exh.3072 have given name of present accused No.17.

(85.3) Both the above confessional statements of co-accused were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements.

(85.4) Therefore, there is nothing on record which would associate accused No.17 Sujatmiya Bachumiya Saiyad with present crime. Hence, he is required to be acquitted from all the charges leveled against him.

Accused No.21 Aarif Abdul Rehman @ Aarif Lambu Memon :-

(86) The accused No.21 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(86.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2989.

(86.2)The confessional statement of present accused Exh.3085 was recorded by Mr.Satish Verma (PW-54). Perusing his confessional statement, it appears that he was very well known to Mustafa Majnu and his brother Mohammad Dosa and from the year 1989, he was associated in smuggling of silver with them. He had stated that he had also been to jail in 1992 in the case of murder of a person who was working as a carrier. His name was also revealed in one firing case, wherein Mohammad Kaliya had made firing. He stated that he alongwith Afzal Garbad (Absconding accused) in his Jeep went to village Masla situated at Mumbai Goa road where, they went to one house where Salim Kutta (A30) and Firoz were present who had given riffles and three iron boxes filled with cartridges and hand-grenades in plastic bag to Afzal. Thereafter, **he i.e. Arif** and Afzal reached near Surat in the Jeep and called on phone to Ahmad Oliya (A12) of Surat and talked about where they shall meet. Thereafter, Arif and Afzal went near village Variyav of Surat where they met Ahmadbhai Oliya (A12) who came on scooter and thereafter, they went behind Ahmad Oliya at one house situated near Mosque in Variyav village and all the goods from the Jeep was removed there. Thereafter, both of them left for Bombay in the Jeep. Thus, **perusing the confessional statement of present accused Arif @ Lambu (Exh.3085)**, it clearly appears that he possessed the prohibited riffles, cartridges and hand-grenades and transported to Ahmad Ismile Oliya (A12) at Variyav village of Surat.

(86.3) It further appears that large number of riffles, hand-grenades and cartridges were in possession of present accused No.21 which itself shows that he had conspired with the other accused persons for facilitating terrorist act. Therefore, the charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act stands proved against the present **accused Arif Abdul Rehman**.

(86.4) At this juncture, it would be relevant to note that the charge of Arms Act was not framed against present accused No.21, however, looking to the charge Exh.63, it is alleged that he had transported prohibited arms and ammunition to Ahmad Ismile Oliya (A12). Moreover, as discussed above the confessional statement of accused himself (Exh.3085) proves that he had procured prohibited riffles, cartridges and hand-grenades alongwith accused Salim Mir Mohammad (A30) and thereafter, both of them had transported the same to Ahmad Ismile Oliya (A12) and at village Variyav, Surat.

(86.5) It would be profitable to refer the judgment of Hon'ble Apex Court in case of **Sandeep Yadav vs. Satish reported in 2026 INSC 301** wherein, it is held as under;

> *Indian Penal Code, 1860 - S. 147, 148, 149, 307, 302, 120B - Criminal Law Amendment Act, 1932 - S. 7 - framing of charges* - appeal against High Court order directing fresh trial - trial Court had framed charges against accused persons but later found procedural irregularities in charge framing process - Held that the defect in charge framing was a curable procedural irregularity and did not vitiate the trial as the accused were aware of the charges and actively participated in proceedings for over fourteen years - High Court's direction for a de novo trial was unwarranted and set aside.

(86.6) As discussed earlier the charge Exh.63 as well as the evidence against accused No.21 Arif clearly shows that he was involved in possessing and transferring the prohibited arms and therefore, though formally sections of Arms Act are not narrated in charge Exh.63, the contents of the charge clearly implicate Arif (A21) in the offence punishable under the provisions of Arms Act. As the accused is found involved in possessing and transporting the prohibited arms, there was no requirement to obtain sanction. However, PW-44 (Exh.2983) Mr.Sanjay Prasad Vimal Prasad, the then District Magistrate and Collector had produced a sanction under Section 39 of Arms Act against present accused No.21 Arif vide Exh.2989.

(86.7) It would further be relevant to observe that as held by Hon'ble Apex Court that accused even if acquitted from the offences of TADA, his confessional statement recorded under Section 15 of TADA Act can be taken into consideration for convicting such accused under other offences. Therefore, the present **accused No.21 Arif Abdul Rehman** is required to be convicted for the offences punishable under Section 25(1A) of Arms Act.

Accused No.23 Iftekhar Mohmmad Yunus Ansari :-

(87) The accused No.23 is facing a charge of Section 120(B) of Indian Penal Code, Section 3(3), 5 of TADA Act, Section 25(1A), 25(1AA), 25(1B) of Arms Act, Section 4 & 5 of Explosive Substances Act and Section 9(B) of the Explosives Act.

(87.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under

Section 39 of Arms Act is produced vide Exh.2989.

(87.2)The confessional statement of present accused Exh.3086 was recorded by Mr.Satis Verma (PW-54). Perusing his confessional statement, it appears that he is younger brother of accused No.35 Istiyak Ahmad. He stated that his brother Istiyak knew the accused Abdul Kalam Abdul Aziz Ansari (deceased accused No.22) who was resident of Rahukhedi. Prior to around one and half months of 03.01.1995 (date of his confessional statement), Abdul Kalam (deceased A22) came to his house and after talking to his brother Istiyak gave him one riffle and magazine filled with three cartridges. Upon asking Istiyak, he told that as there is dispute in the village, this would be helpful. Saying so, Istiyak had given the goods i.e arms to **Iftekhar** which were kept carefully by **Iftekhar**. He stated that whichever arms and cartridges were possessed by him were caught by Gujarat Police.

(87.3) Now, it would be relevant to refer the **confessional statement of deceased accused No.22 Abdul Kalam (Exh.3087) which was recorded by Mr.Satish Verma (A54).** It is contended that Abdul Ayub Kayum @ Takla (A24) is his brother-in-law, who was having good friendship with Kadir (A37) and Mohammad Salim Mir Mohammad @ Salim Kutta (A30) of village Kaldi. His brother-in-law Abdul Ayub (A24) was involved in smuggling with some gang in Mumbai and Salim (A30) was also working with him. It is contended that his father-in-law Abdul had told him that Ayub had concealed guns and explosives in the house and as Mumbai Police time and again comes to their home, he asked him to come home and to remove concealed guns and explosives, so that it shall be placed somewhere else. Thereafter, accused Abdul Kalam (Deceased A22) went with his father-in-law at his home and upon digging one bag was found wherein three guns and cartridges were found. Thereafter, his father-in-law took him to one room situated near lake from where, 24 bombs were found. All these goods were brought to home by deceased accused No.22 and his father-in-law and were placed in iron bag. It was informed to deceased accused No.22 by his father-in-law that all the goods were given to Ayub (A24) by Salim Kutta (A3) and Kadir (A37) of village Kaldi. It is further contended that once he had gone to meet his friend Istiyak (A35) at village Nazimabad where he informed to Istiyak that he has concealed some guns, cartridges and explosives in his house and he is afraid that police may come at any time at his home and hence, he asked Istiyak to keep all these goods. To which, Istiyak told him that as there is property dispute in his caste, for his security he needs gun and cartridges and he would get it later. Thereafter, deceased accused No.22 took one gun, 90 cartridges and three magazines and gave it to Istiyak (A35) by going to his home. It is contended that prior to one month of his confessional statement (dated 11.01.1995) Gujarat Police had come to his village and searched his house from where, guns, cartridges and bombs were found. It is further contended that he came to know that Gujarat Police has searched for Istiyak but he was not found and the gun and cartridges given by him i.e. deceased accused No.22 were found from **Iftekhar (A23)**.

(87.4) It would further be relevant to refer the **confessional statement of Istiyak Ahmad (A35) which was recorded by Mr.Pradip Sejul (PW61) produced vide Exh.4033.** Perusing his confessional statement he has stated that his brother **Iftekhar (A23)** was having cosmetic shop in Nazimabad where Abdul Kalam Aziz Ansari of Rahukhedi (deceased A22) used to come and hence, they became friend. The brother-in-law of Abdul Aziz (deceased A22) Ayub Takla (A24) was residing at Mumbai told him that Salim Kutta (A30) works for Daud and if there is any work then he shall be informed. He further stated that he was having dispute in his village and hence, for security purpose, he had asked for arms from Abdul Kalam (deceased A22). Therefore, in and around November, 1994, Abdul Kalam (deceased A22) had given him one AK-47 riffles and 3 magazine containing 90 cartridges which were concealed by him in his house which were later on recovered from **his brother Iftekhar (A23)**. He further stated that Salim Mir Mohhamad (A30), Ayub Kayum @ Ayub Takla (A24) and Kadir Hazi Shekh (A37) had given the arms, cartridges and hand-grenades bombs to Abdul Kalam (deceased A22).

(87.5) Perusing the above confessional statement of Iftekhar (A23) (Exh.3086) and confessional statement of Abdul Kalam (deceased A22) Exh.3087 and confessional statement of Istiyak (A35), it clearly appears that Mohammad Salim (A30), Ayub Kayum @ Takla (A24) and Kadir Hazir Shekh (A37) had given the guns, cartridges and hand-grenades to Abdul Kalam (deceased A22). Thereafter, as Istiyak (A35) was in need of arms, Abdul Kalam (deceased A22) had given one Ak-47 and 3 magazines containing 90 cartridges to Istiyak (A35) and in turn Istiyak (A35) gave it to his brother **Iftekhar Ansari (A23)**. It appears that the accused Iftekhar Ansari (A23) was not aware about any criminal conspiracy and he had merely possessed and concealed the arms and cartridges on the say of his brother. Therefore, the offence under Section 120B of Indian Penal Code read with Section 3(3) of TADA Act are not proved against him.

