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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 1574] नई दिल्ली, बुधवार, अप्रैल 10, 2024/चैत्र 21, 1946
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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 10 अप्रैल, 2024

का.आ. 1657(अ).—केंद्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की तारीख 5 अक्तूबर, 2023 की अधिसूचना संख्यांक का.आ. 4348(अ) (जिसे इसमें इसके पश्चात उक्त अधिसूचना कहा गया है) के द्वारा जम्मू एवं कश्मीर डेमोक्रेटिक फ्रीडम पार्टी (जेकेडीएफपी) को विधिविरुद्ध संगम के रूप में घोषित किया था;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की तारीख 23 अक्तूबर, 2023 की अधिसूचना संख्यांक का.आ. 4639(अ) के द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसमें इसके पश्चात उक्त अधिकरण कहा गया है) का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के न्यायाधीश माननीय न्यायमूर्ति श्री सचिन दत्ता थे;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या जम्मू एवं कश्मीर डेमोक्रेटिक फ्रीडम पार्टी (जेकेडीएफपी) को विधिविरुद्ध संगम के रूप में घोषित किए जाने का पर्याप्त कारण था या नहीं, तारीख 3 नवंबर, 2023 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की गई थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में की गई घोषणा की पुष्टि करते हुए तारीख 3 अप्रैल, 2024 को एक आदेश पारित किया था;

अत:, अब, केंद्रीय सरकार उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में, उक्त अधिकरण के आदेश को प्रकाशित करती है, अर्थात्:—

"

---: अधिकरण का आदेश अंग्रेजी भाग में छपा है :---

न्यायमूर्ति सचिन दत्ता, विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण"

[फा.सं. 14017/30/2024-एन.आई.-एम.एफ.ओ.]

अभिजीत सिन्हा, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 10th April, 2024

S.O. 1657(E).—Whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (herein after referred to as said Act), declared the Jammu and Kashmir Democratic Freedom Party (JKDFP) as an unlawful association vide notification of the Government of India in the Ministry of Home Affairs number S.O. 4348 (E), dated the 5th October, 2023 (herein after referred to as said notification);

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act constituted the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Hon'ble Mr. Justice Sachin Datta, Judge of the High Court of Delhi vide notification of the Government of India in the Ministry of Home Affairs number S.O. 4639 (E), dated the 23rd October, 2023;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on 3rd November, 2023 for the purpose of adjudicating whether or not there was sufficient cause for declaring the Jammu and Kashmir Democratic Freedom Party (JKDFP) as an unlawful association;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, passed an order on 3rd April, 2024, confirming the declaration made in the said notification;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the order of the said Tribunal, namely :—

"UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL,

NEW DELHI

Date of Decision: 3rd April, 2024

IN THE MATTER OF :

Gazette Notification No. S.O. 4348(E). dated 05th October, 2023 declaring the Jammu and Kashmir Democratic Freedom Party (JKDFP) as unlawful association under the Unlawful Activities (Prevention) Act, 1967.

AND IN THE MATTER OF :

Reference under Section 4 of the Unlawful Activities (Prevention) Act, 1967 made to this Tribunal by the Government of India through Ministry of Home Affairs vide Gazette Notification No. S.O. 4639(E). dated 23rd October, 2023.

Present : Ms. Aishwarya Bhati (ASG) along with Mr. Rajat Nair, Mr. Jay Prakash Singh, Ms. Priyanka Dalal, Mr. Annirudh Sharma, Mr. Dhruv Pande, Ms. Poornima Singh, Ms. Manisha Chava, Mr. Rustam Singh Chauhan, Mr. Abhijeet Singh and Mr. O. P. Singh, Advocates for the Union of India.

Mr. Parth Awasthi, Advocate for Union Territory of Jammu & Kashmir.

Mr. Manoj Kumar Singh, Asstt. Director, Mr. Antariksh Singh Rathore, Asstt. Commandant and Mr. Sameer Shukla, Asstt. Section Officer, Ministry of Home Affairs.

Mr. Himanshu Goel, Law Researcher.

Mr. Sanjay Pokhriyal, Registrar, Unlawful Activities (Prevention) Tribunal.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

1. This order answers reference under Section 4(3) read with Section 3(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the '**Act**' or '**UAPA**', for short) made to this Tribunal constituted *vide* Gazette Notification No. S.O. 4639(E). dated 23rd October, 2023 under Section 5(1) of the Act made by the Government of India, Ministry of Home Affairs, for adjudicating whether or not there is sufficient cause for declaring the Jammu and Kashmir Democratic Freedom Party ('**JKDFP'** or **'association'** in short) as an "unlawful association".

I. THE NOTIFICATION

2. The Central Government published Gazette Notification (extra-ordinary) No. S.O. 4348(E). dated 05th October, 2023 in exercise of powers conferred under Section 3(1) of the Act and declared JKDFP to be an "unlawful association". A copy of the said notification has been sent to this Tribunal, as contemplated under Rule 5(i) of the Unlawful Activities (Prevention) Rules, 1968 ("**UAP Rules**" in short). The said notification dated 5th October, 2023 reads as under :—

"S.O. 4348(e)-Whereas, the Jammu and Kashmir Democratic Freedom Party (hereinafter referred to as the JKDFP) was formed in 1998 by Shabir Ahmad Shah, a prominent separatist known for his anti-India and pro-Pakistan propaganda;

And whereas, the founder of JKDFP had called Kashmir as a 'dispute' and ruled out any settlement within the framework of the Constitution of India;

And Whereas, the members of the JKDFP have been at the forefront of secessionist activities in the Jammu and Kashmir and want to create a separate Islamic State;

And Whereas, the leader or members of the JKDFP have been involved in raising funds through various sources including Pakistan and its proxy organizations for perpetrating unlawful activities, including supporting terrorist activities, sustained stone-pelting on Security Forces in Jammu and Kashmir;

And Whereas the JKDFP and its members by their activities show sheer disrespect towards the constitutional authority and constitutional set up of the country;

And Whereas, the JKDFP and its leaders or members, particularly its found Shabir Ahmad Shah, have been indulging in unlawful activities, which are prejudicial to the integrity, sovereignty, security and communal harmony of the country;

And Whereas, there have been a number of inputs showing linkages of the JKDFP with banned terrorist organizations;

And Whereas, the JKDFP and its members have been involved in the violent terrorist activities with an intent to create a reign of terror in the country, thereby endangering the security and public order of the State, and its anti-national activities also show disrespect and disregard to the constitutional authority and sovereignty of the State, hence an immediate and prompt action is required against the organization;

And Whereas, the Central Government is of the opinion that if there is no immediate curb or control of unlawful activities of the Jammu and Kashmir Democratic Freedom party, it will use this opportunity to—

(i) Continue with the anti-national activities which are detrimental to the territorial integrity, security and sovereignty of the country;

(ii) Continue advocating the secession of the Jammu and Kashmir from the Union of India while disputing its accession to the Union of India;

(iii) Escalate its insurrectionary activities including attempt to carve out an Islamic State out of the territory of the Union of India by destabilizing the Government established by law; and

(iv) Continue propagating anti-national sentiments of the people of Jammu and Kashmir with the intention to cause disaffection against India and disrupt public order;

And Whereas, the Central government for the above-mentioned reasons is firmly of the opinion that having regard to the activities of the Jammu and Kashmir Democratic Party, it is necessary to declare the Jammu and Kashmir Democratic Freedom Party (JKDFP) as an 'unlawful association' with immediate effect;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Jammu and Kashmir Democratic Freedom party (JKDFP) as an unlawful association;

The Central Government, having regard to the above circumstances, is of firm opinion that it is necessary to declare the Jammu and Kashmir Democratic Freedom Party (JKDFP) as an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of Section 3 of the said Act, the Central Government hereby directs that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette."

3. As can be seen, the notification also enumerates the reasons/ circumstances, as contemplated under proviso to Section 3(3) of the Act, for declaring the association as unlawful, with immediate effect.

II. THE BACKGROUND NOTE

4. Along with the reference to this Tribunal under Section 4 of the UAPA, the Central Government has submitted and filed before this Tribunal a background note, as contemplated under Rule 5(ii) of the UAP Rules, 1968.

5. The background note states that JKDFP was formed in the year 1998 with Shabir Ahmad Shah, a separatist leader, as its chairman. The association is known for its anti-India and pro-Pakistan propaganda, referring to Kashmir as a 'dispute', and ruling out any settlement within the framework of the Constitution of India. JKDFP has continuously advocated the secession of Jammu & Kashmir from the Union of India while disputing its accession to the Union of India; its members have shown sheer disrespect towards the constitutional authority and constitutional set-up of the country. The background note further states that since 1998, JKDFP has been organizing various processions in support of Kashmir's 'freedom struggle', as also press-meetings in which Shabir Shah made stand of JKDFP clear on the 'ongoing struggle' in Kashmir, and blamed the Government of India for not acting sincerely towards the solution of Kashmir issue. Shabir Shah had given a boycott call of 1998 general elections**.** It is further stated that members of JKDFP have been at the forefront of secessionist activities in Jammu and Kashmir and want to create a separate Islamic State. Shabir Shah was reportedly taken into confidence by Pakistan Government through Pakistan based terrorist outfit 'Muslim Janbaz Force' (MJF) Chief and Vice Chairman of United Jehad Council, 'Mohammad Iqbal Kotwal' @ Kaka Kotwal @ Usman and a sum of Rs. 1.2 crore is stated to have been given to him through different channels by the cross-border agency during 1999.

Leadership

6. As per the background note, in September 2020, there were 11 Executive Committee/EC members in JKDFP, including Shabir Shah, out of which two EC members namely Mehmood Ahmad Sagar (Acting Chairman, JKDFP) and Bashir Ahmad Shah @ Meeras (Spokesperson of JKDFP in Pakistan) are settled in Pakistan. It is stated that with Shabir Shah in Jail, many of the functionaries of JKDFP are lying low. Some of the important leaders, associated with JKDFP, are stated to be as under:

a) Shabir Ahmad Shah (Chairman, currently in Tihar Jail)

b) Mehmood Ahmad Sagar (Acting Chairman, PoK)

c) Adv. Fayaz Ahmad Sodagar (General Secretary, r/o Anantnag)

d) Younus Ahmad Tak (Chief Organizer, r/o Anantnag)

e) Manzoor Ahmad Yatoo (Member, Executive Council, r/o Anantnag)

f) Masood Ahmad Bodha (Member, Executive Council, r/o Verinag, district Anantnag)

g) GhulamMohdMuqdam (Member, Executive Council, r/o Budgam)

h) Mohd Ibrahim Bhat (Member, Executive Council, r/o Sopore, district Baramulla)

i) Zameer Ahmad Sheikh (Member, Executive Council, r/o Nowgam, district Srinagar)

j) Ghulam Rasool Nawaz (Member, Executive Council, r/o Pampore, district Pulwama)

k) Ghulam Rasool Wani (Member, Executive Council, r/o Village Koil, district Pulwama)

l) Bashir Ahmad Shah @ Meeras (Spokesperson, PoK)

m) Bashir Azim (Spokesperson, r/o Pulwama)

n) Bashir Ahmad Wani (District President, Kulgam, r/o Kulgam)

o) Tanvir Ahmad Bhat (District President, Shopian, r/o Shopian)

p) Mohammad Amin (District President, r/o Bonpora, Litter, district Pulwama)

q) Abdul Rashid Gilkar (District President, r/o Sangri Colony, district Baramulla)

r) Maulana Mohammad Abdullah Tari (retired General Secretary, r/o Alyalpora, district Shopian)"

Activities Supporting Terrorists

7. As per the background note, JKDFP had links with banned terrorist organizations and its leaders have been involved in raising funds through various sources including Pakistan and its proxy organizations for perpetrating unlawful activities, including supporting terrorist activities, sustained stone-pelting on Security Forces in Jammu and Kashmir. Shabir Ahmad Shah had criticized the retaliatory action by the Indian Army in Kargil and characterized it as complete violation of the 'Lahore declaration' by India. He was detained under Public Safety Act, 1978 on 27.10.1999 and was released on 26.11.1999 from Central Jail, Jammu. In November 2006, Shabir Shah has said that India should positively respond to the proposals of United Jehad Council, a militant organization, for the resolution of Kashmir problem in the light of statements issued on behalf of Syed Salahuddin, head of United Jehad Council and Commanded-in-chief of Hizb-ul-Mujahideen (a banned terrorist organisation). He is stated to have created disruptive law and order situation in Jammu & Kashmir in July, 2016 by exhorting the masses over the killing of Burhan Muzaffar Wani, a commander of banned terrorist organization Hizb-ul-Mujahideen ('HM'), and his two associates to participate in the funeral prayers in absentia for the martyrs. Eulogizing the terrorist, Shabir Shah said "Burhan Wani will always remain alive in our hearts. He is a role model for our youth. In his brief lifespan, he rendered immense contribution to the ongoing freedom struggle. He would be an inspiration for generations to come. People's participation in funeral prayers of these martyrs is a referendum and an eye-opener for the world". JKDFP is stated to have expressed deep concern over killing of LeT Commander Bashir Ahmad Wani and Shaheed Azad Ahmad, who were killed in encounter with SFs in Delgam, the JKDFP expressed in Srinagar on July 1, 2017 stating that there is a need to identify the black-sheep who were damaging the 'freedom movement'.

8. General Secretary, Moulana Abdullah Tari is also stated to have praised people of Pakistan for their moral, political, and diplomatic support. He urged the Government of Pakistan, its people, and all political parties to come on one platform and extend political support and exhibit solidarity with the 'subjugated people' of Jammu and Kashmir. On the death sentence awarded by the Kolkata court to Kashmiri terrorist Muzaffar Wani, he said "we cannot see our youth falling prey to judicial tyranny". Terming the verdict as "politically motivated", he said Indian judiciary at the behest of authorities is "murdering" the law and justice. Shabir Shah thus tried to cast aspersions on independence of judiciary and created distrust in the minds of Kashmiris to succeed in his evil designs.

Anti-National Activities and Linkages with Cross Border Agency/Establishment

9. The background note further states that Shabir Shah in a press release dated January 15, 2007 appealed to people to observe January 26, as 'Black Day'. He stated that the dates January 26, August 15 and October 2 were painful for Kashmiris, because the people, who had snatched the freedom of Kashmiris, were celebrating these days. In August 2016, he rejected the Indian Prime Minister's statement that Kashmir was an integral part of India terming August 15 as a 'Day of Bloodbath'.

10. To subvert democracy in Jammu and Kashmir, during 2002-2004, JKDFP, on the instructions of the cross border agency, persuaded the people to boycott the elections in Kashmir. In a move to bring unity among different secessionist outfits during 2003-2004, Shabir Shah was urged by cross border agency through Mehmood Sagar (PoK-based JKDFP leader) and Tajam-ul Islam (Chief, Kashmir Media Service) to join All Parties Hurriyat Conference/ 'APHC' (Geelani faction). Shabir Shah had sent two ex-militants of terrorist outfit Muslim Janbaz Force (MJF), namely Zamir Ahmed Sheikh and Aijaz Gul Khan both residents of Srinagar to Pakistan on valid documents in the first week of December 2005, to revive the financial channel for the party. In the month of May 2006, Shabir Ahmad Shah continued to be an obedient mouthpiece of Pakistan establishment, urging India to resume dialogue with Pakistan, while advocating for involvement of militant leadership in the dialogue process. In June, 2015, he also welcomed the statement of the then Pakistan Army Chief General Raheel Sharif that Kashmir was an unfinished agenda of the partition of 1947, and added that General Sharif issued 'exactly the right statement vis-à-vis Kashmir issue'. He also termed Pakistan's role with regard to the Kashmir dispute as 'crucial'. He said 'the speeches of the Pakistan President in Parliament sent a clear message to India that resolving the Kashmir issue is a national responsibility of the Islamic Republic'. He expressed immense gratitude to every section of Pakistan particularly their top leadership and the military leadership for their unflinching support making the Kashmir issue echo at international forums. In April, 2016, in a statement issued to the press, he appealed to people to strengthen the Hurriyat Conference saying that only a strong platform could take the freedom movement to its logical end.

Continued nexus between Shabir Shah and adverse elements across the border

11. The background note further states that the APHC/PoK, under the leadership of Shabir Shah, has consistently issued statements challenging India's integrity and sovereignty, advocating for Kashmiri independence, and condemning what they perceive as Indian oppression. These statements have been disseminated through various channels, including social media and news portals. Some key instances include:

a) On October 23, 2021, Shabir Shah reiterated calls for complete shutdown on October 27th, the anniversary of India's 1947 'invasion and occupation of Kashmir' against Kashmiris' wishes. He said that despite India's state terrorism, Kashmiris remain resolute in their freedom struggle which they are determined to take to its logical conclusion. He lauded Kashmiris' unwavering morale and political stance of rejecting India's occupation. Shah said that the blood of 'Kashmiri fighters' nourishes the freedom struggle that Kashmiris must accomplish at all costs.

b) On January 24, 2022, Shabir Shah reiterated calls to observe India's upcoming Republic Day on January 26 as Black-Day in protest of India's illegal occupation of Kashmir. Shah appealed for civil curfew across occupied Kashmir. He said that Kashmiris have long rejected Indian rule through peaceful protests and demonstrations seeking self-determination. He condemned India's routine oppression and violence inflicted on Kashmiris. Shah asserted that forcibly waving the Indian flag cannot deter Kashmiris' freedom sentiments.

c) On February 15, 2022, APHC PoK chapter leader Mehmood Ahmad Sagar hailed Shabir Ahmad Shah for the resistance against alleged occupation of Jammu and Kashmir by India, in a statement issued in Islamabad. Sagar reiterated Shabir's commitment to continue his mission in all circumstances and to raise his voice for the rights of Kashmiri people.

d) On August 1, 2022, Shah called on the people of Kashmir to observe August 5th as Black Day, marking the anniversary of India's 2019 decision to revoke Jammu and Kashmir's special status.

e) On March 12, 2022, Mehmood Sagar posted on social media stating 'senior APHC leader and Chairman Jammu and Kashmir Democratic Freedom Party/JKDFP, Shabir Ahmad Shah has condemned in strong terms the rising incidents of Indian state terrorism and the ongoing killing spree of Kashmiri youth by the Indian occupation forces in the territory. In a message from Tihar Jail, the leader while voicing his serious concern over the worsening human rights situation in the region said that the continued violence and bloodshed in the restive region poses a serious existential threat to Kashmiris who have been reeling under the India's relentless and brutal suppression for the past several decades'.

f) On May 30, 2022, Mehmood Ahmed Sagar yet again posted on social media that 'In a message from Tihar jail, the leader Shabir Shah, while referring to rising incidents of violence in the valley said that on one hand Indian government has let loose its forces to kill innocent Kashmiris while on the other it has been shamelessly using anti-terror laws to silence legitimate political voices who have been advocating the Kashmiris' just cause peacefully and seeking a settlement of the lingering dispute through dialogue and diplomacy'.

g) On July 24, 2022, Mehmood Ahmed Sagar posted on social media that "senior APHC leader and chairman Jammu Kashmir Democratic Freedom Party Shabir Ahmad Shah has urged the world community, in particular the United Nations, to play its much-needed role to stop the bloodbath of innocent Kashmiris at the hands of the Indian forces in occupation of Kashmir. In a message from Tihar jail the JKDFP chief while highlighting the grim situation in the held territory said that there has been immense increase in the incidents of bloody violence unleashed upon Kashmiris by the Indian occupation troops'.

h) On August 1, 2022, Mehmood Ahmed Sagar posted on social media that 'senior APHC leader and Chairman Democratic Freedom Party Shabir Ahmad Shah has appealed to the people of Kashmir to observe 5th August as a black day to convey a strong message to the world that Kashmiris do not accept India's hegemony and its illegal control over the territory of Jammu and Kashmir. In a message from Tihar Jail, the leader while terming 5th August 2019 as one of the worst precedents of Indian colonialism said 'It was on this day when India stripped the region of its nationhood status, dissolved the state and reduced its status to a union territory'.

i) On August 13, 2022, Mehmood Ahmed Sagar posted on social media that 'Senior APHC leader and Chairman Democratic Freedom Party Shabir Ahmad Shah has appealed to the people of Kashmir to observe 15 August as a black day to convey a strong message to the world that Kashmiris do not accept India's hegemony and its illegal control over the territory of Jammu and Kashmir. In a message from Tihar Jail, the leader while terming India as usurper said that the country that has deprived millions of Kashmiris from their fundamental rights and snatched their fundamental freedoms by occupying their motherland has no justification, whatsoever, to observe Independence Day'.

j) On February 9, 2023, Mehmood Ahmed Sagar posted on social media that 'In a message from Tihar jail the APHC leader Shabir Shah said that the hanging of Afzal Guru was miscarriage of justice. The verdict against Guru was a slap on India's judiciary and its entire legal system that brazenly violated the fundamentals of justice by denying him the right to fair trial'.

k) On June 15, 2023**,** All Parties Hurriyat Conference (APHC) PoK chapter protested outside the Indian High Commission in Islamabad, condemning the extended detention of Shabir Ahmad Shah, activists, and

Kashmiri youth in Jammu and Kashmir. The protesters highlighted the case of Shabir Ahmad Shah and appealed to international organizations to address the issue. They called for the release of detainees and accused India of using biased courts and agencies like the National Investigation Agency.

Other inimical activities

12. The background note further states that during Shabir Shah's meeting on May 28, 2007 with Sheikh Ghulam Hassan (Amir-e-Jamaat, Jamaat-e-Islami, J&K- now proscribed), the latter while agreeing with Shabir's suggestion for unity, endorsed Geelani's position and advised Shabir to unite secessionists under the slogan of right of self-determination. Shabir also separately approached other APHC (Geelani faction) constituents and emphasized upon them the need for unity in the interest of freedom struggle. Shabir Ahmad Shah through a press release on August 17, 2015 condemned the proposed creation of Sainik colonies and the settlement of retired Army personnel in Jammu & Kashmir and remarked that any such move to create Israel type colonies to change the demographic status of Jammu & Kashmir was unacceptable. Shabir Shah termed it a big diplomatic victory for Pakistan for garnering support of other nations to Kashmiris' right to self-determination. In July, 2021, JKDFP made an appeal to the people of Kashmir to pay homage to the martyrs of 1931, to remember their sacrifices, observe complete shutdown on July 13, and renew their pledge to continue the ongoing 'struggle for independence'. In May, 2021, General Secretary, JKDFP, Fayaz Soudagar stated that the day was not far off when Kashmiri masses in huge numbers would come out on roads against Government of India and UT Administration and neither force nor any strategy would be able to subdue their anger. It is stated that the said statement was not less than a clarion call against the Union of India and it was a clear attempt to excite disaffection towards the Government established by law. It is further stated that the chief organizer, JKDFP, Yunus Ahmad Tak made a visit to Saudi Arabia on June 16, 2021 to meet Pak based Hurriyat leaders.

Cases being investigated by National Investigation Agency (NIA) relating to Jammu and Kashmir Democratic Freedom Party (JKDFP)

13. The background note mentions that a NIA case RC-10/2017/NIA/DLI under sections 120B, 121 & 121A of IPC and sections 13, 16, 17, 18, 20, 38, 39 and 40 of the UAPA, 1967 was registered at PS NIA New Delhi, based on credible information that Hafiz Muhammad Saeed, Amir of Jamat-ud-Dawah and the secessionist and separatist leaders, including the members/cadres of the Hurriyat Conference, have been acting in connivance with active militants of proscribed terrorist organizations viz. Hizb-ul-Mujahideen (HM), Dukhtaran-e-Millat, Lashkar-e-Taiba (LeT), and other terrorist organizations/associations/gangs for raising, receiving and collecting funds domestically and abroad through various illegal channels, including hawala, for funding separatist and terrorist activities in Jammu and Kashmir. Investigation revealed that various terrorist organizations viz. JKLF, HM, LeT, in connivance with various secessionist groups particularly the APHC/Hurriyat Conference and its constituents funded by Pakistan and its agencies and terror groups have entered into a criminal conspiracy to wage war against the Government of India. The Hurriyat leaders and their supporters are following the ideology of 'freedom' i.e. secession of the State of Jammu & Kashmir from the Union of India. Shabir Ahmad Shah, JKDFP was involved in the conspiracy of insurgency and funding for unrest in Jammu & Kashmir and also inciting people to hold protests, hartals and complete shut-downs. He was involved in raising funds through donations from Kashmiris and also received funds from Pakistan. These funds were used for unlawful activities such as stone pelting on security forces and creating unrest in Jammu & Kashmir. A lot of incriminating materials were recovered from his residential premises. Shabir Ahmad Shah was arrested on 04.06.2019 and based on the evidence that came on record, 2nd Supplementary Charge-Sheet in the said NIA case was filed on 04.10.2019 against five accused persons including Shabir Ahmad Shah u/s 120B, 121, 121A & 124A IPC and section 13, 16, 17, 18, 20, 38 & 39 of UAPA, in the NIA Special Court, Patiala House Courts, New Delhi. Charges were framed against accused Shabir Ahmad Shah on 16.03.2022 for the offences under sections 120B, 121, 121A of IPC and Section 13 UAPA r/w 120B IPC, Section 15 UAPA r/w 120B IPC, Sections 17, 18 & 20 of UAPA. The said case is under trial.

Case Being Investigated by Delhi Police (Special Cell) Relating to Shabir Shah.

14. The background note states that on 26.08.2005, Delhi Police Special Cell had arrested one accused Mohd. Aslam Wani and recovered 5 Kg of explosive, one pistol with 15 live cartridges and a cash of Rupees 62,96,000/-. During investigation, the accused Mohd. Aslam Wani made a disclosure statement before Delhi Police that he had been acting as a carrier for Shabir Shah for the last 15 months for collecting *hawala* amount from *hawala* operator in Delhi and used to deliver the same to Shabir Shah at Srinagar. On the instructions of Shabir Shah, Mohd Aslam Wani collected the *hawala* payment to the tune of Rs.62,96,000/- from a *hawala* operator through one Iqbal of Bombay on 25.8.2005 and out of the said amount he was to deliver Rs. 52,96,000 to Shabir Shah and the remaining amount of Rs. 10,00,000/- was to be paid for the activists of Jaish-e-Mohammed, a banned terrorist organization. Upon this revelation, FIR No. 122/05 dated 26.08.2005 was registered by P.S Special Cell Delhi Police against Shabir Shah.

Case Being Investigated by Enforcement Directorate (ED) Relating To Jammu and Kashmir Democratic Freedom Party (JKDFP).

15. The background note gives the details of the case being investigated by the Enforcement Directorate. It states that ECIR No. ECIR/04/DZ/2007 dated 09.02.2007 was registered by the ED on the strength of FIR No.- 122/2005 dated 26.08.2005 U/s 120B/121/121A/122/123 IPC, U/s 4 & 5 of Explosive Substance Act, U/s 17 & 23 of UAPA & U/s 25 of Arms Act. It further states that during PMLA Investigation Shabir Ahmad Shah was arrested on 26.07.2017 from Srinagar and was produced before the Court on the same day. Shabir Ahmad Shah continues to be in judicial custody as on date. It is stated that Mohd. Aslam Wani was arrested on 06.08.2017 and was produced before the Court on the same day and was first remanded to ED Custody and later to judicial custody. He was released on bail vide Order dated 18.01.2019 passed by High Court of Delhi. The Enforcement Directorate is investigating a case against Hafiz Saeed and others under the provisions of the Prevention of Money Laundering Act, 2002 in which one of the accused is Shabir Ahmad Shah, Head of JKDFP. Investigation revealed that Shabir Ahmad Shah, along with other accused persons, played a key role in building the separatist/militant movement in Jammu and Kashmir. Investigation by NIA revealed that accused Shabir Shah was continuously in touch with these Pakistan-based militants and had received funds to the tune of Rs.1,20,00,000/- through hawala and other means from these persons. As on date, proceeds of crime amounting to Rs. 21,80,000/- in the form of immovable property belonging to Shabir Ahmad Shah has been attached by Enforcement Directorate vide Provisional Attachment Order (PAO) dated 03.11.2022 under the provisions of PMLA which has been confirmed by learned Adjudicating Authority. Shabir Ahmad Shah has been made an accused in the supplementary Prosecution Complaint filed on 09.01.2023 before PMLA Special Court in the case.

Cases being investigated by Jammu and Kashmir Police

16. The background note mentions that in addition to the cases registered by NIA, Delhi Police and ED, the State Police of J&K have also registered many cases against Shabir Shah under various sections of UAPA, RPC Act 1932, TADA (P) Act, in which he has been accused of perpetrating unlawful activities against the integrity and sovereignty of the country, raising anti national slogans, delivering hate speeches, propagating secessionism, disturbing communal harmony, provoking people to fight against security forces, appreciating terrorist acts and promoting enmity between different groups on the grounds of separatism, which are prejudicial to the national integration and sovereignty of the Union of India. Its linkages with Pak-ISI and support to terrorist activities are also a cause of concern.

17. The background note states that JKDFP and its leaders or members, particularly its founder Shabir Ahmad Shah, have been indulging in unlawful activities, which are prejudicial to the integrity, sovereignty, security and communal harmony of the country. Keeping in view the activities of JKDFP, the Central Government has prescribed it as an unlawful association *vide* Gazette Notification (Extraordinary) S.O. 4348(E). dated 5th October, 2023.

