

(2019) 11 KAR CK 0035
In the Karnataka High Court
Case No : Criminal Appeal No. 2066 Of 2016

Imran Jalal @ Bilal Ahmed

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 121, 121A, 120B, 122, 196
Explosive Substances Act, 1908 — Section 5, 5(b), 6, 7
Arms Act, 1959 — Section 25, 25(1A), 26, 26(2), 28, 39
Unlawful Activities (Prevention) Act, 1967 — Section 2(m), 2(k), 3(1), 10, 11, 13, 15, 18, 19, 20, 23, 23(1)
Code Of Criminal Procedure, 1973 — Section 91, 196, 313
Evidence Act, 1872 — Section 65B

Citation : (2019) 11 KAR CK 0035

Hon'ble Judges : Ravi Malimath, J;H.P. Sandesh, J

Bench : Division Bench

Advocate : S. Balakrishnan, V.M. Sheelvanth

Final Decision : Dismissed

Judgement

1. This appeal is filed against the judgment of conviction and sentence dated 4.10.2016 passed in S.C.No.1031 of 2008, on the file of the Court of LV Additional City Civil and Sessions Judge (CCH-56), Bangalore City, for the offences punishable under Sections 121, 121A and 122 of the Indian Penal Code, 1860, Section 5(b) of the Explosive Substances Act, 1908, Sections 25(1-A) and 26(2) of the Arms Act, 1959 and Sections 20 and 23(1) of the Unlawful Activities (Prevention) Act, 1967.

The brief facts of the case are that:

2. The complainant Sri K.N. Jithendranath, Assistant Commissioner of Police, Central Crime Branch, Bengaluru, having received credible information that one terrorist aged about 35 years wearing pant, a black coloured leather jacket and a woolen cap, who is a native of Jammu and Kashmir State and presently residing at Hospet was coming from Hospet to Bengaluru in a VRL bus bearing No.KA 25/

B-6085 which was going to arrive at Bengaluru in the early morning hours on 5.1.2007 and he was carrying two bags of which one is maroon colour containing assault rifles, ammunition and hand grenades. Upon receiving the information, he called the inspectors and went to Goraguntepalya Circle by 4.45 a.m. in four private vehicles. He then summoned two witnesses to act as panchayatdars. Further, he states that DCP Crime, Sri Ravikanthe Gowda, arrived at the spot, supervised the arrangements and proceeded to follow the noted bus and the complainant instructed Thimmaiah and staff to signal about the arrival of the bus. At about 5.05 a.m., Police Inspector Thimmaiah signaled the arrival of the bus and as they saw the bus parked aside, two passengers alighted from the bus and the complainant noticing the suspect carrying a maroon coloured bag on his shoulder and another bag in his hand, rushed towards him with panchayatdars and apprehended him at about 5.10 a.m.

3. It is also the case of the complainant that after he disclosed his identity as Imran Jalal, he was questioned about the contents of the bag and as he provided evasive answers, the complainant searched the maroon colour regzine bag in the presence of panchayatdars and found one AK assault rifle, two plastic packet containing 100 rounds of ammunition, one packet containing two magazines of AK assault rifle, one rifle sling, one bed sheet and one pyjama. In the other bag they found one chadar, one jamkhana, one rasai, five hand grenades, one travel book, one Bengaluru City map, one Thuraya satellite phone and one letter pad book. Further, on personal search, they found one Nokia mobile phone from his right hand side pocket, one Nokia mobile phone in the right side of leather jacket pocket, one leather purse in his back pant pocket with one used and three unused SIM cards of BSNL, cash of Rs.1,500/-, one passport size photo of a male, membership card of gym, Jammu and Kashmir I.D. Card, Driving Licence, PAN Card, Handicrafts Owners Association membership card, Jammu and Kashmir bank ATM Card, Jammu and Kashmir Bank slip, one slip bearing numbers in green ink, two slips bearing phone number and one slip with number said to be of passport, one key Alba make found in the right side of the pant pocket and one traveling ticket with the name Imran in the left side of pant pocket.

4. The mahazar was drawn and a written complaint was lodged at about 9.30 a.m., which came to be registered as Crime No.6/2007 for the offences punishable under Sections 5 and 6 of the Explosive Substances Act, 1908, Sections 25, 26 and 28 of the Arms Act, 1959, Section 120B, 121, 121A and 122 of Indian Penal Code, 1860 and Sections 10, 11, 13, 15, 18, 19, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967.

5. The Investigating Officer, ACP, CCB, Bengaluru conducted the investigation and after completion of the investigation, he has filed the charge-sheet against the accused Nos.1 to 6 and showing accused Nos.2 to 6 as absconding in the Trial Court. Thereafter, the Investigating Officer has obtained the following sanctions specifically under Section 39 of the Arms Act, 1959 dated 26.3.2007

and marked as Ex.P.82, under Section 7 of the Explosive Substances Act, 1908 dated 26.3.2007 marked as Ex.P.83 and under Section 196 of Code of Criminal Procedure to prosecute under the Unlawful Activities (Prevention) Act, 1967 dated 30.3.2007 marked as Ex.P.57.

6. The Court below after hearing the accused, framed the charges and read over to the accused No.1 and after hearing both the sides, charges were altered and after alteration of the charges, accused No.1 was charged for the offences punishable under Sections 121, 121A and 122 of the Indian Penal Code, 1860, Section 5(b) of the Explosive Substances Act, 1908, Section 25(1-A) of the Arms Act, 1959 and Sections 20 and 23(1) of the Unlawful Activities (Prevention) Act, 1967.

7. Accused No.1 pleaded not guilty and claimed trial. Hence, the prosecution examined P.Ws.1 to 32 and relied upon the documents at Exs.P.1 to 112 and marked Material Object Nos.1 to 42. Thereafter, the statement of accused No.1 was recorded under Section 313 of Code of Criminal Procedure. Accused No.1 has not led any defence evidence. The Court below after hearing both the sides, convicted accused No.1 for the above offences. Hence, the present appeal is filed before the Court.

8. The main grounds urged in the appeal memo is that the Court below has committed an error in accepting the inconsistent and uncorroborated evidence of the prosecution witnesses. The Trial Court has failed to take note of serious and glaring omissions and contradictions elicited in the evidence of the prosecution witnesses which are consistent with the innocence of accused No.1. This was a case where allegation of conspiracy based on recovery had been made by the prosecution but the prosecution has not led any evidence either by direct circumstances or presumptive circumstances to show the alleged involvement of accused No.1.

9. The Trial Judge failed to appreciate the fact that P.W.17, who is an independent witness has been examined to prove that accused No.1 traveled from Hospet to Bengaluru on 4.1.2007, but he has turned hostile stating that he did not see accused No.1 on 4.1.2007, but he has seen him five years back and that he does not know about any bags carried by accused No.1.

10. The Trial Judge has failed to appreciate that P.W.7, who has participated in apprehending accused No.1 along with others states that he had information that Inspector Jayabhandari - P.W.10, was coming in the VRL bus from Hospet. The witness further states that after P.W.10 got down from the bus, he showed the accused to be arrested which contradicts the statements of other witnesses about the circumstances surrounding arrest and seizure.

11. The Trial Judge has failed to appreciate the grave inconsistencies in the statements of P.Ws.8, 9, 10, 11 and 30, who are all the police officers apprehending the accused. The contradictions in the statements of these witnesses raises serious questions about the arrest and the surrounding

circumstances as they provide varied testimonies lacking corroboration. None of the independent witnesses examined have corroborated to the testimonies of these officers. The complainant himself is a police officer and these witnesses also being police officers, their statements must be viewed with caution as they have the motive to implicate the accused falsely.

12. The Court below also failed to appreciate that P.W.1, the so-called independent witness during the apprehension of the accused at Gorguntepalya deposes in a contradictory manner to the other officers and he does not say about the bombs being recovered at all.

13. The Trial Court has erroneously read the evidence of P.W.13, who is an independent witness to the recovery made at the residence of the accused and his statement contradicts the facts that are narrated by the police officers. He further states that he has not seen the grenade being seized. He also states that the accused took the key placed above the door and opened the door while P.W.10 states that the key was in their possession and that they handed over the key to open the door of the house. P.W.13 states that the police did not touch the key of the almirah which was placed above it. P.W.10 states that the almirah was opened by the accused by using the key above the door. This raises serious questions about the very recovery itself.

14. The Trial Court has failed to appreciate that P.W.30 being the complainant who seized the arms and ammunitions in Bengaluru was further assigned to be the Investigating Officer and he does the recovery in the residence of the accused in Hospet and he continues to work as part of the investigation which raises questions about fair investigation.

15. The Trial Court has failed to appreciate that P.W.3 is an independent witness who has witnessed the handing over of seized grenades to P.W.4 to diffuse. He states that the Investigating Officer has not showed any bombs while handing over to P.W.4 and that P.W.4 opened the boxes in firing range and he did not accompany them while they diffused, which raises doubts whether there were any live grenades at all. P.W.6 also states that he carried the defused grenades to FSL by bus, which shows the hollowness of the prosecution claim that the bombs were live in the first place.

16. The Trial Court has failed to appreciate that P.Ws.2 and 23 are bank employees who furnished the bank statements of the accused and they have not supported the case of the prosecution. P.W.31, the complainant states that he found no irregularities in the account statement of the accused and thereby the allegation that accused received funds from LET are baseless and unsubstantiated.

17. The Court below has failed to appreciate that P.Ws.14 and 21 are the witnesses for seizing of electronic records to prove that the accused has been sending e-mail. These electronic records are not accompanied with a certificate under Section 65B of the Indian Evidence Act, 1872 and further the seizure

process is contrary to established law making it unfit to be relied upon.

18. The Trial Court has failed to appreciate that there is absolutely no evidence on record to show that the accused had any membership with LET or that there were any financial transactions between the accused and LET. The learned Trial Court has wrongly come to a conclusion that since the accused has admitted that he paid Rs.1 lakh to Fayaz to purchase a shop he is involved when in fact P.W.31 in his cross-examination states that he examined Fayaz and further he has found nothing untoward in the shop premises. In spite of these material contradictions and in the absence of corroborations, the Court below has committed an error in convicting accused No.1.

19. The learned counsel for the appellant in his argument vehemently contended that the Court below has committed an error in convicting accused No.1. It is also his contention that accused Nos.2 to 6 are split up and only proceeded against accused No.1. The main argument is that the SIM card is not in the name of accused No.1 and no investigation was done to connect the accused for the offences charged against him. There are no material to connect with satellite phone. The other contention is that there are no material placed by the prosecution to show that the accused travelled from Hospet to Bengaluru and none of the passenger is examined, no ticket is collected and the very apprehension itself is doubtful. The prosecution also did not produce any material to prove that accused No.1 is a member of terrorist organization. The Investigating Officer has not collected any material to show that he is a member of terrorist association to invoke Sections 20 and 23 of the Unlawful Activities (Prevention) Act, 1967.

20. The sanction order also discloses that the sanctioning authority has not considered the material before giving the sanction order. There is no other case against him. The accused No.1 came to Bengaluru in his younger age and he did diploma at Bengaluru and thereafter he joined his cousin shop at Hampi and thereafter he only purchased the shop belonged to his cousin and he continued his business at Hospet. The recovery is also not proved and none of the circumstances prove against the accused with regard to the recovery. Even to invoke the offences under the Arms Act also, no investigation was conducted with regard to the source of arms and since 5.1.2007 he has been in custody. The accused denied the charges levelled against him and in the absence of sufficient material, the very conviction is opposed to law.

21. The learned counsel in support of his contentions relied upon the judgment of the Hon'ble Apex Court in the case of PARAM HANS YADAV AND OTHERS v. STATE OF BIHAR AND OTHERS reported in AIR 1987 SC 955 and contended that the charge of conspiracy should be supported by direct evidence and in case the prosecution relies on circumstantial evidences, then clear link has to be established. In situation of incomplete evidence, allegation of conspiracy cannot be accepted. The Apex Court also held that the prosecution has not been able to establish by evidences involvement of the appellant in conspiracy and hence the

accused is entitled to benefit of doubt. In the present case on hand also, the prosecution failed to establish the conspiracy and also involvement of the accused in the heinous crime.