(87.6) So far as Section 5 of TADA Act is concerned as discussed earlier the prosecution has failed to produce the notification of concerned State Government regarding the notified area and also failed to prove that the area in which the accused **Iftekhar (A23)** was found with prohibited arms was in notified area. Therefore, Section 5 of TADA Act is not proved against accused No.23.

(87.7) As discussed above, the accused **Iftekhar Ansari (A23)** had possessed riffles and cartridges which were prohibited arms, the charge of offence under Section 25(1A), 25(1B) (b) of Arms Act stands proved. But it is not proved that the accused No.23 had further transferred or sold the same. Therefore, the charge of Section 25(1AA) is not proved against **accused No.23 Iftekhar.**

(87.8) It would further be relevant to observe that as held by Hon'ble Apex Court that accused even if acquitted from the offences of TADA, his confessional statement recorded under Section 15 of TADA Act can be taken into consideration for convicting such accused under other offences.

(87.9) So far as charges of Explosive Substances Act and Explosives Act are concerned, it would be relevant to note that neither explosives were delivered / transported to present accused No.23 nor the same were recovered from him. Moreover, as discussed earlier the prosecution agency was required to obtain consent of Central Government as the sanction under Section 7 of Explosive Substances Act produced vide Exh.2987 is granted by District Magistrate Mr.Sanjay Prasad (PW-44), as the same is dated 07.01.1995 i.e. before the amendment in Section 7 of Explosive Substances Act was made and hence, the charge of Explosive Substances Act and Explosives Act cannot be said to be proved against present **accused No.23 Iftekhar Mohammad Yunus Ansari.**

<u>Accused No.24 Mohammad Ayub Abdul Kayum Sati @ Ayub Taklo :-</u>

(88) The accused No.24 is facing a charge of Section 120(B) of Indian Penal Code read with Section 3(3) of TADA Act.

(88.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2991.

(88.2)The confessional statement of present accused Mohmad Ayub (A24) Exh.3088 was recorded by Mr.Satish Verma (PW-54). Perusing his confessional statement, it appears that in Mumbai he came in contact with Salim Kutta (A30) and they became good friends. In Sixth or Seventh Month of 1993 when **Ayub (A24)** was at his village, Salim Kutta (A30) and Arif Mota (A26) had come to his village in Maruti Car No.DL3CD3079 and Salim Kutta had told him that he has brought riffles, bombs, cartridges, magazines and asked him to conceal it in his house. As Salim (A30) was very good friend of **Ayub (A24)**, he had concealed 4 riffles, cartridges, 24 hand-grenades and round bomb in one iron box in his house. Thereafter, around one and half months, Salim (A30) had come to his house and took one riffle and magazine filled with cartridges from **Ayub (A24).** He had said this to his father Abdul Kayum and thereafter, left for Mumbai.

(88.3) It would further be relevant to refer the **confessional statement of Istiyak Ahmad (A35) which was recorded**

by Mr.Pradip Sejul (PW61) produced vide Exh.4033, wherein it is contended that in and around November, 1994, Abdul Kalam (deceased A22) had given him one AK-47 riffles and 3 magazine containing 90 cartridges which were concealed by him in his house which were later on recovered from his brother Iftekhar (A23). He further stated that Salim Mir Mohhamad (A30), **Ayub Kayum @ Ayub Takla (A24)** and Kadir Hazi Shekh (A37) had given the arms, cartridges and hand-grenades bombs to Abdul Kalam (deceased A22).

(88.4) Further if the **confessional statement of Kadir Ahmad (A37) produced at Exh.4035 is perused then the same was recorded by Mr.Pradip Sejul (PW-61).** In his confessional statement he stated that he was known to Iftekhar (A23) and his brother Istiyak (A35). He also knew Salim Kutta (A30) as he used to come to his village. It is stated that in Sixth or Seventh Month of 1993 Salim Kutta (A30) had come to his village in red colour Maruti Car of Delhi passing and told him that he is having arms, cartridges, hand-grenades and bombs which are required to be delivered to **Mohammad Ayub @ Takla (A24)** at Rahukhedi village and asked him to come along, hence, he sat in the car and on the way, Salim (A30) had taken one person who was introduced as Arif Mota of Mumbai (A26). They all three went to the house of **Ayub Takla (A24)** and Salima Kutta (A30) had removed one big box and kept in the house of **Ayub Takla (A24).** On opening box, he found AK-47 riffles (4) and around 1500 to 2000 cartridges. Hand-grenades (24) were kept in separate box and one bomb was kept in iron box. Salim (A30) asked **Ayub (A24)** to keep those things which will be taken by him later on. On the way, Salim informed Kadir (A37) that the goods belongs to his boss Mustafa Majnu and he works for him. After one and half month, Salim Kutta (A30) came to his village in maruti car and he was accompanied by Mama Bundu Saiyad and Salim asked him to give him company as they wanted to go to village of **Ayub Takla (A24).** Thus, he went second time at **Ayub Takla's** house where Salim told **Ayub Takla** that he is in need of arms and cartridges. Hence, **Ayub Takla (A24)** had given him one AK-47 and magazine filled with cartridges. Thereafter, in December, 1994 Gujarat ATC has seized AK-47(2), hand-grenades (24) and bomb (1) and cartridges from the house of Abdul Kalam Abdul Ansari (deceased A22).

(88.5) Perusing the above referred confessional statement of Ayub Takla (A24) (Exh.3088) together with confessional statement of Istiyak (A35) (Exh.4033) and confessional statement of Kadir Shekh (A37) (Exh.4035), it appears that the **accused No.24 Ayub Ansari @ Takla** was involved in procuring and possessing riffles, cartridges and hand-grenades, which were prohibited arms. However, it appears that the accused Ayub Ansari (A24) was not aware about any criminal conspiracy and he had merely possessed and concealed the arms and cartridges on the say of Mohammad Salim (A30). Therefore, the offence under Section 120B of Indian Penal Code read with Section 3(3) of TADA Act are not proved against him.

(88.6) As discussed above, Ayub Ansari had procured and possessed prohibited weapons, cartridges etc. in his house and therefore, though formally sections of Arms Act are not narrated in charge Exh.63, the contents of the charge clearly implicate Ayub Ansari @ Takla (A24) in the offence punishable under the provisions of Arms Act. As the accused is found to be involved in procuring and possessing the prohibited arms, there was no requirement to obtain sanction. However, PW-44 (Exh.2983) Mr.Sanjay Prasad Vimal Prasad, the then District Magistrate and Collector had produced a sanction under Section 39 of Arms Act against present accused No.24 Ayub Ansari vide Exh.2991. Therefore, based on above discussion and relying upon pronouncements of Hon'ble Apex Court in case of *Sandeep Yadav (Supra)*, the present **accused No.24 Mohammad Ayub Abdul Kayum Saati @ Ayub Taklo** is required to be convicted for the offences punishable under Section 25(1A) of Arms Act. It would further be relevant to observe that as held by Hon'ble Apex Court that accused even if acquitted from the offences of TADA, his confessional statement recorded under Section 15 of TADA Act can be taken into consideration for convicting such accused under other offences.

Accused No.25 Salmankhan Ismilekhan Mansuri :-

(89) The accused No.25 is facing a charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act.

(89.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2991, however there is no charge of Arms Act against said accused.

(89.2) The present accused has given a confessional statement Exh.3079 and accused Mohammad Hanif @ Raju (A10) in his confessional statement Exh.3072 had given name of present accused No.25.

(89.3) Both the above confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements.

(89.4) The prosecution has examined Pratapsinh Satrajbhai Thakore as PW-8 (Exh.2561) who is a panch witness. As per the deposition of said witness, he was called by police prior to 30 years and asked him to be panch as one accused person was required to be arrested. He stated that he does not remember the name of that person and cannot identify him as considerable long time is passed. The witness had identified his signature in panchnama Exh.2562 which is panchnama of state of body of A-25. Perusing the entire evidence of said panch witness, nothing incriminating found from the accused and in absence of any substantial evidence, this panchnama would be of no help to prosecution.

(89.5) Therefore, there is nothing on record which would associate **accused No.25 Salmankhan Ismilekhan Mansuri** with present crime. Hence, he is required to be acquitted from all the charges leveled against him.

Accused No.26 Mohammad Arif @ Arif Mota S/o. Abdul Raheman Shekh :-

(90) The accused No.26 is facing a charge of Section 120(B) of Indian Penal Code read with Section 3(3) of TADA Act.

(90.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2991.

(90.2) The confessional statement of present accused Exh.3075 was recorded by Mr.P.K.Jha and accused Hanif @ Raju (A10) had given the name of present accused in his confessional statement Exh.3072.

(90.3) Both the above confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064)

Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements.

(90.4)The confessional statement of accused Abdul Hamid Abdul Majid Shekh (deceased A20) produced vide Exh.3084 was recorded by Mr.Satish Verma (PW-54). Perusing his confessional statement, it appears that the deceased accused Abdul Hamid used to purchase gold from Mohammad Amad Umar Dosa and was known to him. In first week of February, 1992, Mohammad Kaliya (A32) and **Arif Mota (A26)** came to him and **Arif** had given him, one locked iron bag and told him that there is a danger and upon lifting the bag, the same was found very heavy and he kept the bag in his Maruti car No.MFC4950 and after reaching home he kept the bag in shelf. It is stated that after around a month, bomb blast had taken place in Mumbai and hence, to check the bag, he broke the lock and found that there were 3 AK riffles and cartridges. It is stated that AK riffles and cartridges which were given by Mohammad Kaliya (A32) and **Arif Mota (A26)** were recovered by police from his house.