18. Along with the background note, following Annexure-1 is appended, thereby giving the details of the cases registered by Jammu and Kashmir Police against the JKDFP members:-

Details of The Cases Registered By Jammu And Kashmir Police (JKP) Against The Jammu And Kashmir Democratic Freedom Party (JKDFP) Members

S. No	Case FIR No.	Name of the Separatist /Party affiliation	Brief of the case	Status of investigation
1.	17/2014 U/S 13 UA(P) Act, 132-A PR Act P/S Hajin	Shabir Ahmad Shah S/O Late Ghulam Mohammad Shah R/O KadiporaAnantnag A/P Sanat Nagar Srinagar	Through reliable sources on 07-03-2014 P/S Hajin received an information that Shabir Ahmad Shah along with other associates Nayeem Khan, Bashir Dra and MohdYousufNaqash delivered anti national speech against the integrity/ Sovereignty of the country at Bazar Hajin. He also provoked the people for election boycott and also warned people of dire consequences if they participated in the elections. They also chanted pro-Pak slogans.	Challaned
2.	39/2015 u/s 147, 148, 336, 341, 13 UA(P) Act P/S Magam		The case pertains to anti national speech delivered by Shabir Ahmad Shah chairman of J&K Peoples Democratic Freedom party, Zaffer AkberBhat of Salvation Movement, Nayeem Ahmad Khan, AsiyaAndrabi Chairperson DukhtaranMillat at Narbal on 21/04/2015 while visiting the residence of deceased	Challaned

			namely Suhail Ahmad Sofi S/o Abdul Ahad Sofi R/0 Narbal for condolence purposes. They raised slogans in favour of Pakistan and against India and also provoked the people against the country. They also halted the smooth flow of traffic on Tangmag-Srinagar Road.	
3.	44/2015 u/s 13 UA(P) Act, 147,124A-RPC P/S Kralgund		On 22-05-2015 P/S Kralgund received a reliable information that Shabir Ahmad shah visited village Ashpora along with his associates and called a meeting of public and raised anti national slogans etc. They also raised Pakistani flag and chanted anti-India slogans besides provoked the youth against the country and appealed them to fight for the freedom of Kashmir from India.	Challaned
4.	52/2015 U/S 13 UA(P) Act P/S Sumbal		On 27-03-2015 Anti-national activists including Shabir Ahmad Shah delivered anti national speech against the integrity / Sovereignty of the country and raised "Pakistan Zindabad slogans etc. at Naidkhai, Sumbal.	Challaned
5.	132/11 U/S 147,336 RPC of P/S Chrari-Shrief		Brief facts of the case are that some ANE's headed by Shabir Ahmad Shah pelted stones on the deployed Police Party at Pakherpora, Budgam and tried to disrupt the peace and tranquillity of the area besides chanted anti-national slogans and halted the traffic.	Challaned
6.	86/2004 u/s 132, 132B RP Act P/S Kupwara		On 16-04-2004 after conclusion of Friday prayers a mob came out from Jamia Masjid Kupwara headed by Shabir Ahmad Shah and others raising antinational slogans regarding election boycott.	Challaned
7.	59/2010 u/s 153, 121- RPC Maisuma, Srinagar		On 29.07.2010, during the Press conference Shabir Ahmad Shah emphasized the fact that the killing of the Kashmiri Youth is highly condemnable and AFSPA is a type of shield in the hands of security forces to kill the common people.	Challaned
8.	61/2017 U/S 132(B)RP Act PS Parimpora, Srinagar		On 28-03-2017, during checking 02 persons were found pasting posters regarding election boycott call given by Separatist leader Shabir Ahmad Shah etc.	Challaned
9.	108/2009 U/S 153-A,13 UA(P) Act PS Batmaloo, Srinagar		P/S received an information on 15/11/2009 from the reliable sources to the effect that Shabir Ahmad Shah, along with other activists are deliberately misguiding the general public and provoke them to join the Hurriyat and make themselves Anti-national etc.	Challaned

10.	73/1999 188,332,424,147,336,149 RPC PS RajbaghSrinagar		On 13.08.1999 Democratic freedom Party leader along with other associates were raising slogans against the State and instigating the public not to participate in Independence Day function. On Seeing the police party attacked the police party and stopped them to perform govt. duty and injured, torn their uniforms they also violate the orders U/S 144 CrPC which already implemented in district Srinagar by the District Magistrate Srinagar.	Challaned
11.	155/95 U/S 188,148,353,121 RPC PS sadder Srinagar		Brief facts of case are that on 09.05.1995 Separatists activists Shabir Ahmad Shah and Ab Gani Lone along with other associates Started procession/Marching towards Charari-Sharief.	Challaned
12.	26/2016 U/S 120-b,121-a,153-A,506 RPC,13,18 UA(P) Act PS Sadder Srinagar		On 22.02.2016 Shabir Ahmad Shah in presence of other leaders addressed press conference that due to JNU incident student and businessmen Kashmir Valley are facing harassment by police and other state agencies in Delhi and has given threat of dire consequences besides warned the govt of India about any harm caused to SAR Geelani.	Challaned
13.	122/2014 U/S 13 UA(P) Act P/S Shopian		Shabir Shah and other Leaders on AsiyaNelofer anniversary, give hateful speeches and slogans against the unity and integrity of national.	Challaned
14.	173/2012 U/S, 148, 149, 336, 427, 341 RPC P/S Shopian		Pertains to stone pelting on security forces by the people after been instigated by some activists.	Challaned
15.	16/2010 U/S 153-A, RPC of PS Rajpora		On 29.01.2010 during his visit at Qalampora where some terrorists were neutralized by SFs, Shabir Shah gave provocative speech instigating the people for anti-national activities.	Challaned
16.	86/2014 U/S 505 (2) (1) RPC, 132 R-Act of PS Pulwama		During patrolling on 14-04-2019 election boycott posters surfaced at village Hakripora etc which were found pasted by some activists.	Challaned
17.	288/2015 U/S148,149,336, 427, 332,307-RPC 13 ULA of PS Pulwama		On 11.09.2015 ShabirAhamd Shah organized Cow Slaughter followed by Stone pelting case at Rajpora Chowk as such instigating / provoking the people against the decision some state govt. on cow slaughter.	Challaned
18.	114/2014 U/S 13 UA(P) Act of P/S Budgam.		The brief facts of the case are that 13/06/2014 PS Budgam received reliable information to the effect that at Nasrullahpora chowk, Shabir Ahmad Shah boarding in a Vehicle (Tata Sumo) is delivering his speech against the security of nation and provoking general	Challaned

			masses against the sovereignty of India, due to which the smooth running of traffic has been interrupted etc.	
19.	118/2008 U/S 148, 149, 452, 436 RPC P/S Baramulla		While returning from MuzaffarabadChalo, a huge mob set ablaze a motor Garage of one belonging to Irshad Ahmad Khan S/o Lt. Abdul Rashid Khan R/o Delina	Challaned
20.	97/2010 u/s 153A-RPC P/S Anantnag		Shabir Shah and others, after attending Friday prayers while speaking on the occasion provoked the people for anti-national activities. They also raised anti-India slogans and Pakistan Zindabad slogans.	Challaned
21.	05/2011 u/s 13(1) B UA(P) Act P.S Anantnag		Case pertains to publishing a calendar by APHC in which contents unfavorable to country's brotherhood has been published as such causing damage / dis-affection among the people of Indian union.	Challaned
22.	68/2008 US 147,332,336,427 RPC PS Nigeen, Srinagar		On 04.07.2008 an unruly mob headed by Shabir Ahmad Shah, Mohammad Ashraf @ Sehraie, Hakeem Ab Rasheed after Friday prayers pelted stones on deployed forces at Tel Bal Adda with the intention to damage Govt/ Public property and raised anti national slogans against Sovereignty of India. they also damaged some vehicles and pedestrians by pelting stones.	Under Investigation
23.	10/2014 u/s 13 UA(P) Act Kothi Bagh, Srinagar.		On 6/02/2014 Hurriyat Conference J&K organized a Seminar at Hotel Lala Rukh in which Shabir Ahmad Shah DFP Chairman had participated. During their speech they provoked the people to raise anti national slogans etc. They provoked the people against the integrity and sovereignty of the country. India has not only killed MaqboolBhat and AfzalGuroo but their dead bodies also have not been handed over to their legal heirs.	Under Investigation
24.	108/2004 U/S 353,336,427 RPC P/S Batmaloo, Srinagar		Case stands registered against Yaseen Malik and others who have protested against the Assembly election 2004.	Under Investigation
25.	11/2011 U/S 147,332,296 RPC P/S Nigeen Srinagar		On 18/02/2011 some activists on the eve of Eid Milad Nabi assembled at VIP park Hazratbal headed by Shabir shah and others and protested there which created panic among the people who had come there for Friday prayers. They also pelted stones on police party deputed there by which some police / civilians got injured.	Under Investigation

26.	157/09 U/S 120B, 120, 121, 153-A RPC 13-ULA ShahedGunj Srinagar		On the eve of death anniversary of Late Ali Mohd Jinnah, Shabir Ahmad Shah, Feroz Ahmad Khan, Asia Andrabi, MianQayoom and SAS Geelani delivered Anti- National speech in Hotel Jehangir. They castigated the Indian Govt. and challenged the Security and sovereignty of the country by delivering a speech that "Kashmir wants Azadi for Islam" and India is killing our people and it cannot be our friend.	Under Investigation
27.	142/2001 U/S 147,148,153-A,336, 353 RPC of PS Pulwama		On 18.05.2001 after Friday prayers at Jamia Masjid Pulwama, Shabir Ahmad Shah and his associates including Gh. Nabi Shaheen, Zahoor Ahmed Kuttay chanted anti-India slogans and tried to proceed towards main Bazar Pulwama and pelted stone upon Police.	Under Investigation
28.	10/2010 u/s 13,17,18 UA(P) Act, 120B, 121A RPC P/S CIK		P/S CI Kashmir Humhama during the investigation of case FIR No.15/91 it came to light through reliable sources that secessionist leaders namely Shabir Ahmad Shah, Nayeem Khan and others have amassed huge wealth and raised huge assets through various hawala channels. The unlawful association / individuals and the so-called political leaders favouring secessionism of J&K from the union of India through armed violence / secessionist ideology are utilizing this property to facilitate illegal funding to various terrorist outfits for carrying forward terrorist violence secessionism in the state of J&K against union of India.	Under Investigation
29.	205/2008 u/s 147,148,149,188,332,336,121-B,427, 153-A RPC P/S Sopore		An unruly mob led by Shabir Ahmad Shah pelted stones upon police/SF during Muzaffar Abad Chaloocall on 11-08-2008. They provoked the general masses to raise anti-India slogans during the rally. The youth were carrying lathis, stones and other destructive things and attacked the vehicles of Police officers in which vehicle of ASP and DYSP Sopore and also injured some police officials.	Under Investigation
30.	110/2014 U/S 147, 341-RPC 13 UA(P) Act of P/S Budgam.		On 11/06/2014 Shabir Ahmad Shah & others violated D.M Srinagar order and assembled/ gathered at Hyderpora chowk to pay tributes to the so-called martyrs. They also raised slogans against integrity of India and restrained police nafri from performing their legal duties. They also halted the smooth flow of traffic	Under Investigation
31.	310/2011 u/s 153A-RPC P/S		After Namaz-e-Zuhr, SAS	Under

	Anantnag		Geelani and Shabir Shah while speaking on the occasion at Rishi Bazar provoked the youth to join the ongoing battle for self-determination. While speaking on the occasion they told people that India is trying to create rift between different communities in Kashmir so that they can stop seeking freedom from India. They also raised anti-India and Pro-Pak slogans on the occasion.	Investigation
32.	111/2004 U/S 13 UA(P) Act, 132-B, RPC P/S Baramulla		This case stands registered against Shabir Ahmad Shah for displaying election boycott posters in district Baramulla wherein he has told the people that we are at a stage where either we have to accept the slavery of India or prefer to fight against India for the freedom of J&K.	Under Investigation
33.	116/2008 U/S 148,149,121,307,452,436,51 1,332,435,427 RPC P/S Baramulla		The case stands registered against some persons including Shabir Ahmad Shah who pelted stones thereby created law and order problem at Mohalla Jadeed Baramulla and set ablaze SRTC Bus and damaged CRPF Bunker.	Under Investigation
34.	157/2011 U/S 13(2) UA(P) Act P/S Bijbehara		The instant case stands registered on reliable information received by the Police Station Bijbehara with regard to gathering of a mob and instigating them by separatists namely ShabirAhamd Shah, Abdul Hamid Dar, Shawkat Ahmed Rather and others against Union of India besides shouting anti-national slogans at village Kanelwan, Bijbehara. They provoked the people for separation of J&K from the Union of India and thus created enmity towards the country.	Under Investigation
35.	198/2004 U/S 132 B R.O Peoples Act P/S Anantnag		Case pertains to provocation of people by Shabir Shah, Aziz Sheikh, etc for election boycott at LalchowkAnantnag.	Under Investigation
36.	197/12 U/S, 147, 148, 149, 152, 336, RPC 13(1) UA(P) Act P/S Anantnag		On the death anniversary of Dr Qazi Nisar a mob from different areas of town Anantnag raised anti national slogans and started heavy stone pelting on SFs / Police resulting in several injuries and damage of property.	Under Investigation
37.	77/2014 U/S 153,153A, 120-A, 121 RPC of P/S Kangan		The case stands registered against Shabir Ahmad Shah regarding provocative speech delivered by him in Jamia Masjid Kangan after Friday prayers thereby causing threat to integrity / sovereignty of state. He provoked the people for election boycott and created hatred among the masses.	Under Investigation

III. STATUTORY PROVISIONS

19. Section 2 (o) and (p) of the UAPA, read as follows:-

*"2. **Definitions**. – (1) In this Act, unless the context otherwise requires,-*

(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

(i) Which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or, the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) Which disclaims, questions, disrupts, or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) Which causes or is intended to cause disaffection against India;

(p) "unlawful association" means any association,-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii), shall apply to the State of Jammu and Kashmir".

20. Section 2(o) of the Act defines 'unlawful activity'. It means "any action taken" by an association or an individual of the kind mentioned in clauses (i), (ii) and (iii) of the said sub-section. Any action taken has reference to and must be of the kind stipulated in and covered by clauses (i), (ii) or (iii). Action can be either written or spoken, by sign or by visible representation or even otherwise. Clause (i) refers to "action taken" with the intent or which supports any claim for secession or cession of any part of India or incites any individual or group of individuals to bring about secession or cession. Clause (ii) refers to "action taken" which has the effect of disclaiming, questioning, disrupting or intending to disrupt the sovereignty and territorial integrity of India. Clause (iii) refers to "action taken" which causes or is intended to cause disaffection against India.

21. Unlawful association has been defined in Section 2(p) of the Act and consists of two parts; (i) and (ii). Part (i) refers to unlawful activity defined in Section 2(o) and encompasses associations which have the object that encourage or even aide persons to undertake the said activity. The last part of Part (i) widens the definition of the term "unlawful association" to include an association of which members undertake unlawful activity. In a way, therefore, the association is vicariously liable and can be regarded as an unlawful association if members of an association undertake unlawful activity.

22. Section 2(p)(ii) does not refer to unlawful activities defined in Section 2(o) of the Act, but refers to Sections 153A and 153B of the Indian Penal Code, 1860 (IPC for short). An association which encourages or aides or the object of which is to encourage or aide persons to undertake activities punishable under Section 153A or 153B is an unlawful association. "Object" for which an association is formed can in many cases be in writing but encouragement and aide to persons to undertake activities under Sections 153A and 153B may be oral or in writing. The last part of Section 2(p)(ii) widens and expands the scope of the term "unlawful association", when it stipulates that an association of which members undertake activities which are punishable under Section 153A or 153B of the IPC is an unlawful association. An association, therefore, can become an unlawful association if its members undertake any activity covered by Section 153A or 153B of the IPC.

IV. NATURE AND SCOPE OF PROCEEDINGS BEFORE THE PRESENT TRIBUNAL

23. The nature of the proceedings before this Tribunal and the scope of inquiry in the present proceedings have been laid down by the Supreme Court in ***Jamaat-e-Islami Hind vs. Union of India*** (1995) 1 SCC 428 in the specific context of the provisions of the UAPA, 1967. The proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Supreme Court in ***Jamaat-e-Islami Hind*** (supra). This *lis* has to be decided by objectively examining which version is more acceptable and credible. In this regard, reference may be made to following observations in ***Jamaat-e-Islami Hind*** (supra):

"30. The allegations made by the Central Government against the Association - Jamaat-E-Islami Hind - were totally denied. It was, therefore, necessary that the Tribunal should have adjudicated the controversy in the manner indicated. Shri Soli J. Sorabjee, learned counsel for the Association, Jamaat-E-Islami Hind, contended that apart from the allegations made being not proved, in law such acts even if proved, do not constitute "unlawful activity" within the meaning of that expression defined in the Act. In the present case, the alternative submission of Shri Sorabiee does not arise for consideration on the view we are taking on his first submission.

The only material produced by the Central Government to support the notification issued by it under Section 3(1) of the Act, apart from a resume based on certain intelligence reports, are the statements of Shri T.N. Srivastava, Joint Secretary, Ministry of Home Affairs and Shri N.C. Padhi, Joint Director, IB. Neither Shri Srivastava nor Shri Padhi has deposed to any fact on the basis of personal knowledge. Their entire version is based on official record. The resume is based on intelligence reports submitted by persons whose names have not been disclosed on the ground of confidentiality. In other words, no person has deposed from personal knowledge whose veracity could be tested by cross-examination. Assuming that it was not in public interest to disclose the identity of those persons or to produce them for cross-examination by the other side, some method should have been adopted by the Tribunal to test the credibility of their version. The Tribunal did not require production of those persons before it, even in camera, to question them and test the credibility of their version. On the other hand, the persons to whom the alleged unlawful acts of the Association are attributed filed their affidavits denying the allegations and also deposed as witnesses to rebut these allegations. In such a situation, the Tribunal had no means by which it could decide objectively, which of the two conflicting versions to accept as credible. There was thus no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, contemplated by the statute. The Tribunal has merely proceeded to accept the version of the Central Government without taking care to know even itself the source from which it came or to assess credibility of the version sufficient to inspire confidence justifying its acceptance in preference to the sworn denial of the witnesses examined by the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statute and the nature of adjudication required to be made by it. The order of the Tribunal cannot, therefore, be sustained."

24. The present Tribunal, constituted under the UAPA, has been vested with certain powers and the procedure to be adopted by it under Section 5 read with Section 9 of the said Act, which are reproduced as under:

*"**5. Tribunal.** (1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government: Provided that no person shall be so appointed unless he is a Judge of a High Court.*

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any court or office ;

(e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (5 of 1898)."

*"**9. Procedure to be followed in the disposal of applications under this Act.–**Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final."*

25. Further, under Section 4(1) of Act, the Central Government refers the notification (issued under Section 3(1) of the Act) to the Tribunal for "adjudicating" whether or not there is "sufficient cause" for declaring the association unlawful. Section 4(2) requires issuance of notice on the association affected to show cause why the association should not be declared as unlawful. Section 4(3) mandates an inquiry in the manner specified in Section 9 after calling for such information as may be necessary from Central Government or from office bearers or members of the association. The Tribunal under Section 4(3) is required to adjudicate and make an order, as it may deem fit, either confirming the declaration made in the notification or cancelling the same. After interpreting the said provisions of the UAPA in ***Jamaat-e-Islami Hind*** (supra), it was held by the Supreme Court as under:-

> *"11…. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context."*

26. On the question of confidential information that is sought to be withheld, the Supreme Court emphasized that the Tribunal can look into the same for the purpose of assessing credibility of the information and the Tribunal should satisfy itself whether it can safely rely upon it. This was necessary as in certain situations, source of information or disclosure of full particulars may be against public interest. Such a modified procedure while ensuring confidentiality of information and its source in public interest, enables the Tribunal to test the credibility of confidential information for objectively deciding the reference. It was emphasized that the unlawful activities of an association may quite often be clandestine in nature and, therefore, material or information for various reasons may require confidentiality. Disclosure, it was held, can jeopardize criminal cases pending investigation and trial.

27. On the question of nature and type of evidence, which can be relied upon by the Tribunal, the Supreme Court referred to Rule 3 of UAP Rules, 1968. Rule 3(1) stipulates that the Tribunal subject to sub-rule (2) shall follow, "as far as practicable", the rules of evidence laid down in Indian Evidence Act. In this regard, reference can be made to the following observations in ***Jamaat-e-Islami Hind*** (supra):-

> *"22. …The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardizing the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.*
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> *23. In John J. Morrissey and G. Donald Booher v. Lou B. Brewer [408 US 471: 33 L Ed 2d 484 (1972)] the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)*
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> > *"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.".*
>
> *xxx xxx xxx*
>
> *26. ……The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such*

matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires."

28. Before assessing the credibility of material and analyzing evidence adduced, it is apposite to take note of Sections 25, 26 and 27 of the Indian Evidence Act, as well as Sections 161 and 162 of the Code of Criminal Procedure, 1973. The same are reproduced hereunder:

Indian Evidence Act, 1872

25. Confession to police-officer not to be proved*.—No confession made to a police-officer , shall be proved as against a person accused of any offence.*

26. Confession by accused while in custody of police not to be proved against him.*—No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate4 , shall be proved as against such person.*

*Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George 6 *** or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 18827 (10 of 1882).*

27. How much of information received from accused may be proved.—*Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*

Code of Criminal Procedure, 1973

"161. Examination of witnesses by police*.—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, 3 section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.

162. Statements to police not to be signed:Use of statements in evidence.—*(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his crossexamination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

29. As per Section 25 and 26 of the Evidence Act, confessions made to a police officer or while in custody shall not be proved against a person accused of any offense during the trial of that offense. As per Section 162 of the Cr.P.C., no statement made by any person to a police officer in the course of an investigation under Chapter XII (which includes Section 161 Cr.P.C.) can be used, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. However, these sections do not prohibit the use of such statements in proceedings where the accused is not being tried for the specific offense in question, or in civil proceedings or ancillary proceedings.

30. The Supreme Court in ***Mahesh Kumar v. State of Rajasthan***, 1990 Supp SCC 541 (2), noted the possible use of statement made to the police by the accused persons for being use of as evidence against the accused in an "enquiry" although inadmissible as evidence against them at the trial for the offence with which they were charged. Relevant extract of the said judgment is as under:

> *"3. In Queen Empress v. TribhovanManekchand a Division Bench of the Bombay High Court laid down that the statement made to the police by the accused persons as to the ownership of property which was the subject matter of the proceedings against them although inadmissible as evidence against them at the trial for the offence with which they were charged, were admissible as evidence with regard to the ownership of the property in an enquiry held by the Criminal Procedure Code. The same view was reiterated in Pohlu v. Emperor where it was pointed out that though there is a bar in Section 25 of the Evidence Act, or in Section 162 CrPC for being made use of as evidence against the accused, this statement could be made use of in an enquiry under Section 517 CrPC when determining the question of return of property. These two decisions have been followed by the Rajasthan High Court in Dhanraj Baldeokishan v. Stateand the Mysore High Court in Veerabhadrappa v. Govinda. In the present case, the amount in question was seized from the accused in pursuance of statements made by them under Section 27 of the Evidence Act. The High Court as well as the courts below have found the property to be the subject of theft and the acquittal of the accused is upon benefit."*

31. The Supreme Court in ***Khatri (IV) v. State of Bihar***, (1981) 2 SCC 493 with reference to the bar under Section 162 of the Cr.P.C viz. against use in evidence of statement made before a police officer in the course of investigation, held, the same would not apply where court calls for such statement in a civil proceeding provided the statement is otherwise relevant under the Evidence Act, 1872. Relevant extract of the said judgment is as under:

> *"3. Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition section and clause (g) of that section defines "inquiry" to mean "every inquiry, other than a trial conducted under this Code by a Magistrate or court". Clause (a) of Section 2 gives the definition of "investigation" and it says that investigation includes "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf". Section 4 provides:*
>
> > *"4. (1) All offences under the Penal Code, 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
> >
> > *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."*
>
> *It is apparent from this section that the provisions of the Criminal Procedure Code are applicable where an offence under the Penal Code, 1860 or under any other law is being investigated, inquired into, tried or otherwise dealt with. Then we come straight to Section 162 which occurs in Chapter XII dealing with the powers of the police to investigate into offences. That section, so far as material, reads as under:*
>
> > *"162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*
> >
> > *Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.*
> >
> > *(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."*

It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but, by the express terms of the section, this bar is applicable only where such statement is sought to be used "at any inquiry or trial in respect of any offence under investigation at the time when such statement was made". If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This section has been enacted for the benefit of the accused, as pointed out by this Court in Tahsildar Singh v. State of U.P. it is intended "to protect the accused against the user of statements of witnesses made before the police during investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence". This Court, in Tahsildar Singh case approved the following observations of Braund, J. in Emperor v. Aftab Mohd. Khan:

> *"As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths"*

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in BaliramTikaram Marathe v. Emperorthat "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses". Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have takenthis view and amongst them may be mentioned the decision of Jaganmohan Reddy, J. in Malakala Surya Rao v.G. Janakamma. The present proceeding before us is a writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their Fundamental Rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how Section 162 can be invoked by the State in the present case. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed in Order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule 10 lays down that at the hearing of the rule nisi, if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before, a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act."

32. With reference to police diaries and Section 172 of the Cr.P.C., the Supreme Court in ***Khatri*** (supra) held as under:

"…These reports are clearly relevant under Section 35 of the Indian Evidence Act which reads as follows:

> *"35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact."*

These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by Section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in Kanwar Lal Gupta v. Amar Nath Chawla. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under Section 35 and this Court held that they were, on the ground that they were (SCC

p. 667) "made by public servants in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent". This Court in fact followed an earlier decision of the Court in P.C.P. Reddiar v. S. Perumal. So also in Jagdat v. Sheopal, Wazirhasan, J. held that the result of an inquiry by a Kanungo under Section 202 of the Code of CriminalProcedure, 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in Chandulal v. Pushkar Rajwhere the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, insofar as they supply information of official proceedings and historical facts. The Calcutta High Court also held in Lionell Edwards Limited v. State of W.B. that official correspondence from the Forest Officer to his superior, the Conservator of Forests, carried on by the Forest Officer in the discharge of his official duty would be admissible in evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst in police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer pursuant to the direction issued by the State Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates are relevant under Section 35 and they are liable to be produced by the State Government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government, it may be possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present writ petition. We may point out that though in our order dated February 16, 1981 we have referred to these reports as having been made by Shri L.V. Singh and his associates between January 10 and January 20, 1981 it seems that there has been some error on our part in mentioning the outer date as January 20, 1981 for we find that some of these reports were submitted by Shri L.V. Singh even after January 20, 1981 and the last of them was submitted on January 27, 1981. All these reports including the report submitted on December 9, 1980 must therefore be filed by the State and taken as forming part of the record to beconsidered by the court in deciding the question at issue between the parties."

33. The Supreme Court in ***Vinay D. Nagar v. State of Rajasthan***, (2008) 5 SCC 597, again held that bar of Section 162 of the Cr.P.C. is with regard to the admissibility of the statement recorded of a person by the police officer under Section 161 Cr.P.C. and by virtue of Section 162 Cr.P.C. would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The relevant extract of the said decision is as under:

"14. On account of Section 162 CrPC, a statement made by any person to a police officer in the course of investigation under Chapter XII, if reduced into writing, will not be signed by the person making it, nor such statement recorded or any part thereof be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. Such statement may be used by an accused and with the permission of the court by the prosecution to contradict the witness whose statement was recorded by the police in the manner provided under Section 145 of the Evidence Act and can also be used for re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. Bar of Section 162 CrPC of proving the statement recorded by the police officer of any person during investigation however shall not apply to any statement falling within the provision of Clause (1) of Section 32 of the Evidence Act, nor shall it affect Section 27 of the Evidence Act. Bar of Section 162 CrPC is in regard to the admissibility of the statement recorded of a person by the police officer under Section 161 CrPC and by virtue of Section 162 CrPC would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

15. In Khatri (IV) v. State of Bihar this Court has held that Section 162 CrPC bars the use of any statement made before the police officer in the course of an investigation under Chapter XII, whether recorded in the police diary or otherwise. However, by the express terms of Section 162, this bar is applicable only where such statement is sought to be used "at any inquiry or trial" in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding, inquiry or trial in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 will not be attracted."

34. After examining the aforementioned provisions, as well as the legal principles established in a catena of judgments, and considering that the inquiry before this Tribunal does not entail adjudicating the guilt of the accused but rather assessing the adequacy of material before the Central Government to designate JKDFP as an unlawful association, the statement of witnesses record by the police officers, the statements made by the accused before police officers, along with the lists of items seized and seizure memos, are deemed admissible before this Tribunal. They can be utilized to ascertain the sufficiency of material before the Central Government for making the declaration under Section 3(1) of UAPA.

V. PROCEDURE FOLLOWED BY THIS TRIBUNAL

35. Consequently, upon due consideration of the aforesaid Notification No. 4348 dated 5th October, 2023 and Notification No.4639 (E) dated 23rd October, 2023, this Tribunal held a preliminary hearing on 09.11.2023, whereupon on a consideration of the material placed on record by the Central Government, notice under Section 4(2) of the Act was issued to the JKDFP to show cause, within a period of 30 days, as to why they ought not to be declared as unlawful association. The notices issued were given due publicity as required under Section 3(4) of the Act.

36. The Gazettee Notification dated 05.10.2023 was also published in two National Newspapers (all India Edition), out of which one was in English while the other was in Hindi. The said notification was also published in two local newspapers in vernacular language having wide circulation in the States where the activities of the JKDFP were or are believed to be ordinarily carried out. The method of affixation and proclamation by beating of drums, as well as loudspeakers, was also adopted. Proclamation was made at the last known address of the JKDFP along with all their leaders, members, factions, wings and front organization as well as that of their principal office bearers.

37. The notice issued by the Tribunal along with the Gazette Notification dated 05.10.2023 was displayed on the notice board of the Deputy Commissioner/District Magistrate/Tehsildar in all the district headquarters of the States where the activities of the association were or are believed to be ordinarily carried on. Help of All-India Radio and electronic media of the State edition was also taken. Announcements were made through radio/electronic media at prime time.

38. Apart from above, notices were also issued to the Union Territory of Jammu and Kashmir through its Chief Secretary.

39. The Registrar attached to the Tribunal was directed to ensure the compliance of the service of notice issued to the JKDFP in the manner indicated. The Registrar was directed to file an independent report in that behalf before the next date of hearing, i.e. 15.12.2023.

40. Accordingly, both the Union of India as well as the Union Territory of Jammu and Kashmir filed affidavits of service, affirming that service had been effected as directed by the Tribunal. The Registrar, vide his report dated 14.12.2023, also confirmed service of notice issued by the Tribunal.

41. This Tribunal having satisfied itself that service had been effected on JKDFP as per the directions contained in the order dated 09.11.2023; coupled with the fact that no appearance was entered by and on behalf of JKDFP, was constrained to proceed further with the inquiry even without the participation of the concerned association.

42. However, in order to afford an opportunity to both the Central and the Union Territory of Jammu and Kashmir to lead evidence in support of their respective averments, allegations and/or grounds set out in the Notification dated 05.10.2023, as also to give another opportunity to JKDFP to rebut the material placed on record by the Central and the Union Territory of Jammu and Kashmir, by the same order, i.e., order dated 15.12.2023, further proceedings were fixed on 17.01.2023 and 18.01.2023 at Jammu with due consent of the counsels appearing for the UOI and the Union Territory of Jammu and Kashmir. Accordingly, a public notice was issued for the hearing at Jammu.

43. Learned Additional Solicitor General informed the Tribunal on 03.01.2024 that substantive affidavits, six (06) in numbers, by way of evidence were filed on behalf of the witnesses from Union Territory of Jammu & Kashmir on 02.01.2024 and that additional eight (08) further affidavits were proposed to be filed of various witnesses who would be deposing on behalf of the Central Government in support of the notification.

44. Accordingly, on 17.01.2024 statement of the following witnesses of the Union of India were recorded at **Jammu**:-

S. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr. Raies Ahmad Mir, Sub – Divisional Police Officer, Sopore, Baramulla, Kashmir	Ex. PW-1/A dated 17.01.2024	Part-IV B, Vol-I Page Nos. 9 to 43
2.	Mohammad Muzzafar Jan, Sub – Divisional Police Officer, Kangan, Ganderbal, Kashmir	Ex. PW-2/A dated 17.01.2024	Part-IV B, Vol-I Page Nos. 44 to 65
3.	Mr. Javid Ahmad, Deputy Superintendant of Police,	Ex. PW-7/A dated	Part-IV B, Vol-II

	Shopian, Kashmir	17.01.2024	Page Nos. 165 to 203
4.	Mohammad SaleemBhat, Deputy Superintendant of Police, Handwara, Kashmir	Ex. PW-8/A dated 17.01.2024	Part-IV B, Vol-II Page Nos. 204 to 233
5.	Syed Al-Tahir Gilani, Senior Superintendant of Police, Budgam, Kashmir	Ex. PW-10/A dated 17.01.2024	Part-IV B, Vol-II Page Nos. 282 to 337
6.	Mohammed Rafee Rather, Deputy Superintendant of Police, Kupwara, Kashmir	Ex. PW-11/A dated 17.01.2024	Part-IV B, Vol-II Page Nos. 338 to 363

45. On the same date i.e. 17.01.2024, Union of India was directed to ensure that any interested party who desires to appear physically before the Tribunal on 17.01.2024 and 18.01.2024 should be duly assisted for the said purpose. For the said purpose, Sub-Inspector Veer Kumar, PID No.876256 (EXK) from the Security Wing was deputed for 17.01.2024 and 18.01.2024 for facilitating the appearance of any interested party who desires to appear before this Tribunal.

46. On 18.01.2024, statements of the following witnesses were recorded at **Jammu**:-

S. No.	**Name of Witness**	**Details of Affidavit along with date**	**Affidavits kept in volumes and at pages**
1.	Mr. Abid Rashid, Deputy Superintendent of Police, Sumbal, Bandipura, Kashmir	Ex. PW-3/A dated 18.01.2024	Part-IV B, Vol-I Page Nos. 66 to 91
2.	Mr. Saqib Ghani, Deputy Superintendent of Police, Headquarters, Budgam, Kashmir	Ex. PW-4/A dated 18.01.2024	Part-IV B, Vol-I Page Nos. 92 to 117
3.	Mr. Rameez Rashid Bhat, Deputy Superintendent of Police, Bijbehara, Anantnag, Kashmir	Ex. PW-5/A dated 18.01.2024	Part-IV B, Vol-I Page Nos. 118 to 141
4.	Mr. Shah Umar, Deputy Superintendent of Police, Bijbehara, Anantnag, Kashmir	Ex. PW-6/A dated 18.01.2024	Part-IV B, Vol-I Page Nos. 142 to 164
5..	Mr. Arif Hussain, Deputy Superintendent of Police, Kulgam, Kashmir	Ex. PW-9/A dated 18.01.2024	Part-IV B, Vol-II Page Nos. 234 to 281

47. Vide the same order i.e. 18.01.2024, learned counsel for the Union of India further submitted that at least five (05) more affidavits of evidence shall be filed on behalf of various officers of Union Territory of Jammu and Kashmir, which shall be filed on or before 29.01.2024. The matter was thereafter listed for 24.01.2024 in New Delhi.

