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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 75/2001@@  
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BALWINDER SINGH .. APPELLANT

vs.

STATE OF PUNJAB .. RESPONDENT

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The appellant stands convicted under three sections of three different enactments. Principal among them is Section 5 of the Terrorist and Disruptive Activities (Prevention) Act (TADA). The other provisions are Section 25 of the Arms Act and Section 5 of the Explosives Act. On the whole a sentence of rigorous imprisonment of five years had been imposed on him besides a fine of Rs.1000/-. He filed this appeal as of right under Section 19 of the TADA.

During the course of arguments we came across certain deficiencies which crept in the trial proceedings. One is that the deposition of Babu Ram (we are not sure whether Babu Ram was in the rank of PW1 or PW2), remains unsigned by him. How it happened is not explained to us by the learned counsel for the respondent as he is also taken by surprise when this was brought to his notice. A plea was made that the entire record purported to be the testimony of Babu Ram should be kept aside on account of that deficiency. Such a course will not be consistent with the principles of criminal justice. We, therefore, thought it more expedient to

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remit the case to the trial court for filling up the said deficiency, for which Babu Ram has to be recalled and re-examined afresh.

The second aspect is, two documents purported to be affidavits signed by Shrimati Bimal Kaur Khalsa and Shri Kamal Jit Singh are seen marked as 'A' & 'B'. Apparently they were not proved by the defence. Mr. Jaspal Singh, learned Senior Counsel made an endeavour to show that they may be relied on by this Court as evidence. Without adverting to the said contention, we adopt a course that the defence may be given an opportunity to prove those documents, for whatever worth they may be.

For the aforesaid reasons, we set aside the conviction and sentence passed on the appellant and remit the case to the trial court for disposal of the trial afresh. We make it clear that we are not ordering a de-novo-trial. For the prosecution Babu Ram alone need be recalled for examination afresh. Other evidence already recorded will remain. Thereafter the court is to put questions to the accused under Section 313 of the Code of Criminal Procedure with reference to the evidence

of Babu Ram so recorded. The trial should proceed to the next stage of calling upon the accused to enter on his defence. If the accused wants, he can avail himself of the said opportunity to prove the aforesaid two documents purported to be the affidavits and any other evidence which he may wish to adduce.

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The appellant will remain in jail (judicial custody) during the trial. But this is subject to a rider that if he makes any application for bail during the remaining part of trial, it is for the trial court to consider that application untrammelled by any observation made by this Court. It is needless to point out that the trial court shall dispose of the case as expeditiously as possible.

This appeal is disposed of accordingly.

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.....J.  
(K.T. Thomas)

New Delhi,  
February 21, 2001

.....J.  
(R.P. Sethi)