(90.5) Further if the **confessional statement of Kadir Ahmad (A37) produced at Exh.4035 is perused then the same was recorded by Mr.Pradip Sejul (PW-61).** In his confessional statement he stated that in Sixth or Seventh Month of 1993 Salim Kutta (A30) had come to his village in red colour Maruti Car of Delhi passing and told him that he is having arms, cartridges, hand-grenades and bombs which are required to be delivered to Mohammad Ayub @ Takla (A24) at Rahukhedi village and asked him to come along, hence, he set in the car and on the way, Salim (A30) had taken one person who was introduced as **Arif Mota of Mumbai (A26).** They all three went to the house of Ayub Takla (A24) and Salima Kutta (A30) had removed one big box and kept in the house of Ayub Takla (A24). On opening box, he found AK-47 riffles (4) and around 1500 to 2000 cartridges. Hand-grenades (24) were kept in separate box and one bomb was kept in iron box. Salim (A30) asked Ayub (A24) to keep those things which will be taken by him later on.

(90.6) Perusing the above referred confessional statement of Abdul Hamid (deceased A20) and confessional statement of Kadir Shekh (A37) (Exh.4035), it appears that the **accused No.26 Mohammad Arif @ Mota** was involved in possessing and transferring the riffles and cartridges, but such involvement comes on the basis of confessional statements of co-accused and therefore there must be some corroborative evidence to support such confessional statements. Further, there is no recovery or discovery from present accused No.26 and no other corroborative evidence is found on record against the accused No.26. It appears that the accused Mohammad Arif (A26) was not aware about any criminal conspiracy. Therefore, the offence under Section 120B of Indian Penal Code read with Section 3(3) of TADA Act are not proved against him.

Accused No.27 Mohmad Safi Mohammad Yusuf Saiyad @ Safi Charsi :-

(91) The accused No.27 is facing a charge of Section 120(B) of Indian Penal Code read with Section 3(3) of TADA Act.

(91.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2991.

(91.2) The present accused has not given any confessional statement. However, in the confessional statement of Mohammad Hanif @ Raju (A10) (Exh.3072), in the confessional statement of Amirali Sadrudin (A5) (Exh.3066), in the confessional statement of Iqbal Saiyyad (A9) (Exh.3073), in the confessional statement of Arif Abdul (A26) (Exh.3075), the name of present accused No.27 is given.

(91.3) All the above confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. Moreover, the present accused is not named by any other deceased accused in their confessional statements.

(91.4) The confessional statements of Abdul Hamid Abdul Majid Shekh (deceased A20) produced vide Exh.3084 and Arif Rehman @ Lambu (A21) produced vide Exh.3085 were recorded by Mr.Satish Verma (PW-54). Perusing both the above confessional statements, it appears that they have stated about present accused No.27 Mohammad Safi was working in the office of Mohammad Dosa and apart from this, no other allegations are made against him. Moreover, he is also not stated to be involved in possessing, procuring and transporting the prohibited arms and ammunition.

(91.5) Therefore, there is nothing on record which would associate **accused No.27 Mohmad Safi Mohammad Yusuf Saiyad @ Safi Charsi** with present crime. Hence, he is required to be acquitted from all the charges leveled against him.

Accused No.28 Ahir Lakhman Hardas :-

(92) The accused No.28 is facing a charge of Section 120(B) of Indian Penal Code read with Section 3(3) of TADA Act.

(92.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2995.

(92.2) The confessional statement of present accused is produced vide Exh.3090 which was recorded by Mr.S.C.Verma (PW-54). The detailed contentions of his confessional statement is narrated in Para-65 (Page

No.118). Therefore, the same are not reiterated here. But it appears from the confessional statement, he went with accused persons namely Kaliya Bali (deceased A4), Chunilal (deceased A18), Yusuf @ Lavaris (deceased A7), Markhi (A29), Mamuiya Panjumiya (A34), Dadlimiya (A36), Rama Giga (A33) at sea shore of Gosabara procured arms and ammunition and then transferred the same in truck at the house of Mamuniya (A34). Thereafter, at the direction of said Mamumiya (A34) all the arms, cartridges etc. were transferred at Dhoraji highway to Dadlimiya (A36). Thus, from the confessional statement of Lakhman Ahir (A28), he is found involved since inception from landing of the prohibited arms and in transportation of the same.

(92.3) The prosecution as examined PW-22 (Exh.2825) Amrutlal Nanjibhai Sonagara - a panch witness in whose presence, the accused Lakhman (A28) had shown a place of landing to police. The said panchnama is produced vide Exh.2826. The arrest panchnama of said accused Lakhman is produced vide Exh.2718 through PW-17 (Exh.2717) Dineshbhai Muljibhai Makwana.

(92.4) The confessional statement of Lalji @ Kaliya (deceased accused No.4) produced vide Exh.3065 and confessional statement of Yusuf @ Lavaris (deceased accused No.7) indicates the name of present accused No.28.

(92.5) Both the above confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064)

Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused. However, the confessional statement of accused himself produced at Exh.3090 is substantial piece of evidence. Looking to the role played by Lakhman Hardas (A28), it appears that he was well aware about the criminal conspiracy and actively participated in preparatory work for terrorist act. Therefore, the prosecution has successfully proved the charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act against the present accused.

Accused No.29 Ahir Markhi Punja :-

(93) The accused No.29 is facing a charge of Section 120(B) of Indian Penal Code read with Section 3(3) of TADA Act.

(93.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2922 and sanction under Section 39 of Arms Act is produced vide Exh.2995.

(93.2) The present accused has not given any confessional statement. The confessional statement of Yusuf @ Lavaris (deceased accused No.7) Exh.3070 indicates the name of present accused No.29 Markhi Punja. This confessional statement was recorded by Mr.P.K.Jha which is produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused.

(93.3) However, in **confessional statement of accused Lakhman Ahir (A28) produced vide Exh.3090 which was recorded by Mr.S.C. Verma (PW-54),** the name and role played by present accused No.29 is narrated. The detailed contentions of confessional statement of Lakhman (A28) is narrated in Para-65 (Page No.118). Therefore, the same are not reiterated here. But it appears from the confessional statement of Lakhman (A28) that he had asked present accused Markhi Punja to take his truck and in his truck the prohibited arms and ammunition were transferred at the house of Mamuniya Panjumiya (A34). As it is discussed earlier based on the pronouncements of Hon'ble Apex Court the accused can be convicted on the basis of confessional statement of co-accused, however, some corroborative evidence is required to be produced in support thereof. In this case, apart from confessional statement of Lakhman (A28), there is nothing on record which would implicate the present accused Markhi Punja. Therefore, there is nothing on record which would associate **accused No.29 Ahir Markhi Punja** with present crime. Hence, he is required to be acquitted from all the charges leveled against him.

Accused No.30 Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta :-

(94) The accused No.30 is facing a charge of Section 120(B), 34 of Indian Penal Code, Section 3(3) of TADA Act, Section 25(1A), 25(1AA), 25(1B)(a)(b)(c)(f) of Arms Act.

(94.1) The present accused has not given any confessional statement. The confessional statement of Mohammad Hanif @ Raju (A10) (Exh.3072), confessional statement of Alabax (A11) (Exh.3074), confessional statement of Arif @ Mota (A26) (Exh.3075) and confessional statement of Mohammad Ismile Oliya (A12) (Exh.3077) indicate the name of present accused No.30 Mohammad Salim.

(94.2) The above referred confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused.

(94.3) However, the **confessional statement of Usmangani Noormamad (deceased accused No.19) (Exh.3047) recorded by Mr.Benjamin (PW-51)** is required to be perused. In earlier discussion, based on the confessional statement of Usmangani Noormamad, this court has believed the conspiracy against some of the accused persons. In this statement, the present accused No.30 Mohammad Salim is mentioned as an associate of

Mohammad Dosa.

(94.4) Perusing the **confessional statement of Arif @ Lambu (A21) is produced vide Exh.3085 which was recorded by Mr.Satish Verma (PW-54)** and **confessional statement of Abdul Kalam (deceased A22) produced vide Exh.3087 which was recorded by Mr.Satish Verma** and **confessional statement of Mohammad Ayub @ Takla (A24) produced vide Exh.3089 which were recorded by Mr.Satish Verma** and **confessional statement of Kadir Ahmad (A37) produced vide Exh.4035 which was recorded by Mr.Pradip Sejul (PW-61),** it clearly appears that present accused No.30 was associated with Majnu Sheth and was actively involved in procuring and transporting of riffles, cartridges, magazine, hand-grenades and bombs to various other accused persons. It further appears that the riffles, hand-grenades etc. which were supplied by present accused No.30 were recovered from the accused persons to whom, he had supplied.

(94.5) Looking to the active role of accused No.30 Salim Mir Mohammad who is also known as Salim Kutta, it clearly appears that he was actively involved in the conspiracy and preparatory work of terrorist act. However, there is no sanction obtained under Section 20A(2) of TADA Act which is fairly admitted by Ld.Special P.P. Therefore, the charge of TADA Act cannot be considered as proved against the present accused. But as discussed earlier, the accused is found actively involved in possessing and transporting the prohibited arms, the charge of Section 25 (1A), 25(1AA), 25(1B)(b) of Arms Act stands proved against the present accused **No.30 Mohammad Salim Mir Mohammad Salim.**

Accused No.32 Mohammad Kasam Lajporiya @ Chacha @ Mechanic @ Kaliya :-

(95) The accused No.32 is facing a charge of Section 120(B), 153, 34 of Indian Penal Code, Section 3(3) of TADA Act.

(95.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2923 and sanction under Section 39 of Arms Act is produced vide Exh.2944.

(95.2) The present accused has not given any confessional statement. The confessional statement of Lalji @ Kaliya (deceased A4) (Exh.3065) and confessional statement of Amirali Sadrudin (A5) (Exh.3066) and confessional statement of Osman (A1) (Exh.3067) and confessional statement of Mohammad Hanif @ Raju (A10) (Exh.3072) and confessional statement of Iqbal Saiyyad (A9) (Exh.3073) indicate the name of present accused No.32.