48. The Tribunal could not assemble on 24.01.2024 and the next date was fixed for 31.01.2024 for drawing up the schedule for further recording of evidence.

49. On 31.01.2024 it was submitted that eight (08) more affidavits of evidence would be filed by various officers from the Union Territory of Jammu and Kashmir. Matter was next fixed for 09.02.2024 for recording of evidence of four (04) out of eight (08) witnesses. The order dated 09.02.2024 records that six (06) more affidavits had been filed on behalf of UT of Jammu and Kashmir on 06.02.2024. Matter was, thus, posted for 16.02.2024 for the purpose of recording evidence.

50. Statements of following five (04) witnesses was recorded on 16.02.2024 at **Delhi High Court, New Delhi**:-

S. No.	**Name of witness**	**Details of Affidavit along with date**	**Affidavits kept in volumes and at pages**
1.	Ms. P.D. Nitya, IPS, SSP, Pulwama, Kashmir	Ex. PW-12/A dated 16.02.2024	Part-IV B, Vol-III Page Nos. 365 to 458
2.	Dr. Sumit Sharma, Sub-Divisional Police Officer, Kothibagh, Srinagar, Kashmir	Ex. PW-13/A dated 16.02.2024	Part-IV B, Vol-III Page Nos. 461 to 491
3.	Mr. ShahjhanChoudhary, Sub-Divisional Police Officer, West Srinagar, Kashmir	Ex. PW-14/A dated 16.02.2024	Part-IV B, Vol-III Page Nos. 492 to 512
4.	Mr. Ashaq Hussain Dar, Sub-Divisional Police Officer, Zakoora, Kashmir	Ex. PW-15/A dated 16.02.2024	Part-IV B, Vol-III Page Nos. 513 to 556

51. Also, vide order dated 16.02.2024, Union of India was granted further time to file three (03) more affidavits, as requested, within two days and the matter was posted for 19.02.2024 for directions.

52. On 19.02.2024, the matter was further posted for directions on 21.02.2024 as the learned counsel for the Union of India submitted that affidavit of evidence of witnesses from NIA, Delhi Police and ED would also be filed on or before 26.02.2024.

53. With the consent of learned counsel, the matter was fixed for recording of evidence of five (05) witnesses of the Jammu and Kashmir Police on 02.03.2024 at 11.00 AM at Srinagar. Directions for issuing a public notice in this regard were also issued.

54. Accordingly, on 02.03.2024 statement of the following five (05) witnesses of the Union of India was recorded at **Srinagar**, and the matter was directed to be listed for recording of evidence of witnesses from NIA and ED on 07.03.2023 at New Delhi:-

S. No.	Name of witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr. Sajad Ahmad Sheikh, Addl. Superintendent of Police, Anantnag, Kashmir	Ex. PW-16/A dated 02.03.2024	Part-IV B, Vol-IV Page Nos. 557 to 756
2.	Mr. Syed Yasir Qadri, Addl. Superintendent of Police, Baramulla, Kashmir	Ex. PW-17/A dated 02.03.2024	Part-IV B, Vol-IV Page Nos. 757 to 812
3.	Mr. Murtaza Ahmad, Dy. Superintendent of Police, CIK, Kashmir	Ex. PW-18/A dated 02.03.2024	Part-IV B, Vol-V Page Nos. 813 to 844
4.	Mohd. Ashrif, SDPO, Sadder, Kashmir	Ex. PW-19/A dated 02.03.2024	Part-IV B, Vol-V Page Nos. 845 to 913
5.	Mr. Fayaz Hussain Geelani, SDPO, Shaheed Gunj, Kashmir	Ex. PW-20/A dated 02.03.2024	Part-IV B, Vol-V Page Nos. 914 to 975

55. On 07.03.2024, statement of the following witness from the National Investigation Agency (NIA) was recorded at **Delhi High Court, New Delhi**, and the matter was posted for 11.03.2024 for recording of statement of the remaining witness/s of the Union of India at New Delhi:

S. No.	Name of witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr.B.B. Pathak, Deputy Superintendent of Police, National Investigation Agency (NIA), New Delhi	Ex. PW-22/A dated 07.03.2024	Part-IV B, Vol-VII & VIII Page Nos.1265 to 1873

56. On 11.03.2024, statement of the following witness from Enforcement Directorate (ED) was recorded at **Delhi High Court, New Delhi**, and the matter was posted for 12.03.2024 for recording of statement of the concerned witness from Ministry of Home Affairs at New Delhi:

S. No.	Name of witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr. Mayank Arora, Assistant Director, Enforcement Directorate (ED), Delhi Zonal Office-II, New Delhi	Ex. PW-21/A dated 11.03.2024	Part-IV B, Vol-VI Page Nos.976 to 1264

57. On 12.03.2024, at the request of the learned Additional Solicitor General appearing on behalf of the Union of India, the examination of the witness of the Union of India was deferred till 13.03.2024.

58. On 13.03.2024, elaborate submissions were heard on the application filed on behalf of the Union of India under Section 123 of the Evidence Act read with Rule 3(2) of the UAP Rules, 1968 claiming privilege / confidentiality in respect of certain documents submitted in a sealed envelope; and as referred to in the paragraph 11 of the affidavit of the concerned witness from the Ministry of Home Affairs. It was held that the prayer made in the application shall be dealt with in the final report / judgment of this Tribunal and subject thereto, the sealed envelope containing the concerned documents in respect of which the privilege had been claimed, was opened, and the documents were taken on record.

59. Vide the same order dated 13.03.2024, statement of the following witness from the Ministry of Home Affairs was recorded separately at **Delhi High Court, New Delhi**:-

S. No.	Name of witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr. Dharmender Kumar, Deputy Secretary, Government of India, Ministry of Home Affairs, New Delhi	Ex. PW-23/A dated 13.03.2024	Part-IV B, Vol-IX Page Nos.1874 to 1919

60. After recording of the statement, as aforesaid, on 13.03.2024, learned Additional Solicitor General appearing for the Union of India commenced final arguments, which, however, remained inconclusive. Hence, the matter was listed for final arguments on 14.03.2024 at New Delhi.

61. On 14.03.2024, learned Additional Solicitor General for the Union of India was heard at some length, and the matter was listed for clarification / further arguments, if any, on 22.03.2024. On 22.03.2024, the order in the matter was reserved.

VI. NON-APPEARANCE/NO REPLY ON BEHALF OF THE ASSOCIATION IN THESE PROCEEDINGS

62. Despite service of notice upon Shabir Ahmad Shah/JKDFP, the concerned association has not entered appearance to contest the notification under Section 3(1) of the UAPA. Despite opportunities afforded, no reply has been filed on behalf of the concerned association, as contemplated under Section 4(2) of the Act. This Tribunal has also not received any intimation from any interested party seeking to depose before this Tribunal.

63. Ample opportunity has been afforded by this Tribunal to the concerned association/ its office bearers to appear before this Tribunal and give their written version/ adduce evidence, in opposition to the factual version of the Central government as regards the activities of the concerned association. Apart from effecting service on the association and its office bearers in the manner aforesaid, this Tribunal even held public hearing/s in Jammu and Srinagar to enable members of the concerned association and/ or member of the public, to participate in the proceedings of the Tribunal. However, the said opportunity was not availed of by the association or any of its office bearers.

64. This tribunal is conscious that despite non-appearance of the concerned organization, this tribunal is required to make an "objective determination" as mandated in the judgment of the Supreme Court in ***Jamaat-e-Islami Hind*** (supra). The credibility of the material/evidence placed on record by the Central Government is required to be tested; the Supreme Court has cautioned that the procedure to be adopted must achieve this purpose and must not be reduced to mere acceptance of the "ipse dixit of the Central Government".

65. Thus, notwithstanding the non-appearance on behalf of the concerned association, this Tribunal is required to independently assess the credibility of the material / evidence placed on record by the Central Government, and on that basis, come to a conclusion as to whether or not there is sufficient cause for declaring the association unlawful.

VII. EVIDENCE ADDUCED BEFORE THE TRIBUNAL

PW-1

66. **Mr. Raies Ahmad (PW-1)** tendered his affidavit as **Ex.PW-1/A** and deposed that he is posted as a Sub-Divisional Police Officer at Sopore, Baramulla, Kashmir and he is the supervisory officer in respect of FIR No. 205/2008, which was registered on 11.08.2008 at P.S. Sopore against Shabir Ahmad Shah, Mushtaq-ul-Islam, Shakeel Ahmad Bakshi, Bilal Ahmad Trali u/s 147/148/149/188/336/332/ 427/121-A and 153A of Ranbir Penal Code since the said persons gathered on that day at 10.30 hours at Old Hospital Crossing, Sopore and started raising slogans 'Jeevey Jeevey Pakistan, Pakistan Zindabad, Hum Kya Chahtay Azadi, Geelani Sahabka kya farman Kashmir Banega Pakistan' and then pelted stones at the security forces and the Government vehicles. He further deposed that the said separatist leaders instigated the mob to damage government and public property and spread fear and anarchy in the area; and this was done by inciting the co-accused and the local Kashmiri Muslim population to bring about such cession and secession with intention to disrupt the sovereignty and territorial integrity of India. He has relied upon the documents which have been exhibited as Ex.PW-1/1A to PW-1/10A in the present proceedings. These include a copy of FIR and the statement of witnesses recorded under Section 161 Cr.P.C. He deposed that the investigation is still ongoing and has not yet been completed. However, the same is at the final stage and the charge-sheet is likely to be filed shortly.

67. He further deposed that from the investigation in the case and during the course of discharge of his official duties, it is evident that the JKDFP has an agenda of disturbing the peace and to bring about a secession of the State of Jammu and Kashmir from the Union of India and to spread disharmony, hence, the ban imposed on the said organization by the Central Government is in the national interest as well as in the interest of the general public.

68. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-2

69. **Mohammad Muzzafar Jan (PW-2)** tendered his affidavit as **Ex.PW2/A** and deposed that he is posted as a Sub-Divisional Police Officer at Kangan, Ganderbal, Kashmir and he is the supervisory officer in respect of FIR No.77/2014, which was registered under sections 153/153A/120A/121 of the Ranbir Penal Code against Shabir Ahmad Shah since on 22.08.2014 after completion of the Friday prayers separatist leader Shabir Ahmad Shah appeared at Jama Masjid, Kangan and delivered a hate speech to the local public and asked them not to participate in the General Assembly Elections and to alienate Kashmir from the Union of India. He has relied upon the documents which have been exhibited as Ex.PW-1/1A to PW-1/10A in the present proceedings. These include a copy of the FIR and the statement of witnesses recorded under Section 161 Cr.P.C and Section 164 Cr.P.C. He deposed that one of the witnesses, Head Constable Mohmmad Yakoob, in his statement recorded under Section 164 Cr.P.C. (Ex. PW-2/2A) corroborated the above incident.

70. He further deposed that Shabir Ahmad Shah, chairman of JKDFP was not only inciting violence in the territory of Jammu and Kashmir, but also encouraging the separatist movement and had been advocating the claims for secession of Jammu & Kashmir from the Union of India. He further deposed that the activities of JKDFP as summarized in his affidavit is based on the investigation of the said FIR as also on the basis of knowledge derived by him during the course of discharge of his official duties. He also submitted that the cogent and irrefutable evidence which has emerged manifests that JKDFP, its chairman Shabir Ahmad Shah and its other leaders and members have been actively and continuously supporting the separatist and banned organizations and are openly advocating the inciting people to bring about a secession of Jammu and Kashmir from the Union of India; and that the activities of JKDFP is aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of the Union of India; and that the ban on JKDFP is valid and is warranted in the national interest.

71. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-3

72. **Abid Rashid (PW-3)** tendered his affidavit as **Ex.PW3/A** and deposed that he is posted as a Sub-Divisional Police Officer at Sumbal, Bandipora, Kashmir. He deposed that the FIR No.52/2015 was registered in respect of an incident which took place on 27.03.2015 wherein Shabir Ahmad Shah came at Naidkhai area and after culmination of Friday prayers, he delivered a speech to the public gathering wherein he also raised anti-India and pro-Pakistan slogans and has also instigated the general public against the Government of Jammu and Kashmir and sovereignty and integrity of India. Pursuant thereto, investigation into the case was conducted and statements of witnesses were recorded under Sections 161 and 164-A of Cr.P.C. He further deposed on the basis of the incriminating material collected, a charge-sheet was filed in the case on 27.11.2021 before the Special TADA Court, Baramulla against Shabir Ahmad Shah, and the trial of the case is still pending. He has relied upon certified true copies of the FIR No.52/2015 and the charge-sheet pursuant thereto, English version of the copy of the statement of the witnesses which have been exhibited as Ex.PW-3/1A to PW-3/8A in the present proceedings.

73. He further deposed that the statement made by him in his affidavit are on the basis of the records maintained in his district; upon a perusal of the record of the investigation of the aforesaid FIR No.52/2015, as also based on the knowledge derived by him during the course of discharge of his official duties. He further deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

74. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-4

75. **Saqib Ghani (PW-4)** tendered his affidavit as **Ex.PW4/A** and deposed that he is posted as a Sub-Divisional Police Officer at Headquarters, Budgam, Kashmir and he is the Supervisory Officer in respect of FIR No.114/2014, which was registered in respect of an incident which took place on 13.06.2014 at about 14.45 hours after the Friday prayers wherein Shabir Ahmad Shah appeared at Narullahpora Chowk, Budgam and after stopping the traffic on the main road, started addressing the general public against the sovereignty and unity of India and had also instigated them to secede the then State of Jammu and Kashmir from the Union of India as also raised anti-India slogans. He further deposed that during investigation it was revealed that the incident was witnessed by many local people including two police officials, and, hence, the statements of the eye witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident. He deposed that after collecting sufficient evidence in the case against accused Shabir Ahmad Shah, the charge-sheet was filed before the NIA Court, Budgam, where the trial of the case is still pending. He has relied upon the certified true copies of the FIR No.114/2014 and the charge-sheet (Ex.PW-4/2A) pursuant thereto, English version of the copy of the statement of the witnesses recorded under Section 161 Cr.P.C which have been exhibited as Ex.PW-4/1A to PW-4/6A in the present proceedings.

76. He also submitted that the material available on record shows that JKDFP, its chairman Shabir Ahmad Shah and its other leaders and members have been actively and continuously supporting the separatist and banned organizations and are openly advocating the inciting people to bring about a secession of Jammu and Kashmir from the Union of India; and that the activities of JKDFP is aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of the Union of India; and that the ban on JKDFP is valid and is warranted in the national interest. He lastly deposed that the statement made in his affidavit are on the basis of the records maintained in his district as also upon a perusal of the record of the investigation of the aforesaid FIR No.114/2014 as also based on the knowledge derived by him during the course of discharge of his official duties. He further deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

77. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-5

78. **Rameez Rashid Bhat (PW-5)** tendered his affidavit as **Ex.PW5/A** and deposed that he is posted as a Deputy Superintendent of Police, Police Station Hajin, Bandipora, and is the Supervisory Officer in respect of FIR No.17/2014, which was registered in respect of an incident which took place on 07.03.2014 wherein Shabir Ahmad Shah along with other separatist leaders of JKHC, namely Mushtaq-ul-Islam, Nayeem Ahmad Khan, Bashir Ahmad Dar, Mohammad Yousuf Naqash and Mohammad Yaseen gathered the general public at main chowk Hajin and threatened them with dire consequences for participating in the general elections and raised anti-national slogans 'Pakistan Zindabad'. He further deposed that the above said persons with intent to threaten the sovereignty of India, raised anti-national slogans and the said procession was organized without any permission from the administration. He deposed that during investigation, statements of witnesses under Section 161 Cr.P.C. were recorded, who corroborated the above incident, and thereafter, the charge-sheet was filed before the concerned court, where the trial of the case is still pending. He has relied upon the certified true copy of the FIR No.17/2014 and the charge-sheet pursuant thereto, English version of the copy of the statement of the witnesses recorded under Section 161 Cr.P.C which have been exhibited as Ex.PW-5/1A to PW-5/6A in the present proceedings.

79. He further deposed that the statement made by him in his affidavit is on the basis of the records maintained in his district as also upon a perusal of the record of the investigation of the aforesaid FIR No.17/2014 as also based on the knowledge derived by him during the course of discharge of his official duties. He deposed that the material available on record shows that JKDFP, its chairman Shabir Ahmad Shah and its other leaders and members have been actively and continuously supporting the separatist and banned organizations and are openly inciting people to bring about a secession of Jammu and Kashmir from the Union of India; and that the activities of JKDFP is aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of the Union of India. He lastly deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

80. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-6

81. **Shah Umar (PW-6)** tendered his affidavit as **Ex.PW6/A** and deposed that that he is posted as a Sub-Divisional Police Officer, Bijbehara, Anantnag, Kashmir and now posted as a Deputy Superintendent of Police in Zonal Police, Kashmir. He deposed that he is the Supervisory Officer in respect of FIR No.157/2011, which was registered in respect of an incident which took place on 10.07.2011 wherein Shabir Ahmad Shah along with other separatist leaders gathered a mob at Kanelwan, Bijbehara and instigated the general public against the Union of India and also raised anti-national slogans with intent of harming integrity and sovereignty of the country. He further deposed that the said separatist leaders also spread fear and anarchy in the area. He has relied upon certified true copies of the FIR No.157/2011 and the charge-sheet pursuant thereto, English version of the copy of the statement of the witnesses recorded under Section 161 Cr.P.C which have been exhibited as Ex.PW-6/1A to PW-6/3A in the present proceedings.

82. He further deposed that the statement made by him in his affidavit are on the basis of the records maintained in his district as also upon a perusal of the record of the investigation of the aforesaid FIR No.157/2011 as also based on the knowledge derived by him during the course of discharge of his official duties. He further deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

83. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-7

84. **Javid Ahmad (PW-7)** tendered his affidavit as **Ex.PW-7/A** and deposed that he is posted as a Deputy Superintendent of Police at Shopian, Kashmir. He deposed that on the basis of the activities of JKDFP and its leaders/chairman, FIR No.173/2012 under sections 148/149/336/323/341/427 of the Ranbir Penal Code was registered at P.S. Shopian against Shabir Ahmad Shah, Shameem Ahmad Khan, Zaffar Akbar Bhat, Javaid Ahmad Mir, Mohammad Abdullah Tari, Mukhtar Ahmad Sofi, Yasmeen Raja, Shabir Ahmad Dar, Feeroz Ahmad Dar, Mohammed Shafi Rather, Mohammed Ibrahim Bhat and Zameer Ahmad Sheikh since on 08.06.2012, after the culmination of the Friday prayers at Jama Masjid, Shopian, these persons appeared there and instigated the general public and started pelting stones at the police party due to which some police personnel got injured and police vehicles and public property were damaged. He deposed that said unlawful assembly was not a democratic assembly demanding any democratic constitutional right but was unlawful assembly which was intended to bring cession and secession of territory of Jammu and Kashmir from the Union of India and thus, intended to disrupt the sovereignty and territorial integrity of India. He further deposed that on the basis of the investigation and sufficient material gathered against the accused persons, a charge-sheet was filed in the case on 31.12.2012 in the court of Chief Judicial Magistrate, Shopian.

85. He deposed that another FIR No.122/2014 under Section 13 of the UAPA Act was registered at P.S. Shopian against the accused persons, namely, Shabir Ahmad Shah and other separatist leaders including Mohd. Yousuf Makaie, Mohd. Amin Parrey, Shakeel ah. Itoo, Mohd. Yousuf Nakash, Mohd. Yousuf Mir, Sb. Ahad Para (General Secretary of Muslim League), Mohd. Yousuf Ganie @ Falaie, Shakeel Ahmad Thokar, who all appeared with a mob and delivered provocative speeches to the local youth in order to disturb the peace and raised anti-India and pro-Pakistan slogans like "Hindustan Murdabad", "Pakistan Zindabad", "Hum Kya Chahtay Azadi" etc. and forced the shopkeepers to close their shops and called for strike. He deposed that investigation of the case was conducted and statements of witnesses were recorded wherein an eye witness of the incident Farooq Ahmad Wani, a local resident, stated in his statement recorded under Section 161 Cr.P.C. that Mohd. Rafiq Parray, Shakeel Ahmad Itoo, Mohd. YousufGanie @ Falaie, Rayees Ahmad Khan, Sheel Ahmad Malik, Shakir Ahmad Malik, Imran Ahmad Khan, Muzafar Ahmad Mangnoo, Suheeel Ahmad Ganie and Shakeel Ahmad Thoker led a violent mob who pelted stones at CRPF and Police nafri and raised slogans like "nara takbeer allah hu akbar" and directed the shopkeepers to close their shops. He further deposed that statements of other witnesses were also recorded under Sections 161 and 164 Cr.P.C. (Ex.PW-7/7A, 7/8A and 7/9A), who disclosed the role of accused persons. He deposed that after the situation became conducive in the Valley, based on the credible material collected against the accused persons, a charge-sheet (Ex.PW-7/4A) in the case was prepared and filed on 01.08.2023 before the JMIC, Shopian.

86. He has relied upon the certified true English copies of the above FIRs along with the charge-sheet filed therein as also the statement of witnesses under Sections 161 and 164 of the Cr.P.C. which have been exhibited as Ex.PW-7/1A to Ex.PW-7/9A in the present proceedings.

87. He further deposed that the statements made by him in his affidavit are based not only on the basis of the investigation in the aforesaid FIRs but also on the basis of knowledge derived by him during the course of discharge of his official duties while dealing with similar such cases wherein also the offensive nature of the activities of the JKDFP had come to light. He further deposed that the ban on JKDFP is justified and is necessary for the purpose of preserving law and order in Jammu and Kashmir and also to prevent the said organization from spreading feelings of disaffection and disloyalty towards the Union of India.

88. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-8

89. **Mohammed Saleem Bhat (PW-8)** tendered his affidavit **as Ex.PW-8/A** and deposed that he is posted as a Deputy Superintendent of Police at Handwara, District Kupwara, Kashmir and is the supervisory officer in respect of FIR No.44/2015, registered under Sections 147/124-A of Ranbir Penal Code and under Section 13 of the Unlawful Activities Prevention Act at P.S. Kralgund, Kupwara, which was registered in respect of an incident which took place on 22.05.2015 wherein Shabir Ahmad Shah along with other separatist leaders, namely, Ajaj Ahmad Shah @ Sahba, PeerzadaNaseer Hussain, Rayees Ahmad Bhat, Parvaiz Ahmad Mir, Waheed Ahmad Bhat, Sajad Ahmad Shah, Feroaz Ahmad Mir, Danish Tasaduk Paray and Irfan Ahmad Lone appeared at village Ashpora, Kralgund along with a mob with Pakistani flags and delivered anti-India speech to the general public, thereby provoking and instigating the youth of the area against the Indian Government. He deposed that based on the material collected during investigation, a charge-sheet was prepared and after conditions became conducive in the territory of Jammu and Kashmir, the charge-sheet in the case was filed on 01.04.2023 in the court of Chief Judicial Magistrate, Handwara. He deposed that statements of witnesses were recorded under Sections 161 and 164-A Cr.P.C. (Ex.PW-8/8A). He deposed that the said separatist leaders belonged to a separatist organization Hurriyat and stated in their speech that they will continuously

struggle for freedom of Kashmir from India. He has relied upon the certified true copies of the FIR No.44/2015 and the English translation of the charge-sheet pursuant thereto; copies of the statement of the witnesses recorded under Section 161 Cr.P.C. and 164-A of the Cr.P.C.; which have been Ex.PW-8/1A to PW-8/8A in the present proceedings.

90. He further deposed that the statement made by him in his affidavit is based upon a perusal of the record of the investigation of the aforesaid FIR as also based on the knowledge derived by him from the record of the investigation from other such similar cases against the concerned organization and its chief Shabir Ahmad Shah. He further submitted that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

91. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-9

92. **Arif Hussain (PW-9)** tendered his affidavit as **Ex.PW-9/A** and deposed that he is presently working as a Deputy Superintendent of Police, Kulgam, Kashmir and is the supervisory officer of the FIR Nos.33/2004 and 192/2014. He deposed that FIR No. 33/2004 under Sections 120-B/153-B/124-A/147/149 of Ranbir Penal Code was registered at P.S. Kulgam in respect of an incident which took place on 25.02.2004 wherein Shabir Ahmad Shah, chairman of JKDFP along with other separatist leaders, namely, Syed Ali Shah Geelani, Mohd. SaleemZargar, Zahoor Ahmad Shaikh, Parvaiz Ahmad Dar and Mohd. Maqbool Sofi visited Zangalpora for participating in cremation of Abdul Majeed Mir @ Arif Khan, Divisional Commander of the terrorist outfit Hizbul Mujahiddin who was killed in an encounter on 23.02.2004 at village Kanjikola, Yaripora. He deposed that, thereupon these separatist leaders instigated the common people against the sovereignty and integrity of the nation by delivering hate speeches for boycotting the general elections and has also raised anti-national slogans and the said hate speeches were designed to create hatred among the local people for the Union of India and the Government of Jammu and Kashmir. He deposed that the investigation in this case was impeded on account of adverse situations prevalent in Jammu and Kashmir. However, at present, the investigation is at an advanced stage and the charge-sheet is expected to be filed shortly. He deposed that statements of the witnesses were recorded under Section 161 Cr.P.C., who corroborated the aforesaid incident.

93. He deposed that FIR No. 192/2014 under Sections 153/341/147 of Ranbir Penal Code and under Section 13 of the UAPA was registered on 29.08.2014 in respect of an incident which took place on 29.08.2014 wherein Shabir Ahmad Shah along with other separatist leaders came on the road outside Ziyarat Shareef Syed Simnan Sahib, Kulgam and after stopping the vehicle movement raised anti-national slogans like “Hum Kya Chahtay Azadi” etc. and had also instigated the general public against the State and Central Government and provoked them for not participating in the General Elections. He deposed that during investigation, statements of witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident. He deposed that after the situation become conducive in the Valley, based on the credible material collected against the accused persons establishing their role in the incident, a charge-sheet (Ex.PW-9/5A) has been filed on 29.09.2023 in the court of CJM, Kulgam

94. He has relied upon the certified true copies of the FIR Nos. 33/2004 and 192/2014 and the charge-sheet filed pursuant to FIR No. 192/2014, copy of the statement of witnesses recorded under Section 161 Cr.P.C., which have been exhibited as Ex. PW-9/1 to PW-9/15 and its true English translated copies thereof, have also been exhibited as Ex.PW-9/1A to PW-9/15A in the present proceedings.

95. He further deposed that statement made in his affidavit is based upon a perusal of the record of the investigation of the aforesaid FIR No(s). 33/2004 and 192/2014 as also based on the knowledge derived by him during the course of discharge of his official duties and that his statement is on the basis of the records maintained in his district. He lastly deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

96. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-10

97. **Syed Al-Tahir Gilani (PW-10)** tendered his affidavit as **Ex.PW-10/A** and deposed that he is posted as a Senior Superintendent of Police at Budgam, Kashmir and is the supervisory officer of the FIR No.33/2004, FIR No.110/2014, FIR No.132/2011 and also FIR No.39/2015**.** He deposed that vide order no. DMS/GBD/144-CRPC/358-365/14 dated 24.4.2014, Syed Ali Shah Geelani, chairman of Hurriyat (G), who was a prominent separatist organization actively working in the Kashmir Valley with prime object of secession of Kashmir from Union of India, was kept under house arrest. However, on 11.06.2014, in defiance of the said order, Shabir Ahmad Shah, Nayeem Ahmad Khan, Bashir Ahmad Bhat @ Pir Saifullah and Mohd. Akbar Khanday @ Ayaz Akbar, all separatist leaders of Hurriyat (G), gathered at the house of Syed Ali Shah Geelani at Hyderpora, Srinagar and held a conference in commemoration of

the martyrs of 2010 and after holding said illegal conference, all these separatist leaders came out at Hyderpora Chowk in the form of unlawful assembly, prevented the police from discharging their legitimate duties and stopped the traffic movement and raised slogans against the sovereignty and unity of India.

98. He deposed that leading to the said incident, FIR Nos.110/2014 under Sections 147/341/353 of Ranbir Penal Code and under Section 13 of the UAPA was registered on 11.06.2014 at P.S. Budgam against these separatist leaders. He deposed that due to adverse situations developed in the Kashmir Valley, investigation could not be concluded and is now at its final stage. He deposed that during investigation, statements of witnesses were recorded under Section 161 Cr.P.C.

99. He deposed that FIR No.132/2011 under Sections 147/336 of Ranbir Penal Code was registered on 09.09.2011 at P.S. Charari Sharief, Budgam against Shabir Ahmad Shah, chairman of JKDFP and his associates namely, Mudasir Ahmad Wani, Muzaffar Ahmad Sheikh and others, who arrived outside Charari Sharief (a prominent shrine) and at the instigation of Shabir Ahmad Shah, pelted stones on the police nafri posted there. He deposed that Shabir Ahmad Shah was arrested in the case and during investigation statements of witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident. He deposed that after the situation became conducive in the Valley, based on the material collected, a charge-sheet was filed on 26.12.2019 in the court of JMIC, Chadora. During the investigation one of the co-accused, Muzaffar Ahmad Sheikh was found to be juvenile and hence a charge-sheet was filed against him on 26.12.2019 before the Juvenile Justice Board, Budgam.

100. He deposed that FIR No.39/2015 under Sections 147/148/336/341 of the Ranbir Penal Code and under Section 13 of the UAPA at P.S. Magam was registered on 21.4.2015, when Shabir Ahmad Shah along with Zafar Akbar Bhat and Nayeem Ahmad Khan visited Narbal for paying condolence to the family of deceased Suhail Ahmad Sofi and instigated the general public by raising anti-India and pro-Pakistan slogans, which resulted into public going violent and starting pelting stones against the police and CRPF personnel. He deposed that at the instigation of above said leaders, the gathering converted into an unlawful assembly and had also blocked the Narbal-Gulmarg road for traffic. He deposed that some of the accused persons were arrested in the case and during investigation, statement of the witnesses under Section 161 Cr.P.C. was recorded, who corroborated the above incident. He deposed that based on the material collected, a charge-sheet (Ex.PW-10/6A) was filed on 03.11.2022 in the court of Judicial Magistrate 1st Class, Magam, Budgam.

101. He has relied upon the certified true copies of FIR No.110/2014, FIR No.132/2011 and FIR No.39/2015 along with their English version of translated copies as also the statements recorded in the aforesaid cases which have been exhibited as Ex. PW-10/1A to PW-10/16A in the present proceedings.

102. He deposed that from the investigation of aforesaid FIRs, it is evident that JKDFP and its chairman Shabir Shah have been promoting the cession or secession of the State of Jammu and Kashmir from the territory of India and have been inciting individuals and people of the State of Jammu and Kashmir to bring about such cession or secession. He deposed that the acts of omission and commission which have emerged during the investigation of the aforesaid FIRs clearly demonstrates that the said acts are intended to disrupt the sovereignty and territorial integrity of India. He further deposed that the investigation in the aforesaid cases reveals the activities of JKDFP, which justify its banning. He deposed that his statement before the Tribunal and the affidavit tendered in evidence is on the basis of the records maintained in his district and are based on the investigations made in the aforesaid FIRs as also on the basis of the knowledge of the activities of JKDFP as derived by him during the course of discharge of his official functions in different capacities.

103. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-11

104. **Mohammed Rafee Rather (PW-11)** tendered his affidavit as **Ex.PW-11/A** and deposed that he is posted as a Deputy Superintendent of Police at Kupwara, Kashmir and is the supervisory officer of the FIR No.86/2004, which was registered under Sections 132/132B of the Representation of Peoples Act was registered at P.S. Kupwara against accused Shabir Ahmad Shah, who on 16.04.2004 after culmination of the Friday prayer at Markazi Jamia Masjid Shareef, Kupwara, along with his party associates, delivered a speech to general public instigating them to boycott the elections and raised anti-national slogans. He deposed that due to the disruptive activities carried out by JKDFP in active connivance with other separatist/foreign/local terrorist organizations, investigation in the case could not proceed. He deposed that during investigation, statement of eye witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident and that on the basis of statement of eye witnesses, one poster in Urdu language was seized from the spot which was issued by JKDFP, Paraypora office for instigating the people for boycotting the elections and the seizure memo is exhibited as (Ex.PW-11/6A). He deposed that when the conditions in the territory of Jammu and Kashmir became conducive, the investigations of the case got completed and charge-sheet (Ex.PW-11/2A) was filed on 05.03.2020 in the court of Munsif Judge, Kupwara. He deposed that from the investigation of FIR No.86/2004, it is manifest that the JKDFP and its chairman Shabir Ahmad Shah have been incessantly and actively advocating secession of the territory of Jammu and Kashmir from India. He has relied upon the certified true copies of

the FIR No.86/2004 along with its English translation as also copies of the charge sheet filed pursuant thereto, statement of witnesses recorded under Section 161 Cr.P.C., copy of the seizure memos, which have been exhibited as Ex. PW-11/1A to PW-11/6A in the present proceedings.

105. He further deposed that the acts of commission and omission which are the subject matter of FIR No.86/2004, clearly demonstrates that the activities of the concerned organization and its chairman are primarily designed to disrupt the territorial integrity of India and the said organization and its chairman has been inciting the individuals and groups to promote anti-national and separatist sentiments, which are designed to jeopardize the integrity and the security of the country. He lastly deposed that he has drawn these conclusions primarily based on the investigations made in this case and also on the basis of knowledge of the activities of this organization as derived during the course of discharge of his official functions.

106. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-12

107. **Ms. P.D. Nitya (PW-12)** tendered her affidavit as **Ex.PW-12/A** and deposed that she is posted as a Senior Superintendent of Police, Pulwama, Kashmir and is the Supervisory Officer of and has gone through the records of the case files of FIR Nos.142/2001, 16/2010, 86/2014 and 288/2015. She has deposed with regard to these FIRs as under:-

- FIR No.142/2001 under Sections 147/149/353/332/336 of Ranbir Penal Code was registered at P.S. Pulwama in respect of an incident which took place on 18.05.2001 wherein Shabir Ahmad Shah, chairman of JKDFP along with other separatist leaders proceeded towards Main Chowk, Pulwama and chanted anti-government slogans, pelted stones upon the police, attacked the police officials and physically assaulted the SHO, PS Pulwama and the said hate speeches were designed to bring about such cession and secession and intended to disrupt the sovereignty and territorial integrity of India. She deposed that investigation of the case was commenced, however, due to adverse situations developed in the Valley, the investigation could not reach its logical conclusion. She deposed that statement of the witnesses under Section 161 Cr.P.C. was recorded, who corroborated the above incident.

- FIR No.16/2010 under Section 153-A of the Ranbir Penal Code was registered at P.S. Pulwama in respect of an incident which took place on 29.01.2010 wherein Shabir Ahmad Shah appeared at village Kalampora, where a noted militant namely Mushtaq Ahmad Mir was eliminated by the forces on 23.01.2010 and delivered hate speech and provoked the general public against the Union Territory of Jammu & Kashmir and security forces. He deposed that statement of the witnesses under Section 161 Cr.P.C. was recorded, who corroborated the above incident. She deposed that upon the situation turned conducive in the Valley, based on the credible material collected against accused persons establishing his role in the incident, a charge-sheet (Ex.PW-12/11A) has been filed under Section 147/153-A of RPC.

- FIR No. 86/2014 under Sections 505(2) of the Ranbir Penal Code and under Section 123(2)(1) of the Representative of Peoples Act was registered on 21.4.2014 at P.S. Pulwama in respect of an incident which took place on 21.04.2014 when some unknown persons were affixing posters on electric pole near Jama Masjid, Hakripora calling for election boycott by All Party Hurriyat Conference and Shabir Shah party/JKDFP. On the basis of the statements of the witnesses under Section 161 Cr.P.C., a suspect namely Owais Maqbool was taken into custody, who during investigation disclosed that he obtained the election posters for pasting them in the vicinity. He further disclosed that he pasted two posters at electric pole and concealed few at his cowshed. He deposed that upon this disclosure and his pointing, 05 posters published by Syed Ali Shah Geelani, chairman of AIHC were recovered and seized and a seizure memo (Ex.PW-12/24A) was prepared. He deposed that upon the situation becoming conducive in the Valley, based on the credible material collected against accused persons establishing their role in the incident, a charge-sheet (Ex. PW-12/17A) has been filed against Shabir Ahmad Shah and the case has been abated against accused Syed Ali Shah Geelani, who passed away before filing of the challan.

- FIR No.288/2015 under Sections 148/149/336/427/332/307 of the Ranbir Penal Code and under Section 13 of the UAPA was registered at P.S. Pulwama on 11.09.2015, in respect of an incident which took place on 11.09.2015 at Rajpora Chowk, Pulwama, wherein Shabir Shah addressed a large gathering and instigated them against the sovereignty of the Union of India and love/affection for Pakistan due to which the gathering turned violent with a clear intent to kill by pelting stones on the police. Statement of the witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident. He deposed that upon situation becoming conducive in the Valley and on the basis of the credible material collected against accused persons establishing their role in the incident, a charge-sheet (Ex.PW-12/28-A) has been filed against accused Shabir Ahmad Shah.

108. She has relied upon the certified copy/English translations of the FIR Nos. 142/2001, 16/2010, 86/2014 and 288/2015, charge-sheets filed in FIR Nos.16/2010, 86/2014 and 288/2015, copy of seizure memos, and copy of the

statement of the witnesses recorded under Section 161 Cr.P.C., which have been exhibited as Ex. PW-12/1A to PW-12/31A in the present proceedings.

109. She further deposed that the statement made by her in her affidavit is based on a perusal of the record of the investigation in FIR Nos. 142/2001, 16/2010, 86/2014 and 288/2015 as also based on the knowledge derived by her during the course of discharge of her official duties and that her statement is on the basis of the records maintained in her district. She deposed that facts from the above FIRs show that JKDFP and the accused Shabir Ahmad Shah were indulging in anti-national activities and were working for secession of the State of Jammu and Kashmir from the Union of India and cession of the Constitution of India and the ban imposed upon the said organization by the Central Government is appropriate and needs to be upheld in national interest as well as in the interest of general public.

110. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-13

111. **Dr. Sumit Sharma (PW-13)** tendered his affidavit as **Ex.PW-13/A** and deposed that he is posted as a Sub-Divisional Police Officer at Kotibagh, Srinagar and is the supervisory officer in respect of FIR Nos.59/2010 and 10/2014. He has deposed with regard to these FIRs as under:-

- FIR No.59/2010 was registered on 01.07.2010 at Police Station Maisuma, Srinagar, under Sections 153A/121 of the Ranbir Penal Code, since during an appearance in Court, Shabir Ahmad Shah, chairman of JKDFP interacted with media persons present there and through them he appealed to all the separatist leaders to unite and come up with a common minimum program. He further appealed to the general masses of Kashmir to follow the said program and condemned the continuance of AFSPA in Kashmir and due to this instigation situation in the Valley and especially in the area falling within the jurisdiction of PS Maisuma became very tense. He deposed that the statements of the witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident and a charge-sheet (Ex.PW13/2A) was filed
- FIR No.10/2014 under Section 13 of the UAPA and under Section 109 of the RPC was registered on 06.2.2014 at P.S. Kothibagh for an incident which took place on 06.02.2014 wherein Shabir Ahmad Shah and other leaders gave speech that Govt. of India is occupying Jammu and Kashmir forcefully and holding hanging of Mohd. MaqboolBhat and Mohd. Afzal Guroo as unconstitutional and raised slongs 'Hindustan Hai Hai' Pakistan Zindabad and 'Hum Kya Chahtay Azadi'. He deposed that due to adverse conditions prevailing in the Valley, the investigation could not progress, but now the case is progressing satisfactorily and is at its final stage and the charge-sheet in the case is also expected to be filed shortly.

112. He has relied upon the certified true copies/English translations of the FIR Nos. 59/2010 and 10/2014, charge-sheet filed in FIR No.59/2010 and copy of the statement of the witnesses recorded under Section 161 Cr.P.C. and 164-A Cr.P.C., which have been exhibited as Ex. PW-13/1A to PW-13/7A in the present proceedings.

113. He further deposed that the statement made by him in his affidavit is based on a perusal of the record of the investigation in FIR Nos. 59/2010 and 10/2014 as also based on the knowledge derived by him during the course of his experience in the Valley in the last 4 years and on the basis of the records maintained in his district. Lastly, he deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

114. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-14

115. **Mr. Shahjhan Choudhary (PW-14)** tendered his affidavit as **Ex.PW-14/A** and deposed that he is posted as a Sub-Divisional Police Officer, West Srinagar, and is the Supervisory Officer in respect of FIR No.61/2017, u/s 132(b) of the Representation of Peoples Act, which came to be registered on 28.03.2017 at Police Station Parimpora, Srinagar for an incident which took place on 28.03.2017 wherein the in-charge of Police Station Qammarwari during patrolling duty saw two persons namely Mohd. Yousuf Mir and Faizan Ahmad Malik pasting posters of Democratic Freedom Party (a constituent of Hurriyat) for boycotting the Polls. The accused persons informed that they were doing the same at the instance of Shabir Ahmad Shah. He deposed that investigation of the case was conducted, the statement of the witnesses were recorded under Section 161 Cr.P.C., arrest memo and seizure memo was prepared, and the charge-sheet (Ex.PW-14/2A) was prepared and filed in the court in the year 2018. He has relied upon the certified true copies/English translations of the FIR Nos. 61/2017, charge-sheet filed in FIR No.61/2017 and copies of the statement of the witnesses recorded under Section 161 Cr.P.C., which have been exhibited as Ex. PW-14/1A to PW-14/4A in the present proceedings.

116. He further deposed that the statement made by him in his affidavit is based on a perusal of the record of the investigation in FIR Nos. 61/2017 as also based on the knowledge derived by him during the course of discharge of

his official duties, since 2017, since when, he had been posted in Srinagar and on the basis of the records maintained in his district. Lastly, he deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

117. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-15

118. **Mr. Ashaq Hussain (PW-15)** tendered his affidavit **as Ex.PW-15/A** and deposed that he is posted as a Sub-Divisional Police Officer, Zakoora, Srinagar, Kashmir and is the supervisory officer in respect of FIR Nos.68/2008 and 11/2011. He has deposed with regard to these FIRs as under:-

- FIR No.68/2008 under Sections 147/332/336/427 of the Ranbir Penal Code was registered at Police Station Nigeen, Srinagar for an incident which took place on 04.7.2008 on the basis of information received that after Friday prayers, an unruly mob led by separatist leaders Shabir Ahmad Shah, Mohd. Ashraf Sehrai and Ab. Rasheed Hakeem started pelting stones at public property and when the police tried to stop them, they started pelting stones upon the police and other security forces as well. He deposed that investigation of the case was conducted and statement of witnesses was recorded under Section 161 Cr.P.C., who corroborated the above incident, and the charge-sheet/Challan dated 17.12.2023 (Ex.PW-15/2A) was prepared and filed in the jurisdictional court on 17.12.2023.
- FIR No.11/2011 under Sections 147/332/296 of the RPC was registered at Police Station Nigeen for an incident which took place on 18.02.2011 wherein Shabir Ahmad Shah and other leaders with a group of 50-100 people arrived at the main gate of the Dargah and started raising slogans and pelted stones upon the police and other security persons due to which situation of chaos and stampede arose. The security personnel apprehended accused persons but Shabir Ahmad Shah escaped taking advantage of the gathering. He deposed that investigation of the case was conducted and the statement of the witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident, and finally charge-sheet (Ex.15/7A) was prepared and filed in the court on 18.12.2023.

119. He has relied upon the certified true copies/English translations of the FIR Nos. 68/2008 and 11/2011, charge-sheets filed in FIR Nos.68/2008 and 11/2011 and copy of the statement of the witnesses recorded under Section 161 Cr.P.C., which have been exhibited as Ex. PW-15/1A to PW-15/11A in the present proceedings.

120. He further deposed that the statement made by him in his affidavit is based on a perusal of the record of the investigation in FIR Nos. 68/2008 and 11/2011 as also based on the knowledge derived by him during the course of discharge of his official duties and on the basis of the records maintained in his district. Lastly, he deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

121. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-16

122. **Mr. Sajad Ahmad Sheikh (PW-16)** tendered his affidavit as **Ex.PW-16/A** and deposed that he is posted as an Additional Superintendent of Police, Headquarters, Anantnag, Kashmir and is the Supervisory Officer in respect of FIR Nos.197/2012, 05/2011, 198/2004, 310/2011, 344/2012, 98/1979 and 97/2010. He has deposed with regard to these FIRs as under:-

- FIR No.197/2012 under Sections 147/148/149/152/336 of the RPC and under Section 13 of the UAPA was registered on 19.06.2012 at Police Station Anantnag against accused Quazi Yasir, Sarjan Ahmad Wagay, Zahid Ahmad Wagay and other Hurriyat leaders who were carrying out a procession in connection with death anniversary of late Qazi Nisar Ahmad at Hanfi Eid Gah Janglat Mandi, Anantnag. They not only used slogans against India but also pelted stones on the police personnel. He deposed that due to adverse situations in the Valley created by the separatist leaders, supported by terrorist outfits, the investigation, though commenced, could not be completed, but now it is at the final stage and the charge-sheet is likely to be filed shortly.
- FIR No.05/2011 under Section 13 of the UAPA was registered on 03.01.2011 at Police Station Anantnag against accused Gh. Mohi-din Sheikh and Mohd. YousufMakroo, close associate of Syed Ali Shah Geelani for publishing calendars and diaries for the year 2011 in which it was printed that people of Kashmir should separate Kashmir from the Union of India. He deposed that during investigation statement of witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident, and finally a charge-sheet

(Ex.PW16/8A) was filed on 28.09.2022 before the Special Designated NIA Court, Anantnag against Syed Shah Geelani (deceased), Gh. Mohi-din Sheikh and Mohd. Yousuf Makroo.

- FIR No.198/2004 under Section 132 of the Representation of Peoples Act was registered on 04.05.2004 at Police Station Anantnag against accused Hurriyat activists namely, Mr. Shabir Ahmad Shah, Mohd. Yasin Malik and Javaid Ahmad Mir for doing a campaign against parliamentary general elections and instigating people to completely boycott the said elections. He deposed that statements of the witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident.

- FIR No.310/2011 under Section 153A of RPC was registered on 03.09.2011 at P.S. Anantnag, Kashmir against accused Syed Ali Shah Geelani, Quazi Yasir Zaffar Akbar Bhal etc. for delivering a speech to people who were offering Namaz at Jamia Masjid, Sherbagh and instigating the general public and youth by raising slogans against sovereignty and integrity of India. He deposed that statement of the witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident, and also some accused persons were arrested and arrest memo to that effect was also prepared.

- FIR No.344/2012 under Section 13 of the UAPA and under Section 505 of the RPC was registered on 04.11.2012 at P.S. Anantnag, Kashmir against separatist leader Saifullah Mir for publishing banner and pamphlets at Hurriyat Office which contain message for secession of the State of Jammu & Kashmir from the Union of India and cession of the constitution of India. He deposed that upon investigation into the case, a charge-sheet (Ex.PW16/31A) has been filed against the accused persons on 02.12.2022 in the NIA Court, Anantnag.

- FIR No.98/1979 under Sections 307/148/336/332/437, 120-B & 149 of the RPC was registered on 30.03.1979 at Police Station Anantnag against accused Shabir Ahmad Shah for protesting at Lal Chowk, Anantnag against hanging of Ex-Pakistan Prime Minister Zulfikar Ali Bhutto, who along with his associates, marched towards Khanabal and pelted stones on the office of Jamatislamia and damaged army vehicle No.JKB-3596. He deposed that during the investigation of the case, damaged vehicle was seized and seizure memo was prepared and statement of the witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident.

- FIR No.97/2010 under Section 153 of the RPC was registered on 19.03.2010 at Police Station Anantnag against accused Hurriyat leader Syed Ali Shah Geelani, Peer Said Ud Din, Bashir Ahmad Bhat and Ali Mohd. Bhat for provoking general public during Friday prayers by raising anti-India slogans against the integrity and sovereignty of India and the State. He deposed that statement of the witnesses were recorded under Section 161 Cr.P.C. and finally a charge-sheet (Ex.PW16/53A) was filed on 04.07.2023 before the Special Mobile Magistrate, Anantnag.

123. He has relied upon the certified true copies/English translations of the FIR Nos. 197/2012, 05/2011, 198/2004, 310/2011, 344/2012, 98/1979 and 97/2010, charge-sheets filed in FIR Nos. 05/2011, 344/2012 and 97/2010 and copy of the statement of the witnesses recorded under Section 161 Cr.P.C., copy of arrest memo and seizure memo, as mentioned in his affidavit, which have been exhibited as Ex. PW-16/1A to PW-16/58A in the present proceedings.

124. He further deposed that the statement made by him in his affidavit are based on a perusal of the record of the investigation in FIR Nos. 197/2012, 05/2011, 198/2004, 310/2011, 344/2012, 98/1979 and 97/2010 as also based on the knowledge derived by him during the course of discharge of his official duties. He further reiterated that Shabir Ahmad Shah is one of the prime separatist leader of Jammu and Kashmir since 1980's and has worked in close association with the premiere separatist organization namely Hurriyat Conference, its faction Tehreek-E-Hurriyat (which is also recently declared as an unlawful association) and other like-minded separatist organizations and leaders well known for doing unlawful activities for achieving their goal of secession of Jammu and Kashmir from the Union of India and cession of Indian Government from Jammu and Kashmir. He further deposed that JKDFP and Shabir Ahmad Shah since the formation of JKDFP has worked in close association with premiere separatist leader like Syed Ali Shah Gilani, Mirwaiz Umar Farooq etc. and their organizations and the JKDFP and Shabir Ahmad Shah worked with sole object of secession of the State of Jammu and Kashmir from the Union of and for the said purposes have used unlawful activities and that his statement is on the basis of the records maintained in his district. Lastly, he deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

125. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-17

126. **Mr. Syed Yasir Qadri (PW-17)** tendered his affidavit as **Ex.PW-17/A** and deposed that he is posted as an Additional Superintendent of Police, Baramulla, Kashmir and is the supervisory officer in respect of FIR Nos.111/2004, 116/2008 and 118/2008. He has deposed with regard to these FIRs as under:-

- FIR No.111/2004 under Section 132-B of RP Act was registered on 17.04.2004 at Police Station Baramulla against a worker of JKDFP for circulating posters at General Bus Stand, Baramulla wherein it was stated that the general public should boycott elections as their participation in the elections will substantiate India's claim of accession over Kashmir as justified and democratic. He further deposed that the said posters were published by Shabir Ahmad Shah. He deposed that the investigation of the case was halted for a long time owing to prevailing situations in the Jammu and Kashmir and that on 10.4.2009 Shabir Ahmad Shah was arrested and his arrest memo (Ex. PW17/14A) was prepared. He deposed that the statement of the witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident.

- FIR No.116/2008 under Sections 148/149/121/307/436/332/435/427/511 of the RPC was registered on 11.08.2008 at Police Station Baramulla against accused Shabir Ahmad Shah and other leaders of JKDFP for disrupting lawful activities in the valley of Kashmir by instigating huge mob equipped with lathis and stones. The said mob came at the main town of Baramulla with intent to kill the police personnel and pelted stones on them. The violent mob also damaged the public buses and tried to demolish the Raghunath Temple, building of police station and other Government buildings. He deposed that during investigation statement of various witnesses were recorded under Section 161 Cr.P.C. & 164 Cr.P.C. (Ex.17/7 & 8A), who corroborated the above incident. He deposed that investigation of this case was halted for a long period of time, but are now at its final stage and the charge-sheets are likely to be filed shortly. He deposed that during investigation, the pelted stones were seized (Seizure memo Ex. PW 17/9A) from the spot and the accused Shabir Ahmad Shah was arrested against an arrest memo (Ex. PW 17/10A).

- FIR No.118/2008 under Section 148/149/452/436 of the RPC was registered on 11.08.2008 at Police Station Baramulla against the mob, which, equipped with lathis and stones come out on the road at Delina NHW and entered into the workshop namely Irshad Motors at Delina NHW and set on blaze various vehicles at the said workshop. Shabir Ahmad Shah was also arrested in the case and an arrest memo was prepared for the same. He deposed that upon investigation, name of seven accused persons were surfaced who all were arrested and the charge-sheet (Ex.PW 17/12A) was filed before the jurisdictional court. He deposed that Shabir Ahmad Shah was also arrested against an arrest memo (Ex.PW 17/13A).

127. He has relied upon the certified true copies/English translations of the FIR Nos. 111/2004, 116/2008 and 118/2008, charge-sheet filed in FIR No. 118/2008 and copy of the statement of the witnesses recorded under Section 161 Cr.P.C., copy of arrest memo and seizure memo, as mentioned in his affidavit, which have been exhibited as Ex. PW-17/1A to PW-17/14A in the present proceedings.

128. He further deposed that the statement made by him in his affidavit are based on a perusal of the record of the investigation in FIR Nos. 111/2004, 116/2008 and 118/2008 as also based on the knowledge derived by him during the course of discharge of his official duties. He further reiterated that Shabir Ahmad Shah is one of the prime separatist leader of Jammu and Kashmir since 1980's and has worked in close association with the premiere separatist organization namely Hurriyat Conference, its faction Tehreek-E-Hurriyat (which is also recently declared as an unlawful association) and other like-minded separatist organizations and leaders well known for doing unlawful activities for achieving their goal of secession of Jammu and Kashmir from the Union of India and cession of Indian Government from Jammu and Kashmir. He further deposed that JKDFP and Shabir Ahmad Shah since the formation of JKDFP has worked in close association with premiere separatist leader like Syed Ali Shah Gilani, Mirwaiz Umar Farooq etc. and their organizations and the JKDFP and Shabir Ahmad Shah worked with sole object of secession of the State of Jammu and Kashmir from the Union of and for the said purposes have used unlawful activities and that his statement is on the basis of the records maintained in his district. Lastly, he deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

129. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-18

130. **Mr. Murtaza Ahmad (PW-18)** tendered his affidavit as **Ex.PW-18/A** and deposed that he is posted as a Deputy Superintendent of Police, CIK, Kashmir and is currently the Investigating Officer with regard to FIR Nos.15/1991 and 10/2010. He has deposed with regard to these FIRs as under:-

- FIR No.15/1991 under Section 153-A/120-B of the RPC and under Section 13 of the ULA(P) Act, was registered on 31.10.1991 at Police Station CIK-SIA, Srinagar, Kashmir, against Syed Ali Shah Geelani, Shabir Ahmad Shah, Prof. Abdul Gani Bhat and Abdul Ghulam Lone (Ex-MLA) for their conspiring with their handlers across the border enemy countries and for the purpose of seceding the State of J&K from the Union of India, they have been continuously opposing the policies of the Union of India. Further, these leaders instigated the youth of Jammu & Kashmir and were involved in ex-filtrating them to Pakistan for

acquiring illegal arms and arm training. These leaders continued their secessionist, anti-national and terrorist activities and termed themselves as freedom fighters and called their acts as 'Jihaad'. The local newspapers namely 'A'-Safa' and 'Srinagar Times' were publishing their interviews and appreciating their statements made against the Union of India. These leaders were instrumental behind the turmoil caused in the State of Jammu & Kashmir and especially in the Kashmir region from the year 1989 onwards.

- FIR No.10/2010 under Sections 121A/120B of the RPC and under Sections 13/17/18 of ULA(P) was registered at Police Station JI, CIK, Srinagar, Kashmir against the accused persons involved in FIR No.15/1991 as during investigation of FIR No.15/1991, in the year 2010, it came to light that the separatist leaders involved in the said FIR had amassed huge wealth and raised large number of assets through hawala and other illegal channels of money laundering and were using the said monies and assets for promoting violence/militancy, spreading secessionist ideology in the State of Jammu and Kashmir and were facilitating illegal funding to militant outfits for carrying armed violence for secession of the State of Jammu & Kashmir from the Union of India. He deposed that after collecting sufficient material against the accused persons proving the offences, a charge-sheet was filed in the case. He deposed that statements of various witnesses were also recorded under Section 161 Cr.P.C., who corroborated the above facts.

131. He has relied upon the certified true copies/English translations of the FIR Nos. 15/1991 and 10/2010, copy of the statement of the witnesses recorded under Section 161 Cr.P.C., as mentioned in his affidavit, which are exhibited as Ex. PW-18/1A to PW-18/7A in the present proceedings.

132. He further deposed that the statement made by him in his affidavit is based on a perusal of the record of the investigation in FIR Nos. 15/1991 and 10/2010 as also based on the knowledge derived by him during the course of discharge of his official duties. He further reiterated that Shabir Ahmad Shah is one of the prime separatist leader of Jammu and Kashmir since 1980's and has worked in close association with the premiere separatist organization namely Hurriyat Conference, its faction Tehreek-E-Hurriyat (which is also recently declared as an unlawful association) and other like-minded separatist organizations and leaders well known for doing unlawful activities for achieving their goal of secession of Jammu and Kashmir from the Union of India and cession of Indian Government from Jammu and Kashmir. He further deposed that JKDFP and Shabir Ahmad Shah since the formation of JKDFP has worked in close association with premiere separatist leader like Syed Ali Shah Gilani, Mirwaiz Umar Farooq etc. and their organizations and the JKDFP and Shabir Ahmad Shah worked with sole object of secession of the State of Jammu and Kashmir from the Union of and for the said purposes have used unlawful activities and that his statement is on the basis of the records maintained in his district. Lastly, he deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

133. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-19

134. **Mohd. Ashrif (PW-19)** tendered his affidavit as **Ex.PW-19/A** and disposed that he is presently working as Sub-Divisional Police Officer, Sadder, Srinagar, Kashmir and is the Supervisory Officer in respect of FIR Nos. 155/1995, 73/1999 and 26/2016. He has deposed as under with regard to these FIRs:-

- FIR No. 155/1995 under Section 188/148/353/121 of the RPC was registered at Police Station Sadder, Srinagar on 09.05.1995, since on that date a written docket was received at the said Police Station from SDPO Sadder informing therein that despite Section 144 CrPC imposed in the area, at around 06.30 hours, a large procession of people led by Shabir Ahmad Shah and Abdul Gani Lone pelted stones on the patrolling party led by SDPO Sadder and also raised anti-national slogans. He deposed that upon investigation, statement of witnesses were recorded under Section 161 Cr.P.C. and other material were collected in respect of the accused persons, on the basis of which a charge-sheet (Ex. PW19/2A) was prepared and filed in the jurisdictional court against Shabir Ahmad Shah. He deposed that accused Abdul Gani Lone died prior to the filing of the charge-sheet.

- FIR No. 73/1999 under Section 188/147/332/336/427 of the RPC was registered at Police Station Rajbagh on the basis of a written docket being received in Police Station Rajbagh informing therein that on 13.09.1999 at about 1400 hours, the SHO on patrolling duty in Rajbagh received an information that workers of JKDFP under the supervision of its chairman, Shabir Ahmad Shah, were proceeding towards Lal Mandi and were instigating the general public from loud speakers to avoid the Independence Day ceremonies. The violent and unlawfully assembled mob raised objectionable slogans and violated orders under Section 144 Cr.P.C., and made the situation tense and uncontrollable. He deposed that during investigation statement of various witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident, and thereafter, charge-sheet (Ex.19/4A) was filed against the accused persons.

- FIR No. 26/2016 under Sections 121/120-B/506 of the RPC and under Sections 13 & 18 of ULA(P) Act was registered at Police Station Budshah Colony, Sanatnagar, Srinagar on the basis of an incident against JKDFP and Shabir Ahmad Shah which was reported on 29.02.2016, wherein it was informed that on 22.02.2016 Shabir Ahmad Shah, General Secretary of Hurriyat 'G' along with other Hurriyat leaders addressed a press conference at his residence in Sanatnagar, Srinagar and requested all the business community, traders and shopkeepers to make complete shutdown on 26th and 27th February on account of protests held in JNU against the Kashmiri students. He further deposed that, in his speech, Shabir Ahmad Shah called Afzal Guru's execution a judicial killing and threatened the State Government with dire consequences in case harm is caused to Syed Ali Shah Geelani. Shabir Ahmad Shah also stated in his speech that Jammu & Kashmir is not a part of India and the people should honour mujahedeen who are brave hearted and are sacrificing their lives for separating Jammu & Kashmir. He deposed that during investigation statements of various witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident, and thereafter, a charge-sheet (Ex.PW19/10A) was filed in the court against Shabir Ahmad Shah. He deposed that investigation in the case could not be completed due to adverse situation prevailing in the Valley, but after the conducive situation, the investigation progressed satisfactorily and charge-sheet was filed.

135. He has relied upon the certified true copies/English Translation of the FIR Nos. 155/1995, 73/1999 and 26/2016, copies of the charge sheets in the said FIRs, and copy of the statement of witnesses recorded under Section 161 of the Cr.P.C., as mentioned in his affidavit, which have been exhibited as Ex.PW19/1A to Ex.PW19/15A in the present proceedings.

136. He further deposed that the statement made by him in his affidavit is based upon a perusal of the record of the investigation of the aforesaid FIR Nos. 155/1995, 73/1999 and 26/2016 as also based on the knowledge derived by him during the course of discharge of his official duties. He further reiterated that Shabir Ahmad Shah is one of the prime separatist leader of Jammu and Kashmir since 1980's and has worked in close association with the premiere separatist organization namely Hurriyat Conference, its faction Tehreek-E-Hurriyat (which is also recently declared as an unlawful association) and other like-minded separatist organizations and leaders well known for doing unlawful activities for achieving their goal of secession of Jammu and Kashmir from the Union of India and cession of Indian Government from Jammu and Kashmir. He further deposed that JKDFP and Shabir Ahmad Shah since the formation of JKDFP has worked in close association with premiere separatist leaders like Syed Ali Shah Gilani, Mirwaiz Umar Farooq etc. and their organizations. He deposed that JKDFP and Shabir Ahmad Shah worked with sole the object of secession of the State of Jammu and Kashmir from the Union of and for the said purposes have used unlawful activities, and is on the basis of the records maintained in his district. Lastly, he deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

137. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-20

138. **Fayaz Hussain Geelani (PW-20)** tendered his affidavit as **Ex.PW-20/A** and deposed that he is presently working as Sub-Divisional Police Officer, Shaheed Gunj, Srinagar, Kashmir, and is the supervisory officer in respect of FIR Nos. 108/2004, 108/2009 and 157/2009. He has deposed as under with regard to the aforesaid FIRs:-

- FIR No. 108/2004 under Sections 353/336/427 of the Ranbir Penal Code was registered at Police Station Batamaloo, Srinagar on 07.10.2004 on the basis of a written docket received at Police Station Batamaloo from the then SHO of P.S. Batamaloo Camp Reck Chowk informing that on the said date during their patrolling duty for the elections, he saw separatist leaders namely, Shabir Ahmad Shah, Mohd. Yasin Malik, Feroz Ahmad Dar and Mohd. Siddiq Guroo, who all were associated with Hurriyat Party, suddenly appeared at Rech Chowk along with other youth of the area and started raising anti-election slogans. When the SHO tried to restrain the said people, they became violent and started pelting stones. He deposed that on the instigation of Shabir Ahmad Shah and others, the mob pelted stones on the rally of Mst. Shameema Begam (leader of Panthers Party) who was going towards Ziyarat Batamaloo. He deposed that during the investigation statement of various witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident, and on the basis of the materials collected, charge-sheet (Ex. PW 20/2A) was filed in the jurisdictional court on 11.11.2021. He deposed that the broken pieces of glasses and stones were seized from the spot and a seizure memo (Ex.PW-20/10A) was prepared.