22. The learned counsel also relied upon the judgment of the Hon'ble Apex Court in the case of KAILASH GOUR AND OTHERS v. STATE OF ASSAM reported in (2012) 2 SCC 34 and contended that the Apex Court in the judgment held that such aberrations however do not justify departure from rules of evidence or fundamental tenets of criminal justice system. The benefit arising from faulty investigation ought to go to accused and not to the prosecution. Moreover, quality and credibility of evidence required to bring home guilt of accused cannot be different in cases where investigation is satisfactory vis-à-vis cases in which it is not or where it involves communal overtones vis-à-vis ordinary crimes. There can only be one set of rules and standards in criminal cases unless a statute provides for anything specially applicable to a particular case. He also contended that the Commissions indicate an anti-minority bias among the police force in communal riot situations and investigations. By relying upon this judgment he contended that it is a classic example falsely implicating the accused only on the ground that he belongs to muslim community.

23. He also relied on the Hon'ble Apex Court's judgment in the case of DATAR SINGH v. THE STATE OF PUNJAB reported in AIR 1974 SC 1193 and contended that the prosecution failed to prove beyond reasonable doubt that the accused was involved in the crime. Conviction based on mere suspicion and erroneous appreciation of evidence is not sustainable.

24. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of SANJAY DUTT (A-117) AND OTHERS v. STATE OF MAHARASHTRA reported in AIR 2013 SC 2687 with regard to the sentence and contended that the Court below has committed an error in sentencing the accused for life imprisonment on different counts. The Apex Court in this judgment reduced the sentence and further with regard to conviction and sentence, the Apex Court discussed in paragraph No.95 that "As has been rightly observed by the Designated Court, mere recoveries of a.9mm pistol and the rounds from the bungalow of A-120 would not be sufficient to connect him with said articles. It is settled law that the recoveries made must be found to have been made as a consequence to the statement made by the accused in custody. In other words, if the nexus in between is not established, the said statement made would be inadmissible in evidence." The counsel relying upon this judgment would contend that the prosecution failed to prove the recoveries at the instance of the accused.

25. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of ADAMBHAI SULEMANBHAI AJMERI AND OTHERS v. STATE OF GUJARAT reported in (2014) 7 SCC 716, wherein it is held that uncorroborated, unconnected and contradictory retracted confessions, illegally and forcibly extracted to frame innocent and unconnected persons because police, after a

long delay of about a year, failed to nab unknown terrorists/masterminds of the crime. In the case on hand also the police implicated the accused without any material and there are no independent witnesses before the Court and most of the witnesses are police witnesses and the same was not corroborated in admissible evidence and prosecution story did not form a credible chain linking the accused with the crime. Under the circumstances, the Apex Court appreciating the material on record allowed the appeal and set aside the judgment. In the case on hand also in the absence of any independent witnesses and mainly relying upon the evidence of police witnesses and no material to connect the accused that he was involved in the terrorist crime and the offences invoked against the accused are not sustainable in the eye of law.

26. The learned counsel relying on the judgment of the Hon'ble Supreme Court in the case of ARUP BHUYAN v. STATE OF ASSAM reported in AIR 2011 SC 957, brought to the notice of this Court paragraph Nos.11 and 14 to 16 that mere membership of a banned organization cannot be a ground to convict the accused. Although the appellant has denied that he was a member of ULFA, which is a banned organisation. Even assuming he was a member of ULFA, it has not been proved that he was an active member and not a mere passive member. Further it held that, it has to be read in the light of our observations made above. Mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence.

27. He also relied on the judgment of the Hon'ble Supreme Court in the case of BILAL AHMED KALOO v. STATE OF ANDHRA PRADESH reported in AIR 1997 SC 3483 and contended that decisive ingredient for establishing offence of sedition under Section 124-A is doing of certain acts which would bring Government established by law into hatred or contempt. Serious offences should be dealt with great care so that liberty of citizen is not lightly interfered with. He also would contend that in order to invoke Section 121 of the Indian Penal Code, there are no material before the Court and in the absence of the same, the Trial Judge has erroneously convicted the accused.

28. On the other hand, the learned State Public Prosecutor appearing for the State in his argument would contend that the evidences of P.Ws.1, 7, 9, 10, 11, 13 and also the complainant, who has been examined as P.W.30 with regard to the apprehending the accused, recovery and seizure of articles is consistent. P.W.13, is the recovery witness in Hospet, i.e., in the residence of the accused. The banned articles are seized and possession is not disturbed in the cross-examination of this witness. Hence, the prosecution has proved the apprehending of the accused and also with regard to seizure of the banned material at the instance of the accused. Exs.P.74 and 77 discloses with regard to the explosives the accused was having in his possession without authorization. There is no dispute with regard to sanction order. The only contention is that the sanctioning authority has not considered the material and the same also cannot

be accepted. P.W.1 is an independent witness and he categorically says that the accused had already alighted from the bus. Hence, the question of examining the driver, conductor or the passengers does not arise. It is not his case that he was not at the spot and he was apprehended at 5.10 a.m. and FIR was registered at 9.10 a.m. and mahazar was conducted immediately after his arrest, till 9.00 a.m. The seizure at Hospet is also proved by examining the panch witnesses.

29. Section 3(l) of the Unlawful Activities (Prevention) Act defines with regard to "terrorist gang" and Sections 2(m) and 2(k) defines with regard to "terrorist organization" and "terrorist act". He further contend that though possession is not defined, the Court can draw inference under Section 15 and also with regard to the possession under Section 23 of the Unlawful Activities (Prevention) Act. Section 23 is with regard to unauthorized possession and there is no explanation by the accused under Section 313 of Code of Criminal Procedure. The burden is on him to explain with regard to the possession, where he got the seized articles and sources also. The appellant cannot find fault with the investigation with regard to the source of the articles. The mobile and e-mails were seized at the instance of the accused and the Trial Court considered all these materials while convicting the accused.

30. The counsel appearing for the State also in his arguments relied on the judgment of the Hon'ble Supreme Court in the case of YAKUB ABDUL RAZAK MEMON v. STATE OF MAHARASHTRA reported in (2013) 13 SCC 1 with regard to the meaning and measures to deal with terrorism. It is also contended that investigation, search, seizure, panchanamas, recoveries and related issues are supported by the prosecution evidence. The object behind conducting the panchanama is to check malpractices of search officers and to ensure that incriminating recovered article was not implanted by search officers. The law does not require corroboration of evidence of independent panch witnesses duly corroborated by contemporaneous panchanama found trust worthy. The counsel relying upon this judgment would contend that the principles laid down in the judgment is aptly applicable to the case on hand. The accused is involved in organized crime and the material collected by the Investigating Officer is sufficient to bring the accused within the purview of the charges leveled against him and the Court below has given its anxious consideration to the material available on record and rightly convicted the accused. Hence, prayed this Court to dismiss the appeal.

31. In reply to the arguments of the respondent's counsel, the learned counsel for the appellant would contend that the prosecution did not produce any documents regarding traveling of the accused from Hospet to Bengaluru in connection with his business. The Court cannot infer Section 20 of the Unlawful Activities (Prevention) Act in the absence of any material. In order to invoke Section 121 of the Indian Penal Code and also the charges under the Unlawful Activities (Prevention) Act, there must be material and there are no material before the Court and the offences invoked are heinous offences and the accused

cannot be convicted for life imprisonment based on the surmises. Hence, the appeal is liable to be allowed and the impugned judgment of conviction is liable to be set aside.

32. Having heard the learned counsel for the appellant and the learned State Public Prosecutor appearing for the State, the points that arise for the consideration of this Court are:

1. Whether the Court below has committed an error in coming to the conclusion that the sanction order is a valid sanction and it requires interference of this Court?

2. Whether the Court below has committed an error in invoking Sections 121, 121-A, and 122 of Indian Penal Code that the accused had conspired with the other accused to wage war against Government of India being the active member of a banned organization namely, Lashkar-e-Toiba and it requires interference of this Court?

3. Whether the Court below has committed an error in invoking Section 5(b) of the Explosive Substances Act, 1908 that the accused was possessing explosives under suspicious circumstances and it requires interference of this Court?

4. Whether the Court below has committed an error in invoking Sections 25(1-A) and 26(2) of the Arms Act, 1959 that accused had secret contacts in possessing the explosive substances and it requires interference of this Court?

5. Whether the Court below has committed an error in coming to the conclusion that the accused is a member of a banned organization namely, Lashkar-e-Toiba which involved in terrorist activities and he being a member of terrorist organization unauthorisedly possesd hand grenades which are capable of mass destruction and unauthorisedly possessed AK assault rifle aiding a terrorist organization and committed an error in invoking Sections 20 and 23(1) of the Unlawful Activities (Prevention) Act, 1967?

6. What order?

33. Before considering the material on record we would like to narrate the brief facts of the case of the prosecution. The case of the prosecution is that, this accused, along with other five accused, during the period from 2001 to 2007 entered into a criminal conspiracy at places namely, Islamabad, Srinagar, Mumbai, Pune, Hampi, Hospet and Bengaluru, being the active member of a banned terrorist organization namely, Lashkar-e-Toiba to wage war against the Government of India or State Government. It is also the specific case of the prosecution that on 05.01.2007 at about 5.10 a.m., this accused was apprehended red-handedly with the explosive substances like hand grenades arms, ammunitions like AK assault rifle etc., to blast the same against the I.T companies like Wipro, Infosys, ITPL, HAL International Airport and Vidhana Soudha, Bengaluru to kill the innocent people and thereby make terror attempt to wage war against the Government of India.

34. It is the further case of the prosecution that from the year 2001 to 2007, the accused being the active member of Lashkar-e-Toiba, collected arms and ammunitions with an intention to wage war against the Government and knowingly acquired and had the same under his control a special category of explosive substances like hand grenades etc., and he was not having any license to possess the same and he also failed to show that he had those substances in his possession under lawful object. In between the year from 2001 to 2007, he had acquired and possessed the prohibited arms like AK assault rifle in contravention of Section 7 of the Arms Act without any special authorization which would indicate that he was having secret contravention to create mass destruction.

35. It is also the case of the prosecution that this accused involved in unlawful terrorist activities and was a member of a banned terrorist organization till the incident and was possessing hand grenades which are capable of mass destruction, which is in contravention of the provisions of the Arms Act and was unauthorisedly possessing AK assault rifle which are capable of mass destruction. The accused being the member of an unlawful activities organization engaged himself in causing dangers to the life of innocent people and thereby committed an offence punishable under Sections 121, 121-A and 122 of the Indian Penal Code, 1860, Section 5(b) of the Explosive Substances Act, 1908, Sections 25(1-A) and 26(2) of the Arms Act, 1959 and Sections 20 and 23(1) of the Unlawful Activities (Prevention) Act, 1967.

36. The accused did not plead guilty and hence, he was subjected to trial. The prosecution, in order to substantiate the case, examined the witnesses P.Ws.1 to 32 and also relied upon the documentary evidence, Exs.P1 to P112 and material objects 1 to 42. Now let this Court discuss both oral and documentary evidence placed by the prosecution.

37. P.W.1 is the mahazar witness with regard to apprehending the accused and seizure. P.W.1 in his evidence states that he was called by P.W.30 and was requested to become the mahazar witness and at around 5.00 to 5.10 a.m., VRL bus came and stopped near Goraguntepalya Bus Stop. From the said bus, two persons alighted and P.W.30 and his staff has surrounded a persons and he was wearing jeans pant, leather jacket and was also wearing monkey cap on his head. He tried to escape from the spot, but he was apprehended. P.W.30 disclosed that he is a Police Officer. The said person was having two bags, one is grey colour and another is blue colour. The same was subjected to verification and they found AK-47 rifle, two magazines, total 200 live bullets, chest belt for holding AK-47 which also contains a pyjama. The other blue colour bag contained five live grenades, carpet, map and other articles and they were subjected to P.F. P.W.1 also identifies M.Os.1 to 17. It is also his evidence, on enquiry, accused revealed his name as Imran Bilal and he had possessed the above, in order to blast the ITPL and Airport and the same was seized under the mahazar in terms of Ex.P1 from morning 5.15 to 9.10 a.m. He also identifies the Magazines as

M.Os.19 and 20 and AK-47 fiber stink belt, 10 live bullets, 90 live bullets, 10 live bullets and another 90 live bullets and the same are marked as M.Os.21 to 26. On personal search, they found one nokia phone in the jerkin and another nokia phone from his pant pocket and also purse. In the said purse, they found one used sim card, driving license, ATM card of Jammu and Kashmir Bank, Rs.15,000/- cash, Passport, phone number, pan number and also Jammu Kashmir I.D. card and the same are also seized. He was subjected to cross-examination.