(95.3) The above referred confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused.

(95.4) Perusing the **confessional statement of Abdul Hamid (deceased accused No.20) which was recorded by Mr.S.C.Verma (PW-54),** it appear that the **present accused No.32** alongwith accused Arif Mota (A26) had come with iron bag which was containing riffles and cartridges.

(95.5) As it is discussed earlier based on the pronouncements of Hon'ble Apex Court that the accused can be convicted on the basis of confessional statement of co-accused, however, some corroborative evidence is required to be produced in support thereof. In this case, apart from confessional statement of deceased accused Abdul Hamid (A20), there is nothing on record which would implicate the present accused No.32 Mohammad Kasam. Hence, he is required to be acquitted from all the charges leveled against him.

Accused No.33 Rama Giga Mer :-

(96) The accused No.33 is facing a charge of Section 120(B) of Indian Penal Code read with Section 3(3) of TADA Act.

(96.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2924 and sanction under Section 39 of Arms Act is produced vide Exh.2945.

(96.2) The present accused has not given any confessional statement. The confessional statement of Lalji @ Kaliya (deceased accused No.4) (Exh.3065) indicates the name of present accused No.33 Rama Giga Mer. This confessional statement was recorded by Mr.P.K.Jha which is produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused.

(96.3) However, **in confessional statement of accused Lakhman Ahir (A28) produced vide Exh.3090 which was recorded by Mr.S.C. Verma (PW-54),** the name and role played by present accused No.33 is narrated. The detailed contentions of confessional statement of Lakhman (A28) is narrated Para-65 (Page No.118). Therefore, the same are not reiterated here. But it appears from the confessional statement of Lakhman (A28) that present accused No.33 was present with him at the time of landing of arms at Gosabara.

(96.4) As it is discussed earlier based on the pronouncements of Hon'ble Apex Court that the accused can be convicted on the basis of confessional statement of co-accused, however, some corroborative evidence is required to be produced in support thereof. In this case, prosecution has examined PW-14 (Exh.2695) Divyesh Nakum a panch witness who has stated that the accused Rama Giga Mer had shown the place of landing to police in his presence and the panchnama is produced vide Exh.2696. But, no incriminating material has been found from the possession of Rama Giga Mer. Therefore, apart from confessional statement of Lakhman (A28), there is nothing on record which would implicate the present accused Rama Giga Mer in the present crime. Hence, **accused No.33 Rama Giga Mer** is required to be acquitted from all the charges leveled against him.

Accused No.34 Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari :-

(97) The accused No.34 is facing a charge of Section 120(B), 153, 34 of Indian Penal Code, Section 3(3), 5 of TADA Act, Section 25(1A), 25(1AA), 25(1B)(a)(b)(c)(f) of Arms Act, Section 4, 5 & 6 of Explosive Substances Act and Section 9(B) of the Explosives Act.

(97.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2925 in the deposition of PW-35(Exh.2920) Mr.Bharatkumar Vadukar and PW-48 (Exh.3018) Mr.Arunkumar Jagatnarayan Bhargav has identified his signature in sanction Exh.2925 and has given evidence in that regard. Further the sanction under Section 39 of Arms Act against said accused is produced vide Exh.3014.

(97.2) Perusing the evidence of complainant (PW1) (Exh.2104) he has produced complaint Exh.2116 wherein it is stated that the present accused Mamumiya Panjumiya alongwith other accused persons were present at the sea shore of Porbandar-Veraval. Thus, the name of present accused No.34 was revealed since inception.

(97.3) The accused has not given any confessional statement under Section 15 of the TADA Act but in confessional statement of Lalji Harji (deceased A4) produced at Exh.3065, in confessional statement of Amirali Sadrudin (A5) produced at Exh.3066, in confessional statement of Osman (A1) produced at Exh.3067 in confessional statement of Yusuf Ismile (deceased A7) produced at Exh.3070, in confessional statement of Mohammad Hanif @ Raju (A10) produced at Exh.3072, in confessional statement of Iqbal Saiyad (A9) produced at Exh.3073 and in confessional statement of Jakab Bava (A14) produced at Exh.3076, the name and role played by present accused No.34 has been narrated.

(97.4) The above referred confessional statements of accused persons were recorded by Mr.P.K.Jha which were produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused.

(97.5) The **confessional statement of Lakhman Hardas (A28) is produced vide Exh.3090 which was recorded by Mr.S.C.Verma (PW-54).** The detailed contentions of his confessional statement is narrated Para-65 (Page No.118). Therefore, the same are not reiterated here. But it appears from the confessional statement of Lakhman Hardas (A28), he went with accused persons namely Kaliya Bali (deceased A4), Chunilal (deceased A18), Yusuf @ Lavaris (deceased A7), Markhi (A29), **Mamuiya Panjumiya (A34),** Dadlimiya (A36), Rama Giga (A33) at sea shore of Gosabara and procured arms and ammunition and then transferred the same in truck at the house of present accused **Mamuniya (A34)**. Thereafter, at the direction of present accused **Mamumiya (A34),** all the arms, cartridges etc. were transferred at Dhoraji highway to Dadlimiya (A36). Thus, from the confessional statement of Lakhman Ahir (A28), it appears that the present accused No.34 was actively involved in the landing and further transferring of prohibited arms and ammunition.

(97.6) As discussed earlier and as it is a settled legal position that if the name of accused person is revealed in the confessional statement of co-accused then it is incumbent to find corroborative evidence. Therefore, now it is required to be seen whether there are any corroborative evidence against present accused No.34 exist or not.

(97.7) In this case, prosecution has examined **Mr.Kishorkumar Amarshibhai Gandhi as PW-5 (Exh.2432).** As per the evidence of said witness, he went alongwith another panch Nikhilbhai Buch at Pathik Ashram situated in Police Headquarter on 22.01.2005 at 09:00 AM, where he was made aware about the facts of offence by S.P. Mr.Manoj Shashidhar and he was asked to listen what the arrested accused person wants to say.

Thereafter, upon asking the name of accused, he introduced himself as Umarmiya Ismilemiya @ Panjumiya Bukhari resident of Porbandar, aged 50 years and thereafter, he informed to panchas that he wants to show some muddamal out of arms and ammunition those were landed at Gosabara of District Porbandar. Thereafter, *inter-se* search was made and nothing objectionable was found. On completion of first part of panchnama at 09:30 both the panchas and Investigating officer put their signatures and thereafter, all proceeded towards Probandar to Madhavpur and then to Mangrol road as directed by accused No.34 where accused had taken them at one field which was belonging to his friend Ismile Judma (deceased accused). Thereafter, at that place between Coconut tree and Neem tree, Mamumiya Panjumiya (A34) started digging with spade and one plastic bag tied with string was removed and upon opening the string, 295 cartridges made of copper were found, which upon verification by expert police staff were found live cartridges of AK riffles. On further digging two black rubber tubes tied with plastic string were found and on opening, one AK series riffle was found which upon verification by expert police staff was found in working condition. Alongwith these bag of riffle another plastic bag was found wherein three black colour of magazine of AK series were found. Moreover, Air gun butt, gun body and barrel were found. The panch had identified the cartridges, AK 56 riffles, magazine, Air gun butt etc. in the Court. The witness further stated that all these muddamal were seized and he identified his signatures in panch slips Exh.2496, Exh.2497, Exh.2498 and Exh.2499. He identified his signature alongwith signature of panch No.1 Nikhilbhai Buch and S.P. Mr.Manoj Shashidhar in panchnama Exh.2500. He also identified accused Mamuiya (A34) in the Court. After the completion of said panchnama Exh.2500, the panch had given evidence with regard to deceased accused Ismile Juma. However, now this evidence with regard said deceased accused is not relevant and hence not discussed.

(97.8) In cross-examination, he stated that he has received forest training and hence, he could identify the weapons. He also stated that the forest department had made them aware about the weapons by showing it. He admitted that the arms recovered were not test fired at the place by some person. He denied that as he is serving in Government Department, he has given false evidence to help the police. He stated that the field where they went was not covered by any fencing or wall.

(97.9) The Ld.Advocate Mr.P.M.Buch submitted that the panch witness does not state about which seal was applied and who had applied it. It is also not coming on record that after the muddamal seized from Porbandar, in whose custody, the same was kept until, it was brought to Jamnagar. The prosecution has also not produced the note made in muddamal register. He also submitted that until FSL had given report Exh.2635 in respect to arms seized at instance of A-34, in whose possession, the muddamal was kept and who submitted such muddamal to FSL is not coming on record. He further submitted that the prosecution could not prove the muddmal recovered at instance of A-34 in the year 2005 was out of arms and ammunition those were landed in the year 1993.

(97.10) The Ld.Advocate Mr.Buch has relied upon the judgment of Hon'ble Apex Court in case of Amarjit Singh Alias Babbu Versus State Of Punjab reported in 1995 (Supp3) SCC 217, wherein it is observed as under;

> 7. The entire prosecution case, thus, is clouded with number of infirmities which compel this court not to accept such an unworthy evidence. These infirmities have been brushed aside by the Designated court by observing that since the model number of the revolver was noted down, the non-sealing of the revolver or the handing over of the same to some other police official or a private person, who has not been examined are of no consequence. We are unable to agree and subscribe to this view in a case of this nature. The non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. The report of Prosecution Witness 4 that the weapon is capable of being fired is insignificant since it cannot be said with certainty as to what was the condition of the weapon at the time of the recovery, apart from the evidence of Prosecution Witness 4 that he did not test-fire the revolver.

(97.11) The above referred judgment would not be helpful to accused No.34 because even if it is believed that muddamal arms which were recovered at the instance of A-34 are not in working condition then also it would not affect the case of prosecution because the case of prosecution is with regard to procurement and transportation of arms and ammunition.