- FIR No. 108/2009 under Section 153A of the RPC and under Section 13 of the ULAP Act was registered at Police Station Batamaloo on 15.11.2009 on the basis of a complaint that chairman of Muslim League, Mushtaq Ahmad Bhat along with other activists of Hurriyat including Shabir Ahmad Shah, Nayeem Khan, Shakeel Bakshi, Zaffar Bhat and others were delivering speech at Kashi Mohalla and were provoking general public to indulge in anti-national activities and to promote secession of Jammu & Kashmir from the

Union of India, as also spread hatred amongst the people against India. He deposed that during investigation, statement of various witnesses were recorded under Section 161 Cr.P.C., who corroborated the above incident.

- FIR No. 157/2009 under Section 120/120-B/121/153-A of the Ranbir Penal Code and under Section 13 of ULA (P) Act was registered at Police Station Shaheed Gunj, Srinagar on the basis of anti-India speeches and slogans delivered by prominent separatist leaders on 30.12.2009 in a seminar conducted by Feroz Ahmad Khan, Vice-Chairman of Muslim League in the memory of late Mohammed Ali Jinnah. All the separatist leaders present there stressed that there should be Islamic law in Jammu & Kashmir and the future of Kashmir depends only upon Pakistan. He deposed that the investigation in this case could not be concluded due to adverse situation created in the Valley by the separatist leaders, but now due to conducive situation, the investigation is at its final stage and the charge-sheet in the case is also expected to be filed shortly.

139. He has relied upon the certified true copies/English translated copies of the FIR Nos. 108/2004, 108/2009 and 157/2009, copy of the charge sheet in FIR No. 108/2004, copy of the statement of witnesses recorded under Section 161 of the Cr.P.C., copy of seizure memo, as mentioned in his affidavit, which have been exhibited as Ex.PW 20/1A to Ex.PW 20/19A in the present proceedings.

140. He submitted that the statement made by him in his affidavit is based upon a perusal of the record of the investigation of the aforesaid FIR Nos. 108/2004, 108/2009 and 157/2009 as also based on the knowledge derived by him during the course of discharge of his official duties. He reiterated that Shabir AhmadShah is one the prime separatist leader of Jammu and Kashmir since 1980's and has worked in close association with the premiere separatist organization namely Hurriyat Conference, its faction Tehreek-E-Hurriyat (which is also recently declared as an unlawful association) and other likeminded separatist organizations and leaders well known for doing unlawful activities for achieving their goal of secession of Jammu and Kashmir from the Union of India and cession of Indian Government from Jammu and Kashmir. He further deposed that JKDFP and Shabir Ahmad Shah since the formation of JKDFP has worked in close association with premiere separatist leader like Syed Ali Shah Gilani, Mirwaiz Umar Farooq etc. and their organizations. He further deposed that JKDFP and Shabir AhmadShah worked with sole object of secession of the State of Jammu and Kashmir from the Union of and for the said purposes have used unlawful activities and is on the basis of the records maintained in his district. Lastly, he deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

141. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-21

142. **Mr. Mayank Arora (PW-21)** tendered his affidavit as **Ex.PW-21/A** and deposed that he is working as an Assistant Director in the Enforcement Directorate, Delhi Zonal Office – II, New Delhi and is fully conversant with the facts of the case based upon his knowledge derived from the relevant records of the case. He deposed that he is duly authorized by the Joint Director, Enforcement Directorate, Delhi Zonal Office – II, New Delhi to depose before this Tribunal by letter dated 07.03.2024, copy of which was kept on record.

143. He deposed that the FIR No. RC-10/2017/NIA/DLI (Ex.PW-21/1) was registered on 30.5.2017 by the National Investigation Agency (NIA in short), under Sections 120B, 121 and 121A of the IPC, 1860 read with Section 13, 16, 17, 18, 20, 38, 39 and 40 of Unlawful Activities (Prevention) Act (UAPA), 1967 against Hafiz Muhammad Saeed, members / cadres of Hurriyat Conference, Hizb-ul-Mujahidden (HM), DukhtaraneMillat, Lashkar-e-Toiba (LeT) and other proscribed terrorist organizations / associations / gangs, other secessionist and separatist leaders, hawala operators and LoC traders for acting in connivance with active militants for raising, receiving and collecting funds domestically and abroad through various illegal channels, including hawala, for funding separatist and terrorist activities in Jammu and Kashmir; and through the fund so collected, they entered into a larger criminal conspiracy for causing disruption in the Kashmir valley by way of pelting stones on the security forces, systematically burning of schools, damaged public property and waged war against India.

144. He deposed that the NIA filed a Charge-Sheet No.01 of 2018 dated 18.01.2018 under Sections 173(2) Cr.P.C. in FIR No.RC/10/2017/NIA/DLI before the Special Judge for NIA cases, Patiala House Courts, New Delhi. Subsequently, NIA filed first supplementary charge-sheet No.01 A of 2018 dated 22.01.2019 under Section 173(2) Cr.P.C. for the offences under Sections 120B, 121 & 121A of the IPC read with Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967. Subsequently, a second supplementary charge-sheet No.01 B of 2019 on 04.10.2019 (Ex. PW-21/2) was filed by NIA under Section 173(8) Cr.P.C. for offences under Sections 120B, 121 & 121A of the IPC read with Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the UAPA, 1967.

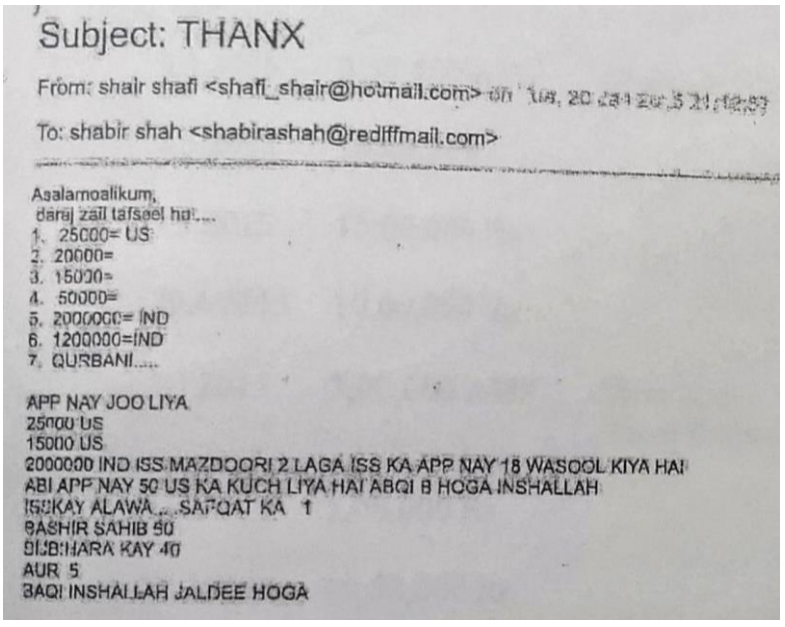
145. He deposed that the investigation conducted by the NIA reveals that various terrorist organizations viz. Jammu Kashmir Liberation Front (JKLF), Hizb-ul-Mujahideen (HM), Dukhtarane Millat, LeT, in connivance with All Party

Hurriyat Conference (APHC) and its constituents were funded by Pakistan and its agencies and terror groups and entered into a criminal conspiracy to wage war against the Government of India. The Hurriyat leaders and their supporters were following the ideology of 'freedom' i.e. secession of the State of Jammu & Kashmir from the Union of India. Hurriyat Conference and its factions Tahreek-E-Hurriyat were recently declared as an unlawful association by the Central Government.

146. He deposed that All Parties Hurriyat Conference (APHC), which was formed in 1993 as a conglomerate of 26 political / social / religious organizations, serves as a front for secessionist activities, supported by Pakistan. APHC orchestrated violence in Kashmir, including strikes and stone-pelting with an aim to further its agenda of separation of Kashmir from India thereby constituting a criminal conspiracy. Shabir Ahmad Shah @ Shabir Shah, chairman of JKDFP, which was formed on 24.5.1998, was an active constituent of APHC and has been one of the frontline secessionist entities pursuing the agenda of securing secession of Jammu and Kashmir from the Union of India since its formation. He made inflammatory speeches at several places in J&K instigating the masses for secession of J&K from the Union of India. He was in touch with Pakistan and POK based terrorist's leadership including Syed Salahuddin, Chairman of HM and United Jihad Counsel, Hafiz MohdSaeed (Chief of JuD/LeT) and all these facts have already been brought out in the charge-sheet filed on behalf of the NIA including the supplementary charge-sheet referred to as aforesaid.

147. He deposed that enquiries were initiated under the Prevention of Money Laundering Act (PMLA), 2002 against the accused persons after taking note of the scheduled offence in ECIR No.03/DLZO-II/2017 dated 14.06.2017 (EX PW- 21/3). The investigation revealed that Shabir Ahmad Shah S/o Ghulam Mohd. Shah along with other accused persons, played a key role in building the separatist / militant movement in J&K and was one of its chief architects. Accused Shabir Ahmad Shah was duly supported by the Pakistani agencies through the Hurriyat representatives such a Shafi Shair and Mehmood Sagar based in Pakistan. Shabir Ahmad Shah was continuously in contact with the Pakistan based entities and he had received money through Hawala from these persons.

148. He deposed that during the investigation and scrutiny of the pointing cum recovery memo dated 08.6.2019 (EX. PW-21/4), relied upon by the NIA as AD-120 in the second supplementary charge sheet dated 04.10.2019, it was revealed that Shabir Shah was maintaining and using an email bearing ID shabirashah@rediffmail.com. A perusal of the emails received on the said mail (relied upon by the NIA as AD-120/43 in the second supplementary charge sheet dated 04.10.2019), revealed that he was receiving funds from overseas which was corroborated by email dated 20.01.2015 received on his email ID from shafi_shair@hotmail.com. The said mail contained details of funds distributed in US Dollars and Indian currency, establishing ShafiShair as a Hurriyat representative based in Pakistan. The said email is at page 160 of his affidavit and reads as under:-



Subject: THANX

From: shair shafi <shafi_shair@hotmail.com> on Tue, 20 Jan 2015 21:12:52

To: shabir shah <shabirashah@rediffmail.com>

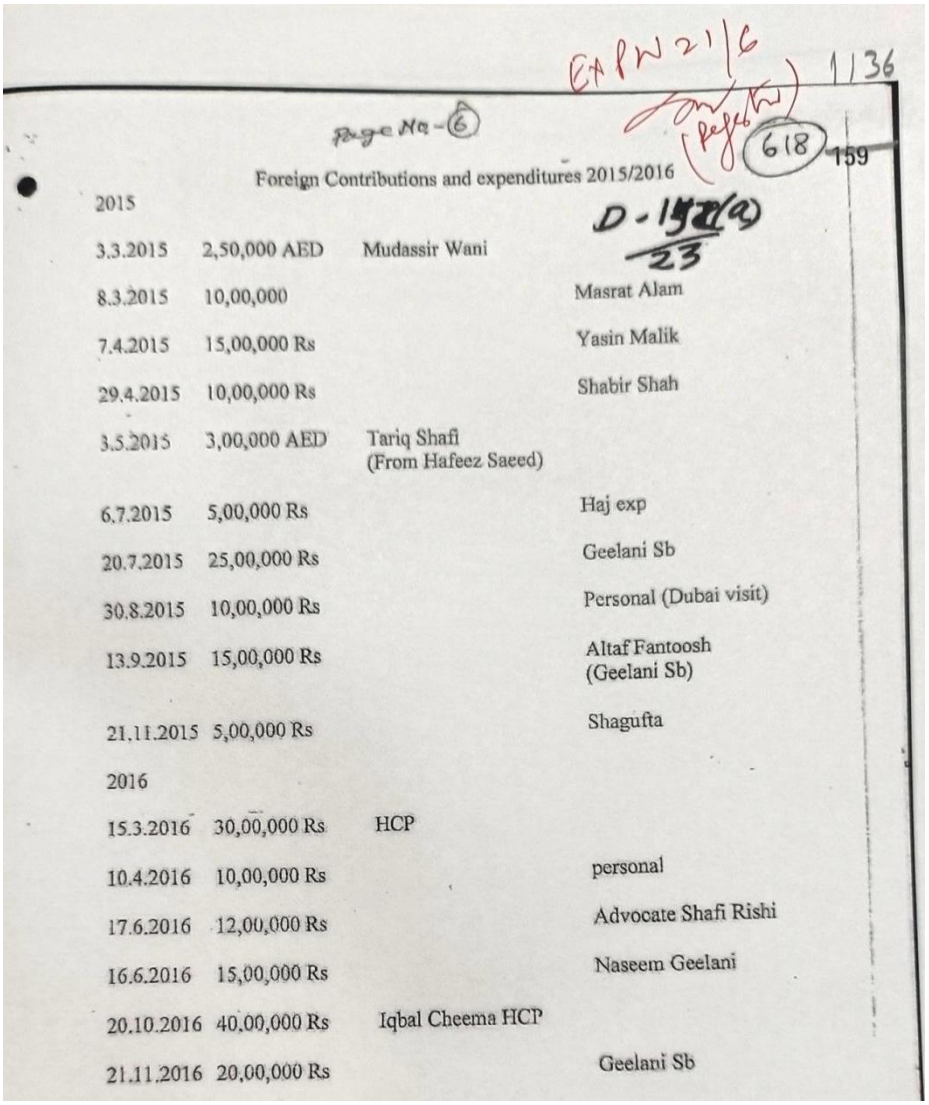
Aaalamoalikum,
daraj zail tafseel hai....
1. 25000= US
2. 20000=
3. 15000=
4. 50000=
5. 2000000= IND
6. 1200000=IND
7. QURBANI.....

APP NAY JOO LIYA
25000 US
15000 US
2000000 IND ISS MAZDOORI 2 LAGA ISS KA APP NAY 18 WASOOL KIYA HAI
ABI APP NAY 50 US KA KUCH LIYA HAI ABQI 8 HOGA INSHALLAH
ISSKAY ALAWA ....SAFQAT KA 1
BASHIR SAHIB 50
BIJBIHARA KAY 40
AUR 5
BAQI INSHALLAH JALDEE HOGA

149. He deposed that he recorded the statement dated 24.08.2022 of Shabir Ahmad Shah under Section 50 of PMLA, 2002 (EX. PW 21/5) and Shabir Shah acknowledged to him his association with Shafi Shair since 1993. The CDRs of Shabir Shah revealed that he had received several calls on his mobile number from Mohd. Shafi Shair from his Pakistani number during the period from 22.01.2017 to 26.01.2017. On being confronted with the aforesaid email dated 20.01.2015, Shabir Shah refused to explain the content of the said mail, thus, he could not discharge the burden of proof under Section 24 of the PMLA, 2002 with respect to the incriminating email received from Shafi Shair dated 20.01.2015 describing the distribution of funds in USD and INR to various persons, including himself.

150. He deposed that Shabir Shah was also receiving funds from Pakistan through Zahoor Ahmad Shah Watali (a Kashmir based businessman, who was a Hawala conduit), which fact was substantiated by the documents seized from

the house of Ghulam Mohammad Bhat, the accountant-cum-cashier of accused Zahoor Ahmad Shah Watali during the search conducted by NIA on 16.08.2017. The document shows Shabir Shah having received an amount of Rs.10 lakhs on 29.04.2015 from Hawala conduit Zahoor Ahmad Shah Watali. The said document is at page 159 of his affidavit (Ex.PW-21/6) and reads as under:-



Ex PW 21/6 1136

Page No-6 (Page No) 618 159

Foreign Contributions and expenditures 2015/2016

D-152(9) 23

2015			
3.3.2015	2,50,000 AED	Mudassir Wani	
8.3.2015	10,00,000		Masrat Alam
7.4.2015	15,00,000 Rs		Yasin Malik
29.4.2015	10,00,000 Rs		Shabir Shah
3.5.2015	3,00,000 AED	Tariq Shafi (From Hafeez Saeed)	
6.7.2015	5,00,000 Rs		Haj exp
20.7.2015	25,00,000 Rs		Geelani Sb
30.8.2015	10,00,000 Rs		Personal (Dubai visit)
13.9.2015	15,00,000 Rs		Altaf Fantoosh (Geelani Sb)
21.11.2015	5,00,000 Rs		Shagufta
2016			
15.3.2016	30,00,000 Rs	HCP	
10.4.2016	10,00,000 Rs		personal
17.6.2016	12,00,000 Rs		Advocate Shafi Rishi
16.6.2016	15,00,000 Rs		Naseem Geelani
20.10.2016	40,00,000 Rs	Iqbal Cheema HCP	
21.11.2016	20,00,000 Rs		Geelani Sb

151. He deposed that he himself had recorded the statement of Shabir Ahmad Shah under Section 50 of PMLA, 2002 on 24.08.2022, who affirmed his association with Zahoor Ahmad Watali (Hawala conduit) since 2009-10. Since he offered no comments when confronted with the said document, reflecting his having received Rs.10 lakhs from Zahoor Ahmad Shah Watali, he could not discharge the burden of proof under Section 24 of the PMLA, 2002 with respect to incriminating documents seized from the house of Ghulam Mohd. Bhat during the search by NIA which showed foreign contributions received from Hafiz Saeed, Pakistan High Commission and others and did not give any explanation regarding receipt of funds and its utilization by him.

152. He deposed that the bail application of Zahoor Ahmad Shah Watali was cancelled by the Supreme Court *vide* judgment/order dated 02.04.2019 reported as (2019) 5 SCC 1.

153. He deposed that from the investigation under PMLA, it is evident that the Pakistani Government sent an amount of Rs.1.10 crores to Shabir Ahmad Shah to be distributed amongst those who had resorted to stone pelting on the security forces in J & K and who were then injured in the security forces action. This clearly shows that Shabir Shah along with other accused persons was at the centre of the conspiracy to promote lawlessness and violence in J & K perpetuated with an intention to secure secession of J & K from the Union of India.

154. He deposed that Shabir Shah had received funds to the tune of Rs.1.20 crores, which qualifies as 'proceeds of crime' in terms of Section 2(i)(u) of the PMLA, 2002, from Zahoor Ahmad Shah Watali and from Pakistani authorities for distributing amongst stone pelters and to promote lawlessness and violence in J & K. The said proceeds of crime were dissipated by Shabir Ahmad Shah for terrorist and secessionist activities. Thus, in terms of Section 2(1)(u) of PMLA, 2002 property belonging to Shabir Ahmad Shah situated at H.No. 179, Survey No. 838 min adm.

12.5 marlas in Botshah Colony, Sanat Nagar, PS Barzulla, Srinagar, valued at around Rs.21.8 lakhs at the time of registration of FIR by NIA i.e. 30.5.2017, constituted property equivalent in value to a part of proceeds of crime and hence, the said property qualified to be proceeds of crime in terms of Section 2(i)(u) of PMLA, 2002. The said property was attached vide Provisional Attachment Order (PAO) bearing No.13/2022 dated 03.11.2022 issued u/s 5 (1) of the PMLA, 2002 (Ex. PW-21/7). The Original Compliant (OC) bearing No.1845/2022 dated 30.11.2022 was filed before the learned adjudicating authority, New Delhi u/s 5(5) of the PMLA, 2002 and the provisional attachment order was confirmed vide order dated 26.04.2023 (Ex.PW21/8).

155. He deposed that a supplementary prosecution complaint arraigning Shabir Shah, head of JKDFP as accused was filed on 09.01.2023 before the Special Judge (PMLA), Patiala House Courts, New Delhi (Ex. PW 21/9); cognizance on the same was taken on 10.01.2023 and the matter is listed for framing of charges and the main PC in the case was filed on 24.08.2020.

156. He deposed that the accused Shabir Ahmad Shah and his party JKDFP has been indulging in anti-national activities, hence, declaration of JKDFP as unlawful association by the Central Government of India is legally justified and is required to be upheld in the public interest so as to curb and curtain illegal and unlawful activities of JKDFP.

157. He has relied upon the certified true copies of the FIR No. RC-10/2017/NIA/DLI dated 30.05.2017; the first and second supplementary charge-sheets dated 22.01.2019 and 04.10.2019; the scheduled offence in the ECIR No.03/DLZO-II/2017 dated 14.6.2017; statement of Shabir Shah dated 24.8.2022; the seizure memo dated NIL; the Provisional Attachment Order No.13/2022 dated 03.11.2022; the confirmation order of the provisional attachment order dated 26.4.2023 and the supplementary prosecution complaint dated 09.01.2023 arraigning Shabir Shah as an accused, as mentioned in his affidavit, which have been exhibited as Ex.PW21/1 to Ex.PW21/9 in the present proceedings.

158. He deposed that the statement made by him hereinabove is based upon a perusal of the record of the investigation of the above cases as also based on the knowledge derived by him during the course of discharge of his official duties and his statement is on the basis of the records maintained with the Enforcement Directorate. He has lastly deposed that the ban on the organization is justified and is necessary to prevent disruption of law and order and to prevent the concerned organization from continuing to preach disaffection, disloyalty and feelings of enmity and hatred against the lawfully established government and the Union of India.

159. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-22

160. **Mr. B. B. Pathak (PW-22)** tendered his affidavit **as Ex.PW-22/A** and deposed that he is serving as Deputy Superintendent of Police in National Investigation Agency (NIA), New Delhi and is fully conversant with the facts of the case based upon his knowledge derived from the relevant records of the case. He tendered his affidavit in evidence as Ex.PW-22/A affirmed on 26.02.2024. The said affidavit has been drafted on his instructions and each page of the affidavit has been signed by him and duly notarized.

161. He deposed that NIA, being India's Federal Counter Terrorism Investigation Agency, was directed by order No.11011/2017-IS-IV dated 30.05.2017 issued by the Ministry of Home Affairs (MHA), to register a regular case and take up the investigation as credible information was received by the Central Government that Hafiz Muhammad Saeed, Amir of Jammat-ud-Dawah and the secessionist and separatist leaders, including the members/cadres of the Hurriyat Conference, have been acting in connivance with active militants of terrorist organization viz. Hizb-ul-Mujahideen (HM), Dukhtaran-e-Millat, Lashkar-e-Taiba (LeT) and other terrorist organizations/associations/gangs for raising, receiving and collecting funds domestically and abroad through various illegal channels, including hawala, for funding separatist and terrorist activities in Jammu and Kashmir by way of pelting stones on the security forces, systematically burning of schools, damaging public property and waging war against India.

162. He deposed that the NIA registered a case being RC-10/2017/NIA/DLI under Sections 120B, 121, 121A of the IPC and Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 (Ex. PW-22/1); and the investigation into the case revealed that various terrorist organizations viz. Jammu & Kashmir Liberation Front (JKLF), Hizb-ul-Mujahideen (HM), LeT, in connivance with various secessionist groups particularly the All Parties Hurriyat Conference (APHC/Hurriyat Conference) and its constituents were funded by Pakistan and its agencies and terror groups had entered into a criminal conspiracy to wage war against the Government of India. The Hurriyat leaders and their supporters were following the ideology of 'freedom' i.e. secession of the State of Jammu & Kashmir from the Union of India.

163. He deposed that he is the chief investigation officer in respect of the said case since 15.12.2023 and had also personally participated in the searches that were conducted at the initial stage of the investigation.

164. He deposed that the investigation revealed that APHC was formed as a conglomerate of 26 political/social/ religious organizations in 1993 to give a political mask to the secessionist activities. This alliance has been consistently promoted and supported by Pakistan to fulfil its evil motive and establish its claim over the State of

Jammu & Kashmir. However, the real agenda of APHC was to create a conducive atmosphere to fulfil their goal i.e. secession of Jammu & Kashmir from the Union of India. He deposed that the investigation has further revealed that APHC had entered into a criminal conspiracy and engaged in instigating the gullible general public of Kashmir for taking arms and to take part in violent activities to create a surcharged atmosphere in the valley, which is conducive for propagation of their secessionist agenda. The APHC has repeatedly asked the people to observe strikes on various non-existent issues and instigated them to get involved in unlawful activities such as stone-pelting, burning of public properties etc. He deposed that the motive behind the disturbances caused by the frequent strikes and the stone-pelting incidents was to create such circumstances which will lead to the secession of the State of Jammu & Kashmir from the Union of India. The secessionist agenda of the Hurriyat was also mentioned in its website www.huriyatconference.com, which speaks about "Freedom struggle" and that "People of Jammu & Kashmir have been fighting against Indian Occupation".

165. He deposed that pursuant to the investigation carried out by the NIA, Charge Sheet dated 18.01.2018 (Ex. PW-22/2) was filed before the Special Court, NIA, New Delhi against 12 accused persons, including two designated terrorists, based in Pakistan, namely Hafiz Muhammad Saeed, who is the Head of banned terrorist organization 'LeT', Mohd. Yusuf Shah @ Salahuddin, Head of banned terrorist organization 'HM', as absconders. The said Charge Sheet also included other arrested accused persons, who are the leaders of APHC viz. Aftab Ahmad Shah@ Shahid-ul-Islam, Altaf Ahmad Shah @ Fantoosh, Nayeem Ahmad Khan Farooq Ahmad Dar @ Bitta Karate, Mohammad Akbar Khanday, Raja MehrajuddinKalwal, Bashir Ahmad Bhat @ Peer Saifullah, one accused Zahoor Ahmad Shah Watali involved in providing funds for terrorists and secessionist activities and two were involved in stone pelting in Kashmir Valley, under Sections 120B, 121, 121A & 124A of the Indian Penal Code and Sections 13, 16, 17, 18, 20, 38, 39 & 40 of the Unlawful Activities (Prevention) Act, 1967. The case was further being investigated in terms of Section 173 (8) of Cr.P.C.

166. He deposed that the aforesaid charge-sheet takes note of the extent of the secessionist and terrorist activities in Jammu and Kashmir as stated in para 17.2.1 therein. Further, the charge-sheet also refers to the role of Hurriyat in the conspiracy/ secessionist agenda. The contents of the charge-sheet shows that the magnitude of the secessionist and terrorist activities is attributable to the Hurriyat. He has made a specific reference to para 17.2 and 17.3 of the said charge-sheet. The facts stated therein shows the hostile environment which prevailed in the territory of Jammu and Kashmir.

167. He deposed that during the course of further investigation, it was revealed that Shabir Ahmad Shah, head of JKDFP along with other accused persons played a key role in building the separatist/militant movement in Jammu and Kashmir.

168. He deposed that on 26.02.2019 and 27.02.2019, nine (09) premises belonging to the separatists, the accused persons arraigned in the case and Shabir Ahmad Shah @ Shabir Shah were searched in Jammu and Kashmir, and electronic items were seized (Ex. PW-22/3). The seized electronic devices were sent to Centre for Development of Advanced Computing ("C-DAC") Trivandrum for analysis and expert opinion. Several incriminating videos have been extracted from the seized digital devices by the experts of C-DAC (Ex. PW-22/4). The said incriminating videos have been submitted in a pen drive to the Registrar of this Tribunal which has been exhibited as (Ex.PW-22/6A).

169. He deposed that during investigation accused Shabir Ahmad Shah, being a part of the conspiracy related to the secessionist and terrorist activities in the state of Jammu and Kashmir, was arrested on 04.06.2019 against an arrest memo (Ex.PW-22/6). The investigation revealed that JKDFP was formed on 24.05.1998 and Shabir Ahmad Shah @ Shabir Shah became its chairman. It has further been revealed that JKDFP was an active constituent of APHC. JKDFP has been one of the frontline secessionist entities which is pursuing the agenda of securing secession of Jammu & Kashmir from the Union of India since its formation. He deposed that Shabir Ahmad Shah had made inflammatory speeches at several places in Jammu & Kashmir instigating the masses for secession of Jammu & Kashmir from Union of India to create a surcharged atmosphere against the Government of India.

170. He deposed that Shabir Ahmad Shah was in constant contact with Pakistan and POK based terrorists' leadership including Syed Salahuddin, Chairman of HM and United Jihad Counsel), Hafiz MohdSaeed (Chief of JuD/LeT) and used to pay tributes to the killed militants and on his directions delegation of his party viz. JKDFP, that is the banned organization, used to visit family members of slain terrorists. He deposed that the investigation revealed that Shabir Ahmad Shah remained frequently in touch with Pakistan based entities and received money from them through Hawala channels and also used to share the details of killed militants to Pakistan based entities. Further, Shabir Ahmad Shah, being the head of JKDFP, was involved in the conspiracy of insurgency and funding for unrest in Jammu & Kashmir and was also inciting people to hold protests, Hartals and complete shut-downs. He deposed that he was involved in raising funds through donations from Kashmiris and also received funds from Pakistan through Hawala which was used for unlawful activities such as stone pelting on security forces and creating unrest in the State of Jammu and Kashmir. As such, Shabir Ahmad Shah played a key role in building the separatist and militant movement in Jammu & Kashmir.

171. He deposed that during investigation several witnesses were examined and their statements have been recorded under section 161 Cr.P.C (Ex. PW-22/7 & 22/8); a perusal of which would reveal the active role of Shabir Ahmad

Shah played in building the separatist and militant movement in Jammu and Kashmir. He further deposed that further, the statement of the protected witnesses (i.e. Alpha, John, X45 and X46) in terms of the Section 44 of the UAPA, have also been annexed along with his affidavit (Ex.PW-22/9).

172. He deposed that Shabir Ahmad Shah vide his disclosure statement dated 08.06.2019 (Ex.PW-22/11) stated that he had joined APHC as an executive member in 1994, however, he quit APHC and started the organization sought to be banned viz. JKDFP. He further confessed that he remained associated with other separatist leaders in planning and propagating secessionist movement in Kashmir and also promoting anti India feelings in the population of Kashmir using different social platforms i.e. Email, Facebook and Twitter. He deposed that Shabir Shah also stated that if he was given access to his email account, face-book and twitter IDs, he could show mails, messages and other data. In continuation of this disclosure statement, he was given access to a computer and internet connection; pursuant thereto data from his email account i.e. shabirashah@rediffmail.com was recovered and seized (Ex.PW-22/12) wherefrom it has been established that Shabir Shah was in frequent touch with Shafi Shair and Mehmood Sagar, Hurriyat representatives based in Pakistan and would receive money through Hawala from these persons.

173. He deposed that investigation has further revealed that Shabir Shah was receiving funds from Pakistan through some conduits, which is substantiated by the document seized from the house of Ghulam Mohammad Bhat, the accountant-cum-cashier of co-accused Zahoor Ahmad Shah Watali. A copy of the seizure memo is exhibited as (Ex.PW-22/13). He deposed that based on the evidence on record, the 2nd Supplementary Charge-Sheet was filed on 04.10.2019 against five accused persons namely Mohd. Yasin Malik, head of JKLF, an unlawful association, Shabir Ahmad Shah, Head of JKDFP, Masarat Alam Bhat, Secretary of Muslim League, Syeda Aasiya Andrabi, head of terrorist organization Dukhtaran-e-Millat (DeM) and Abdul Rashid Sheikh, Chairman of Awami Ittehadi Party u/s 120B, 121, 121A & 124A IPC and Section 13, 16, 17, 18, 20, 38 & 39 of UA(P) Act, in the NIA Special Court, Patiala House Courts, New Delhi. Copy of the 2nd Supplementary Charge sheet dated 04.10.2019 is exhibited as (Ex. PW-22/14).