In the cross-examination, he states that, he was the resident of Somwarapete Taluk and he is doing the real estate business with one of his friend Sundaresh. P.W.30 called him to mahazar and gave notice at around 4.45 a.m. He was at the spot at 4.30 a.m. When he went to the spot, at that time, a VRL bus came, five to six persons alighted from the said bus. There were people near the bus stop. The Assistant Commissioner of Police, i.e., P.W.30 was not in his uniform and the panchanama was written by himself from morning 5.00 to 9.00 a.m. near a tree. The same is in the hand writing of P.W.30, Jitendranath. He read the contents of mahazar and signed the same. He cannot tell how many signatures were taken at the spot but, those signatures have been pasted on the material objects. He identified M.O.21, AK-47 rifle and the accused himself told that it is AK-47 rifle. He states that in M.O.21, there is a mark and he does not know whether the same was in existence prior or it has occurred after the was seized and brought. It is elicited that, 200 live bullets were seized at the instance of the accused and the same were counted by P.W.30 in his presence. It is elicited that, now he does not know where his friend Sundaresh is staying. But, at the time of the incident, he was staying at Yeshwanthapur. He admits, he cannot provide all the details as mentioned in his chief evidence and satellite phone belongs to Thuraya Company and he does not know the spelling and he cannot tell in which place, the same was mentioned but, he claims that he has seen and read the same. He admits, in the early morning, in the said area , number of vehicles moves around and he cannot state the day of 05.01.2007. He cannot state whether in mahazar, Ex.P1, it is mentioned that the accused was having above objects to blast the public places. It is suggested that, he has signed mahazar in the police station and the same was denied. He also claims that his friend Sundaresh has also signed the same but, he cannot state as to who all others have signed the same. It is suggested that nothing was seized at the instance of the accused and the same was denied.

38. The prosecution also relies upon the evidence of P.W.2, Retired Deputy General Manager, Canara Bank, who states with regard to accused was having bank account from 2004 to 2007 and a request was given to him to furnish the details as to who introduced him, in terms of Ex.P2. The details was furnished to the police on the next day, in terms of Ex.P3 and also the details in terms of Exs.P4 to P8 was furnished and in Ex.P4, it is stated that one Riyaz Ahmed Meer introduced him while opening the account. The accused has signed Exs.P4 and P7 as Imran Jalal.

In the cross-examination, it is elicited that he is not aware that at the time of opening the account, whether it is mandatory to produce the originals or duly certified copies of address proof of identity. It is elicited that, Ex.P6 is a document which does not bear signature of any person i.e., Form No.60 which is a declaration that a person needs to be filed at the time of opening of an account. He also admits that page No.2 of Ex.P4 is completely blank. It is suggested that Ex.P4 is a fake document, which does not have any proper recordings and the same was denied. He admits that the photo affixed to the form should be attested by the Manager and Ex.P4 does not have the attestation of the Manager. The first page of Ex.P8 is in hand writing and rest of the pages are printouts. Ex.P7 is the specimen signature card and a photograph is affixed on the rear side of Ex.P7. He cannot state whether the specimen signature is of the person in the photograph. He has not seen the correctness of the document after receiving the same from the bank.

39. The other witness is P.W.3, who is a witness for diffusing of live grenades before it could blast. He was called to Yeshwanthapura police station on 03.02.2007. The police gave five live bombs which were kept in the box to one Jagadeesh and instructed him to diffuse the same. Hence, they all went in a jeep near the firing range, Hosakote and the said Jagadeesh diffused the live bombs. While diffusing, he also found chemicals, steel balls and pins and it took up to 4.30 p.m. to diffuse the same and thereafter, they came to CCB office. Mahazar was drawn to this effect in terms of Ex.P9 and he signed the same.

The person, who accompanied along with him i.e., Mr. Sanjeeva Sharma also signed Ex.P9. He was subjected to cross-examination.

In the cross-examination, he states that he has no knowledge about the bomb. He believed the version of the Investigating Officer and identified them as bombs. From the car, two cartoon boxes which were packed with white cloth and stitched over that there was a seal. The Investigating Officer has not showed him the bombs by opening two boxes in the police station. P.W.4 and other officers diffused the bombs. He does not know how many bombs were diffused and states that he did not pack and seal the explosive materials.

40. P.W.4 is the witness, who diffused the live bombs. In his evidence, he states that on 11.01.2007, a letter was addressed to their office and request was made to send a person, who is having a knowledge of diffusing the bombs and accordingly, himself, Narayanappa, Sukumara and Shashikumar were nominated by memo in terms of Ex.P10. That on 03.02.2007, he went to Yeshwanthapur ACP office and they have given a letter and also handed over 10 plastic hand grenades to diffuse the same and letter was also given to him in terms of Ex.P12. After taking the said hand grenades to the police firing range diffusing office along with the witnesses, they reached the office at 1.00 p.m. and through Explosive Vapor Detector, they examined which type of chemicals are used to prepare the bombs and sent the same to FSL for examination and diffused the same. The Assistant Commissioner of Police gave five each live bombs which are

in blue and green colour and they removed safety liver and safety pins in the said bombs. Thereafter, separated the detonator in the bombs and diffused the same which took time up to 4.30 p.m. Again the same were sealed, packed and handed over to concerned police and gave the report in terms of Ex.P13. Ex.P9 is the mahazar drawn to this effect.

In the cross-examination, it is elicited that, he prepared Ex.P13 in CCB office on the date of disposal of the bombs. He has not mentioned the names of Panchayathdars in his report. He does not know the contents of the boxes, until they were opened. It is his evidence that according to BSF plastic hand grenades are found in border area and he has not mentioned the same in Ex.P13. He has not submitted anything to demonstrate that he has made such enquiries. It is suggested that, he neither went to the police station nor collected the grenades for disposal and the same was denied. It is suggested that he is giving evidence at the instance of Investigating Officer and the same was denied.

41. P.W.5 in his evidence states that on 12.07.2007 he received a letter from CCB office requesting him to verify whether the bombs seized belongs to military and identify the source of those bombs. One Sri T.K. Haridasan, Ammunition Technician was nominated and he took the same and gave the report in terms of Exs.P14 to P16.

In the cross-examination, it is elicited that he has not produced the request letter of the police and also he does not remember the designation of the police personnel, who accompanied, Sri T.K. Haridasan. He admits that he is not the author of Exs.P14 and P15 and he cannot say the truth and veracity of Exs.P14 and P15.

42. P.W.6 is the witness, who carried the seized articles to FSL. In his evidence, he states that on 17.02.2007, he took the items of P.F.No.6/2007 as per the request letter in terms of Ex.P18 and he handed over the same to FSL.

In the cross-examination, a suggestion was made that he did not carry the seized articles to FSL and the same was denied. But he states that he carried the sealed articles to FSL by bus and he does not know the contents of the sealed articles.

43. P.W.7 is the mahazar witness. In his evidence, he states that on 05.01.2007, P.W.30 informed that they have received the information that one person of Jammu and Kashmir is coming to Bengaluru from Hospet in VRL bus and accordingly, as per his instructions, they all went near the place at 4.45 a.m. The Assistant Commissioner of Police also called two persons, who were on walk and requested them to act as panch witness. It is his evidence, when the persons alighted from the bus, we surrounded this accused and on enquiry, he revealed his name as Imran Jalal of Srinagar and he was having two carry bags, one on his left shoulder and another on his left hand and he tried to ran away, but the staff apprehended him. P.W.7 also reiterates the evidence of P.W.1 with regard to the accused possessing M.Os.1 to 17.

In the cross-examination, he admits that the Inspector, Assistant Commissioner of Police and Constable were wearing bullet proof jacket. They all went to Goraguntepalya at around 4.30 to 4.45 a.m. and he was near the vehicle. He states that he was having a bag on his shoulder and another bag in his hand but, he cannot tell the nature of the bag. The Assistant Commissioner of Police himself personally searched those bags. He admits that at around 6.00 a.m., number of lorries and other vehicles makes the movement in the said road. It is suggested that, he did not accompany the Assistant Commissioner of Police, Jitendranath and no articles were seized at the instance of the accused and the same was denied.

44. P.W.8 is also a mahazar witness. In his evidence, he reiterates the evidence of P.W.7. He states that two persons got down from the bus, one person was wearing pant, T-shirt, black jerkin and cap and was having two bags. The Assistant Commissioner of Police stopped him and apprehended him and requested the persons walking on the road at the spot to act as panch witnesses. The accused revealed his name as Imran Jalal and in the bags which he carried, M.Os.1 to 17 and 19 and 27 were found. This witness is treated as hostile only with regard to eliciting the answer that Assistant Commissioner of Police took all of them from the accused and sent the seized articles to Yeshwanthapura police station and also produced the accused before the Yeshwanthapura police station and lodged a complaint.

In the cross-examination, it is elicited that he has seen AK-47 rifle in his training but, he does not know the varieties of AK-47 rifle and he has not used AK-47 rifle magazine, which is the cover used for loading rounds. It is elicited that, M.O.21 may be new, but he cannot say how new it is. He admits, in their training, they have not shown any other rifle except, AK-47 rifle and further volunteers to state that in their training, they have told that AK-47 is not from India. He has not seen the satellite phones before and the Assistant Commissioner of Police told them that M.O.11 is the satellite phone. The Assistant Commissioner of Police enquired with the accused about M.O.11 as to what kind of phone it is and how it is to be used.

45. P.W.9 is also a mahazar witness and he reiterates the evidence of P.Ws.7 and 8 with regard to going to the spot and apprehending the accused. He states that at about 5.05 a.m., the Police Inspector gave signal to him and other staff stating that the bus is coming. The Assistant Commissioner of Police gave a hand signal to come to the spot, two panchas were also secured at the spot and accused was apprehended and he revealed his name as Imran Jalal. The Assistant Commissioner of Police searched the accused and found M.Os.1 to 17 and 19 to 27. In the cross-examination, he states that himself, Prakash and Prabhakar were standing along with the Assistant Commissioner of Police. A suggestion was made that one cannot see the number plate of the vehicle coming with headlights and the same was denied. Further suggestion was made that one cannot identify the light is of the same bus and the same was also

denied. It is elicited that he does not know whether the Inspector and other staff enquired the other person, who got down from the bus. The road situates opposite to CAQ and next to Gokuldas Imaging leads to Mysuru and it is a ring road. Jetty Motors is situated after RNS bus stop. It is suggested that himself and other officials had not come near RNS bus stop and not apprehended the accused and did not seize any articles and the same was denied.