(97.12) It is further submitted that the then Ld. Designated Court by passing an order below Exh.645 in TADA Case No.02 of 2005 had observed that there is no legal proof and evidence regarding the seized goods i.e. arms etc. have any connection with Porbandar landing in 1993 and discharged accused Ismile Juma from the offences of TADA and directed to file separate charge-sheet before the competent Court. It is submitted that said order was confirmed by the Hon'ble Apex Court in Criminal Appeal No.1184 of 2007. Upon perusing the order below Exh.645, it appears that the then Ld.Designated Court had discharged accused Ismile Juma with an observation that it was not proved that Ismile Juma was given arms and ammunition by Mamumiya (A34) out of muddamal that was landed in 1993.

(97.13) It is further submitted that the discovery of arms at the instance of A-34 is highly suspicious because such discovery is made in the year 2005 i.e. after almost 12 years since the landing had taken place. Moreover, such discovery was from the open field of Ismile Juma. In this regard, it would be relevant to refer the judgment of Hon'ble Apex Court in case of **Yakub Abdul Razak Memon Versus State Of Maharashtra Through Cbi, Bombay reported in 2013 (13) SCC 1**, wherein it is observed as under;

> "1797. In view of the above, merely because the contraband was recovered from a public place i.e. a place accessible to the public at large, the same does not mean that the recovery is to be discarded. In case, the articles had been hidden by digging up the earth, covering the same up with garbage or other material, the public may not have taken note of it. The same remained in the specific knowledge of the accused i.e. where and also the manner in which the said articles were hidden. Moreover, the recovery cannot be discarded for want of signature of the accused on the recovery manner."

(97.14) Based on the above judgment as well as discussion made earlier, the prosecution has successfully proved that the prohibited arms and ammunition were discovered at the instance of accused No.34.

(97.15) Further prosecution has examined Mr.Satar Osman Darjada as PW25 vide Exh.2865 who is panch witness and identified his signature at Panchnama at Exh.2866 however, he had not supported the case of prosecution but perusing the evidence of Mr.Manoj Shashidhar (PW-63) (Exh.4044), he has given evidence with regard to discovery panchnma Exh.2500 and panchnama Exh.2866. Moreover, the contentions of said panchnama Exh.2866 are proved by said investigating officer Mr.Manoj Shahishdhar. Through this panchnama Exh.2866, the prosecution has proved that the accused No.34 had shown the place of landing of arms and ammunition.

(97.16) Further the weapons discovered by present accused No.34 are prohibited weapons and therefore, there is no requirement of any sanction, however, sanction under Section 39 of Arms Act is produced vide Exh.3014 by PW-46 (Exh.3010) Mr.T.Natrajan the then District

Magistrate/ Collector, Jamnagar. It further appears that accused No.34 had remained present at Gosabara coastal area and got the arms and ammunition deboarded and arms and cartridges were found from his possession, which itself shows that he had conspired with the other accused persons for facilitating to terrorist act. Therefore, the charge of Section 120B of Indian Penal Code read with Section 3(3) of TADA Act stands proved against the accused No.34.

(97.17) So far as Section 5 of TADA Act is concerned the same is with regard to possession of unauthorized arms in specified areas. The prosecution had to prove that the accused No.34 found in possession of arms, bombs etc. unauthorizedly in a notified area. The definition of notified area is given in Section 2(f) of the TADA Act which states that "notified area" means such area as the State Government may, by notification in the official gazette, specify; In this case, no such notification has been produced on record and prosecution failed to show that the place from where unauthorized arms were found from accused No.34 was in a notified area. Therefore, the charge of Section 5 of TADA Act is not proved against the accused No.34.

(97.18) As discussed above, riffles and cartridges were found from accused No.34, which were prohibited arms and he had acquired and further transferred it and thereby the charge of Section 25(1A), 25(1AA), 25(1B)(b) of Arms

Act stands proved but charges of Section 25(1B)(a)(c)(f) and Section 153 and 34 of Indian Penal Code are not proved against accused No.34 Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari.

(97.19) So far as charges of Explosive Substances Act and Explosives Act are concerned, it would be relevant to note that neither explosives were delivered or transported to present accused No.34 nor the same were recovered from him. Hence, the charge of Explosive Substances Act and Explosives Act cannot be said to be proved against present accused Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari.

<u>Accused No.35 Istiyak Ahmed Mohammad Yunus Ansari :-</u>

(98) The accused No.35 is facing a charge of Section 120(B), 34 of Indian Penal Code, Section 3(3), 5 of TADA Act, Section 25(1A), 25(1AA), 25(1B)(a)(b)(c)(f) of Arms Act.

(98.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2927 and sanction under Section 39 of Arms Act is produced vide Exh.2947.

(98.2)The confessional statement of present accused Exh.4033 was recorded by Mr.Pradip Sejul (PW-61). Perusing his confessional statement he has stated that his brother Iftekhar (A23) was having cosmetic shop in Nazimabad where Abdul Kalam Aziz Ansari of Rahukhedi (deceased A22) used to come and hence, they became friend. The brother-in-law of Abdul Aziz (deceased A22), Ayub Takla (A24) was residing at Mumbai told him that Salim Kutta (A30) works for Daud and if there is any work then he shall be informed. He further stated that he was having dispute in his village and hence, for security purpose, he had asked for arms from Abdul Kalam (deceased A22). Therefore, in an around November, 1994, Abdul Kalam (deceased A22) had given him one AK-47 riffles and 3 magazine containing 90 cartridges which were concealed by him in his house, which were later on recovered from his brother Iftekhar (A23). He further stated that Salim Mir Mohhamad (A30), Ayub Kayum @ Ayub Takla (A24) and Kadir Hazi Shekh (A37) had given the arms, cartridges and hand-grenades bombs to Abdul Kalam (deceased A22).

(98.3) It would be relevant to refer **the confessional statement of Iftekhar (A23) who is brother of present accused Istiyak (A35)**. The said confessional statement was recorded by Mr.S.C.Verma (A54) and produced vide Exh.3086, wherein he had stated that he is younger brother of accused No.35 Istiyak Ahmad. He stated that his brother **Istiyak** knew the accused Abdul Kalam Abdul Aziz Ansari (deceased accused No.22) who was resident of Rahukhedi. Prior to around one and half months of 03.01.1995 (date of his confessional statement), Abdul Kalam (deceased A22) came to his house and after talking to his brother **Istiyak** give him one riffle and magazine filled with three cartridges. Upon asking **Istiyak,** he told that as there is a disputed in the village and hence, this would be helpful. Saying so, **Istiyak** had given the goods i.e arms to Iftekhar which were kept carefully by Iftekhar. He stated that whichever arms and cartridges were possessed by him were caught by Gujarat Police.

(98.4) Now, it would be relevant to refer **the confessional statement of deceased accused No.22 Abdul Kalam (Exh.3087)** which was recorded by Mr.Satish Verma (A54). It is contended that Abdul Ayub Kayum @ Takla (A24) is his brother-in-law who was having good friendship with Kadir (A37) and Mohammad Salim Mir Mohammad @ Salim Kutta (A30) of village Kaldi. His brother-in-law Abdul Ayub (A24) was involved in smuggling with some gang in Mumbai and Salim (A30) was also working with him. It is contended that his father-in-law Abdul had told him that Ayub had concealed guns and explosives in the house and as Mumbai Police time and again come to their home, he asked him to come home and by removing concealed guns and explosives, it shall be placed somewhere. Thereafter, accused Abdul Kalam (Deceased A22) went with his father-in-law at his home and upon digging one bag was found wherein three guns and cartridges were found. Thereafter, his father-in-law took him to one room situated near lake from where, 24 bombs were found. All these goods were brought to home by deceased accused No.22 and his father-in-law and were placed in iron bag. It was informed to deceased accused No.22 by his father-in-law that all the goods were given to Ayub (A24) by Salim Kutta (A3) and Kadir (A37) of village Kaldi. It is further contended that once he had gone to meet his friend **Istiyak (A35)** at village Nazimabad where he informed to **Istiyak** that he has concealed some guns, cartridges and explosives in his house and his afraid that police come at any time at his home and hence, he asked **Istiyak** to keep all these goods. To which, **Istiyak** told him that as there is property dispute in his caste, for his security he needs gun and cartridges and he would get it later. Thereafter, deceased accused No.22 took one gun, 90 cartridges and three magazines and gave it to **Istiyak (A35)** by going to his home. It is contended that prior to one month of his confessional statement (dated 11.01.1995) Gujarat Police had come to his village and searched his house from where, guns, cartridges and bombs were found. It is further contended that he came to know that Gujarat Police has searched for Istiyak but he was not found and the gun and cartridges given by him i.e. deceased accused No.22 were found from Iftekhar (A23).

(98.5) Further if **the confessional statement of Kadir Ahmad (A37) produced at Exh.4035** is perused then the same was recorded by Mr.Pradip Sejul (PW-61). In his confessional statement he stated that he was known to

Iftekhar (A23) and his brother **Istiyak (A35).** He also knew Salim Kutta (A30) as he used to come to his village. It is stated that in Sixth or Seventh Month of 1993 Salim Kutta (A30) had come to his village in red colour Maruti Car of Delhi passing and told him that he is having arms, cartridges, hand-grenades and bombs which are required to be delivered to Mohammad Ayub @ Takla (A24) at Rahukhedi village and asked him to come along, hence, he set in the car and on the way, Salim (A30) had taken one person who was introduced as Arif Mota of Mumbai (A26). They all three went to the house of Ayub Takla (A24) and Salima Kutta (A30) had removed one big box and kept in the house of Ayub Takla (A24). On opening box, he found AK-47 riffles (4) and around 1500 to 2000 cartridges. Hand-grenades (24) were kept in separate box and one bomb was kept in iron box. Salim (A30) asked Ayub (A24) to keep those things which will be taken by him later on. On the way, Salim informed Kadir (A37) that the goods belongs to his boss Mustafa Majnu and he works for him. After one and half month, Salim Kutta (A30) came to his village in Maruti car and he was accompanied by Mama Bundu Saiyyad and Salim asked him to give him company as they wanted to go to village of Ayub Takla (A24). Thus, he went second time at Ayub Takla's house where Salim told Ayub Takla that he is in need of arms and cartridges. Hence, Ayub Takla (A24) had given him one AK-47 and magazine filled with cartridges. Thereafter, in December, 1994 Gujarat ATC has seized AK-47(2), hand-grenades (24) and bomb (1) and cartridges from the house of Abdul Kalam Abdul Ansari (deceased A22).