174. He deposed that the charges have been framed against accused Shabir Ahmad Shah vide Court order dated 16.03.2022 for the offences under Sections 120B, 121, 121A of IPC and Section 13 UAPA r/w Section 120B of IPC, Section 15 of UAPA r/w 120B of IPC, Sections 17, 18 & 20 of UA(P) Act. Copy of the Charge Order dated 16.03.2022 passed by the Ld. Special Judge, NIA, New Delhi is also enclosed and exhibited as (Ex. PW-22/15). He deposed that the accused Yasin Malik, head of JKLF had pleaded guilty, following which he was convicted of all the charges levelled against him and was, thus sentenced with rigorous imprisonment for life and fine of Rs. 10 lakhs and the trial qua the other accused persons is still underway and is pending adjudication and is now listed on 06.04.2024 and 08.04.2024 for examination of prosecution witnesses.

175. He deposed that from the cogent and irrefutable evidence on record, the evidence adduced by the witnesses, inter alia the FIRs registered along with subsequent charge-sheets and the examination-in-chief of the witnesses filed before this Tribunal, it is clear that the JKDFP and Shabir Ahmad Shah have been actively and continuously encouraging a veiled armed insurgency at the behest and on instructions from Pakistan and POK based terrorist organizations and have been openly advocating and inciting the people to bring about a secession of territory of Jammu and Kashmir from the territory of India; besides causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and its members are indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of India; and as such the decision of the Central Government to declare the JKDFP as unlawful association is just, proper and bona fide.

176. He has relied upon the certified true copies of the Seizure Memo dated 26.02.2019; Scrutiny Report of Articles seized from the residence of Shabir Shah; Forensic Report received from C-DAC vide No. CDAC/CSG/L 19-71 dated 13.03.2019; Arrest Memo dated 04.06.2019; statements of the Prosecution Witness viz. Mohd. Rajak and Mohd. Aslam Wani; statements of the protected witnesses (*in terms of Section 44 of UAPA*) code named as Alpha, John, X45 and X 46 **(in sealed cover for perusal of the Tribunal only)**; Disclosure statement dated 08.06.2019; pointing cum recovery memo; Seizure Memo dated 16.08.2017, Letter dated 11.09.2019, and ED letters, the pen drive containing incriminating videos, Charge-sheets filed in the NIA case, and Charge Order dated 16.03.2022, as mentioned in his affidavit, which have been exhibited as Ex.PW22/1 to Ex.PW22/16 in the present proceedings.

177. He lastly deposed that the statement made by him is based upon a perusal of the record of the investigation of the above cases as also based on the knowledge derived by him during the course of investigation done by himself; and further that the investigation in the present case is on-going and as such his knowledge is on the basis of the facts uncovered during the course of investigation that he has carried out by himself.

178. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

PW-23

179. **Mr. Dharmender Kumar (PW-23)** tendered his affidavit as **Ex.PW-23/A** and disposed that he is presently posted as a Deputy Secretary in the Government of India, Ministry of Home Affairs, New Delhi, and is duly authorized by the Ministry of Home Affairs to depose before this Tribunal. The relevant copy of the office noting

which incorporates the authorization in his favour has been handed over to the Registrar of this Tribunal. A copy of the relevant noting authorizing him to move an application for claiming privilege against the disclosure of confidential documents **(duly sealed)** referred to in his affidavit, has also been handed over to the Registrar of this Tribunal. The said office noting specifically records that the satisfaction of the Union Home Secretary (Head of the Department) has been arrived at in respect of the claim for privilege/confidentiality.

180. He deposed that he tendered his affidavit in evidence as Ex.PW-23/A affirmed on 07.03.2024 and the said affidavit has been drafted on his instructions on the basis of his knowledge as derived from the official records and each page of the affidavit has been signed by him and duly notarized.

181. He deposed that he has been dealing with all the relevant files/records pertaining to JKDFP i.e. the said banned organization in his official capacity, even prior to the issuance of notification No. S.O. 4348 (E) dated 05.10.2023. He deposed that the said files/records were perused by him on account of being posted in Counter-terrorism and Counter-radicalisation Division in the Ministry of Home Affairs.

182. He deposed that the notification No. S.O. 4348 (E) dated 05.10.2023 (Ex.PW-23/1) issued by the Central Government is based on the information and material received from central intelligence agency(ies) and criminal investigation department of the Govt. of UT of Jammu & Kashmir with regard to the unlawful activities of the JKDFP, and the said information and material demonstrates the unlawful activities of Jammu and Kashmir Democratic Freedom Party (JKDFP).

183. He deposed that on the basis of the aforesaid information, a note was prepared for the consideration of the Cabinet Committee on Security. The said note was prepared by him in consultation with senior officers and the draft notification and the said note was prepared after the requisite consideration at various levels and taking into account the relevant facts and circumstances, including internal security implications. He deposed that the above position is reflected in the official record of the Ministry of Home Affairs and he has personally perused the said record, and has deposed on the basis thereof.

184. He deposed that the Cabinet Committee on Security, in the meeting held on 04.10.2023 approved the proposal contained in the aforesaid Cabinet note and, consequently, the declaration was made and published in the official gazette dated 05.10.2023. He deposed that *vide* Notification dated 23.10.2023 bearing S.O. 4639 (E), in terms of sub-section (1) of Section 5 r/w sub-section (1) of Section 4 of the UAPA, this Tribunal was constituted. He deposed that the background note submitted to this Tribunal in terms of Rule 5 of the UAP Rules 1968 *vide* letter dated 03.11.2023 (Ex. PW-23/2), is based upon the material / information as contained in the concerned files.

185. He deposed that various cases registered by the Jammu and Kashmir Police, National Investigation Agency (NIA) and the Enforcement Directorate (ED) throw light on the unlawful and subversive activities of the chairman and members of JKDFP. He deposed that affidavits have been filed before this Tribunal by the concerned officers of the UT of Jammu & Kashmir, against the chairman and members of JKDFP bringing out the illegal activities of the association, which also contravene various provisions of the law including the UAPA and Ranbir Penal Code etc; and further that the affidavits which have been filed before this Tribunal by the concerned officers of the NIA and the ED bring out the activities of the chairman of JKDFP and of the JKDFP itself, and the various offences committed under various sections of the UAPA, IPC and PMLA.

186. He deposed that evidence adduced by various witnesses in support of declaration contained in notification No.4348 (E) dated 05.10.2023 clearly establishes that JKDFP is continuously indulging in unlawful activities and poses a serious threat to the internal security and sovereignty of the country. He deposed that various intelligence inputs clearly bring out the unlawful activities of JKDFP and the fact that JKDFP is continuously indulging in activities of separation of Jammu and Kashmir from the Union of India; and that banning of JKDFP is necessary in the interest of national security, sovereignty and territorial integrity of India. He deposed that the statement made by him in para 10 of his affidavit is based both on the inputs received from the various intelligence agencies as also based on the evidence of various witnesses who have deposed before this Tribunal. He deposed that the original file (duly indexed) containing above mentioned intelligence reports/inputs are being submitted in a sealed cover for the perusal of this Tribunal and the contents thereof are privileged and confidential in nature, hence, cannot be made available to the banned association or to any third party. It is in respect of this information and for claiming privilege/confidentiality with regard thereto, that a separate application has also been filed, with the prior approval of the Union Home Secretary.

187. During the recording of statement of PW-23/A, following question was specifically put by learned counsel for the Union of India, and answered by him as under:-

> **Question by learned counsel for the Union of India:-** As regards status of investigations of various FIRs registered by the Jammu and Kashmir Police, what is the cause of delay in investigation of the said cases?
>
> **Ans.-** Because of the hostile environment in the State of Jammu and Kashmir and due to insurgency by the terrorist organizations who acted in connivance and support of separatist organizations, it was not conducive for the investigating agencies to carry out a fair and expeditious investigation and it is only after coming into force

of the Jammu and Kashmir Re-organisation Act, 2019, that the environment has become conducive for investigation to proceed faster and to expedite the process of trial. The details of the facts/situation regarding hostile environment already forms part of the charge-sheet filed by the NIA at para 17.

188. He deposed that from the cogent and irrefutable evidences which have come on record, JKDFP is continuously encouraging a veiled armed insurgency and openly inciting people to bring about secession of the part of territory of India from the Union; and further that activities of JKDFP is aiming at causing disaffection, disloyalty and disharmony by promoting feeling of enmity and hatred against the lawful government and continuously pursuing the agenda of securing secession of Jammu and Kashmir from the Union of India by inciting and orchestrating violence. He lastly deposed that if the JKDFP is not banned, the activists and sympathizers of JKDFP will pose a serious threat to the communal harmony, internal security and integrity of the country. Hence, the declaration made by the Central Government vide Notification No.4348 (E) dated 05.10.2023 may please be confirmed and upheld both in the public interest and national interest.

189. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the assocation.

VIII. SUBMISSIONS ON BEHALF OF THE UOI

190. On 13.03.2024 the matter was fixed for hearing. On the said date, learned Additional Solicitor General for the Union of India, while arguing for claiming privilege for producing documents in sealed cover, has referred to Section 123 of the Evidence Act read with Section 3(2) of the UAP Rules, 1968, which are reproduced as under:-

Indian Evidence Act, 1872

*"**123. Evidence as to affairs of State** – No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."*

The Unlawful Activities (Prevention) Rules, 1968

"3. Tribunal and District Judge to follow rules of evidence.-

(1) In holding an inquiry under sub-section (3) of section 4 or disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,-

(a) Make such books of account or other documents a part of the records of the proceedings before it; or

(b) Allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it."

191. Learned Additional Solicitor General submitted that the claim of privilege by the Union of India for the documents placed is made as the documents are of such a nature that the non-disclosure of which would be in the interest of the public. It was submitted that this concept of public interest is taken into account even in the criminal proceedings qua the accused, whereas in juxtaposition, the present matter stands at a much higher pedestal and involves the issue of sovereignty and integrity of the country. Learned ASG submitted that the cases concerning national security, sovereignty and integrity, the tribunal has to interpret and analyze the material differently as the decisions taken by the Central Government in such manner are based on highly sensitive information and inputs; and the effects of such decisions are not confined to the boundaries of the nation; and, in fact, in the present scenario when the terrorist activities and national insurgency is on rise, the global boundaries have become meaningless.

192. To support her arguments, learned ASG has relied upon the judgment in a case of preventive detention in ***Raj Kumar Singh vs. State of Bihar*** (1986) 4 SCC 407; where the Supreme Court, *inter alia*, held as under:-

"The executive authority is not the sole judge of what is required for national security or public order. But the court cannot substitute its decision if the executive authority or the appropriate authority acts on proper materials and reasonably and rationally comes to that conclusion even though a conclusion with which the court might not be in agreement. It is not for the court to put itself in the position of the detaining authority and to satisfy itself that untested facts reveal a path of crime provided these facts are relevant. See in this

connection the observations of O. Chinnappa Reddy, J. in Vijay Narain Singh case [(1984) 3 SCC 14: 1984 SCC (Cri) 361: AIR 1984 SC 1334: (1984) 3 SCR 435] at p. 440 and 441. (SCC p. 19, para 1) 346. Similarly, in the case of Union of India vs. Rajasthan High Court, (2017) 2 SCC 599: 2016 SCC Online SC 1468.. It was not for the court in the exercise of its power of judicial review to suggest a policy which it considered fit. The formulation of suggestions by the High Court for framing a National Security Policy travelled far beyond legitimate domain of judicial review. Formulation of such a policy is based on information and inputs which are not available to the court. The court is not an expert in such matters. Judicial review is concerned with the legality of executive action and the court can interfere only where there is a breach of law or a violation of the Constitution."

193. The learned ASG has also placed reliance upon the judgment in ***Ex-Armymen's Protection Services (P) Ltd. v. Union of India*****,** (2014) 5 SCC 409, wherein it has been inter alia held as under:

"15. It is difficult to define in exact terms as to what is "national security". However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.

16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive."

194. The learned ASG submitted that the UAPA and the Rules framed thereunder provide for a mechanism to claim privilege and withhold certain facts/documents to seek non-disclosure of the same. The learned ASG then placed reliance on the judgment in ***Jamaat-e-Islami Hind*** (supra), wherein the Hon'ble Supreme Court has held as under:-

"19. ...the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of acts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit nondisclosure of confidential documents and information which the Government considers against the public interest to disclose…

20…

21. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest.

22....in such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense.

23…

24. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken."

195. The learned ASG also relied on the judgment in ***People's Union for Civil Liberties vs. Union of India,*** (2004) 2 SCC 476, where it was, *inter alia*, held as under:

"69. The legislative policy behind the aforementioned provisions is no longer res integra. The State must have the prerogative of preventing evidence being given on matters that would be contrary to public interest.

70. For determining a question when a claim of privilege is made, the Court is required to pose the following questions:

(1) whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State; and

(2) whether disclosure of the contents of the document would be against public interest?

71. When any claim of privilege is made by the State in respect of any document, the question whether the document belongs to the privileged class has first to be decided by the court. The court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. The claim of immunity and privilege has to be based on public interest.

72. The section does not say who is to decide the preliminary question viz. whether the document is one that relates to any affairs of State, or how it is to be decided, but the clue in respect thereof can be found in Section 162. Under Section 162 a person summoned to produce a document is bound to ―bring it to the court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court‖. It further says that: ―The court, if it seems fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility

73. In order to claim immunity from disclosure of unpublished State documents, the documents must relate to affairs of the State and disclosure thereof must be against interest of the State or public interest."

196. The learned ASG, thus, submitted that from a bare reading of the aforesaid judgment of the Supreme Court, it is clear that an enquiry contemplated under the UAPA gives a right to the government to claim privilege of sensitive documents in public interest/national interest and in the interest of justice; which right has been duly upheld by the Supreme Court; and that in the present case, the documents for which claim of privilege, by their very nature, are confidential and sensitive in nature and, therefore, cannot be supplied as a public document.

197. The learned ASG further submitted that the document forms part of the evidence collected by the intelligence agencies which pertains to secessionist and unlawful activities of the JKDFP and those associated with it and the said documents are confidential and secret in nature and the same can be verified by the Tribunal only. The learned ASG further submitted that the nature of material placed in the sealed cover by the Central Government is in the form of intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, communications between the intelligence agencies, information which may lead to further recoveries, discoveries of facts as also unearth conspiracies, the disclosure whereof would be clearly detrimental to the larger public interest and the security of the State. The learned ASG submitted that the material filed by the Central Government contains the note then put up to the Cabinet Committee on Security along with documents supporting the note and the grounds on which the notification was issued besides intelligence inputs and correspondence in relation thereto. Hence the claim of privilege of the documents by the Central Government is in accordance with law and the documents submitted in sealed cover are not required to be disclosed in the public interest.

198. Learned ASG further submitted that the sealed cover material as mentioned in the affidavit of the Union of India, forms part of the evidence which is inherently and dehors being part of the evidence of the present proceeding is of confidential nature, disclosure of which would be contrary, not only to the public interest but also to national interest and the interest of justice. In the same breath, the learned ASG submitted that the privilege of the said documents is claimed based on the nature of documents which impinge upon national security. The disclosure of these documents to the other side would jeopardize not only the interest and safety of certain individuals but would also compromise national security.

199. Learned ASG has also placed reliance in this regard on the following judgments of the Hon'ble Supreme Court:-

(a) Dr. George Mathew Vs. UOI (1997) 10 SCC 537

(b) R.K. Jain Vs. UOI (1993) 4 SCC 119

(c) W.N. Chadha Vs. Union of India (1993) Supp (4) SCC 260

(d) Doypack Systems Vs. UOI (1988) 2 SCC 299

(e) S.P. Gupta Vs. Union of India (1981) Supp SCC 87

(f) State of U.P. Vs. Raj Narain (1975) 4 SCC 428

200. Learned ASG has submitted that with regard to the claim of privilege for non-disclosure of sealed documents, the Supreme Court in ***S.P. Gupta*** (supra), has held as under:

"73. We have already pointed out that whenever an objection to the disclosure of a document under Section 123 is raised, two questions fall for the determination of the court, namely, whether the document relates to affairs of State and whether its disclosure would, in the particular case before the court, be injurious to public interest. The court in reaching its decision on these two questions has to balance two competing aspects of public interest, because the document being one relating to affairs of State, its disclosure would cause some injury to the interest of the State or the proper functioning of the public service and on the other hand if it is not disclosed, the nondisclosure would thwart the administration of justice by keeping back from the court a material document. There are two aspects of public interest clashing with each other out of which the court has

to decide which predominates. The approach to this problem is admirably set out in a passage from the judgment of Lord Reid in Conway v. Rimmer [(1968) AC 910, 952, 973, 979, 987, 993 : (1968) 1 All ER 874 (HL)] :

> *"It is universally recognized that there are two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done. There are many cases where the nature of the injury which would or might be done to the nation or the public service is of so grave a character that no other interest, public or private, can be allowed to prevail over it. With regard to such cases it would be proper to say, as Lord Simon did, that to order production of the document in question would put the interest of the State in jeopardy. But there are many other cases where the possible injury to the public service is much less and there one would think that it would be proper to balance the public interests involved."*

201. Learned ASG, therefore, submitted that the rigors of ***S.P Gupta*** (supra) for claiming privilege have to be read in context of the provisions of UAPA and the Rules framed thereunder which provide that document, disclosure whereof may not be in the public interest, be not disclosed. She further submitted that the UAP Rules, as quoted above, starts with a *non obstante* clause and thus an inbuilt mechanism has been provided under the UAPA and the Rules framed thereunder. Accordingly, the Tribunal is mandated to grant privilege forbidding disclosure where the claim of the Government is that the disclosure of such documents could affect the larger public interest of the nation by jeopardizing the safety and sovereignty of the country and also finds that the public interest outweighs the interest of the association/members/office bearers.

202. Learned ASG submitted that the claim of confidentiality has to satisfy on the test of character of the document and if on an objective satisfaction it is concluded that the document is of such a character that its disclosure will injure public interest, the contents thereof cannot be permitted to be disclosed to the other side. Thus, the foundation of immunity from non-disclosure stems from the character of the document and an act of balancing public interest against the interest of the individual, the office bearer or the association which has been banned, has to be carried out by the Tribunal.

203. The learned ASG submitted that the statement of objects and reasons of the UAPA itself underlines the purpose of the enactment to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. She submitted that the statute empowers the Parliament to impose by a due process of law reasonable restrictions in the interest of sovereignty and integrity of India on the right to form an association and incidentally a restriction on the freedom of speech and expression, to assemble peacefully and with arms. UAPA being a special statute, the procedure provided therein necessarily prevails on the general provisions of law. Learned ASG submitted that, further Section 48 of the UAPA itself provides that the provisions of the UAPA and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of an enactment other than this Act giving a clear over-riding position.

204. The learned ASG also submitted that the decision of the previous Tribunals constituted under Section 4 of the UAPA, in which the claim of privilege by the Central Government had been allowed holding that the same satisfied the requirement of Section 123 of the Evidence Act, are binding on this Tribunal in view of the provisions of Section 5(7) of the UAPA which provide that the proceedings before this Tribunal are judicial proceedings and, therefore, reliance has been placed on the Extraordinary Gazette Notification bearing no CG-DL-E-27032023-244721 published in PART II—Section 3—Sub-section (ii) having No. 1382 dated MONDAY, MARCH 27, 2023/CHAITRA 6, 1945 whereby, Tribunal comprising of Hon'ble Mr Justice Dinesh Kumar Sharma, Judge, Delhi High Court in exercise of the powers conferred by sub-Section (3) of section 4 of the said Act, passed an order on the 21st March, 2023, confirming the declaration made by Central Government declaring the Popular Front of India (PFI) and its associates or affiliates or fronts including Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), National Confederation of Human Rights Organization (NCHRO), National Women's Front, Junior Front, Empower India Foundation and Rehab Foundation, Kerala as an unlawful association vide notification of the Government of India in the Ministry of Home Affairs, number S.O. 4559 (E), dated the 27th September, 2022 (hereinafter referred to as the said notification), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 28th September, 2022.

205. In view of the aforesaid position, the learned ASG submitted that the Central Government respectfully claims privilege on the documents contained in the sealed cover, as mentioned in the affidavit filed by the Central Government.

206. The Tribunal posed a question to the learned ASG as to what is the difference between the 'unlawful activity' & 'unlawful association' and the 'terrorist activity' & the 'terrorist organization'. To this, learned ASG submitted that the wisdom of Parliament to create two species of offences i.e. 'unlawful activity' & 'unlawful association' and

'terrorist activity' & terrorist organization' cannot be questioned. She submitted that the validity of the provisions of the Act ought to be judged in the backdrop of the history of the Act necessitating their introduction. Learned ASG submitted that as per the Statement of Objects and Reasons, the Unlawful Activities (Preventive) Act, 1963 was enacted to make powers available for dealing with activities directed against the integrity and sovereignty of India which may take the manner and form either of "terrorism" or "other unlawful activity" that threatens the sovereignty of India.

207. Learned ASG further submitted that the exception to the freedom of speech and expression, and to form associations and union, under Article 19(1) of the Constitution of India, was inserted in the form of "sovereignty and integrity of India" in Article 19(2) and 19(4), after the National Integration Council appointed a Committee on National Integration and Regionalization. The said Committee was to look into the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Learned ASG submitted that pursuant to the acceptance of recommendations of the Committee, the Constitutional Sixteenth Amendment) Act 1963 was enacted to impose reasonable restrictions in the interests of the sovereignty and integrity of India. Further, in order to implement the provisions of the 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament. The main objective of the Unlawful Activities (Prevention) Act is to make powers available for dealing with activities directed against the integrity and sovereignty of India.

208. Learned ASG submitted that after Independence of India, Parliament of India has passed many laws to regulate national security and in order to protect sovereignty of India. The UAPA, 1967 is an Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and other matters connected therewith. Learned ASG submitted that the present Act is the Central Act and has been amended time and again to tackle the menace of terrorism and terrorist activities from India.

209. Learned ASG further submitted that to achieve the aforesaid purpose of tackling the menace of activities inimical to the sovereignty and integrity of India, the legislature in its wisdom decided to create two species of the offence i.e.

i. Unlawful Activity & Unlawful Association [S-2(o) r/w Chapter 2 & 3 (Sections 3-14)]; and

ii. Terrorist Act & Terrorist Organization [S-2(k), (I),(m) r/w Chapter 4-6 (Sections 15-40)].

210. Learned ASG further submitted that the growing threat of terrorism posed immediate harm to the lives of the Indian citizens and the security of the State led to the enactments of special deterrent laws from time to time. Learned ASG submitted that notably, the repeal of the Prevention of Terrorist Activities Act, 2002 entailed an absence of a legal framework to address the menace of terrorism. Accordingly, as a consequence, the UAPA was amended to include a definition of the term 'terrorism' and to give substantive powers to the Indian State to address the same. The amendments made therein were made also keeping in mind India's commitments under the Security Council Resolution dated 28th September, 2001, which enjoined to fight both terrorism as well as terror funding, which was to be treated as a genus of terrorism. The amendments were in furtherance of the global fight against terrorism.

211. In view of the aforesaid, learned ASG submitted that it is evident that the provisions of UAPA have been enacted by the Parliament which had the legislative competence to enact the same and that once it is clear that the Parliament had the legislative competence to enact the law, there is a presumption of constitutionality in favour of the statute. It is further submitted that there is always presumption of constitutional validity of the statute and it is presumed that the Legislature understands the needs of the people. Learned ASG submitted that an organization can be banned solely based on the opinion of the Central Government and, therefore, the challenge to Chapter II of UAPA has already been repelled by the Hon'ble Supreme Court in para 84 -92 of ***Arup Bhuyanv v. State of Assam*** (2023) 8 SCC 745. In para 90 of this judgment, the Hon'ble Supreme Court held as under:-

> *"90. Thus from the aforesaid it can be seen that before any organization is declared unlawful a detailed procedure is required to be followed including the wide publicity and even the right to a member of such association to represent before the Tribunal. As observed hereinabove the notification issued by the Central Government declaring a particular association unlawful, the same is subject to inquiry and approval by the Tribunal as per Section 4. Once that is done and despite that a person who is a member of such unlawful association continues to be a member of such unlawful association then he has to face the consequences and is subjected to the penal provisions as provided under Section 10 more particularly Section 10(a)(i) of the UAPA, 1967."*

212. Learned ASG submitted that from the aforesaid discussion of the Supreme Court, it is clear that an organization can be banned solely on the basis of the opinion of the Central Government and through the process duly established by the law enacted by the Parliament.

213. Part-heard arguments were heard on behalf of the Union of India and the matter was fixed for final arguments on 14.03.2024.

214. On 14.03.2024, learned ASG for the Union of India submitted that the proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Supreme Court in ***Jamaat-e-Islami Hind*** (supra) and the matter has to be decided by objectively examining which version is more acceptable and credible. In this regard, learned ASG has referred to the observation made in para 30 of ***Jamaat-e-Islami Hind*** (supra). Learned ASG also argued that the procedure to be followed by the Tribunals can be read from the law enacted under the Administrative Tribunals Act, 1985. Learned ASG then submitted that similarly the Tribunal established under the UAPA has been bestowed with certain powers and the procedure to be adopted by it under Section 5 read with Section 9 of the said Act.

215. Learned ASG has submitted that as per the mandate of Section 4 of the UAPA, the jurisdiction of this Tribunal is to adjudicate whether or not there is sufficient cause available with the Central Government to ban the organization in question. Learned ASG has submitted that any procedural irregularities or defects in material adduced before this Tribunal are to be tested by the concerned trial court within the parameters of the Indian Evidence Act, 1872 and other relevant laws. Learned ASG further submitted that the jurisdiction of this Tribunal is to satisfy itself whether these documents can be relied upon to ascertain 'sufficiency of cause' and whether the agencies responsible for the enforcement of law and order could or could not have ignored the same for recommending suitable action under the UAPA.

216. Learned ASG has submitted that for the purpose of assessing the sufficiency of the cause, this Tribunal has to holistically look into the entire materials / incidents and if the material / incidents are relatable acts of commission of unlawful activity, secession or 'cession of a part of the territory of India' on the anvil of preponderance of probability, then the ban is justified and is required to be confirmed. Learned ASG submitted that the Central Government has led sufficient and cogent material and evidence to demonstrate that there was sufficient material available with the Central Government to form an opinion that JKDFP and its associates were indulging in unlawful activities. Learned ASG submitted that the law does not require that the cases which should form the basis of opinion formed by the Central Government should not be proximate to the date of the decision or there should be 'X' number of cases to prove an association to be an unlawful association; and that even one case may be sufficient. Learned ASG has submitted that the delay in the investigation will have no bearing in the present proceedings as the degree of evidence required before this Tribunal and the adjudication thereon is to be based on the principles of preponderance of probabilities.

217. Learned ASG has further submitted that the evidence adduced by the Central Government has not been refuted on any ground whatsoever, and as such, in view of non-rebuttal of the evidence adduced by the Central Government by any member / erstwhile member of JKDFP opposing the ban, the Notification No. S.O. (E) 4348 published in the Gazette of India, Extraordinary, dated 5th October, 2023, declaring the Jammu and Kashmir Democratic Freedom Party (JKDFP) as an 'unlawful association' under sub-Section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 is liable to be confirmed.

218. As regards the hostile environment prevailing in the territory of Jammu & Kashmir creating hurdles in conclusion of cases against the separatist and militants, the learned ASG submitted that as has been stated in the testimonies of various witnesses, the delay in the investigation and trial has occurred due to extremely hostile environment which prevailed in the erstwhile State of Jammu and Kashmir. Learned ASG submitted that it is a matter of public knowledge that since last more than three decades, the erstwhile State of Jammu and Kashmir has been adversely affected by the acts and deeds of the Separatist groups and its leaders.

219. Learned ASG submitted that from 1989 to 2016 the situation in the erstwhile State of Jammu and Kashmir remained volatile and disturbed due to the circumstances created by terrorist groups camouflaged as Separatist Groups/Political Parties or self-styled political leaders who instigated and provoked the general public at large against the lawfully established governments with the help of foreign state and non-state actors having interests inimical to the interest of the country. Learned ASG has submitted that these facts have been referred to in the concurring opinion of Justice Sanjay Kishan Kaul in para-31 and Epilogue recorded in para 113-135 in the judgment ***Re: Article 370 of the Constitution***, reported in 2023 INSC 1058 : 2023 SCC Online SC 1647.

220. Learned ASG submitted that the separatist leaders and their activists had created such terror in the minds of public that the general public, which even did not support their cause, feared to oppose them or to report to the police against various incidents and even feared to depose or give evidence against the said separatist leaders. Thus, leading to a non-cooperative atmosphere for the police investigating agencies in the cases registered against the said separatist organizations or its leaders.

221. Learned ASG also submitted that the investigation was further slowed thereafter due to COVID-19 Pandemic which had brought all the routine activities to a standstill and a complete lockdown in the entire nation was imposed, hence, the investigation in the cases registered against the JKDFP and Shabir Ahmad Shah in the State of Jammu & Kashmir could not be processed at the pace it should have been.

222. Learned ASG has also submitted that the NIA in its charge-sheet filed on 18.01.2018 in RC-10/2017/NIA/DLI vide paragraphs 17.2. to 17.5 has highlighted the magnitude of secessionist and terrorist activities in the Kashmir valley and the nexus of JKDFP and cross border terrorist organizations in the Kashmir valley and that the

investigation carried out by the NIA, therefore, corroborates the hostile environment in the State of Jammu and Kashmir for a long period of time which could not let the Investigating Agency to complete the investigations in respective FIRs.

223. The learned ASG submitted that a bare perusal of the facts stated in the NIA charge-sheet read with the facts stated in the judgment of the Supreme Court in ***Re: Article 370 of the Constitution*** (supra), it can be clearly inferred that prior to coming into force the Jammu & Kashmir Re-Organization Act, 2019, the various successive governments / authorities from 2004 to 2019 for the reasons recorded in the judgment of the Supreme Court did not take any stern action against the separatists. Learned ASG submitted that the said authorities rather than concentrating on prosecuting the criminal acts of separatist and secessionist forces, indulged in dialogue. Learned ASG submitted that it appears that due to such non-conducive and hostile environment the investigations / prosecutions could not reach to their logical conclusions, which are not taken up with a sense of urgency and seriousness post coming into force the Jammu and Kashmir Re-Organization Act, 2019.

224. Learned ASG submitted that despite several FIRs having been lodged against Shabir Ahmad Shah and other members of JKDFP, its members / activists / sympathizers are still active and are indulging in unlawful activities as defined in the UAPA and are indulging in anti-national activities posing a serious threat to the sovereignty and integrity of India, peace, communal harmony, internal security and maintenance of secular fabric of the Indian society. Learned ASG has submitted that if the JKDFP is not banned again, the activists and sympathizers of JKDFP will again pose a serious threat to the communal harmony, internal security and integrity of the country.

225. Lastly, learned ASG has submitted that the notification No. S.O. 4348 (E); dated October 5th, 2023, issued by the Central Government declaring JKDFP as an unlawful association is based on the information and material received from the State Government of Jammu and Kashmir, the National Investigation Agency, Directorate of Enforcement and the various intelligence agencies, with regard to the unlawful activities of the JKDFP and is liable to be confirmed.

IX. APPLICATION FILED BY THE UNION OF INDIA CLAIMING PRIVILEGE

226. The Union of India has filed an application claiming privilege, where, it has been *inter alia* averred as under :-

"1. The above-mentioned matter is pending consideration before this Hon'ble Tribunal. That the Union of India through Ministry of Home Affairs has filed a detailed affidavit and the contents of the Affidavit are not repeated herein for the sake of brevity and may be read as part and parcel of the present application.

2. The Central Government is constrained to file the present application to seek privilege to the documents mentioned in para-11 of the said affidavit. The Central Government places its claims of privilege to the document under Section 123 of Evidence Act read with Section 3(2) of The Unlawful Activities (Prevention) Rules, 1968….

xxx xxx xxx

5. In the present case, it is respectfully submitted that the documents for which claim of privilege, by their very nature, are confidential and sensitive in nature and, therefore, cannot be supplied as a public document.

6. It is submitted that the documents forms part of the evidence collected by the intelligence agencies which pertains to secessionist and unlawful activities of the JKDFP and those associated with it. The said documents are confidential and secret in nature and the same can be verified by the Hon'ble Tribunal only.

7. It is further respectfully submitted that the contents of the sealed cover documents are privileged and confidential in nature and Government considers it against the public interest to disclose the same to either the unlawful association or to any third party inter-alia in terms of the provisions of the UAPA.