46. P.W.10 is the other mahazar witness, both in respect of the mahazar dated 05.01.2007 and also the signatory to the mahazar which is drawn at the native place of the accused at Hospet. P.W.10 also reiterates the evidence of P.Ws.7 to 9. It is his evidence that as per the instructions of Assistant Commissioner of Police, he was standing near the MES cross road along with Police Constables Mahadevappa and Dinesh Shetty. All were alert and the bus came and stopped in RNS bus stop and accused was apprehended. On enquiry, the accused disclosed his name and P.W.30 seized the article, M.Os.1 to 27. It is also his evidence that on the same day they went to Hospet and reached the same 6.00 a.m. The accused led all of us to his house and panch witnesses were also secured. Based on the voluntary statement of accused, he took us to his house and he opened the door of the house and opened the almirah, wherein we found clothes and also a packet which was covered with the cloth and on opening the same, we found AK-47 rifle and the same was seized and identified as M.O.28. The almirah key was also seized as M.O.29. The accused also removed other two packets which were kept inside the clothes and they found 100 live bullets in one packet and in another packet also found 100 live bullets and out of them, ten live bullets were taken separately and remaining 90 bullets each was seized separately and the same has been identified as M.Os.30 and 31. The remaining 90 bullets each are marked as M.Os.32 and 33. It is also the evidence of P.W.10 that, the accused has produced a file which is mentioned as peacock file and the same is marked as Ex.P21, ration card is marked as Ex.P22, residential certificate is marked as Ex.P23 and notice issued by the Commercial Tax Department is marked as Ex.P24, VAT registration document is marked as Ex.P25, migration certificate as Ex.P26, lease agreement as Ex.P27, rental agreement as Ex.P28, copy of the application filed for ration card as Ex.P29, the Commercial Tax Registration Certificate as Ex.P30 and driving license is marked as Ex.P31. He also produced a book from the almirah which is mentioned as 'raising son arts cash and credit book' which contained the bill Nos.701 to 800 and the same was seized in terms of Ex.P33. The satellite charger is also seized and the same is identified as M.O.35. A detailed mahazar to this effect was drawn from 9.15 a.m. to 2.55 p.m. and the same is marked as Ex.P34. It is elicited that in terms of voluntary statement of the accused, he went to VRL bus booking centre which is located near welcome gate of Pune and met the official from the said centre one Viresh Hiremath, and he told that on 06.11.2006 and 26.12.2006, the accused has traveled from Pune to Hospet by booking the tickets. He also states that he is not having any document to that effect. He further states that, he requested the said official to take the print outs from the computer in respect of the said

dates and accordingly, he has taken the print out in respect of the dates 06.11.2006, 26.12.2006, 05.11.2006 and 25.12.2006, the same were seized in the presence of panchas in terms of Ex.P35. It is also elicited in the evidence that accused took all of them to Hotel Milan which is situated in Pune Railway station and told that he had stayed in a room of the said hotel and the Receptionist was requested to produce the documents to this effect. The register shows that he had stayed on 14.06.2011, the same are marked as Exs.P40, P42 and P43 and mahazar was drawn in terms of Ex.P44. The panch witnesses have also attested the mahazar. The accused again took us to Padma Hotel and told that he stayed there on 20.12.2006 and 26.12.2006 and hence, requested the Receptionist of the said hotel to produce the documents in that regard. The documents are marked as Exs.P45 and P48. The mahazar drawn in this regard is marked as Ex.P49 and he identifies his signature as Ex.P49(a). The accused again took us to Amar Lodge and told that he stayed there on 06.11.2006 and there was an entry in the register and mahazar was drawn in terms of Ex.P50 and his signature is marked as Ex.P50(a). Form No. A Extract is marked as Ex.P51 in respect of room No.204. The documents in this regard is marked as Ex.P34. The accused also showed the place where he sent the E-mail to the Pakistanis and accused took us near Srirama Cyber Café situate at Hampi and the accused had also furnished his E-mail address. There were six computers in the said Café and told that he has send the messages by using his own E-mail I.D. and there were 33 messages and print out of the same were taken and the same were marked as Sl.Nos.4 and 4(a). There was a mail dated 15.10.2005 and the same is marked as Sl.No.5 and likewise all the messages were marked up to Sl.No.38. Sl.No.9 is a E-mail sent to Lalak Khan and the same was seized and mahazar was drawn in terms of Ex.P52. The E-mail print outs are marked as Ex.P53. The accused has also received an E-mail which is marked as Ex.P38 from the accused, Lalak Khan and he was asked to come to Pakistan on 10.02.2006 and the details of address are also furnished, the same is marked as Ex.P53(b). It is also his evidence that in Srirama Cyber Café, two books were seized by drawing the mahazar in terms of Ex.P52. The license of the cyber café and tax paid receipts are marked as Exs.P54 and P55. P.W.10 was subject to cross-examination.

In the cross-examination, it is suggested that Assistant Commissioner of Police, P.W.30 did not inform that accused will come along with AK-47 rifle and grenades and the same was denied. He admits that they were in civil dress on that day. Except Assistant Commissioner of Police, other staffs were in civil address, but he does not remember which dress the Assistant Commissioner of Police was wearing. The panchnama was read in detail and thereafter, the same was signed. The Assistant Commissioner of Police was given instructions to keep their vehicle near the MES cross i.e., at the distance of 75 meters from Tumkur Road. He admits that there is a Shiva Temple near the said place. He does not know whether all types of vehicles proceed in the said road. He admits that the vehicles which come in the early morning, used the headlight. It is suggested

that, it is not possible to identify the vehicle number when the headlights are put on and the same was denied. He states that Assistant Commissioner of Police was having correct information at what time, the bus is going to come. When he went to the spot, they were not wearing the police dress but, he carried his service revolver and he was also wearing bullet proof jacket. Immediately after the accused alighted from the bus, the bus proceeded further. Hence, the driver, Conductor or the passengers were not enquired. He mentions that, there was a reference in mahazar with regard to M.O.21, AK-47 and AK-47 was not loaded with bullets and hence, they have not taken any precaution. He admits that some time is required to open the hand grenades and the Assistant Commissioner of Police was told that the accused is coming with hand grenades. It is suggested that the Assistant Commissioner of Police was not informed about the accused coming with arms and ammunitions and the same was denied. He admits that while drawing mahazar, there was sunlight. It is suggested that he had already got prepared the mahazar from his team and has signed thereafter, and the same was denied. It is true that the seized articles from the house of the accused were dangerous arms and ammunitions. The panchas were not wearing bullet proof jacket. It is elicited that he himself wrote Ex.P34 and he know the contents of the mahazar. He cannot tell to which police station limit the place which they have visited comes. M.O.28, AK-47 rifle and Ex.P21, file were produced by the accused himself and the same were seized in the house of the accused at Hospet. It is suggested that Exs.P21 to 31 were not seized in the house of the accused and the same was denied. It is suggested that Ex.P32 was created to suite their convenience and the same was denied. He admits that in Ex.P38(a), the name is mentioned as Rahul and in Ex.P39(a) as Ameer. It is suggested that he did not visit Pune and the accused did not take him to different places at Pune and the same was denied. It is elicited that Exs.P40, P44, P49 and P50 are Xerox copies. He admits that Ex.P52 does not contain his signature. It is suggested that he did not write Exs.P34, P35, P40, P44, P49, P50 and P52 and the same was denied. He admits, in the E-mail, nowhere the name of the accused was found but, the witness volunteers that E-mail ID of the accused was found and the accused himself has given his E-mail ID. It is suggested that no such incident has taken place as deposed in the evidence and the same was denied.

47. P.W.11 was the Police Inspector and also a raiding party along with the Assistant Commissioner of Police who has been examined as P.W.30. In his evidence, he says that P.W.30 bifurcated the raider parties into five groups and provided them with bullet proof jacket, torch and separate vehicles. They left police station at about 4.00 a.m. and went to Gorguntepalya which is located near Tumkur-Bengaluru Highway, by that time, it was about 4.45 a.m. After their arrival, P.W.30 instructed them as to where they have to stand. A special instruction was also given to Thammaiah that on arrival of VRL bus bearing registration No.KA-25-B-6085, he has to give signal and as soon as it reaches, they have to come near the bus. P.W.30 also secured the two independent panch witnesses. At about 5.05 a.m., the VRL bus came near Gorguntepalya and

according to the instructions and signal, we came near the bus. Only two passengers alighted the bus and as per the instructions provided by P.W.30, the person was wearing a cap and jacket and the said person was carrying two bags i.e., one bag in his hand and another bag on his shoulder and accordingly, he was identified and apprehended. On enquiry, he disclosed his name as Imran Jalal @ Bilal Ahmed S/o Samshuddin Sadarbal Aharathbal. Accused was carrying two bags one in maroon colour and another in blue colour. The same were subjected to verification. He seized the articles from his custody and the same are mentioned in the mahazar. He reiterates the contents of mahazar in terms of Ex.P1. On personal search, two mobile phones and one satellite phone were seized. On examining the satellite phone, the name stroll displayed few contact numbers. The accused on being enquired about the said contact numbers, he revealed that those contact numbers belong to Pakistani Commandos. He also identifies his signature as Ex.P1(d) on the mahazar Ex.P1.

In the cross-examination, a suggestion was made that Ex.P1 was not drawn at the spot and the same was denied. Further a suggestion was made that it was created on some other day but showing as the same has been written on 05.01.2007 at the spot and the same was denied. He admits that Ex.P1 is in his hand writing. It is suggested that Ex.P1 was written in the station and thereafter, the signatures of the panch witnesses and other investigating officers were obtained and the same was denied. They got information that the accused is going to alight at Gorguntepalya and not at Jalahalli Cross. It is suggested that on the said day, the accused did not alight from the VRL bus in the said place and the same was denied. He admits that RMC Yard police station is near to the place of incident, where the accused was apprehended. He further volunteers that the place of incident comes within the jurisdiction of Yeshwanthpur Police station. He states that when the accused was taken to custody, 5 grenades were in his possession. A suggestion was made that AK-47, 5 grenades and magazines were not seized from the custody of the accused and the same was denied. He admits that our soldiers also use AK-47 rifles in large numbers. He states that he cannot say as to in which country AK-47 rifles are manufactured based on the number pattern but the expert can state the same. He admits that the accused opened the box in which the grenades was there and accused did not open the grenades from the bags and shown. It is suggested that as per Exs.P1 and 81 mahazar and PF, the articles were not seized at the instance of the accused in the presence of the panchas and the same was denied.

48. P.W.12 is the owner of the shop at Hampi and he states that earlier one Payaz was running the business in the said shop and after his marriage, he gave the said shop to the accused. P.W.13 in his evidence states that he was called to the police station, Hospet and requested him to be the panch witness. Thereafter, accused took them to his house. The accused went inside his house and removed the lock of the almerah and took out one AK-47 rifle, which is identified as M.O.28. He also states that there were 200 live bullets in the plastic cover and the police took out 10 bullets each from the cover and placed in the separate two

bottles and sealed and they told him that they would send the same to FSL at New Delhi for examination. They also found one box and the accused told that there are bombs in the said box. On further search, one satellite phone charger was found. Accused also produced one file which contains his driving license, ration card, residential certificate and records pertaining to two wheeler and the same were marked as Ex.P21 to Ex.P31. Mahazar was drawn in terms of Ex.P.34. He also identified the material objects and also his signatures at Exs.P.34(b) to (j).

In the cross-examination, he states that the police secured him to station by sending police constable. He also states that another panch witness, an employee of Kirloskar Company was also present. The police secured him to the police station at 7.00 a.m. and the police brought the accused at 9.00 a.m. to the station. He further states that along with accused, one Bandari, Jitendra and other staff members came from Bengaluru. At about 9.00 a.m., they left police station and went to Ranipet. The Bengaluru police did not bring anything when they came to the police station along with accused. He further states that Hospet Police Inspector also accompanied them and they went in two jeeps. He was not aware of the name of the accused until he was brought to the Ranipet house. The owner of the house also came to the house after their arrival. He admits that he has no specific identification mark so as to say that M.O.28 has been produced by the accused. But he claims that he has signed as panch witness on M.O.28 at the time of mahazar. The bombs which were in the box were sealed. He admits that he read the contents of Ex.P34, which is in Kannada. Mahazar was drawn till 3.30 p.m. and it was around 5.00 p.m. to 5.30 p.m. when all the articles were sealed. Thereafter, they were taken to Hampi along with accused. When they searched the shop of the accused, they did not find anything. He states that he does not remember as to how many seals were put on the seized articles. He admits that if any assistance is required to the persons in the police station, then he used to visit the station and get them released. He admits that he was the witness to the police in 4 to 5 cases since last 40 years. He admits that since he is a trustworthy person and can be believed, the police used to call him as a witness. It is suggested that since he is having good relationship with many of the police officials, at the instance of Police Inspector, he is giving false evidence against the accused and the same was denied. It is suggested that Ex.P.34 was not signed at Hospet and the same was denied.