(98.6) Perusing the above confessional statement of accused Istiyak (A35) together with confessional statement of Iftekhar (A23) (Exh.3086) and confessional statement of Abdul Kalam (deceased A22) Exh.3087 and confessional statement of Kadir Hazi Shekh (A37) Exh.4035, it clearly appears that Mohammad Salim (A30), Ayub Kayum @ Takla (A24) and Kadir Hazir Shekh (A37) had given the guns, cartridges and hand-grenades to Abdul Kalam (deceased A22). Thereafter, as Istiyak (A35) was in need of arms, Abdul Kalam (deceased A22) had given one AK-47 and 3 magazines containing 90 cartridges to Istiyak (A35) and in turn Istiyak (A35) gave it to his brother Iftekhar Ansari (A23). It appears that the accused Istiyak Ansari (A35) was not aware about any criminal conspiracy and he had merely possessed and concealed the arms and cartridges. Therefore, the offence under Section 120B and 34 of Indian Penal Code read with Section 3(3) of TADA Act are not proved against him.

(98.7) So far as Section 5 of TADA Act is concerned as discussed earlier the prosecution has failed to produce the notification of concerned State Government regarding the notified area and also failed to prove that the area in which the accused Istiyak (A35) was found with prohibited arms was in notified area. Therefore, Section 5 of TADA Act is not proved against accused Istiyak Accused No.35.

(98.8) As discussed above, the accused Istiyak Ansari (A35) had possessed riffles and cartridges which were prohibited arms, the charge of offence under Section 25(1A), 25(1B) (b) of Arms Act stands proved. But it is not proved that the accused No.35 had further sold the same. Therefore, the charge of Section 25(1AA) and 25(1B)(a)(c)(f) of Arms Act are not proved against accused No.35 Istiyak Ansari.

(98.9) It would further be relevant to observe that as held by Hon'ble Apex Court that accused even if acquitted from the offences of TADA, his confessional statement recorded under Section 15 of TADA Act can be taken into consideration for convicting such accused under other offences.

<u>Accused No.36 Jusabmiya @ Dadlimiya S/o. Ismilemiya @ Panjumiya Saiyad :-</u>

(99) The accused No.36 is facing a charge of Section 120(B), 34 of Indian Penal Code read with Section 3(3) of TADA Act.

(99.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2928 and sanction under Section 39 of Arms Act is produced vide Exh.2949.

(99.2) The present accused has not given any confessional statement. The confessional statement of Yusuf @

Lavaris (deceased accused No.7) (Exh.3070) and confessional statement of Jakab Bava (A14) (Exh.3076) indicate the name of present accused No.36 Dadlimiya. These confessional statements were recorded by Mr.P.K.Jha which are produced by PW-53 (Exh.3064) Mr.Ajit Dubal. In earlier discussion, it is held that the confessional statements recorded by Mr.Jha are not proved against the accused persons and therefore, the same cannot be considered against the present accused.

(99.3) However, in confessional statement of accused Lakhman Ahir (A28) produced vide Exh.3090 which was recorded by Mr.S.C. Verma (PW-54), the name and role played by present accused No.36 is narrated. The detailed contentions of confessional statement of Lakhman (A28) is narrated in Para-65 (Page No.118). Therefore, the same are not reiterated here. But it appears from the confessional statement of Lakhman (A28) that present accused No.36 was present with him at the time of landing of arms at Gosabara.

(99.4) As it is discussed earlier based on the pronouncements of Hon'ble Apex Court that the accused can be convicted on the basis of confessional statement of co-accused, however, some corroborative evidence is required to be produced in support thereof. In this case, prosecution has examined PW-16 (Exh.2699) Jayesh Harishbhai Makwana a panch witness who has stated that the accused Jusabmiya @ Dadlimiya was arrested in his presence and panchnama to that effect which is produced vide Exh.2700. However, no incriminating material has been found from the possession of Jusabmiya @ Dadlimiya. Therefore, apart from confessional statement of Lakhman (A28), there is nothing on record which would implicate the present accused Jusabmiya @ Dadlimiya in the present crime. Hence, **accused No.36 Jusabmiya @ Dadlimiya S/o. Ismilemiya @ Panjumiya Saiyad** is required to be acquitted from all the charges leveled against him.

<u>Accused No.37 Kadir Ahmad s/o Amir Ahemad Shaikh @ Kadir Haji Shekh:-</u>

(100) The accused No.37 is facing a charge of Section 120(B) of Indian Penal Code, Section 3(3), 5 of TADA Act.

(100.1) The sanction under Section 20A(2) of TADA Act against said accused is produced vide Eh.2929 and sanction under Section 39 of Arms Act is produced vide Exh.2951.

(100.2) The **confessional statement of present accused No.37 Kadir Ahmad produced vide Exh.4035 was recorded by Mr.Pradip Sejul (PW-61).** In his confessional statement he stated that he was known to Iftekhar (A23) and his brother Istiyak (A35). He also knew Salim Kutta (A30) as he used to come to his village. It is stated that in Sixth or Seventh Month of 1993 Salim Kutta (A30) had come to his village in red colour Maruti Car of Delhi passing and told him that he is having arms, cartridges, hand-grenades and bombs which are required to be delivered to Mohammad Ayub @ Takla (A24) at Rahukhedi village and asked him to come along, hence, he set in the car and on the way, Salim (A30) had taken one person who was introduced as Arif Mota of Mumbai (A26). They all three went to the house of Ayub Takla (A24) and Salima Kutta (A30) had removed one big box and kept in the house of Ayub Takla (A24). On opening box, he found AK-47 riffles (4) and aruond 1500 to 2000 cartridges. Hand-grenades (24) were kept in separate box and one bomb was kept in iron box. Salim (A30) asked Ayub (A24) to keep those things which will be taken by him later on. On the way, Salim informed Kadir (A37) that the goods belongs to his boss Mustafa Majnu and he works for him. After one and half month, Salim Kutta (A30) came to his village in maruti car and he was accompanied by Mama Bundu Saiyyad and Salim asked him to give him company as they wanted to go to village of Ayub Takla (A24). Thus, he went second time at Ayub Takla's house where Salim told Ayub Takla that he is in need of arms and cartridges. Hence, Ayub Takla (A24) had given him one AK-47 and magazine filled with cartridges. Thereafter, in December, 1994 Gujarat ATC has seized AK-47(2), hand-grenades (24) and bomb (1) and cartridges from the house of Abdul Kalam Abdul Ansari (deceased A22).

(100.3) Now, it would be relevant to refer the **confessional statement of deceased accused No.22 Abdul Kalam (Exh.3087) which was recorded by Mr.Satish Verma (A54).** It is contended that Abdul Ayub Kayum @ Takla (A24) is his brother-in-law who was having good friendship with **Kadir (A37)** and Mohammad Salim Mir Mohammad @ Salim Kutta (A30) of village Kaldi. His brother-in-law Abdul Ayub (A24) was involved in smuggling with some gang in Mumbai and Salim (A30) was also working with him. It is contended that his father-in-law Abdul had told him that Ayub had concealed guns and explosives in the house and as Mumbai Police time and again come to their home, he asked him to come home and by removing concealed guns and explosives, it shall be placed somewhere. Thereafter, accused Abdul Kalam (Deceased A22) went with his father-in-law at his home and upon digging one bag was found wherein three guns and cartridges were found. Thereafter, his father-in-law took him to one room situated near lake from where, 24 bombs were found. All these goods were brought to home by deceased accused No.22 and his father-in-law and were placed in iron bag. It was informed to deceased accused No.22 by his father-in-law that all the goods were given to Ayub (A24) by Salim Kutta (A3) and **Kadir (A37)** of village Kaldi. It is further contended that once he had gone to meet his friend Istiyak (A35) at village Nazimabad where he informed to Istiyak that he has concealed some guns, cartridges and explosives in his house and his afraid that police come at any time at his home and hence, he asked Istiyak to keep all these goods. To which, Istiyak told him that as there is property dispute in his caste, for his security he needs gun and cartridges and he would get it later. Thereafter, deceased accused No.22 took one gun, 90 cartridges and three magazines and gave it to Istiyak (A35) by going to his home. It is contended that prior to one month of his confessional statement (dated 11.01.1995) Gujarat Police had come to his village and searched his house from where, guns, cartridges and bombs were found. It is further contended that he came to know that Gujarat Police has searched for Istiyak but he was not found and the gun and cartridges given by him i.e. deceased accused No.22 were found from Iftekhar (A23).