8. The nature of material placed in the sealed cover by the Central Government is in the form of intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, communications between the intelligence agencies, information which may lead to further recoveries, discoveries of facts as also unearth conspiracies, the disclosure whereof would be clearly detrimental to the larger public interest and the security of the State. The material filed by the Central Government contains the note put up to the Cabinet committee on Security along with documents supporting the note and the grounds on which the notification was issued besides intelligence inputs and correspondence in relation thereto. Hence the claim of privilege of the documents by the Central Government is in accordance with law and the documents submitted in sealed cover are not required to be disclosed in the public interest."

227. The prayers made in the aforesaid application are as under:-

"PRAYER

In view of the aforesaid, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

a) Grant privilege to Central Government for not sharing sealed cover documents as mentioned in para-11 of the affidavit of Central Government or for bringing the said documents in the public domain both in national interest, interest justice, as well in public interest; and

b) Pass such other and further order as this Hon'ble Tribunal deems fit and proper"

228. The present application has been filed in the context of the fact that the concerned witness from the Ministry of Home Affairs (PW- 23) has sought to tender along with his affidavit a sealed envelope containing intelligence reports/inputs.

229. The issue regarding privilege by the Central Government in respect of the documents disclosure whereof is injurious to public interest is specifically envisaged in the UAP Rules, 1968. Rule 3 of the said UAP Rules, is in the following terms :-

***"3. Tribunal and District Judge to follow rules of evidence**.—(1) In holding an enquiry under sub-section (3) of Section 4 or disposing of any application under sub-section (4) of Section 7 or sub-section (8) of Section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).*

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not, --

(a) make such books of account or other documents a part of the records of the proceedings before it; or

(b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it."

230. It can be seen that the Rule 3 (2) starts with a non-obstante clause providing that notwithstanding anything contained in the Indian Evidence Act, 1872, where any books of account or other documents are sought to be produced by the Central Government and these documents are claimed to be of a confidential nature, then the Tribunal shall not make such documents a part of the records of the proceedings before it or allow inspection of or grant a copy of the same to any person other than the parties to the proceedings before it.

231. Rule 5 of the UAP Rules which provides for the documents which should accompany a reference to the Tribunal viz. a copy of the notification and all facts on which grounds specified in the notification are based, further provides that nothing in the said Rule shall require the Central Government to disclose any fact to the Tribunal which it considers against public interest to disclose. The said rule is in the following terms:-

*"5. **Documents which should accompany a reference to the Tribunal.** – Every reference made to the Tribunal under sub-section (1) of Section 4 shall be accompanied by –*

(i) a copy of the notification made under sub-section (1) of Section 3, and

(ii) all the facts on which the grounds specified in the said notification are based:

Provided that nothing in this rule shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose."

232. The aforementioned provisions and the requirement of maintaining confidentiality of certain documents specifically came to be considered by the Supreme Court in the case of ***Jamaat-e-Islami Hind*** (supra), wherein it was held as under :-

"22. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office-bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the

points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.

23. In John J. Morrissey and G. Donald Booher v. Lou B. Brewer the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

> *"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."*

24. In Paul Ivan Birzon v. Edward S. King placing reliance on Morrissey, while dealing with a similar situation, when confidential information had to be acted on, it was indicated that the credibility issue could be resolved by the Board retaining confidentiality of the information but assessing the credibility itself, and a modified procedure was indicated as under:

> *"... the board was required to decide whether it would believe the informants or the parolee and his witnesses. The infirmity that we see in the hearing and determination by the parole board is that it resolved the credibility issue solely on the basis of the State report, without itself taking the statements from the informants. Thus the board had no way of knowing how reliable the informants were and had no real basis on which to resolve the credibility issue against the parolee....*
>
> *We do not mean to intimate that the board should have taken testimony from the informants at the hearing and given the parolee the opportunity to cross-examine. What we do mean is that the board should have received the information directly from the informants (although not necessarily in the presence of the parolee), instead of relying solely on the State report. The board could then have reached its own conclusions about the relative reliability of the informants' statements and those of the parolee and his witnesses.*
>
> *Similarly, the board could then have made its own decision about how realistic were the claims of potential danger to the informants or to State parole officers if their identity was disclosed, instead of placing exclusive reliance on the State report. Thus, we hold that, in relying exclusively on the written synopsis in the State report, which was the only evidence of a parole violation, in the face of the parolee's denial and his presentation of the testimony of other witnesses, the revocation of Satz's parole was fundamentally unfair to him and was a denial of due process of law."*

25. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken.

26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should

form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.

27. It follows that, ordinarily, the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny. In this context, the claim of privilege on the ground of public interest by the Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires. The requirements of natural justice can be suitably modified by the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. This modified procedure would satisfy the minimum requirement of natural justice and judicial scrutiny. The decision would then be that of the Tribunal itself."

233. The High Court of Andhra Pradesh in ***Deendar Anjuman v. Government of India,*** 2001 SCC OnLine AP 663 after applying the test laid down in ***Jamaat-e-Islami Hind*** (supra) upheld the ban imposed and further held that the entire material available on record itself need not be published or made available to the aggrieved person but what is required is disclosure of reasons and the grounds. Relevant extract of the said judgment is as under:

"19. The expression "for reasons to be stated in writing" did not necessarily mean that the entire material available on record itself is to be published or made available to the aggrieved person. What is required is disclosure of reasons. The grounds must be disclosed. The notification issued under sub-section (1) of Section 3 alone is required to be referred to the Tribunal "for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful." The Tribunal after such reference is required to issue notice to the affected association to show cause, why the association should not be declared unlawful. The Tribunal is required to hold an enquiry in the manner specified in Section 9 and after calling for such further information as it may consider necessary from the Central Government or from the association and then decide whether or not there is sufficient cause for declaring the association to be unlawful. The Tribunal is require "to adjudicate whether or not there is sufficient cause for declaring the association unlawful." As held by the Supreme Court in Jamaat-e-Islami Hind v. Union of India[2] the Tribunal is required to weigh the material on which the notification under sub-section (1) of Sec. 3 is issued by the Central Government after taking into account the cause shown by the Association in reply to the notice issued to it and by taking into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the action to be unlawful. The Tribunal is required to objectively determine the points in controversy. The Supreme Court further held that subject to non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. The Tribunal is entitled to ascertain the credibility of conflicting evidence relating to the points in controversy. It is observed by the Supreme Court:

> *"To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the ipse dixit of the Central Government. The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence of material in respect of which the Central Government claims nondisclosure on the ground of public interest."*

20. It is, therefore, evident that disclosure of all the facts and material available on record subject to the claim of any privilege in this regard by the Central Government is only after the reference of the notification issued under sub-section (1) of Section 3 of the Act to the Tribunal for the purpose of adjudication whether or not there is sufficient cause for declaring the association unlawful. The material available on record may have to be revealed to the association or its members. In a case wherever any privilege is claimed, the Tribunal has to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. Therefore, there is no requirement to disclose the material itself and publish the same in the notification or provide to the association along with the notification issued in exercise of the power under proviso to sub-section (3) of Section 3 declaring the association to be unlawful with immediate effect. The requirement is disclosure of additional reasons and grounds and not the material. The notification issued in

exercise of the power under proviso to sub-sec. (3) of Section 3 cannot be set aside on the ground that the material relied upon for stating the reasons is not communicated to the association concerned declaring it to be an unlawful association with immediate effect. Such notification would become vulnerable only when the reasons are not notified: The record should contain the reasons in writing and the same is required to be revealed and published in the notification or communicated to the association concerned. Such reasons are required to be distinct and different and cannot be the same for imposing ban under Section 3 of the Act. The reasons are required to be communicated but not the entire material. Disclosure of the material is only after reference of the notification issued under Section 3 of the Act to the Tribunal."

234. The legal position, that emerges, can be succinctly put in the following terms:-

i. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder contemplates maintenance of confidentiality whenever required in public interest;

ii. The Tribunal can look into the confidential material without the same being disclosed to the Association or its office-bearers, for the purpose of assessing the credibility of the information and satisfying itself that the same is reliable;

iii. The Tribunal can devise a suitable procedure for itself for examining and testing the credibility of such material

iv. The requirement of natural justice can be suitably modified by the Tribunal in the manner it considers appropriate for the purpose of assessing/examining the confidential material/documents, and arriving at a conclusion based on a perusal thereof.

235. Further, the rigors prescribed by the Supreme Court in the case of ***S.P. Gupta*** (supra) have to be read in the context of the provisions of the UAPA and the Rules framed thereunder. In particular, it needs to be borne in mind that Rule 3(1) of the UAP Rules, 1968 expressly provides that in holding any inquiry under Sub-Section (3) of Section 4 of the UAPA, the Tribunal shall follow "as far as practicable", the rules of evidence laid down in the Indian Evidence Act. Thus, the rigors that have been contemplated in the context of Section 123 of the Indian Evidence Act, cannot *ipso-facto* be made applicable to these proceedings. The legislative intent in making the provisions of the Evidence Act applicable only "as far as practicable" is evident from the nature of these proceedings. The proceedings before this Tribunal do not contemplate a full-fledged trial; rather the proceedings are in the nature of an "inquiry" as referred to in Section 4(3).

236. Further, the proceedings are time-bound and as laid down by the Supreme Court in the case of ***Jamaat-e-Islami Hind*** (supra), an appropriate procedure has to be devised/tailored by this Tribunal for the purpose of its inquiry. As such, any claim seeking privilege has to be assessed in terms of the in-built mechanism as provided under the UAPA and the Rules framed thereunder and the Tribunal is mandated to grant privilege from disclosure where it finds that the disclosure would be against/injurious to public interest. Thus, the nature of the documents has to be assessed by the Tribunal to see whether it contains any sensitive information, disclosure of which would be against public interest.

237. On perusal of the documents submitted by the Central Government in a sealed cover, it is found that the same contains intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, notes/memos prepared by the investigating and intelligence agencies, information revealed on investigation including information as to the clandestine nature of the activities of the concerned association and its office-bearers and linkage of the association and its office-bearers with organizations and individuals outside of India.

238. I find from the perusal of these documents that the disclosure of these documents would be detrimental to the larger public interest and security of the State. One of the documents which is contained in the sealed cover, is a note prepared for consideration of the cabinet committee on security, which contains sensitive information about activities of the Association and its inimical impact on national security. Clearly, the nature of these documents is such that it would be in public interest and in the interest of the security of the State to maintain confidentiality as regard thereto.

239. I also note that the claim for privilege has been expressly stated by the concerned witness from the Ministry of Home Affairs (PW - 23) to be based on a specific approval/direction of the Union Home Secretary (The head of the Department). The said position is also borne out from the relevant official/noting files shared with this Tribunal.

240. In the circumstances, this Tribunal allows the claim for privilege in respect of the documents submitted in a sealed cover by the concerned witness from the Ministry of Home Affairs. Consequently, the Tribunal has proceeded to peruse the said documents, as contemplated in the Judgment of the Supreme Court in ***Jamaat-e-Islami Hind*** (supra) and to assess the credibility thereof and the implications flowing therefrom for the purpose of the present inquiry.

X. ANALYSIS AND CONCLUSION

241. On the basis of the material placed on record and the evidence adduced by the Central Government, I find sufficient cause for declaring the Jammu and Kashmir Democratic Freedom Party ('JKDFP') as an unlawful association.

242. The notification dated 5th October, 2023 issued under Section 3(1) of the Act *inter alia* mentions that, (i) the members of the JKDFP have been at the fore-front of the secessionist activities in Jammu and Kashmir; (ii) the leaders or members of the JKDFP have been involved in raising funds through various sources including those in Pakistan for promoting unlawful activities, including supporting terrorist activities; (iii) JKDFP and its members have scant respect towards the constitutional authority and constitutional set-up of the country; (iv) JKDFP and its leaders or members, particularly, its founder Shabir Ahmad Shah, have been indulging in unlawful activities, which are prejudicial to the integrity, sovereignty, security and communal harmony of the country; (v) there are linkages between JKDFP with banned terrorist organizations.

243. The above grounds/justification cited in the notification issued under Section 3(1) of the Act are borne out from the extensive evidence adduced by the Central Government. The said evidence can be broadly categorized into four categories:-

i. Evidence adduced by officers(senior police officers) from Union Territory of Jammu and Kashmir;

ii. Evidence in the form of Charge-sheet filed in NIA case No. RC-10/2017/NIA/DLI;

iii. Evidence showing receipt of funds by Shabir Ahmad Shah from Pakistan, and collusion with external agencies/inimical elements; and

iv. Evidence in the form of documents/material submitted in a sealed cover before this Tribunal.

Evidence adduced by officers from the Union Territory of Jammu and Kashmir

244. As many as 20 senior police officers/officials from the Union Territory of Jammu and Kashmir (PW1 – PW20) have deposed as regards the litany of incidents involving JKDFP/ Shabir Ahmad Shah since the past several decades. The same clearly brings out that the concerned association and its chief protagonist Shabir Ahmad Shah has been relentlessly indulging in "unlawful activities".

245. The incidents with regard to which voluminous evidence have been adduced, *inter alia* involves:

i. raising anti-India and pro-Pakistan slogans (evidence of PW-1, PW-3, PW-5, PW-7, PW-8, PW-9, PW-10, PW-11, PW-12, PW-13, PW-15, PW-16, PW-19),

ii. encouraging boycott of elections and openly professing dis-allegiance towards the Constitution of India (evidence of PW-2, PW-5, PW-11, PW-12, PW-14, PW-16, PW17 and PW-20),

iii. inciting the people of Jammu and Kashmir to take resort to violence/pelting of stones on security forces (evidence of PW-1 PW-7, PW-10, PW-12, PW-15, PW-16, PW-17, PW-19 and PW-20),

iv. undermining the sovereignty and territorial integrity of India and professing affection towards Pakistan by making hate speeches (evidence of PW-2 PW-4, PW-9, PW-10, PW-12, PW-16, PW-20),

v. instigating the general public intending to cause disaffection against India (evidence of PW-6, PW-7, PW-12, PW-16, PW-18 and PW-19),

vi. raising of funds through various sources including for promoting unlawful activities, including supporting terrorism/ violence/ militancy, spreading secessionist ideology in Jammu and Kashmir (evidence of PW-18).

246. On a cumulative consideration of the various incidents/activities which are subject matters of the various FIRs with regard to which the aforesaid evidence has been led, it is evident that JKDFP and its President Shabir Ahmad Shah have been indulging in "unlawful activities" and have posed a grave threat to the law and order situation in Jammu and Kashmir since the last several decades.

247. Although it is true that the investigation in most of the FIRs (with regard to which PW-1 to PW- 20 have deposed) has been protracted, learned ASG of Union of India has sought to emphasise that the same was on account of hostile environment prevailing in the Territory of Jammu and Kashmir over a long period of time. However, what is of relevance to this Tribunal is the clear pattern that is discernible as regards the nature of activities of the concerned association and its office bearers. The pattern of conduct is to incessantly encourage secession of the State of Jammu and Kashmir, questioning or seeking to disrupt the sovereignty and territorial integrity of India, inciting the people of Jammu and Kashmir to take resort to violence/pelting of stones etc., and to disrupt peace in the region of Jammu and Kashmir. These activities continued unabated for a long period of time; it is only in the last few years (in the aftermath of the Jammu & Kashmir Re-organisation Act, 2019) that there has been a lull in the activities of the JKDFP/Shabir Ahmad Shah, as evident from the reduced instances of violence/disruption of law and order.

248. This Tribunal also takes note of the fact that each of the senior police officers from the State of Jammu and Kashmir, who have deposed before this Tribunal, during the course of their examination, strenuously emphasized from their own personal knowledge derived during the course of discharge of their official functions, that JKDFP and its chairman Shabir Ahmad Shah and those other leaders and members have been:

i. incessantly encouraging and have been actively and continuously advocating claims for secession of Jammu and Kashmir from the Union of India and have been inciting the local population;

ii. promoting anti-national and separatist sentiments prejudicial to the integrity and security of the country;

iii. tacitly and tactically supporting militancy and incitement of violence in the territory of Jammu and Kashmir on religious lines and have sought to escalate the separatist movement.

249. The compelling testimony of officers from numerous districts of Jammu and Kashmir cannot be disregarded. The aforesaid evidence remains unrebutted by the concerned association/ its office bearers. At every stage of these proceedings, a right was afforded to the concerned association/its members and any other interested party in the matter to appear before this Tribunal and cross-examine the concerned officers who have deposed before this Tribunal. However, the said opportunity has not been availed.

Evidence in the form of Charge-sheet filed in NIA case No. RC-10/2017/NIA/DLI

250. This case pertains to the terrorist and secessionist activities that have rattled Jammu and Kashmir since late 1980's and early 1990's. Various terrorist organizations such as Lashkar-e-Toiba (LeT), Hizub-ul-Mujahideen (HM), Jammu & Kashmir Liberation Front (JKLF), Harkat-ul-Jihad-al-Islami, Jaish-e-Mohammad (JeM) etc. unleashed a spate of violence in the valley by attacking civilians as well as the security forces with the active support of the Inter-Services Intelligence (ISI) of Pakistan. Pakistan has not only been training the terror groups but also supporting them financially and diplomatically. Amidst the violent activities of the terrorists and mass exodus of the minority community from Jammu and Kashmir, the All Parties Hurriyat Conference (APHC) was formed as a conglomerate of 26 political/social/religious organizations in the year 1993 which gave a political front to the secessionist activities.

251. The investigation in the NIA case uncovered a conspiracy involving various terrorist organizations, such as JKLF, HM, and LeT, in collusion with secessionist groups comprising the APHC, funded by Pakistan and its agencies. The aim was to wage war against the Indian Government and advocating for the secession of Jammu & Kashmir from India. APHC, initially formed as a political front, was found to be actively involved in inciting violence and unrest in Kashmir to further their secessionist agenda. Pursuant to the investigation, a charge-sheet dated 18.01.2018 was filed before the NIA Special Court, New Delhi - against 12 accused persons (who are leaders in APHC), including two designated terrorists, based in Pakistan, as absconders.

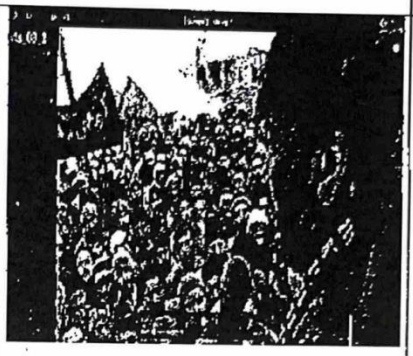
252. During the course of further investigation in the said case, it has been found that Shabir Ahmad Shah, as the head of JKDFP, played a significant role in building the separatist and militant movement in Jammu and Kashmir. Electronic devices seized from him and other accused individuals were analysed, revealing his involvement in conspiracies related to secessionist and terrorist activities. Shabir Ahmad Shah maintained contacts with Pakistan-based terrorist leaders and received funds through illicit channels like Hawala. He incited protests and unrest in Jammu & Kashmir, using funds raised through donations and Hawala transactions. Witness statements recorded under Section 161 of the Cr.P.C and Shah's own disclosure statement further implicated him in planning and promoting separatist movements. He was involved in organizing protests, shutdowns, and inciting anti-India sentiments, using various social platforms. A supplementary charge sheet was filed on 04.10.2019 against Shabir Ahmad Shah (head of JKDFP) and other accused individuals, including Yasin Malik (head of JKLF), who pleaded guilty and was convicted, while the trial for others is still ongoing.

253. The supplementary charge-sheet elaborates at length the nefarious role played by JKDFP/Shabir Ahmad Shah in building the separatist and militant movement in Jammu and Kashmir. It has been brought out therein that JKDFP and its chief protagonist Shabir Ahmad Shah has been the frontline secessionist entity vigorously pursuing the agenda of securing cessation of Jammu and Kashmir from the Union of India. Further, it is stated that since formation of JKDFP on May 24, 1998, accused Shabir Ahmad Shah became the mouthpiece of Pak-ISI which had been handling him through his Pak/POK based representative i.e. Mehmood Ahmed Sagar.

254. The chargesheet brings out that in pursuance of his secessionist agenda, accused Shabir Ahmad Shah, had been giving virulent anti-India public speeches. This has been substantiated from the scrutiny of the CD's recovered from his house during search, which has revealed numerous instances wherein Shabir Shah made inflammatory speeches at several locations such as Kishtwar, Bhadarwa, Anantnag, Kargil, Poonch etc. instigating the masses to shout slogans in support of secession of Jammu & Kashmir from the Union of India, and created such a surcharged atmosphere against Government of India that people started pelting stones on the security forces, who were deployed there to maintain law & order.

255. Para 9 of the affidavit filed by PW-22 P.B. Pathak, Deputy Deputy Superintendent of Police in the National Investigation Agency (NIA), New Delhi specifically mentions that on 26.02.2019 and 27.02.2019, 09 premises belonging to the separatists, the accused persons arraigned in the case and Shabir Ahmad Shah @ Shabir Shah were searched in Jammu and Kashmir, and electronic items were seized. The seized electronic devices were sent to Centre for Development of Advanced Computing (hereinafter referred to as "C-DAC") Trivandrum for analysis and expert opinion. Several incriminating videos have been extracted from the seized digital devices by the experts of C-DAC. Scrutiny report of articles seized from the residence of Shabir Ahmad Shah has been exhibited EX.PW22/4, the same is as under:-

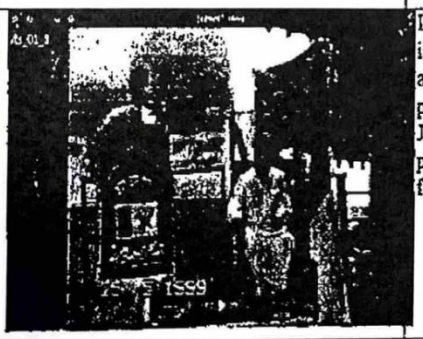
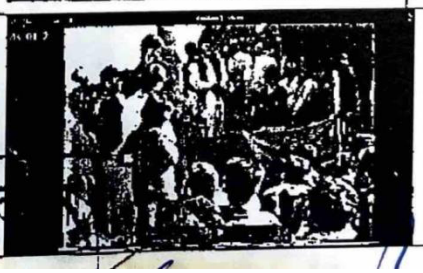
SCRUTINY REPORT OF ARTICLES SEIZED FROM THE HOUSE OF SHABBIR SHAH

Name of Device	Path way	Gist	Screen Shot of Video/Image	Remarks
Black Colour CD Album containing 62 nos of CDs	H:\Evd66\Optical Drives Bag-62 Nos\51-DVD-Moserbaer-Public Meet-Shabir shah (VTS 08_01) (1)	In a public meeting Shabbir Shah is addressing people and saying such parents are fortunate whose sons are martyred. People are also chanting slogans like Hum kya Chahte Azadi, hum cheen kar lenge azadi, hum lad kar lenge azadi etc.		This is 4.13 minute video in which from 18 sec to 46 sec and 1.04 minute to 1.16 minutes is material period.
-do-	H:\Evd66\Optical Drives Bag-62 Nos\51-DVD-Moserbaer-Public Meet-Shabir shah (VTS 11_01)	In this video Shabbir Shah is addressing people that there is conspiracy against Pakistan and Hindustan, Yahoodi and Nasroniyon want to destroy Pakistan.		This video is total 18 second.
-do-	H:\Evd66\Optical Drives Bag-62 Nos\51-DVD-Moserbaer-Public Meet-Shabir shah (VTS 12_01)	In this video Shabbir Shah is addressing public that we are grateful to Pakistan that he has sheltered our youth and standing on mountains for our freedom.		This is 1.15 minutes video and from 001 second to 45 second Shabbir Shah is relevant part of the video.

-do-	H:\Evd66\Optical Drives Bag-62 Nos\51-DVD-Moserbaer-Public Meet-Shabir shah (VTS 20_01)	Shabbir Shah is addressing people and spreading propaganda against RSS that RSS will impose economic blockage in valley like food, medicines, milk etc and will make their colony in valley.		This is 2.05 minutes video and from 1.14 to 1.38 is relevant part of the video.
-do-	H:\Evd66\Optical Drives Bag-62 Nos\51-DVD-Moserbaer-Public Meet-Shabir shah (VTS 21_01)	In the said video Shabbir Shah is addressing people that Hindustan will have to leave Kashmir as British left.		This is 55 second video and from 12 to 41 second is relevant period of the video.
-do-	H:\Evd66\Optical Drives Bag-62 Nos\51-DVD-Moserbaer-Public Meet-Shabir shah (VTS 22_1)	During the public address Shabbir Shah is praising Pakistan that Pak is the only country among 57 country who has nuclear power and people of Pakistan is fighting for us in Kashmir. In the said video Shabbir Shah is provoking people for azadi slogans etc.		This video is 1.12 second video and entire video is seems to incriminating.

All above video seems to belong from same day and same location.

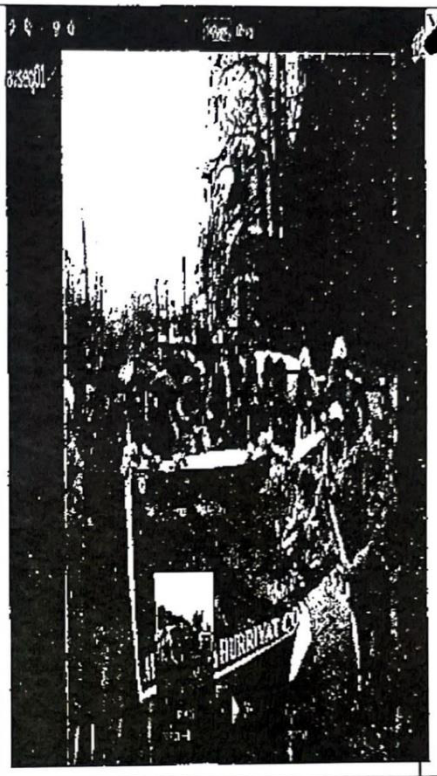
Black Colour CD Album containing 52 nos of CDs	H:\Evd68\51-DVD	During arrest of Shabbir Shah his party workers are chanting slogans of Ajadi • Hum kya chahte Azadi • Hum Cheen ke lenge azaadi. • Sarkarl dehshatgardi band karo. • Is mulk ka faisal hum karenge.		Approx 1.4 minute video, period from 16 to 30 second is incriminating.
Black Colour printed CD Album containing 43 nos of CDs	H:\Evd70\DVD-5 Pattern Rally\VIDEO_TS (VTS_01_1)	A video containing the footage of a public rally held in the month of Nov. 1995 at Pattan where Shabbir Shah is leading a rally and mounting on a bus. During the rally Nayeem Khan (Hurriyat leader) is provoking the people for azadi slogans.		Hurriyat leader Nayeem Khan is associating Shabbir Shah in his party rally. This video is 14.26 minutes video.
-do-	H:\Evd70\DVD-5 Pattern Rally\VIDEO_TS (VTS_01_2)	A video containing the footage of a public rally held in the month of Nov. 1995 at Pattan where Shabbir Shah is addressing crowd and they chanting Azadi and anti national slogans. • Sarkar ne hamare Mujahidon		Hurriyat leader Nayeem Khan is associating Shabbir Shah in his party rally. This video is 32.17 minutes.

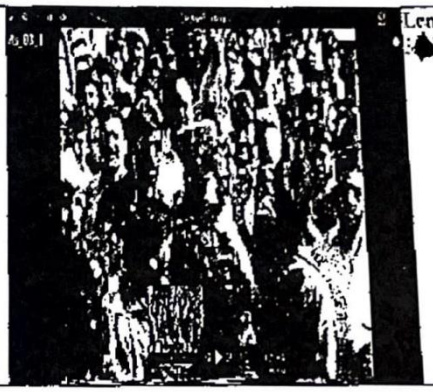
		ko bandook uthane ko majboor kar diya. (12.19 second) • Main un Mujahidon ko salam karta hoon jinhone kom ke liye...(17.58 second) • Shabeer Shah is praising about might of Mujhaheed. Apart from there several moment where party worker provoking people for chanting Azadi slogans.		
-do-	H:\Evd70\DVD-8 4 Tape\VIDEO_TS (VTS_01_1)	Video footage belong to a party worker meeting which was held in 25.05.1999 where people are chanting azadi slogan, where Shabeer Shah along with other party leader addressing.		Length of the video is 31.50 minutes and at 18.34 second party leader of JKDFP is provoking people for Azadi slogans.
-do-	H:\Evd70\DVD-13 26 Tape Error\VIDEO_TS (VTS_01_2)	During the public address Shabbir Shah is provoking people for fighting of Azadi		

-do-	H:\Evd70\DVD-13 (i) Tape Error\VIDEO_TS (VTS_02_0)	Video containing footage sof Shabbir shah political activities at Batote, Doda and Kishtwar. During a Public gathering Shabbir Shah, Maulana A.K. Tari (Ex chairman Tehreek-e-Hurriyat) & Nayeem Khan addressed the people in Kishtwar party worker are chanting anti Nation slogan. • Hum kya chahte Azadi. • Hum Cheen ke lenge azadi. • Hai haq hamara azadi. (Batote: 38.49 minute). (Kishtwar: 40.20 minute).		Lenth of video is 1 hrs.
-do-	H:\Evd70\DVD-13 26 Tape Error\VIDEO_TS (VTS_02_1)	Video footage of a Public gathering addressed by Shabbir Shah at Bhadarwa. During the address people are chanting Azadi slogans. Hum Kya Chahte Azdai (48		Length of video of 4.12 minutes.

		second)		
-do-	H:\Evd70\Evd70-22 (VTS_01_1)	Video containing footage of a party rally of JKDFP held in Anantnag in which people are chanting Azadi slogans. **Hum kya chahte azadi.** **Hai haq hamara azadi** **(06.5 minutes & 08.40 minutes)**		Hurriyat leader Nayeem Khan is present in rally. Length of video is 33.10 minutes.
-do-	H:\Evd70\Evd70-22 (VTS_03_1)	Video footages containing a party rally organized in Kargil by Shabbir Shah and his party JKDFP in which people hurriyat leader Shabbir Shah and other party worker are provoking people to chanting Azadi slogan. **Hum lad ke lenge azadi.** **Hum kya chahte azadi.** **Hum kya chahte azadi.** **(.52-1.24 minute)**		Length of video is 14.12 minutes.

-do-	H:\Evd70\Evd70-33 (VTS_01_1)	Video is containing the footages, of a march in which Shabbir shah along with his party worker who were holding the banners for freedom and chanting the slogan: • Hum kya chahte azadi. • Hai haq hamara azadi.		Video length is 03.54 minutes.
-do-	H:\Evd70\Evd70-33 (VTS_01_2)	Shabbir Shah is being garlanded by many women , who are chanting Azadi Slognas. In the same video party worker are chanting slogans: • Hum kya chahte azadi. • Hum Cheen ke lenhe azadi. • Ye pahad kya mange azadi. • Ye dharti kya mange azadi. • Ye maa kya mange azadi. Etc (from 20 to 30 second)		Length of video is 16.49 minutes.

-do-	H:\Evd70\Evd70-43	Under the banner of All Party Hurriyat Conference, Shabbir Shah along with other Hurriyat leaders are marching a protest rally. During the rally they are chanting azadi i.e. • Hum lad kar lenge azadi, hai haq hamara azadi and other anti India slogans and trying to hustle the Security Force personnel. From 10 to 1.24 second		Video length is 15 second.
Black Colour CD Album containing 80 nos of CDs	H:\Evd69\EVD69-20-0020.iso\MPEGAV	Shabbir Shah along with his party worker protesting and chanting the azadi slogans in a rally		Length of video is 39.18 minutes picture and sound quality is poor.
Black Colour CD Album containing 80 nos of CDs	H:\Evd69\EVD69-32-0032.iso	Shabbir Shah along with his party worker are chanting Azadi slogan and demanding to leave Kashmir • Hum cheen ke lenge azadi. • Hum kad kar lenge azadi.		Length of video is 15.16 minutes.