49. P.W.14 in his evidence states that the police brought the accused on 17.01.2017 along with panch witnesses. He is running a cyber café under the name and style of "Srirama Cyber Café". He states that six computers were there in his shop and accused himself opened his email ID and there were 33 messages in the first email ID and 26 messages in the second email ID and 2 messages in the third email ID and also the print outs of the said emails were taken. He further states that the police seized 5 CPUs from his shop. Panchanama was drawn from 10.30 a.m. to 5.30 p.m. He also identified his signatures at Ex.P.52(b) and Exs.P.52(e) to (k) and also identifies the print outs

at Ex.P.53.

He was subjected to cross-examination. In the cross-examination, he admits that there are other shops nearby to his shop. He is running the said shop since 19 years. He also admits in the cross-examination that he is having acquaintance with the accused. He also admits that if an email is received from anywhere in the world, the print out of the same can also be taken anywhere in the world. He admits that in Ex.P.53, it is not mentioned that the said print outs were taken from Srirama Cyber Café but he volunteers that on perusal of the documents, it shows that those print outs were taken from his shops. He also admits that if any person visits his cyber café after the said incident, he is taking the name and address of such persons.

50. P.W.15 deposes with regard to the purchase of the sim-cards by the accused. He states that he is having acquaintance with the accused. He states that he does not remember as to how many sim-cards he has given to the accused. In the cross-examination, he admits that while selling the sim-cards, he used to get records and only on the basis on the said records, he used to sell the sim-cards. It is suggested that the accused did not purchase any sim-card from his shop and the same was denied.

51. P.W.16 in his evidence states that accused used to come to his shop as a customer, hence, he is having acquaintance with the accused. He states that he has given one sim-card to the accused. In the cross-examination, he admits that to sell the same, he has taken the records from the accused. It is suggested that accused has not purchased any sim-card at all and the same was denied.

52. P.W.17 worked as an Assistant in the VRL Travels. He states in his evidence that accused booked ticket to go to Hospet from Bengaluru by paying an amount of Rs.280/- but he cannot tell the seat number. He booked the ticket to go to Bengaluru from Hospet and the bus timings was at 10.30 p.m. The police came and recorded his statement. He was treated partly hostile. In the cross-examination, he admits that he might have booked the seat number 13 to the accused. He further admits that the accused has booked the ticket to travel in the bus bearing registration No.KA-25-B-6085, which departs Hospet on 4.01.2007. In the cross-examination, a suggestion was made that police did not visit his office and enquired him and the same was denied. He admits that at the time of enquiring him, the police did not bring the accused to his office.

53. P.W.18 is the Deputy Secretary of Law Department and he has been examined with regard to sanction order. In his evidence, he has given the details of accusation made in the letter seeking sanction in terms of Ex.P.57. In the cross-examination, he admits that in terms of the order of his superior, he has issued Ex.P57 and he also admits that in Ex.P.57, the name of the superior officer who has taken the decision after due verification has not been mentioned. He admits that for what reason the sanction was granted has not been stated in the sanction order, but he claims that in the order, it is specifically mentioned

that there are prima facie material against the accused for such accusation. Hence, sanction has been granted.

54. P.W.19 is working as clerk in the VRL office at Pune. He states that accused was not brought to his office and he also identified his signatures on Exs.P.35 to 39. He claims that Imran has booked the tickets to travel from Hospet to Mumbai and from Mumbai to Hospet on 5.11.2006 and 6.11.2006 and one Rahul has booked the ticket to travel on 25.12.2006 and so also, Imran has booked the ticket to travel on 26.12.2006 in terms of Ex.P.39. He was subjected to cross-examination treating him hostile. In the cross-examination, it is suggested that accused was brought to his office and the same was denied. In the cross-examination by the accused counsel, a suggestion was made that Exs.P.36 to 39 were brought and shown to him by the police and the same was denied. But he claims that he has only taken the said print outs from the computer. Further, he admits that the said print outs were taken by his staff and he has signed the those print outs.

55. P.W.20 is an employee of Milan lodge and he identifies his signature on Ex.P.40 as Ex.P.40(b). He was treated hostile by the Public Prosecutor and a suggestion was made that accused was brought to his hotel and Ex.P.40 was seized in his presence and the same was denied. But he admits that as per Ex.P.40(a), the name of the customer is mentioned as Imran Jalal.

56. P.W.21 is the neighbouring seizure witness and in his evidence he states that accused was brought to Srirama Cyber Café and seized the messages from the said computer. He identified his signatures on Ex.P.53 as Exs.P.53(a) to (g) and also he says that police have seized 5 CPUs, Ex.P.54 to Ex.P.56 and also two notebooks at Ex.P.60 and Ex.P.61 and he has signed the mahazar Ex.P.52. In the cross-examination, the accused counsel elicited that the accused shop is situated after 10 shops of his shop and further he admits that the shop of the accused by name Raising Centre is near to his shop. It is suggested that accused was supporting Kashmeeri people in Hampi and hence he is giving false evidence against him and the same was denied. It is suggested that he is falsely deposing that print outs were taken in his presence and the same was denied.

57. P.W.22 is the police constable who carried the seized articles to FSL. In his evidence, he states that as per the specific instructions, he carried the seized articles to FSL and identified the passport at Ex.P.62 and the acknowledgment on the backside of the said passport as Ex.P.63. It is suggested that he has not handed over the seized articles to FSL and the same was denied.

58. P.W.23 was the Manager of Jammu Kashmir Bank and he states that accused No.1 opened the account in terms of Ex.P.65 and the account of the persons who introduced the accused to the bank is in terms of Exs.P.66 and 67. The account extract is marked as Ex.P.68. In the cross-examination, a suggestion was made that Ex.P.68 does not belongs to the accused and the same was denied.

59. PW.24 is the General Manager of BSNL. He states that request was made in

terms of Ex.P.69 to give details of the mobile number and he gave reply in terms of Ex.P.70 and certificate is in terms of Ex.P.71. He identifies his signature as Exs.P.71(a) and (b). He admits that in Ex.P.72 serial Nos.140, 141, 178, 180, 184, 209, 295 are the calls made to Alaska State in USA and serial Nos.183 and 184 are the calls made to Nepal.

In the cross-examination, he admits that without obtaining the documents, sim-card will not be activated. He further admits that the mobile number 9449510825 stands in the name of one Manjunatha Rao and there are documents in the concerned branch office with regard to the said documents and so also he admits that Ex.P.71 shows the details with regard to the other mobile numbers standing in the name of different persons.

60. P.W.25 is the FSL officer and in his evidence, he states that he received request to examine the articles and he has received the 14 sealed articles in terms of Ex.P.73. He gave the report stating that the articles 3 and 9 are the rifles of Polland and also found rifle bullet powder in the said articles and they were in working condition and measures 300 meters length. The articles 5 to 8, 10 to 13 are also live bullets and the same can be used in articles 3 and 9. He says that after examination, he gave the report in terms of Ex.P.74. He identified his signature as Ex.P.74(a) and the signature of the Director as Ex.P.74(b). He also identified his signatures at Exs.P.75 and 76. He further reiterates that M.Os.21 and 28 are the make of Polland. He was subjected to cross-examination. In the cross-examination, he admits that similar type of M.O.21 and M.O.28 are also available in the Indian Military and police department and he cannot tell how many of the Karnataka Police is using the same. He also admits that AK-47 rifles are also being manufactured in India and India took the patent from Russia to manufacture the same. He admits that AK-47 rifles are being manufactured in India from last 5 to 6 years and also purchasing the same. He admits that the numbers on MOs.21 and 28 are not erased. These rifles might have been manufactured in the year 1958 and 1960. It is suggested that AK-47 rifles are different from the one which are subjected for examination and the same was denied.

61. P.W.26 is the Director of FSL. In his evidence he states that seized articles were sent to FSL and the same were subjected for examination. Item Nos.1 to 10 contains grenade components and the said report has been given in terms of Ex.P.77. He also states that same can be carried in any carry bags. Since the said articles contains safety pin, it would not blast until the safety pins are opened. If the safety pin is removed and subjected for blast, it would have an effect to an extent of 10 meters surrounding.

In the cross-examination it is elicited that it is not mentioned in the report that what type of plastic is used. It is suggested that safety pin are not on the ring and the same was denied. He admits that in his report, he has not mentioned the use of safety pin. Witness volunteers that investigating agency did not ask anything about the same. It is suggested that he has not subjected all the

articles for complete examination and he has given false report and the same was denied.

62. P.W.27 is the retired police official and in his evidence, he states that Assistant Commissioner of Police produced accused and 25 sealed articles before him and also gave complainant. He received the complaint and registered the case and sent FIR and mahazar to the Court. The complaint is Ex.P.79 and FIR is Ex.P.80. PF received is also in terms of Ex.P.81. He identifies his signature as Ex.P.81(c). In the cross-examination, he admits that before producing the accused the beat police have not informed anything about the incident to him. It is suggested that he is falsely deposing that P.W.30 produced the complaint and the same was denied.

63. P.W.28 was the sanctioning authority and in his evidence, he states that Assistant Commissioner of Police Rameshchandra, after completion of the investigation gave report and sought the sanction under Section 196 of Indian Penal Code and after examining the material, he gave the sanction in terms of Exs.P.82 and 83. In the cross-examination a suggestion was made that he mechanically gave the sanction order without examining the material and the same was denied. It is suggested that investigating officer did not follow the procedure as contemplated under the Explosive Substance Act and the same was denied. It is suggested that without examining the statement of witnesses and documents, he gave the sanction order and the same was denied.

64. P.W.29, who took up further investigation in this case from P.W.27. In his evidence, he states that he recorded the voluntary statement of the accused and in his voluntary statement, he has stated that he will produce the explosives and other articles if he is taken to his house in terms of Ex.P.84 and he also recorded the statement of other witnesses. The accused was produced before the court and taken to police custody and a circular was given to Assistant Commissioner of Police in terms of Ex.P.87 and accordingly, Assistant Commissioner of Police-Jitendranath went to Hospet and seized the articles and produced the same before him. He also obtained the permission to diffuse the grenades which were seized at the instance of the accused. Thereafter, he entrusted the further investigation to P.W.31 in terms of Ex.P.88 and Ex.P.89.

In the cross-examination, a suggestion was made that accused has not given voluntary statement in terms of Ex.P.84. However, he admits that the same is a computer typed document. He investigated only for four days. He admits that he directed the concerned staff to go to Hospet and submit the report in writing. It is suggested that the contents of Ex.P.84 are false and the same was denied. He admits that Assistant Commissioner of Police-P.W.30 did not produce the accused and seized the articles before him. But he volunteers that the same were produced before the station house officer. But he claims that he investigated the matter after he took up the investigation from P.W.27.

65. P.W.30 in his evidence states that on 4.1.2007 at 11.30 p.m., he received

credible information that accused is traveling in the VRL bus and he is the permanent resident of Jammu and Kashmir and presently residing at Hospet. He is coming in VRL bus bearing registration No.KA-25-B-6085 and carrying the prohibited articles. He is wearing a woollen cap, black colour jacket and carrying a maroon colour bag containing assault rifle and grenades and he is involved in the terrorist activities. Immediately, he informed the said matter to his higher ups in writing. He secured the bullet proof jacket, torch, lights, packing materials, laptop and investigating kit and along with staff he went to the spot at 4.45 a.m. He secured two persons and requested them to be the panch witnesses by giving notice. He also gave instructions to his staff and located them in particular places. He gave instructions to staff to rush to the spot by giving signal. In the meanwhile, the bus came and stopped near the newly constructed building. At that time, they were standing near the tree next to the bus stop. Two persons alighted the bus and the present accused alighted as 2nd passenger and he identified him. He was carrying one maroon bag on his shoulder and blue bag in his hand. When he proceeded to apprehend him, the accused tried to escape. However, he caught hold of him and at that time, other officials and staff surrounded him. He showed his ID Card to the said person and revealed that he is an police officer. He questioned him about his name and address. He revealed his name as Imran Jalal @ Bilal S/o Samshuddin, Sabarbal, Ajarath Bal, resident of Srinagar, Jammu and Kashmir State and presently residing in Ranipet at Hospet.