(100.4) The **confessional statement of Istiyak Ansari (A35) produced vide Exh.4033 was recorded by Mr.Pradip Sejul (PW-61).** Perusing his confessional statement he has stated that his brother Iftekhar (A23) was having cosmetic shop in Nazimabad where Abdul Kalam Aziz Ansari of Rahukhedi (deceased A22) used to come and hence, they became friend. The brother-in-law of Abdul Aziz (deceased A22) Ayub Takla (A24) was residing at Mumbai told him that Salim Kutta (A30) works for Daud and if there is any work then he shall be informed. He further stated that he was having dispute in his village and hence, for security purpose, he had asked for arms from Abdul Kalam (deceased A22). Therefore, in an around November, 1994, Abdul Kalam (deceased A22) had given him one AK-47 riffles and 3 magazine containing 90 cartridges which were concealed by him in his house, which were later on recovered from his brother Iftekhar (A23). He further stated that Salim Mir Mohhamad (A30), Ayub Kayum @ Ayub Takla (A24) and **Kadir Hazi Shekh (A37)** had given the arms, cartridges and hand-grenades bombs to Abdul Kalam (deceased A22).

(100.5) Perusing the above confessional statement of accused Kadir Ahmad (A37) together with confessional statement of Istiyak (A35) produced vide Exh.4033 and confessional statement of Abdul Kalam (deceased A22) Exh.3087, it clearly appears that Mohammad Salim (A30), Ayub Kayum @ Takla (A24) and Kadir Hazir Shekh (A37) had given the guns, cartridges and hand-grenades to Abdul Kalam (deceased A22). Thereafter, as Istiyak (A35) was in need of arms, Abdul Kalam (deceased A22) had given one AK-47 and 3 magazines containing 90 cartridges to Istiyak (A35) and in turn Istiyak (A35) gave it to his brother Iftekhar Ansari (A23). It appears that the accused Kadir Ahmad (A37) was not aware about any criminal conspiracy and he had merely possessed and transported the arms and cartridges. Therefore, the offence under Section 120B of Indian Penal Code read with Section 3(3) of TADA Act are not proved against him.

(100.6) So far as Section 5 of TADA Act is concerned as discussed earlier the prosecution has failed to produce the notification of concerned State Government regarding the notified area and also failed to prove that the area in which the accused Kadir Ahmad (A37) was found with prohibited arms was in notified area. Therefore, Section 5 of TADA Act is not proved against accused Kadir Ahmad Accused No.37.

(100.7) As discussed above, Kadir Ahmad (A37) had possessed and transported the prohibited weapons, cartridges etc. and therefore, though formally sections of Arms Act are not narrated in charge Exh.2001, the contents of the charge clearly implicate present accused Kadir Ahmad (A37) in the offence punishable under the provisions of Arms Act. As the accused is found involved in possessing and transporting the prohibited arms, there was no requirement to obtain sanction. However, Mr.Divyesh Nandasana (PW-37)(Exh.2940) has produced the sanction Exh.2951 and Mr.Ravishankar Prasad (PW-55) (Exh.3097), the then District Magistrate and Collector, Jamnagar has identified his signature in said sanction under Section 39 of Arms Act against present accused No.37 Kadir Ahmad. Therefore, based on above discussion and relying upon pronouncements of Hon'ble Apex Court in case of *Sandeep Yadav (Supra)*, the present **accused No.37 Kadir Ahmad** is required to be convicted for the offences punishable under Section 25(1A) of Arms Act. It would further be relevant to observe that as held by Hon'ble Apex Court that accused even if acquitted from the offences of TADA, his confessional statement recorded under Section 15 of TADA Act can be taken into consideration for convicting such accused under other offences.

(101) Based on above discussion, I answer issue Nos.3 & 4 in Partly Affirmative and for issue No.5, I pass the following order;

O R D E R

(1) The prosecution partly succeeds.

(2) The following accused persons are ordered to stand acquitted of all charges leveled against them in connection with the offence registered vide II- CR No.151 of 1993 registered with City "B" Division Police Station, Jamnagar.

ACQUITTED ACCUSED PERSONS	
ACCUSED NO.	NAME OF ACCUSED
5	Amirali Sadrudin Khoja
6	Abdul Rasid Valimamad Ansari
8	Gulamchisti Sulemanchisti Shekh
9	Iqbal Abdul Hasan Saiyad
10	Mohamad Hanif @ Raju @ Roshan @ Sagar S/o. Husen Jumma Petivala Shekh
13	Mohammad Iqbal Abdul Gani Mansuri
14	Jaku @ Jakab Bava Padhiyar
15	Salim Aazam Lala Vora
16	Ismile Sale Bafan
17	Sujatmiya Bachumiya Saiyad

25	Salmankhan Ismilekhan Mansuri
26	Mohammad Arif @ Arif Mota S/o. Abdul Raheman Shekh
27	Mohmad Safi Mohammad Yusuf Saiyad @ Safi Charsi
29	Ahir Markhi Punja
32	Mohammad Kasam Lajporiya @ Chacha @ Mechanic @ Kaliya
33	Rama Giga Mer
36	Jusabmiya @ Dadlimiya S/o. Ismilemiya @ Panjumiya Saiyad

(3) The above acquitted accused persons are hereby directed to submit fresh bail bond under Section 437(A) of the Criminal Procedure Code for a period of six months in a sum of Rs.10,000/- (Rupees Ten Thousand Only) each with one surety of like amount.

(4) Previous surety bonds of the acquitted accused persons stand discharged.

(5) As far as the remaining accused are concerned, **Accused No.1 Osman @ Usman Umar Koreja** is hereby found guilty of the charges framed against him vide Exh.63 and is hereby ordered to stand convicted for having committed the offence punishable under Section 3(3) of TADA Act r/w Section 120B of Indian Penal Code.

(6) The **Accused No.2 Mamad Alimamad @ Mamdu Sap** is hereby found guilty of the charges framed against him vide Exh.63 and is hereby ordered to stand convicted for having committed the offence punishable under Section 3(3) of

TADA Act r/w Section 120B of Indian Penal Code.

(7) The **Accused No.3 Harun Adam Sanghar Vagher** is hereby found guilty of the charges framed against him vide Exh.63 and is hereby ordered to stand convicted for having committed the offence punishable under Section 3(3) of TADA Act r/w Section 120B of Indian Penal Code.

(8) The **Accused No.12 Ahemad Ismail Oliya** is hereby acquitted from the offence punishable under Section 5 of TADA Act, Section 25(1AA) of the Arms Act, Section 4(b), 5 of the Explosive Substances Act and Section 9(B) of the Explosives Act.

The **Accused No.12 Ahemad Ismail Oliya** is hereby found guilty of the charges framed against him vide Exh.63 and is hereby ordered to stand convicted for having committed the offence punishable under Section 3(3) of TADA Act r/w Section 120B of Indian Penal Code together with Section 25(1A), 25(1B)(b) of the Arms Act.

(9) The **Accused No.21 Aarif Abdul Rehman @ Aarif Lambu Memon** is hereby acquitted from the offence punishable under Section 3(3) of TADA Act r/w Section 120B of Indian Penal Code.

The **Accused No.21 Aarif Abdul Rehman @ Aarif Lambu Memon** is hereby found guilty of the offence punishable under Section 25(1A) of the Arms Act.

(10) The **Accused No.23 Iftekhar Mohmmad Yunus Ansari** is hereby acquitted from the offence punishable under Section

3(3), 5 of TADA Act r/w Section 120B of Indian Penal Code and Section 25(1AA) of the Arms Act and Section 4 and 5 of the Explosive Substances Act and Section 9(b) of the Explosives Act.

The **Accused No.23 Iftekhar Mohmmad Yunus Ansari** is hereby found guilty of the offence punishable under Section 25(1A), 25(1B)(b) of the Arms Act.

(11) The **Accused No.24 Mohammad Ayub Abdul Kayum Sati @ Ayub Taklo** is hereby acquitted from the offence punishable under Section 3(3) of the TADA Act r/w Section 120B of Indian Penal Code.

The **Accused No.24 Mohammad Ayub Abdul Kayum Sati @ Ayub Taklo** is hereby found guilty of the offence punishable under Section 25(1A) of the Arms Act.

(12) The **Accused No.28 Ahir Lakhman Hardas** is hereby found guilty of the charges framed against him vide Exh.63 and is hereby ordered to stand convicted for having committed the offence punishable under Section 3(3) of TADA Act r/w Section 120B of Indian Penal Code.

(13) The **Accused No.30 Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta** is hereby acquitted from the offence punishable under Section 3(3) of the TADA Act r/w Section 120B, 34 of Indian Penal Code and under Section 25(1B)(a)(c)(f) of the Arms Act.

The **Accused No.30 Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta** is hereby found guilty of the charges framed against him vide

Exh.2001 and is hereby ordered to stand convicted for having committed the offence punishable under Section 25(1A), 25(1AA), 25(1B)(b) of the Arms Act.

(14) The **Accused No.34 Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari** is hereby acquitted from the offence punishable under Section 5 of TADA Act, Section 153 and 34 of the Indian Penal Code, Section 25(1B)(a)(c)(f) of the Arms Act, Section 4, 5 and 6 of the Explosive Substances Act and Section 9(B) of the Explosives Act.

The **Accused No.34 Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari** is hereby found guilty of the charges framed against him vide Exh.2001 and is hereby ordered to stands convicted for having committed the offence punishable under Section 3(3) of TADA Act r/w Section 120B of Indian Penal Code together with Section 25(1A), 25(1AA), 25(1B)(b) of the Arms Act.

(15) The **Accused No.35 Istiyak Ahmed Mohammad Yunus Ansari** is hereby acquitted from the offence punishable under Section 3(3), 5 of TADA Act r/w Section 120, 34 of Indian Penal Code, Section 25(1AA), 25(1B)(a)(c)(f) of the Arms Act.

The **Accused No.35 Istiyak Ahmed Mohammad Yunus Ansari** is hereby found guilty of the charges framed against him vide Exh.2001 and is hereby ordered to stands convicted for having committed the offence punishable under Section 25(1A), 25(1B)(b) of the Arms Act.

(16) The **Accused No.37 Kadir Ahmad s/o Amir Ahemad Shaikh @ Kadir Haji Shekh** is hereby acquitted from the offence punishable under Section 3(3), 5 of TADA Act r/w Section 120B of Indian Penal Code.