When he was subjected to inquiry about the bag, he did not give proper answers. He opened the bag in presence of the panch witnesses and found the articles in both two bags which were detailed in Ex.P.1 Mahazar, which was drawn from 5.15 a.m. to 9.10 a.m and thereafter, he gave complaint to the concerned police in terms of Ex.P.79 and he also identified his signature in the mahazar at Ex.P.1. Other independent witnesses and officials have also signed the said mahazar. Since accused gave his voluntary statement to produce the articles, they left Bengaluru at 12.30 p.m. and reached Hospet at about 7.00 a.m. They went to Hospet police station at around 8.40 a.m. Independent panch witnesses were secured with the help of local inspector. The accused led the panch witnesses by name Krishna and Umesh and also the police officials. Accordingly to the voluntary statement of the accused, he led all of them to his house and produced the articles which were kept in the almerah and he seized the articles by drawing the mahaar in terms of Ex.P.34. In the said house, AK-47 rifles, grenades and also live bullets of 200 in number were seized along with other documents at Exs.P.21 to 33. Mahazar was drawn from 9.15 a.m to 2.55 p.m. and he identified his signature on Ex.P.34. Thereafter, they came to Bengaluru and he gave the report.

In the cross-examination, he admits that he has not given any information about this incident to any other state intelligence bureau and also the central intelligence bureau. But he claims that immediately when he received the information, he communicated to the Jammu and Kashmir State Intelligence

Bureau. It is suggested that they did not have proper information about the accused and hence, they did not give any such information to the Central Intelligence Bureau and the same was denied. He admits that in the complaint, he has not mentioned to which terrorist organization, he is a member. It is suggested that he did not receive any information about the accused to report the same to the said intelligence bureau and the same was denied. It is suggested that he did not receive any information about the member of any terrorist organization and the same was denied. He admits that he did not receive any information about the other members accompanying the accused to involve in the terrorist activities along with the accused but he claims that whatever the information he has received, he has mentioned the same in the complaint. He admits that he gave instructions to prepare Ex.P.1. Ex.P.1-Mahazar is written in the hand writing since the official Gachinakatte was not having full fledge knowledge to use the laptop. Since the proceedings of drawing the mahazar requires more time and the battery of the laptop would get damaged, Ex.P.1 has been written in hand writing. He claims that he might have given the information about the said incident to the DCP-Ravikanthegowda in writing. But he does not remember the same. He admits that he has not mentioned in the mahazar as to how many bullet proof jackets and weapons were taken. He also admits that they were also having AK-47 assault rifle. He states that he cannot tell exactly how many bullet proof jackets were taken by them. Nearly 10 persons of them went to the investigation spot. They went in a private car and the driver of the private car was not provided with any bullet proof jacket. He admits that if the bullet is fired from AK 47 rifle, the same can be prevented by wearing the bullet proof jacket. It is suggested that Ex.P.1 was drawn in his office and the same was denied. It is elicited that after receiving the information, they made all preparation from 11.30 p.m. to 4.00 a.m. to go to the spot. Since they suspected that they would be attacked, they wore bullet proof jacket and went to the spot. It is suggested that Ex.P.1 was prepared to suit their convenience and the same was denied. It is suggested by the defence itself that the bus was followed from the out skirts of Bengaluru and he admits the same. He admits that he did not depute any staff to stay in the previous bus stop of the Gorguntepalya. He admits that the spot sketch has to be prepared by the investigating officer. He admits that he has not given any information to the drivers of the private vehicles about the incident. They obtained AK-47 rifles from their City Armed Reserved Department based on the orders of his superior. He admits that AK 47 rifle is very dangerous weapon. He is having training to use the same. All other staffs are also having training to use the said rifle. He admits that he has signed Ex.P.1 after completion of the mahazar and thereafter, the complaint was given. The compliant has been prepared by his staff as per his instructions at the place of the incident itself. Ex.P1 was written at the spot on the road side near RNS compound. The key of the house of the accused was seized at the spot. It is suggested that as per Ex.P.9, he had not taken the accused to the Hospet and no recoveries were made at Hospet.

66. P.W.31 is the one who conducted further investigation of the matter in terms of Ex.P.89 memo. It is also his evidence that after taking over the further investigation, he gave notice under Section 91 of Code of Criminal Procedure and sought details of the Bank account of the accused and also identified Exs.P.91, 92 and 93. He also states that he himself and P.I.-Bhandari and other staffs along with accused went to Pune and collected the details at Pune VRL Office and thereafter, accused was taken to the different place where he used to stay when he visits Pune. The documents are also seized as per Ex.P.40 to Ex.P.51 and thereafter, he came to Bengaluru. He also states that he received the FSL report and collected all other materials. He also recorded the further statement of the accused and went to Hospet and seized the emails and then concluded the further investigation and filed the charge sheet.

In the cross-examination of P.W.31, it is elicited that on 3.2.2007, the bomb diffusing squad diffuses the hand grenades. It is suggested that as per Ex.P.14, 10 hand grenades were delivered by him to the squad and the same was denied. He volunteers that the squad themselves came to his office and took them. He states that request was sent to army to come and inspect the hand grenades on 12.01.2007. The bomb squad came on 03.02.2007. Prior to that on 24.01.2007, army came for inspection of hand grenades and they gave recommended letter to defuse immediately. He sent a letter to Police, Bengaluru City to Turay Company to give the details of satellite phone but he did not get any reply. It is elicited that the mobile numbers were not in his name but he had taken in different names for his criminal activities. The addresses given were all false. He states that he did not find any international calls being made by the accused.

The VRL travels staff gave Exs.P.36 to 39 on 10.01.2007. It is suggested that to suit the case, Exs.P.36 to 39 are obtained and the same was denied. However, it is elicited that in Ex.P.37, the name of Rahul is mentioned. It is suggested that he did not go to Pune but wrote Ex.P.51 in his office and the same was denied. It is suggested that as per the investigation, had accused received any money from the banned organization or from any foreign bank accounts. Witness volunteers in his evidence that for such illegal activities, no banned organization in their own name will send money, it will be only through somebody. The account of the accused was opened on 04.10.1993. He states that he did not send the hard disc to the laboratory since the accused himself opened the hard disc in the Cyber Café using his password and ID. It is suggested that in the seized emails, no material is forthcoming to show that he was involved in the anti national activities and the same was denied. It is suggested that MOs produced in this case are all implanted and they are brought from the police training school and not recovered from the accused and the same was denied.

67. P.W.32 who is the PSI, Crime Branch, Pune deposed in his evidence that P.W.32 came along with his staff to his office and told that the accused is going to show the place where he used to stay in Pune during his visits and requested him to assist them and accordingly, the police inspector permitted him to

accompany them. It is also his evidence that the accused took them to VRL office and thereafter to the Hospet where he was staying during his visit to Pune and seized Exs.P.36 to 39 and he also identified his signature at Ex.P.35(b). Both the traveled records and also hotel registers were seized and mahazar was drawn. He identified his signature as Ex.P.49(b) apart from Exs.P.45 to 48.

In the cross-examination, it is suggested that for the first time he is seeing Exs.P.36 to 39 and the same was denied. It is suggested that Exs.P.36 to 39 are not seized at Pune and the same was denied. He admits that he has not signed Exs.P.36 to 39 to show that the same were seized in his presence, but he admits his signature at Ex.P.35(b). It is suggested that without reading the contents of Exs.P.35, 44 and 49, he has signed and the same was denied. He admits that in Ex.P.49, there is no mention about he calling the panch witnesses and he volunteers that there is no need of mentioning the same.

Point No.1:

68. The main contention of the learned counsel for the appellant in his argument is that there was no any valid sanction to prosecute the accused and the Sanctioning Authority has not applied his mind and the order of sanction is not a reasoned order. In the absence of a valid sanction, the accused cannot be prosecuted for the offences invoked against him. Hence, prayed this Court to set aside the order of the trial Court since, the sanction given by the Sanctioning Authority is not a valid sanction.

69. Per contra, learned State Public Prosecutor appearing for the State would contend that there is no dispute with regard to obtaining the sanction from the concerned authority and the only contention is that the sanction is not a valid sanction.

70. In order to consider this contention, this Court has to peruse the order of sanction in Exs.P57, P82 and P83 and reasoned order has been passed and the sanctioning authority has applied his mind while passing the order. In keeping the contentions, this Court has to peruse Exs.P82 and P83 which are the sanction given by the Commissioner, who is the competent authority to give sanction. It is not the case of the accused that the sanction given by the authority is not competent in respect of Exs.P57, P82 and P83. On perusal of Exs.P82 and P83, it is clear that the Commissioner of Police in the sanction order has discussed in detail the case of the prosecution and seizure of the articles and so also considered the report of the FSL and the material collected by the Investigating Officer to invoke the penal provisions. The Commissioner of Police has also considered the statement of witnesses and thereafter has formed its opinion and accorded sanction to prosecute the accused persons wherein a detailed order has been passed in terms of Exs.P82 and P83.

71. With regard to Ex.P57, sanction given to prosecute the accused for the offence punishable under Unlawful Activities (Prevention) Act, 1967, in the preamble of the order, it is narrated about apprehending of the accused, seizure

of articles, contents of the complaint and the material collected by the Investigating Officer during investigation. There was also a reference in the order that the material collected by the Investigating Officer was scrutinized and placed for approval by the Government. The Government, vide order dated 30.03.2007 accorded its sanction to prosecute the accused. It is also important to note that, in order to prove the documents, Exs.P82 and P83, the prosecution also examined the Sanctioning Authority. The PW.18 is the Deputy Secretary to the Law Department, who has issued the sanction order in terms of Ex.P57. No doubt, in the cross-examination, it is elicited that for what reason the sanction was accorded is not mentioned, however, he volunteers to state that prima facie material was found to proceed against the accused and also on perusal of Ex.P57, there was a reference in the preamble with regard to the material collected by the Investigating Officer, the Higher Authority considered the same and hence, the sanction order was issued by the Deputy Secretary, based on the order passed by the Higher Officer.

72. When such being the case and Exs.P57, P82 and P83 provides the details with regard to the material collected by the Investigating Officer to prosecute the accused, it cannot be contended that there was no valid sanction and it is also not the case of the accused that the Sanctioning Authority is not the competent authority to accord sanction. When the material has been considered and an order has been passed, it amounts to a valid sanction and only question is as to whether the Sanctioning Authority has applied its mind or not while passing the sanction order. The Sanctioning Authority has applied its mind and considered the material collected and referred the same in the sanction order. Hence, we do not find any force in the contention of the learned counsel for the appellant that there was no valid sanction and accordingly, we answer point No.1 as 'negative'.

Point Nos.2 to 5:

73. Now this Court has to examine the material available on record, keeping in view the contentions of learned counsel for the appellant and the learned State Public Prosecutor for the State whether the Court below has committed an error in convicting the accused for the offences invoked against him.

74. The main contention of the learned counsel for the appellant by referring the judgment reported in AIR 1987 SC 955 in the case of PARAM HANS YADAV AND ORS. -VS- STATE OF BIHAR AND ORS. is that there must be some direct evidence to prove the charge of conspiracy, in case the prosecution relies on circumstantial evidences, then clear link has to be established and no such material is placed before the Court.

75. The learned counsel for the appellant would also rely upon the judgment reported in (2012) 2 SCC 34 in the case of KAILASH GOUR AND OTHERS -VS- STATE OF ASSAM and would contend that the accused has been implicated only on the ground that he belongs to Muslim community. He further relies upon the judgment reported in AIR 1974 SC 1193 in the case of DATAR SINGH -VS-THE

STATE OF PUNJAB and would contend that the prosecution has failed to prove beyond reasonable doubt that the accused has involved in the crime.