The **Accused No.37 Kadir Ahmad s/o Amir Ahemad Shaikh @ Kadir Haji Shekh** is hereby found guilty of the offence punishable under Section 25(1A) of the Arms Act.

(17) The proceedings are kept for hearing the convicted accused with regard to the quantum of punishment to be imposed on such accused. Further order would be passed after hearing all the parties with regard to quantum of punishment.

Pronounced and signed in the open Court today on **04th day of May, 2026.**

Date: 04/05/2026 Place: Jamnagar.	**(ROBIN P. MOGERA)** Special Judge(TADA)& Additional Sessions Judge, Jamnagar. **UIC No.GJ01539**

FURTHER ORDER

(1) Heard, the Ld.Advocates appearing on behalf of respective parties on the question of quantum of sentence to be imposed upon the convicted accused.

(2) The Ld.Advocates for the convicted accused persons submitted that the incident of the year 1993 and since last 33 years, they are facing the trial. It is submitted that there are no casualty or injuries caused to anyone and hence, the gravity of offence is less. The accused persons have not indulged themselves in any criminal activities after release on bail. Hence, prayed to impose minimum punishment.

(3) At the outset, the Ld.Special P.P. Mr.T.M.Gokani appearing on behalf of State submitted that the accused persons were indulged in serious matter and if less punishment is imposed then it would be sent wrong singnle to society. Hence, looking to the gravity of offence prayed to impose maximum punishment with appropriate fine.

(4) Upon hearing the Ld.Advocates for the respective parties firstly it would be appropriate to observe that Section 3(3) of TADA Act provides punishment with imprisonment for a term which shall not be less than 5 year but which may extent to imprisonment for life and shall also be liable to fine.

For the offence punishable under Section 25(1A) of Arms Act, the punishment provided is imprisonment for a term which shall not be less than 5 years, but which may extent to 10 years and shall also be liable to fine.

Likewise, for the offence punishable under Section

25(1AA) of Arms Act, the punishment provided is imprisonment for a term which shall not be less than 7 years, but which may extent to imprisonment for life and shall also be liable to fine.

For the offence punishable under Section 25(1B)(b) of Arms Act, the punishment provided is imprisonment for a term which shall not be less than 1 years, but which may extent to 03 years and shall also be liable to fine.

As observed by this Court in beginning of the judgment, that this is a case wherein no casualty has taken place and no one is injured and no properties are damaged or destructed. Moreover, the case is pending since 1994 and the accused persons have attended the proceedings till date and have gone through the agony of the trial. Most of the accused persons are very old and suffering from various medical ailments and in such cases, if maximum imprisonment is imposed then irreparable loss which cannot be compensated in terms of money would be caused to accused persons.

(5) In the circumstances, which have been discussed before and looking to the fact that accused, at the cost of repetition, have faced a trauma of this trial and since all the accused have been facing the trauma for an incident that took place in the year 1994 and also looking to the fact that post enlargment on bail, there has been no complaint of any offence being committed by the accused and looking to the various factors like age and other mitigating circumstances, I imposed the quantum of punishment upon the convicted accused as per

following details;

FINAL ORDER

(1) The **accused No.1 Osman @ Usman Umar Koreja** shall undergo rigorous imprisonment for 5 years and fine of Rs.5000/- (Rupees Five Thousand Only) for the offence punishable under Section 3(3) of TADA Act r/w Section 120B of the Indian Penal Code. In default of payment, the accused shall further under go simple imprisonment for Two months.

(2) The **accused No.2 Mamad Alimamad @ Mamdu Sap** shall undergo rigorous imprisonment for 5 years and fine of Rs.5000/- (Rupees Five Thousand Only) for the offence punishable under Section 3(3) of TADA Act r/w Section 120B of the Indian Penal Code. In default of payment, the accused shall further under go simple imprisonment for Two months.

(3) The **accused No.3 Harun Adam Sanghar Vagher** shall undergo rigorous imprisonment for 5 years and fine of Rs.5000/- (Rupees Five Thousand Only) for the offence punishable under Section 3(3) of TADA Act r/w Section 120B of the Indian Penal Code. In default of payment, the accused shall further under go simple imprisonment for Two months.

(4) The **accused No.12 Ahemad Ismail Oliya** shall undergo rigorous imprisonment for 5 years and fine of Rs.5000/- (Rupees Five Thousand Only) for the offence punishable under Section 3(3) of TADA Act r/w Section 120B of the

Indian Penal Code. In default of payment, the accused shall further under go simple imprisonment for Two months.

Accused No.12 Ahemad Ismail Oliya shall further undergo rigorous imprisonment for five years and fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable under Section 25(1A) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for Two months.

Accused No.12 Ahemad Ismail Oliya shall further undergo rigorous imprisonment for One year and fine of Rs.1,000/- (Rupees One Thousand Only) for the offence punishable under Section 25(1B)(b) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for One month.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently.

(5) The **accused No.21 Aarif Abdul Rehman @ Aarif Lambu Memon** shall undergo rigorous imprisonment for five years and fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable under Section 25(1A) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for Two months.

(6) The **accused No.23 Iftekhar Mohmmad Yunus Ansari** shall undergo rigorous imprisonment for five years and fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable under Section 25(1A) of the Arms Act. In default of payment, the accused shall further under go simple

imprisonment for Two months.

Accused No.23 Iftekhar Mohmmad Yunus Ansari shall further undergo rigorous imprisonment for One year and fine of Rs.1,000/- (Rupees One Thousand Only) for the offence punishable under Section 25(1B)(b) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for One month.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently.

(7) The **accused No.24 Mohammad Ayub Abdul Kayum Sati @ Ayub Taklo** shall undergo rigorous imprisonment for five years and fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable under Section 25(1A) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for Two months.

(8) The **accused No.28 Ahir Lakhman Hardas** shall undergo rigorous imprisonment for 5 years and fine of Rs.5000/- (Rupees Five Thousand Only) for the offence punishable under Section 3(3) of TADA Act r/w Section 120B of the Indian Penal Code. In default of payment, the accused shall further under go simple imprisonment for Two months.

(9) The **accused No.30 Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta** shall undergo rigorous imprisonment for five years and fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable under Section 25(1A) of the Arms Act. In default

of payment, the accused shall further under go simple imprisonment for Two months.

The **accused No.30 Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta** shall further undergo rigorous imprisonment for Seven years and fine of Rs.3,000/- (Rupees Three Thousand Only) for the offence punishable under Section 25(1AA) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for Two months.

Accused No.30 Mohammad Salim s/o, Mir Mohammad @ Mira Mohidin Shekh @ Salim Kutta shall further undergo rigorous imprisonment for One year and fine of Rs.1,000/- (Rupees One Thousand Only) for the offence punishable under Section 25(1B)(b) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for One month.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently.

(10) The **accused No.34 Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari** shall undergo rigorous imprisonment for 5 years and fine of Rs.5000/- (Rupees Five Thousand Only) for the offence punishable under Section 3(3) of TADA Act r/w Section 120B of the Indian Penal Code. In default of payment, the accused shall further under go simple imprisonment for Two months.

Accused No.34 Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari shall further undergo rigorous imprisonment for five years and fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable under Section 25(1A) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for Two months.

Accused No.34 Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari shall further undergo rigorous imprisonment for Seven years and fine of Rs.3,000/- (Rupees Three Thousand Only) for the offence punishable under Section 25(1AA) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for Two months.

Accused No.34 Umarmiya @ Mamumiya Ismilemiya @ Panjumiya Saiyad Bukhari shall further undergo rigorous imprisonment for One year and fine of Rs.1,000/- (Rupees One Thousand Only) for the offence punishable under Section 25(1B)(b) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for One month.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently.

(11) The **accused No.35 Istiyak Ahmed Mohammad Yunus Ansari** shall undergo rigorous imprisonment for five years and fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable under Section 25(1A) of the Arms Act. In default of payment, the accused shall further under go simple

imprisonment for Two months.

Accused No.35 Istiyak Ahmed Mohammad Yunus Ansari shall further undergo rigorous imprisonment for One year and fine of Rs.1,000/- (Rupees One Thousand Only) for the offence punishable under Section 25(1B)(b) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for One month.

It is hereby specifically ordered that all the sentences imposed above shall run concurrently.

(12) The **accused No.37 Kadir Ahmad s/o Amir Ahemad Shaikh @ Kadir Haji Shekh** shall undergo rigorous imprisonment for five years and fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable under Section 25(1A) of the Arms Act. In default of payment, the accused shall further under go simple imprisonment for Two months.

(13) The time spent by the above convicted accused persons in judicial custody is ordered to be set off while computing the total quantum of sentence.

(14) The Muddamal weapons i.e. AK-56 Riffles, AK-47 Riffles, Magazines, Cartridges, Bombs, hand-grenades shall be handed over to the Superintendent of Police, Jamnagar for its disposal in accordance with rules and law after expiry of the appeal period.

If any interim order is passed with regard to muddamal vehicles the same is hereby confirmed and if there are no such order then the I.O. shall inquire about the owners of such vehicles and handover the custody of the same. If no owners of the vehicles are found then the same shall be disposed off in accordance with law after expiry of the appeal period.

The non-valuable muddamal articles are ordered to be appropriately disposed off after expiry of the appeal period.

Copy of the the operative part of the judgment shall be kept in all other consolidated TADA cases.

Copy of this judgment be given to the convicted accused persons free of costs as envisaged under Section 363 of Code of Criminal Procedure.

Pronounced and signed in the open Court today on **04th day of May, 2026.**

Date: 04/05/2026 Place: Jamnagar.	**(ROBIN P. MOGERA)** Special Judge (TADA) & Additional Sessions Judge, Jamnagar. **UIC No.GJ01539**

Umesh