76. The learned counsel for the appellant relying upon the judgment reported in AIR 2013 SC 2687 in the case of SANJAY DUTT AND ORS. -VS- STATE OF MAHARASHTRA, THROUGH CBI (STF), BOMBAY would contend that recovery must be found to have been made as a consequence to the statement made by the accused in custody. The learned counsel for the appellant also relied upon the judgment reported in (2014) 7 SCC 716 in the case of ADAMBHAI SULEMANBHAI AJMERI AND OTHERS -VS- STATE OF GUJARAT and would contend that the Court cannot convict an accused, based on an uncorroborated, unconnected and contradictory retracted confessions, illegally and forcibly extracted to prosecute innocent and unconnected persons. In the case on hand, there is no credible chain link and the prosecution has failed to prove the very involvement of the accused in the present case.

77. Per contra, learned State Public Prosecutor appearing for the State referring the judgment reported in (2013) 13 SCC 1 in the case of YAKUB ABDUL RAZAK MEMON -VS- STATE OF MAHARASHTRA THROUGH CBI, BOMBAY would contend that law does not require corroboration of evidence of independent panch witnesses duly corroborated by extemporaneous panchanama found trustworthy. However, in the case on hand, the evidence of independent witness, P.W.1 is trustworthy since, mahazar was drawn in his presence in terms of Ex.P1 and so also mahazar was drawn at Hospet in the presence of the witnesses P.Ws.10 and 13. Hence, their evidence is creditworthy and it is not the number of witnesses that matters and it is the quality of evidence available before the Court that matters. The very contention of the learned counsel for the appellant that most of the witnesses are police witnesses and there are no independent witnesses cannot be accepted.

78. Keeping in view the contentions of the learned counsel for the appellant and also the learned High Court Government Pleader for the State, keeping the principles laid down in the judgment, this Court has to re-appreciate the evidence available on record.

79. With regard to apprehending of the accused, the prosecution mainly relies upon the evidence of P.Ws.1, 7 to 10 and 11, in respect of the mahazar drawn for seizure of the articles at the instance of the accused in terms of Ex.P1. No doubt, P.W.1 is the independent witness and other witnesses are those who joined P.W.30 in apprehending the accused, the main contention of the learned counsel for the accused is that the accused has been falsely implicated in the case and throughout in the cross-examination, it is suggested that the material objects are not seized at the instance of the accused and the same are secured from the training institute, in order to falsely implicate the accused in the case. On perusal of the evidence of P.Ws.7 to 11 and so also P.W.30, nothing worthwhile is elicited to disbelieve the evidence of P.Ws.7 to 11 and 30. In the cross-examination of P.W.1, who is an independent witness, nothing worthwhile is elicited that accused

was not apprehended at the spot. All these witnesses in their evidence have specifically deposed that the accused alighted from the VRL bus and thereafter, he was apprehended and when he made an attempt to escape from the clutches of the police, however, he was apprehended by P.W.30 and other police officials, who surrounded him. In the cross-examination of P.W.1, he categorically admits that another panch witness one Sri Sundaresh was also along with him and both of them were doing real estate business. It is also his evidence that P.W.30 has given notice requesting him to be as Pancha, when they were waiting near Gokuldas Imaging Building. He also categorically states that bus came at around 5.00 a.m. and this accused was apprehended and mahazar was drawn from 5.10 a.m. to 9.00 a.m. and he also attested the same. It is also important to note that P.W.1 has identified M.O.21, AK-47 rifle and other material objects. In the cross-examination of P.W.1, he categorically states when the accused was apprehended, the accused has categorically stated before them that he was carrying the seized articles, in order to blast the public places.

80. The main contention of the learned counsel for the appellant is that the accused was not apprehended at the spot. The witnesses, who have been examined as P.Ws.7 to 11 have categorically deposed with regard to all of them arriving to Goraguntepalya and apprehending the accused and supported the case of the prosecution. Apart from that, in the cross-examination of P.W.30, the defence itself suggested that they have followed the said bus from the outskirts of Bengaluru and the very suggestion made by the defence in the cross-examination of P.W.30 proves that the bus in which the accused was traveling from Hospet to Bengaluru was followed by police and accused was apprehended. In the cross-examination of P.W.30, it is also suggested that mahazar, Ex.P1 was drawn in his office and the same was denied by all the witnesses. However, the contents of the mahazar, Ex.P1 was proved by examining P.W.1, the independent witness and other official witnesses i.e., P.Ws.7 to 11 and 13. Merely because they are official witnesses their evidence cannot be discarded unless the same is not worthy in acceptance.

81. It is the case of the prosecution that the voluntary statement of the accused was recorded in terms of Ex.P84 and based on his voluntary statement, the accused led the team to Hospet and produced AK-47 rifle which is marked as M.O.28 and so also other articles like grenades etc., which were kept in the almirah and the same were seized by drawing the mahazar in terms of Ex.P34.

82. It is to be noted that the prosecution relies upon the evidence of P.Ws.10 and 13 with regard to seizure of articles at the instance of accused in his residence at Hospet. P.W.13 is the independent witness, and P.W.10 who accompanied P.W.30 in their evidence states that they went to the police station and P.W.30 and other police officials came from Bengaluru along with the accused. P.W.10 and 13 in their evidence have identified M.O.28, AK-47 rifle seized in the house of the accused. They also deposed with regard to the grenades and live bullets seized to an extent of 200 wherein, sample bullets were taken separately. They also

state that satellite phone charger and a file was seized in the house of the accused and the same are marked as Exs.P35 and P21 respectively. Ex.P34 is the mahazar drawn to this effect. In the cross-examination, P.W.13 admits that the house of the accused situates in the nest conservancy of his house and he is having acquaintance with the owner of the said house. Though he cannot state the day of the mahazar, however he states that he was secured by sending the Police Constable. The other panch witness is the employee of the Kirloskar Company, who came to know about bringing the accused to Hospet on the same day and he also signed the same. The accused was accompanied by P.W.30, and other staff.

83. The evidence of P.W.10 and 13, is clear that local Police Inspector Shirolkar also accompanied to the house of the accused and all of them went in two jeeps and he was not having any acquaintance with the accused prior to the seizure. In the cross-examination of P.W.13, apart from eliciting that M.Os.28 and 29, AK-47 rifles are similar, he categorically states that he has signed on the cover of M.O.28. There is nothing on record to disbelieve the evidence of P.W.13, who is an independent witness. No doubt, P.Ws.10 and 30 and other official witnesses have supported the case of the prosecution, it is pertinent to note that, in their evidence also, nothing worthwhile is elicited to disbelieve the case of the prosecution. The very seizure of the articles at the instance of the accused in his residence at Hospet by drawing the mahazar is proved by examining P.Ws.10 and 13. Hence, there is a force in the contention of the learned State Public Prosecutor for the State that the prosecution has proved beyond reasonable doubt the seizure of prohibited articles at the instance of the accused both at Bengaluru as well as Hospet and the independent witnesses P.Ws.1 and 13 have supported the case of the prosecution apart from the evidence of P.W.7 to 11 and P.W.30.

84. It is also pertinent to note that, in the cross-examination of the witnesses, nothing is suggested that police were having ill-will against the accused, in order to falsely implicate him in a serious offences invoked against him, except the suggestion that the accused was supporting the Jammu and Kashmir residents at Hampi which cannot be accepted. In order to falsely implicate the accused, there must be some cogent evidence and there is no material on record. On perusal of the entire evidence of the prosecution, nothing is elicited from the prosecution witnesses to come to a conclusion that the accused has been falsely implicated in the case as contended by the learned counsel for the accused.

85. The other material witness relied upon by the prosecution is P.W.17, who is the employee of VRL office. In his evidence, he states that on a particular date, the accused came and booked the ticket to go to Bengaluru from Hospet. Though in his evidence he states that he could not state the seat number, however, when he was cross-examined by the learned Public Prosecutor, he states that he might have booked seat No.13. In the cross-examination, he categorically denies the suggestion that police did not come and enquire with him with regard to traveling

of the accused from Hospet to Bengaluru in their bus. However, he categorically admits that accused was not brought to his office.

86. The other contention of the learned counsel for the appellant is that, no material was collected by the prosecution to show that accused had traveled from Hospet to Bengaluru. It is to be noted that the evidence of P.Ws.7 to 11 and 30 is clear that, after getting the information at 11.00 p.m., P.W.30 secured the other staff and so also the independent witness, P.W.1 at the spot and apprehended the accused at the spot itself. As already pointed out, the defence itself has suggested in the cross-examination of P.W.30 that they have followed the vehicle in which the accused was traveling from the outskirts of Bengaluru and no doubt, the driver, conductor or any co-passengers of the bus have not been examined.

87. The learned counsel for the accused in his argument mainly contends that neither the driver or the conductor nor the co-passengers of the bus have been examined. It is to be noted that, after alighting from the bus, the accused was apprehended and when he made an attempt to escape from the clutches of the police, he was apprehended. Normally, after the passengers alight from the bus, the driver of the bus proceed further. In the case on hand, the accused was not apprehended in the bus and only after alighting from the bus, he was apprehended. When such being the case, the very contention of the learned counsel for the appellant that no material to the effect that the accused had traveled from Hospet to Bengaluru and neither the driver or the conductor nor the co-passengers of the bus have been examined cannot be accepted.

88. The prosecution also relies upon the other circumstances with regard to seizure of E-mail correspondences by the accused which are marked as Ex.P53 series. P.W.31 is the Investigating Officer, who carried out the further investigation of the case and seized the internet messages. The prosecution relies upon the evidence of P.W.21, who is the witness for seizure of E-mail corresponded by the accused. P.W.21 in his evidence states that the accused took all of them to Srirama Cyber Cafe and there were six computers and out of six computers, he states that he operated five computers and he himself using his E-mail I.D. took out 33 messages which he had sent from his I.D. The accused had sent messages using his E-mail I.Ds. as Sajjad Bhat, Rising sum arts and goodnews. The E-mail correspondences and internet messages which were seized are marked as Ex.P53 (a) to (g). In the cross-examination of P.W.21, he categorically states that he was having acquaintance with the accused since, he is also having a shop near to the shop of the accused and the very answer is elicited by the learned counsel for the accused himself. Hence, it is clear that the witness P.W.21 was having acquaintance with the accused. It is suggested that he is falsely deposing that those printouts were taken in his presence and he has signed the same and the same was denied. Nothing worthwhile was elicited in the cross-examination of this witness with regard to seizure of E-mail corresponded by the accused. The prosecution relies upon the documents to

state that the accused was having E-mail correspondence with the foreign nationals and other accused persons and there is nothing on record to disbelieve the evidence of P.W.21.

89. Apart from the evidence of P.W.30, the other circumstance relied upon by the prosecution is with regard to diffusing of bombs which were seized at the instance of the accused. In order to substantiate the claim of the prosecution, the prosecution has relied upon the evidence of P.Ws.3 and 4. P.W.3 in his evidence states that when he was standing near the Yeshwanthpura Circle signal, police came and took him stating that a bomb has to be diffused and he has to become a Pancha. He found five grenades and the same were handed over to P.W.4. He states that P.W.4 took the same in a jeep to a firing range and it took up to 4.30 p.m. to diffuse the same and thereafter, they came with the diffused grenades and mahazar was drawn in terms of Ex.P9. Along with him, one Sanjeeva Sharma was with him and he has also signed the same. In the cross-examination, he admits that he does not have any knowledge about the bomb and he believed the version of the Investigating Officer and identified them as bombs. The Investigating Officer has not showed him the same by opening two boxes in the police station. P.W.4 and other officers diffused the bomb. In the cross-examination of P.W.3 also, except eliciting that he has no knowledge about the bomb, nothing was elicited as to he accompanied to the firing range along with P.W.4. The evidence of P.W.4 is also clear that on 03.02.2007, he went to the police station and thereafter, took the bombs for diffusing and while diffusing, he also removed safety liver and found the chemicals. In the cross-examination of P.W.4, he states that he was not knowing the contents of the boxes, until it was opened. It is suggested that neither he went to the police station nor collected the grenades for disposal and the same was denied. In the cross-examination of P.W.4, except a suggestion that he has not diffused the grenades and he gave the false report, nothing worthwhile is elicited. Hence, it is clear that after seizure of the grenades in terms Exs.P1 and P34, the same were diffused and the evidence of P.W.4 also substantiates the case of the prosecution that the live grenades seized were diffused.

90. P.W.5 also supports the case of the prosecution that he was requested to examine the arms and ammunitions and one T.K. Haridasan was deputed, who states that he was taken to yeshwanthpur police station. He gave the report in terms of Exs.P14 to P16. Having taken note of the evidence of P.Ws.3, 4 and 5, it is clear that after seizure of the live grenades, the same are diffused.

91. The evidence of P.W.6, who is the carrier of the seized articles is clear that he took the seized articles to the FSL. P.W.22 is also a carrier of seized articles to the FSL. In his evidence he states that he took and handed over the sealed articles to the FSL department. The witness P.W.25 is the Director of Truth Lab. In his evidence, he states that under Ex.P23, sealed articles were sent for examination and he gave the report in terms of Ex.P74 after subjecting the seized articles for examination. It is his specific evidence that articles 3 and 9 are

the AK-47 rifles and they are the make of Polland. In the cross-examination, no doubt it is elicited that now India is also producing AK-47 rifles from last five to six years, but in the cross-examination, the defence itself has elicited that in M.Os.21 and 28, the number of the rifles were not erased and also got elicited that both the rifles were the make of 1958 and 1960. It is suggested that report was given only to help the police and the same was denied.

92. The other FSL witness is P.W.26. In his evidence, he states that the seized articles which were sent to them were examined and he gave the report in terms of Ex.P77. He categorically states that if safety pins are removed, there is no chance of blasting. In the cross-examination, the defence itself has elicited that safety pins are used. It is elicited that, in his report, he has not mentioned the same but, volunteers to state that Investigating Officer did not ask any opinion with regard to the same and hence, he did not mention the same. It is suggested that without examining the grenades, he gave the report and the same was denied.

93. Having considered the evidence of P.Ws.25 and 26 and also the other witnesses, who have carried the articles to the FSL, it is clear that seized articles were prohibited articles and the same were subjected for examination and the report has also been obtained. No license or documentary evidence has been placed before the Court that the accused was permitted to carry and possess the same.

94. The other circumstance relied upon by the prosecution is that accused had visited Pune in connection with securing the prohibited articles. In order to substantiate the same, the prosecution got marked Exs.P36 to P39 and to prove the same, examined the witness P.W.19. P.W.19 states that police came and seized Exs.P36 to P39 and he has signed Ex.P35, mahazar. He was treated as partly hostile and suggestion was made that accused was brought along with the Investigating Officer and the same was denied. But in the cross-examination, a suggestion was made that he did not take out the print and police only brought Exs.P36 to 39 and the same was denied. He categorically states that he himself took the print outs from the computer. But he admits that, his staff took the print outs and he has signed the same. In the cross-examination also, nothing is elicited to disbelieve his evidence. The documents which have been seized under Exs.P36 to P39 are the travel made by the accused from Pune to Hospet and Hospet to Pune. No doubt, in the evidence it is elicited that Ex.P37 (a) stands in the name of one Rahul dated 25.12.2006, the other documents dated 05.11.2006 and 06.11.2006 in terms of Ex.P38, it is evident that the accused himself has traveled from Mumbai to Hospet and in terms of Ex.P39, from Mumbai to Hospet. It is also important to note the evidence of P.W.20, who is an employee of the Milan Lodge. He identifies the seizure of documents of the hotel in terms of Ex.P40. Though he has turned hostile, in the cross-examination, he admits that in Ex.P40 (a), the customer name is mentioned as Imran Jalal. He was not subjected to cross-examination by the learned counsel for the accused.

95. The witnesses P.Ws.19 and 20 have also spoken with regard to the seizure of the documents from the concerned hotel and P.W.31, the Investigating Officer has collected the material taking the accused to Pune. In the cross-examination of P.Ws.19, 20 and 31 also, no fruitful answers were elicited to disbelieve the evidence of the prosecution regarding the visit of the accused to Pune.

96. Having considered both oral and documentary evidence available on record, particularly, the evidence of P.Ws.1, 7 to 11 and 30 in respect of Ex.P1, mahazar about apprehending the accused and seizure of the material objects i.e., M.Os.1 to 23 at the spot and also the evidence of P.Ws.13 and 14 in respect of seizure of banned articles in the house of the accused at Hospet, wherein AK-47 rifle, live grenades and live bullets were seized, the prosecution has proved beyond reasonable doubt the fact that the accused was possessing the prohibited articles stated supra. The Court below has considered the evidence of the prosecution witnesses, no doubt the records reveal that more number of witnesses are the official witnesses, who participated in apprehending the accused and seizure of the articles. However, the independent witnesses have also supported the case of the prosecution. In the cross-examination of independent witnesses i.e., P.Ws.1, 13 and 14, nothing is elicited to disbelieve the case of the prosecution, though the learned counsel appearing for the appellant vehemently contends that the accused has been falsely implicated. There is nothing on record to show that the Investigating Officer, who seized the articles at the instance of the accused, had ill-will against the accused. Nothing is elicited in the evidence of the witnesses also that they had any ill-will against the accused, in order to implicate him falsely in the case. Though made dispute with regard to the seizure of live grenades, bullets and banned articles i.e. AK-47 rifles etc. Nothing is elicited in the cross-examination to disbelieve the case of the prosecution.

97. The main contention of the learned counsel for the appellant is that the source of these articles were not investigated and traced by the Investigating Officer. The said contention cannot be accepted. It is to be noted that the arms and ammunitions which the accused had possessed were the make of Polland and FSL report is also clear that they are the make of Polland. When the prosecution is able to prove that the same was seized at the instance of the accused, the burden shifts on the accused to disprove the same. On perusal of the 313 statement of the accused, there is no explanation on the part of the accused except, total denial. The accused has to explain with regard to the possession of the same and he has not produced any license, permit or documentary evidence that he is permitted to possess the same. Apart from that, the evidence of the prosecution witnesses P.Ws.1 to 32 is consistent with regard to apprehending the accused and seizure of articles at the instance of the accused. Hence, the Court has to take note of the quality of the evidence and not the quantity.

98. The other contention of the learned counsel for the appellant is that independent witnesses are very less and official witnesses are more. Having

considered the factual aspects of the matter and when the information has been received in the night, the Court also cannot expect more number of independent witnesses and the evidence of the independent witness on record is more creditworthy and inspires the confidence of the Court and nothing is elicited in the cross-examination of these independent witnesses to disbelieve the case of the prosecution.

Hence, we do not find any merit in the appeal to come to other conclusion.

99. The Court below has appreciated the material available on record in proper perspective and has rightly come to a conclusion that the material collected by the prosecution substantiates the case of the prosecution.

100. It is also the contention of the learned counsel for the appellant that in order to invoke Sections 20 and 23(1) of the Unlawful Activities (Prevention) Act, 1967, there is no material before the Court. No doubt, there is no documentary proof that he was a member of Lashkar-e-Toiba, however, to bring the accused within the purview of Sections 20 and 23(1) of the Act, it is to be noted that the prosecution has to place material before the Court. In the case on hand, the prosecution has proved with regard to the fact that the accused was possessing M.Os.21 and 28 i.e., AK-47 rifles, grenades and live bullets, which were seized. When the accused has failed to explain with regard to possession of these banned articles, the Court has to draw an inference that there was conspiracy to wage war against the Country since, the accused was also possessing prohibited explosive substances. No doubt, the other accused persons have not been subjected for trial, however, the material collected by the prosecution substantiate the fact that the accused was possessing arms and ammunitions, grenades and also live bullets and there is no explanation on the part of the accused with regard to the same, except general denial. The prosecution has proved beyond reasonable doubt that the accused was possessing the same and the evidence of the prosecution witnesses corroborates the same and nothing is elicited in the cross-examination of these witnesses to disbelieve the case of the prosecution and further more there is no material before the Court for false implication of the accused. Having considered the material on record, the principles laid down in the judgments referred by the learned counsel for the appellant are not applicable to the case on hand and the same will not come to the aid of the accused.

101. Even in the absence of direct evidence with regard to the conspiracy and that he was the member of Lashkar-e-Toiba, the material collected by the prosecution i.e. Ex.P53 (a) to (g) i.e. E-mail correspondences and the weapons which were in the custody of the accused, it is nothing but an act of waging war against the Country. The accused was not only having contacts with the Indian national, but he was also having contacts with the foreign national, who is arraigned as accused No.2 and he has also corresponded with him through E-mail. The E-mail also discloses that the address is furnished to the accused to visit Pakistan and accordingly the accused visited Pakistan. When such being the

case, the prosecution has proved its case beyond reasonable doubt and the very contention that the trial Court ought not to have convicted the accused for the offence punishable under Sections 20 and 23(1) of the Unlawful Activities (Prevention) Act, 1967 also cannot be accepted since, the accused was possessing the banned articles which are capable of mass destruction. The Court also cannot expect any direct evidence with regard to membership with Lashkar-e-Toiba and the banned organization doesn't make any membership and the same has to be gathered with the totality of the evidence. There are ample evidence before the Court that he indulged in the illegal activities having nexus with people who are waging the war against the state. Particularly when he was apprehended he was possessing the banned and prohibited arms and ammunitions i.e., one AK assault rifle, two plastic packet containing 100 rounds of ammunition, one packet containing two magazines of AK assault rifle, one rifle sling, one bed sheet and one pyjama. In the other bag they found one chadar, one jamkhana, one rasai, five hand grenades, one travel book, one Bengaluru City map, one Thuraya satellite phone and one letter pad book. Further, on personal search, they found one Nokia mobile phone from his right hand side pocket, one Nokia mobile phone in the right side of leather jacket pocket, one leather purse in his back pant pocket with one used and three unused SIM cards of BSNL, cash of Rs.1,500/-, one passport size photo of a male, membership card of gym, Jammu and Kashmir I.D. Card, Driving Licence, PAN Card, Handicrafts Owners Association membership card, Jammu and Kashmir bank ATM Card, Jammu and Kashmir Bank slip, one slip bearing numbers in green ink, two slips bearing phone number and one slip with number said to be of passport, one key Alba make found in the right side of the pant pocket and one traveling ticket with the name Imran in the left side of pant pocket. The same were seized by drawing mahazar in terms of Ex.P.1 and the same has been proved by examining the witnesses. The seized articles are marked as M.Os.1 to 17 and 19 to 37. Based on his voluntary statement, he took the Investigating Officer and others to his residence and in the presence of panch witnesses, the prohibited articles viz., AK-47 rifle and the same was seized and identified as M.O.28. The almirah key was also seized as M.O.29. The accused also removed other two packets which were kept inside the clothes and they found 100 live bullets in one packet and in another packet also found 100 live bullets and out of them, ten live bullets were taken separately and remaining 90 bullets each was seized separately and the same has been identified as M.Os.30 and 31. The remaining 90 bullets each are marked as M.Os.32 and 33. The satellite charger is also seized and the same is identified as M.O.35. A detailed mahazar to this effect was drawn from 9.15 a.m. to 2.55 p.m. and the same is marked as Ex.P34. The accused has not explained the possession of these banned articles in his 313 statement. In the absence of any explanation in that regard on the part of the accused, the Court has to accept the evidence of the prosecution and we do not find any reason to set aside the judgment of conviction. The Court below has given anxious consideration to both the oral and documentary evidence and has taken note of the material, circumstantial evidence and accepted the case of the prosecution.

The contention that there is no material to invoke the offence under Section 20 and 23(1) of Unlawful Activities Prevention Act, 1967 cannot be accepted. The Court while invoking the offences has considered the material on record, particularly the possession of arms and ammunitions, live grenades, live bullets, map and magazines and also considered the FSL report and the evidence of the FSL report and also the evidence of the FSL witnesses i.e., P.Ws.24 and 25 and has rightly appreciated both oral and documentary evidence. Hence there are no grounds to reverse the findings of the Trial Court.

102. In view of the discussions made above, we pass the following:

ORDER

(i) The appeal is dismissed.