		• Kasmir hamara chod do. Etc From 00 to 58 second		
Black Colour CD Album containing 80 nos of CDs	H:\Evd69\EVD69-39	Shabbir Shah addressed a public rally in Poonch after rally people started stone pelting over security force personnel		
Black Colour CD Album containing 80 nos of CDs	H:\Evd69\EVD69-45 (VTS_03_1)	Video containing the footage of a public rally of Shabbir Shah in his presence Nayeem Khan is provoking people to come with his party for Azdi of Kashmir. • Hum kya Chahte azadi. • Hum lad kar lenge. • Hum cheen kar lenge. From 10.45 to 11.02 minutes		Length of video is 12.08 second.
-do-	H:\Evd69\EVD69-56-0056.iso (VTS_03_1)	In a public rally at Kargil, Draas and Rajouri Shabbir is provoking public to chanting slogan "Hum kya Chahte Azadi". • From 1.21 to 1.28 minute. • From 17.02 to 17.08 minute.		Length of video is 33.12.
-do-	H:\Evd69\EVD69-59	In a party road show Shabbir Shah along with his party worker are chanting slogans i.e. • Hai haq hamara azadi. • Hum cheen ke lenge aajadi.		Length of video is [illegible] minutes.

256. The above material seized from the chief of JKDFP clearly brings out the anti-national, secessionist agenda of JKDFP and its affinity with the terrorist/anti-national elements from across the border.

257. The investigation conducted by the NIA has also brought out that Shabir Shah was in touch with Pak/POK based militant leadership including Syed Salahuddin (Chairman of HM and United Jihad Council), Hafiz Mohd. Saeed (Chief of JuD) and Iftikar Haider Rana (LeT Commander, Lahore, Pakistan). Shabir Shah has been paying tributes to the neutralized militants and, on his directions, delegations of his party used to visit family members of the slain terrorists.

258. The supplementary chargesheet dated 04.10.2019 filed by the NIA concludes as under:-

> *"During investigation, it has been established through oral testimonies and technical evidence that accused Shabir Ahmad Shah was a part and parcel of the deep-rooted conspiracy hatched by the Hurriyat leaders. To fulfil their secessionist designs, accused Shabir Shah had contacted/interacted with most of the other accused persons and mentors sitting abroad through various means including telephone and email. CDR analysis shows his connectivity with accused persons viz. Zahoor Ahmad Shah Watali, Bitta Karate, Altaf Fantoosh, Peer Saifulla, Ayaz Akbar Khandey and Nayeem Khan. The accused persons, the terrorist organizations and the Pakistani establishment hatched a deep-rooted conspiracy to destabilize law and order in Jammu and Kashmir by carrying out terrorist attack, and by engineering stone-pelting and attacks on security forces and public property so as to create a surcharged atmosphere conducive to achieve secession of Jammu and Kashmir by inciting and instigating masses to wage a war against the Government of India, causing massive loss of lives and property".*

259. The content of the chargesheet filed by the NIA offers an insight into the activities of JKDFP/Shabir Ahmad Shah and is another vital piece of material in support of the notification dated 05.10.2023. The said charge-sheet submitted to the Court under Section 173 of the Cr.P.C is relevant material that can be taken note of for the purpose of these proceedings. In ***Khatri*** (supra), the Supreme Court, while dealing with the investigation report of a person who was directed to investigate into the matter, has held that the reports of investigation are relevant under Section 35 of the Evidence Act. It was *inter alia* held as under:

> *"These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by Section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in Kanwar Lal Gupta v. Amar Nath Chawla. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under Section 35 and this Court held that they were, on the ground that they were (SCC p. 667) "made by public servants in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent". This Court in fact followed an earlier decision of the Court in P.C.P. Reddiar v. S. Perumal. So also in Jagdat v. Sheopal, Wazirhasan, J. held that the result of an inquiry by a Kanungo under Section 202 of the Code of CriminalProcedure, 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in Chandulal v. Pushkar Raj where the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, insofar as they supply information of official proceedings and historical facts. The Calcutta High Court also held in Lionell Edwards Limited v. State of W.B that official correspondence from the Forest Officer to his superior, the Conservator of Forests, carried on by the Forest Officer in the discharge of his official duty would be admissible in evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty."*

260. The contents of the aforesaid chargesheet filed by the NIA; the recoveries referred to therein, the statements of the accused persons as referred to therein; all give an insight as to the activities of JKDFP/ its members, the nexus thereof with nefarious elements from across the border, and substantiates the conclusions drawn in the notification dated 05th October, 2023 issued under Section 3(1) of the UAPA.

Evidence showing receipt of funds by JKDFP/Shabir Ahmad Shah from Pakistan, and collusion with external agencies/inimical elements

261. The supplementary chargesheet dated 04.10.2019 filed in NIA No. RC-10/2017/NIA/DLI specifically mentions that accused Shabir Shah was duly supported by the Pakistan agencies through the Hurriyat representatives such as Shafi Shair and Mehmood Sagar based in Pakistan. It has been established through oral testimonies and documents that accused Shabir Shah remained frequently in touch with these Pakistan-based entities and would receive money through Hawala from these persons. This is also corroborated by the complaint filed by the Enforcement Directorate against the accused Shabir Shah under Prevention of Money Laundering Act. In the said case, one Aslam Wani, an associate of accused Shabir Shah, and also the cash mule for the terrorist organization Jaish-e-Mohammad collected Hawala money in Delhi and handed over the same to the accused Shabir Shah to be used for carrying out subversive and anti-national activities. The said Aslam Wani was arrested with Rs.63 lakhs, received through hawala channels from Middle East and explosive/arms and ammunition on 26.08.2005 by the Delhj Police. A case FIR No. 122/2005 u/s 121, 121A, 122, 123, 120B IPC, Section 4&5 of Explosive Substances Act and Section 25 of Arms Act was registered by Special Cell, Delhi Police on 26.08.2005 and a charge-sheet was filed vide Police Case No. 122/2005.

262. The statement of Aslam Wani recorded under Section 161 of Cr.P.C in NIA case gives minute details as to the manner in which Shabir Ahmad Shah instructed him for the purpose of collection of cash based on instructions received from Pakistan based mobile phone numbers, and delivery thereof to Shabir Ahmad Shah. The said statement is exhibited as Ex. PW22/8 alongwith affidavit of PW-22.

263. Investigation by the Enforcement Department further revealed that accused Shabir Ahmad Shah was in touch with Hafiz Saeed, the Chief of banned terror outfit 'Jamat-ud-Dawa' and a Global Terrorist, based in Pakistan on phone on the issue of Kashmir, and also with Mohd. Shafi Shair who hails from Kashmir but is presently residing in Pakistan. On the analysis of the CDRs, it was found that Shabir Shah received several calls on his mobile number, from Mohd. Sahi Shair from his Pakistan number, during the period from 22.01.2017 to 26.01.2017.

264. The above mentioned findings are also corroborated by the contents recovered from Shabir Shah's emails, under Section 27 of the Evidence Act. On scrutiny of the emails downloaded from the inbox of accused Shabir Shah, revealed an email received from Shafi Shair in which the said Shafi Shair had mentioned details of funds distributed in US Dollars and INRs among various persons including Shabir Shah.

265. The supplementary chargesheet also mentions that accused Shabir Shah was receiving funds from Pakistan through some conduits, and the same is also substantiated by the document/s seized from the house of Ghulam Mohammad Bhat, the accountant-cum-cashier of accused Zahoor Ahmad Shah Watali. The document shows accused Shabir Shah having received an amount of Rs. 10,00,000/- on 29.04.2015 from Hawala conduit Zahoor Ahmad Shah Watali.

266. It has also been mentioned in the chargesheet, that APHC leaders including Shabir Shah, raised funds through LOC trade. LOC trade route was also "abused" by elements from the neighbouring country to smuggle illegal weapons, drugs and fake currency into India. The funds generated by committing irregularities in LoC trade were used to fuel subversive and militant activities in Jammu and Kashmir.

267. The supplementary chargesheet also mentions that the investigation has established that funds are being sent by Pakistan to the secessionists and terrorists in the Kashmir Valley including Shabir Shah for organizing forcible closures, anti-India protests and processions and stone-pelting on the security officers.

268. Further, the investigation is stated to have revealed that in the year 2016, the Pakistan Government sent an amount of Rs.1,10,00,000/- (Rs. One Crore and Ten Lacs only) to accused Shabir Shah to be distributed among those who had resorted to stone-pelting on the security forces in Jammu & Kashmir and who had then got injured in the action of the security forces. This clearly shows that accused Shabir Shah, alongwith the other accused persons, is at centre of the conspiracy to promote lawlessness and violence in Jammu & Kashmir orchestrated with an intention to secure secession of Jammu & Kashmir from the Union of India.

269. It is notable that the email ID of JKDFP/Shabir Ahmad Shah from which incriminating documents were received were opened and accessed using the password provided by Shabir Ahmad Shah himself during the course of investigation. This has been specifically referred to in the pointing-cum-recovery memo exhibited Ex.PW21/4 alongwith affidavit of PW-21, which *inter alia* records as under:-

> *"Firstly, the print of screen shots of the computer system and Internet connections are taken. Accused Shabir Ahmad Shah is directed to open his email ID "shabirashah@rediffmail.com. He entered the password of his rediffmail ID. The email ID opened and accessed. Screen shots of the proceedings related to this email account shabirashah@rediffmail.com were obtained. The important data of the email was extracted and got printed alongwith the above screen shots. Same is marked as Annexure-1 (12 pages). Printout of the important emails was taken out and same is marked as Annexure-2 (28 pages)"*

270. Both the supplementary charge-sheet filed by NIA in Case No. RC-10/2017/NIA/DLI, and the charge-sheet filed by Enforcement Directorate in ECIR No. 03/DLZO-II/2017 reveals the receipt of funds by Shabir Ahmad Shah from Pakistan through conduits, and the same is stated to be substantiated by the documents seized from the house of Gulam Ahmed Bhat, the accountant-cum-cashier of co-accused Zahoor Ahmad Shah Watali.

271. In ***National Investigation Agency v. Zahoor Ahmad Shah Watali***, (2019) 5 SCC 1, the Supreme Court while considering whether grant of bail to Zahoor Ahmad Shah Watali was justified or not considered the evidentiary material regarding the flow of funds from across the border, and specifically noted as under:-

"...Ample material has been collected to show the linkages between the Hurriyat leaders of the J&K and terrorists/terrorist organisations and their continuous activities to wage war against the Government of India."

272. The Supreme Court also took note of the copious and elaborate evidence which showed flow of funds to terrorists/hurriyat leaders which was utilized for the purpose of terrorist/unlawful activities in Jammu and Kashmir. This was specifically taken note of by the Supreme Court in Para 39, 40 and 41, which are reproduced hereunder :-

"39. Reverting to the documents on which emphasis has been placed, Document No. D-132 is the seizure memo of properties seized from the premises of Ghulam Mohammad Bhatt (W-29), the then Munshi/Accountant of the respondent (Accused 10). Document No. D-132(a) is the green page document, seized during the search of the residence of the said Ghulam Mohammad Bhatt, containing information about foreign contributions and expenditures of the respondent (Accused 10) during 2015/2016. Whether this document is admissible in evidence would be a matter for trial. Be that as it may, besides the said document, the statements of Ghulam Mohammad Bhatt (W-29) has been recorded on 30-8-2017 and 1-11-2017. Whether the credibility of the said witness should be accepted cannot be put in issue at this stage. The statement does make reference to the diaries recovered from his residence showing transfer of substantial cash amounts to different parties, which he has explained by stating that cash transactions were looked after by the respondent (Accused 10) himself. He had admitted the recovery of the green-coloured document from his residence, bearing signature of the respondent (Accused 10) and mentioning about the cash amounts received and disbursed during the relevant period between 2015 and 2016. The accusation against the respondent (Accused 10) is that accused A-3 to A-10 are part of the All Parties Hurriyat Conference which calls itself a political front, whereas their agenda is to create an atmosphere conducive to the goal of cessation of J&K from the Union of India. The role attributed to the respondent (Accused 10) is that of being part of the larger conspiracy and to act as a fund raiser and finance conduit. Ample material has been collected to show the linkages between the Hurriyat leaders of the J&K and terrorists/terrorist organisations and their continuous activities to wage war against the Government of India.

40. Regarding the funding of terrorist activities in J&K and, in particular, the involvement of the respondent (Accused 10), the charge-sheet mentions as under:

"17.6. Funding of secessionist and terrorist activities in Jammu & Kashmir:

If publicity and propaganda is oxygen for the terror groups, terror financing is its life-blood. Terror financing provides funds for recruitment, operationalisation of training and training camps, procurement of arms and ammunition, operational cost of planning and resources for terrorist acts, running of underground networks, well-planned stone pelting, school burnings, targeted attacks, provision of legal support for terrorists and over-ground workers facing judicial process, ex gratia payment for militants killed in terrorist operations, regular payments to the families of terrorists and militants killed or convicted, funds for propaganda to clergy as well as relief measures for civilian population and also in case of natural disasters. The investigation in the case has revealed that the secessionists are mobilising funds from all possible sources to fuel unrest and support the ongoing secessionist and terrorist activities in Jammu & Kashmir.

17.6.1. Funding from Pakistan:

(i) The Hurriyat leaders are receiving funds from Pakistan through conduits and also from the Pakistan High Commission directly. It was substantiated by an incriminating document seized from the house of GhulamMohd. Bhatt during search. GhulamMohd. Bhatt worked as the cashier-cum-accountant with Accused A-10 Zahoor Ahmad Shah Watali, a known Hawala conduit. The document clearly shows that Accused A-10 Zahoor Ahmad Shah Watali was receiving money from Accused A-1 Hafiz Saeed (Head of Jamaat-ud-Dawa), from the ISI, from the Pakistan High Commission at New Delhi and also from a source based in Dubai. Accused A-10 was remitting the same to the Hurriyat leaders, separatists and stone-pelters of Jammu & Kashmir. The said document has been maintained in regular course of his business and is signed by accused ZahoorWatali himself. This document clearly shows that Hurriyat leaders were receiving funds from Pakistan through the officials of Pakistan High Commission and through accused A-10 ZahoorWatali.

The signature of accused A-10 ZahoorWatali has also been verified and as per the expert report, his signature on the questioned document matches with his specimen handwriting as well as his admitted handwriting.

(ii) Further, the role of Pakistan in funding secessionist activities also surfaced in the scrutiny of the unedited version of the audio/video furnished by the office of India Today TV news channel wherein accused A-5 Nayeem Khan admits that the secessionists and terrorists of the Valley are receiving financial support from Pakistan and would have received approximately Rs 200 crores to organise anti-India protests and agitations after the killing of Burhan Wani, the Commander of the proscribed terror organisationHizb-ul-Mujahiddin. He further speaks about funds reaching them from Saudi Arabia/Dubai through Hawala via Delhi (Balimaran/Chandni Chowk). He admits that S.A.S. Geelani (Chairman, APHC-G), Mirwaiz Umar Farooq (APHC-M) and Yasin Malik (JKLF) are receiving funds from Pakistan. He further admits the pivotal role played by the Pakistan High Commission to convey and receive instructions from Pakistan. Nayeem Khan also stated that the accused Hafiz MohdSaeed has supported S.A.S. Geelani, Chairman, APHC-G by paying at least 10-12 crores during anti-India agitation after killing of Burhan Wani. Accused Nayeem Khan further admitted that, if funded, he can fuel unrest in the Valley any time.

(iii) Similarly, the scrutiny of the audio/video of the sting operation also reveals accused A-6 Farooq Ahmad Dar Bitta Karate admitted that the funds are being sent by Pakistan to the secessionists and terrorists in the Kashmir Valley including him for organising forcible closures, anti-India protests and processions and stone-pelting on the security forces. He further claimed that he has his cadres in every part of Kashmir who can act on his call at any given point of time and fuel unrest in the Valley. When given an offer of financial support, accused Bitta Karate put forth a demand of Rs 70 crores for fuelling unrest up to six months.

The voice samples of Nayeem Khan and Farooq Ahmad Dar alias Bitta Karate have been forensically examined and the CFSL report has confirmed the match with their voices.

(iv) Further, the investigation has revealed that the seniormost officials of the High Commission of Pakistan were in regular contact with the Hurriyat leaders. The High Commission of Pakistan in New Delhi used to organise functions and meetings in New Delhi, to which the Hurriyat leaders from Kashmir were invited and they were given instructions and funds on a regular basis. These funds were given to various allied groups of the APHC and investigation has revealed that a First Secretary level officer of Pakistan High Commission in New Delhi would act as a channel and A-10 Zahoor Ahmed Shah Watali would act as a courier to deliver the funds to the Hurriyat leadership. These funds as explained above were used to foment the secessionist and separatist activities and unrest in the Valley in an organised manner. One such invitation card from the Pakistan High Commission was seized from the house of A-6 Farooq Ahmad Dar alias Bitta Karate:

On the occasion of the National Day
Pakistan High Commissioner and
Mrs Salman Bashir
Request the pleasure of the company of
Mr Farooq Ahmed Dar
At a Reception
on Friday, 22-3-2013 from 1930 to 2100 hrs.

Venue:	*RSVP*
2/50-G, Shantipath,	*Tel. 011-24121819*
Chanakyapuri, New Delhi	*Fax 011-26872339*

Dress : National/Lounge Suit/Uniform E-mail : pakhcnd@gmail.com
(Please bring this card with you)

Investigation has also established that the accused A-4 was in direct contact with the High Commissioner of Pakistan in New Delhi and would apprise him about the situation in Jammu & Kashmir.

17.6.2. Funding from terrorist organisations based in Pakistan:

During the course of investigation, it is also ascertained that the separatists and secessionists of Jammu & Kashmir were also receiving money from the terrorists and terrorist organisations operating out of Pakistan/PoK. The incriminating document seized from the house of GhulamMohd. Bhatt who worked as a cashier-cum-accountant with accused A-10 ZahoorWatali shows that ZahoorWatali received money

from accused A-1 Hafiz Saeed, Head of JuD and Chief of proscribed terror organization Lashkar-e-Toiba and remitted it to the Hurriyat leaders espousing the cause of secession of Jammu & Kashmir from the Union of India.

17.6.3. Local Donations/Zakat/Baitulmal:

During the course of investigation, it is established that the Hurriyat has its network of cadres at districts and local levels. There are District Presidents and block level leaders who have the responsibility to raise the funds through donation during the religious festivals and month of Ramzan. In a well-established system, the receipt books are printed and funds are collected from shopkeepers, businessmen and residents of Kashmir. The money is also collected to become a member of the Tehreek-e-Hurriyat. Selected members are made as Rukuns and are tasked to propagate the separatist ideology of Hurriyat. These Rukuns act as foot soldiers and ensure that bandhs and hartaals are successful. They also lead the processions and participate in stone pelting.

Investigation also established that various District Presidents collect Rs 5 to 10 lakhs per district as Baitulmal. Funds are also collected from apple-growers and businessmen who are compelled to donate to Hurriyat central office. This money is used for administrative and operational purposes of organising protests and strikes as well as for aid to militants and their families.

The seizure of unaccounted receipts of an amount of Rs 1,15,45,000 from accused A-4 Altaf Ahmad Shah Fantoosh also shows that money is being raised by way of donations. Similarly, records pertaining to the collection of funds were also seized from the house of accused A-8 MehrajuddinKalwal, who was also the District President of Tehreek-e-Hurriyat for Srinagar and Ganderbal.

Further, during the course of investigation, it is also established that the Hurriyat leadership appeals to the public to contribute money generously by way of donations for their so-called freedom movement. This is clearly reflected in the website of the Hurriyat Conference viz. www.huriyatconference.com, which shows a message from S.A.S. Geelani "Help the families of martyrs and prisoners….. people should come forward for donations in the month of Ramadan as the number of people affected by this movement is large".

This substantiates that Hurriyat is raising funds through donations and using the same to fuel secessionist activities and to support the families of killed and jailed terrorists.

17.6.4. LoC Trade:

During the course of investigation, it has been established that the secessionist and separatist leaders are raising funds through LoC trade by way of directing the Kashmiri traders to do under-invoicing of the goods which were imported through LoC barter trade. They sell the goods to the traders in Delhi and a part of the profit of the same is shared with the Hurriyat leaders and other separatists, which in turn is used on anti-India propaganda, for mobilising the public to organise protests and stone-pelting and to support families of killed/jailed militants. The hawala operators based in Srinagar, New Delhi and other parts of the country and abroad are being used to transfer the funds so generated. The investigation has revealed that the funds are generated by resorting to sale of third-party goods, under-weighing, under-invoicing, large-scale dealings in cash and committing irregularities in maintenance of records. This modus operandi leads to generation of huge cash surpluses on the Indian side which are then channelised through several formal banking channels as well as cash couriers and hawala dealers to the separatists and secessionists active in Jammu & Kashmir.

Investigation has revealed that a significant number of traders engaged in cross LoC trade have relatives across the border who are closely associated with banned terrorist organisations, especially Hizb-ul-Mujahideen. Investigation has also revealed that certain ex-militants and their family members are using proxy companies and are registered as traders. During the course of investigation, use of LoC trade route for smuggling of contraband and weapons has also come to light. A separate investigation is underway regarding the irregularities in the LoC trade.

17.6.5. Hawala:

Apart from the abovementioned sources and channels, the secessionists depend heavily on the hawala network and conduits to bring money from offshore locations to India to fuel anti-India activities in Jammu & Kashmir.

(i) During the course of investigation, it was ascertained that accused A-10 Zahoor Ahmad Shah Watali is one such conduit. The seizure of the incriminating document from the house of his cashier-cum-accountant viz. Ghulam Mohd. Bhatt regarding the foreign contributions received by Zahoor Ahmad Shah Watali from Pakistani establishment and terror organisations and their further remittance to the Hurriyat

leaders and secessionists of Jammu & Kashmir clearly shows that he was an active channel to transmit funds from abroad to India to fuel secessionist activities and to wage a war against the Government of India.

(ii) During the course of investigation, it is revealed that accused A-10 Zahoor Ahmad Shah Watali was bringing money from offshore locations to India by layering it through the scores of firms and companies he has opened. It was ascertained that Zahoor Ahmad Shah Watali has an NRE A/c No. 0252040200000505 in J&K Bank and he received foreign remittances to the tune of Rs 93,87,639.31 in this account from 2011 till 2013 from unknown sources.

(iii) During the course of investigation, it was also ascertained that the accused Zahoor Ahmad Shah Watali was showing foreign remittances under 'other income' in his proprietorship firm viz. Trison International, Srinagar. From the analysis of his bank accounts, it has been ascertained that foreign remittances to the tune of Rs 2,26,87,639.31 were received by the accused Zahoor Ahmad Shah Watali in different accounts from the year 2011 to 2016. An amount of Rs 93,87,639.31 came in Zahoor Ahmad Shah Watali A/c No. NRE-0252040200000505 in J&K Bank from 2011 to 2013. An amount of Rs 14 lakhs was remitted in the account of Acharya Shri Chander College of Medical Sciences (Ascoms), Jammu Account No. 1213040100000229 on 9-4-2013 through NEFT against fee deposited for his son viz. YawarZahoor Shah Watali. An amount of Rs 60 lakhs was remitted in current account of accused Zahoor Ahmad Shah Watali in J&K Bank A/c No. CD4508. An amount of Rs 5 lakhs was remitted in the account of Trison Farms and Constructions (P) Ltd. A/c OTN-10162. The investigation has revealed that all these foreign remittances are from unknown sources.

(iv) During the course of investigation, it was also revealed that on 7-11-2014, one Naval Kishore Kapoor, son of Om Prakash Kapoor, resident of PO Box 8669, Oman, UAE entered into an agreement with Trison Farms and Constructions (P) Ltd. through its Managing Director Zahoor Ahmad Shah Watali to take a piece of land measuring 20 kanals in SozeithGoriporaNagbal, Badgam on lease in consideration of an amount of Rs 6 crores as premium and Rs 1000 annual rent for an initial period of 40 years extendable as may be mutually agreed between the parties. In the agreement, M/s Trison Farms and Constructions (P) Ltd. was declared to be the absolute owner of the piece of land in question. Mr Naval Kishore Kapoor remitted a total amount of Rs 5.579 crores in 22 instalments between 2013 and 2016 to the accused Zahoor Ahmad Shah Watali.

(v) During the course of investigation, it was ascertained that no land exists in the name of M/s Trison Farms and Constructions (P) Ltd. as per the balance sheets of the said company (AY 2011-12 to 2016-17). It was also ascertained that the large sum of money i.e. Rs 5,57,90,000 was mobilised by Naval Kishore Kapoor from unknown sources and remitted to the accused Zahoor Ahmad Shah Watali over a period of 2 years to lease a piece of land which is not even existing in the name of the company mentioned as first party in the agreement and the agreement itself lacks legal sanctity. This proves that the said agreement was a 'cover' created by the accused Zahoor Ahmad Shah Watali to bring foreign remittances from unknown sources to India.

(vi) During the course of investigation, it is also ascertained that the Chartered Accountant, who signed the audited balance sheets of the firms belonging to the accused A-10 Zahoor Ahmad Shah Watali viz. M/s Trison International (2013-14 and 2015-16), Trison Farms and Constructions (P) Ltd. (2013-14 and 2015-16), M/s 3Y (2012-13, 2013-14 and 2015-16) and M/s Yasir Enterprises (2013-14 and 2015-16) did so without seeing any supporting documents. The balance sheets of these companies were sent to him by one Mustaq Mir, Cost Accountant and Shabir Mir, Chartered Accountant from Wizkid Office, Srinagar through email and he was asked to sign on them in Delhi without showing any documents.

This clearly shows that ZahoorWatali was remitting money received from unknown sources to India.

(vii) The investigation has also revealed that in the FY 2010-11, a firm belonging to accused A-10 Zahoor Ahmad Shah Watali and his family members viz. Trison Farms and Constructions (P) Ltd. raised unsecured loan of Rs 2,65,55,532 from the Directors of the company i.e. the accused Zahoor Ahmad Shah Watali, his wife Sarwa Begum and his sons YassirGaffar Shah, YawarZahoor&YaminZahoor in the form of both cash and cheque and the same was used towards repayment of secured loan of Rs 2,94,53,353 in the books of J&K Bank. The source of money with the Directors could not be explained satisfactorily by the accused Zahoor Ahmad Shah Watali.

(viii) The seizure from the house of accused A-10 Zahoor Ahmad Shah Watali, of a list of ISI officials and a letter from Tariq Shafi, proprietor of AI Shafi group addressed to Pakistan High Commission recommending grant of visa to ZahoorWatali shows his proximity with Pakistani establishment. It is pertinent to mention here that the name of Tariq Shafi figures in the document of foreign contributions seized from the house of ZahoorWatali's cashier-cum-accountant viz. GhulamMohd. Bhatt.

41. In reference to these accusations, the entry in the diaries and the green-coloured document, recovered from the residence of Ghulam Mohammad Bhatt, is significant. Further, the seizure memo described as Document No. D-3/6, in respect of search and seizure of articles/documents seized from the premises of the respondent (Accused 10) dated 3-6-2017, would unravel the activities of the respondent, including regarding his financial deals. Another crucial document described as D-3g/20 is a contact diary seized from the respondent vide Memo D-3, which contains the Pakistan National name and contact "Tariq Shafi 0092425765022… 26-A" whose name figures in Document No. D-132(a)/23. The Code "0092" pertains to Pakistan. Another contact diary was seized from the respondent vide Memo D-3, which, at p. D-3h/28 contains the same name and contact, namely, "Tariq Shafi 00923008459775/0092425765022". The Documents No. D-3j to D-3j/5 also indicate the involvement of the respondent in terrorist activities, including that three cases of TADA have been registered against him in the past and investigated and one case of J&K PSA, 1978."

273. On the basis of the perusal of the evidence, the Supreme Court found that the grant of bail to Zahoor Ahmad Shah Watali was unjustified. Further investigation in NIA case no. RC-10/2017/NIA/DLI and ECIR No. 03/DLZO-II/2017 fortified the connection between Zahoor Ahmad Shah Watali and JKDFP/Shabir Ahmad Shah.

274. In the affidavit filed on behalf of the ED, it has been specifically brought out that Shabir Ahmad Shah was receiving funds from Pakistan through Zahoor Ahmad Shah Watali, identified as a Hawala conduit. Documents seized from the house of Ghulam Mohammad Bhat, an associate of Watali, in the NIA investigation, show Shabir Ahmad Shah receiving a significant sum of money. In a statement recorded under section 50 of PMLA, 2002, Shabir Ahmad Shah is stated to have affirmed his association with Watali but offered no comments when presented with documents indicating the receipt of funds. He failed to provide any explanation regarding the source or utilization of the funds. Further investigation under PLMA is stated to have revealed that the Pakistani Government sent Rs.1,10,00,000/- (Rupees One Crore and Ten Lakh Only) to Shabir Ahmad Shah for distribution among individuals involved in stone-pelting incidents in Jammu & Kashmir. These funds were intended for those who had been injured during clashes with security forces. This allegation suggests Shah's involvement in promoting unrest and violence in the region.

275. This Tribunal is conscious that the veracity of the contents of the aforesaid chargesheet/s filed by NIA, is required to be established at trial in the said case and that the scope of scrutiny of the material cited by the Central Government is not akin to a criminal trial as held in para 26 of ***Jamaat-e-Islami Hind*** (supra). However, for the purpose of these proceedings, the said evidence is in the nature of relevant material and liable to be considered, in terms of the dicta laid down by the Supreme Court in ***Khatri*** (supra) and ***Jamaat-e-Islami Hind*** (supra). As mandated in terms of the judgment of the Supreme Court in ***Jamaat-e-Islami Hind*** (supra), this tribunal has examined the material cited by the Central Government for the purpose of making an "objective assessment" for the purpose of these proceedings and to assess whether the same supports the declaration made under Section 3(1) of UAPA vide the notification dated 5th October, 2023.

Evidence in the form of documents/material submitted in a sealed cover before this Tribunal

276. As noted hereinabove, the documents submitted by the witness who has deposed on behalf of the Central Government, *inter alia*, includes reports of intelligence agencies, the note prepared for the Cabinet Committee on Security setting out the entire background of JKDFP and its activities based on the information collated by the intelligence agencies and also bringing out linkage of JKDFP with cross-border agencies/establishments, inputs received from Criminal Investigation Department, Jammu and Kashmir (Srinagar).

277. A perusal of the said documents has brought out in vivid detail the terrorist and secessionist activities of JKDFP in close coordination with inimical elements in Pakistan. The systematic attempts to promote secession of Jammu and Kashmir from the territory of India, to undermine the sovereignty of India, to incite the local populace and to promote violence have been brought out in the said material/documents.

278. The Tribunal has also opened the sealed cover (Ex.PW-22/9) containing the statements of the protected witnesses (code named as Alpha, John, X45 and X 46) in NIA case no. RC-10/2017/NIA/DLI and perused the said statements and re-sealed the same with the seal of the Tribunal. The statements of the said protected witnesses also shed light on the modus operandi employed by the JKDFP/Shabir Ahmad Shah to receive funds from across borders and indulge in unlawful activities.

Conclusion

279. From the elaborate material/evidence placed on record in these proceedings, this Tribunal finds that there is ample justification to declare JKDFP as an unlawful association under the UAPA. Moreover, given the nature of activities of the association, the Central Government was justified in taking recourse to the proviso to Section 3 (3) of the UAPA. As noticed hereinabove, the activities of the concerned association have had a deleterious effect on maintenance of law and order in the region of Jammu and Kashmir over the last several decades. The modicum of stability that has come about after 2019 (as is evident from the reduced number of unconducive incidents) could not have been allowed to be jeopardized on account of continuing activities of the concerned association.

280. In the framework of the Indian Constitution and the UAPA, there is no space for an association like the JKDFP which openly propagates secessionism, avowedly expresses dis-allegiance to the Constitution of India, and undermines the territorial integrity and sovereignty of India.

281. Thus, this Tribunal having followed the procedure laid down in the Unlawful Activities Prevention Act, 1967 and its Rules and having independently and objectively appreciated and evaluated the material and evidence on record, is of the firm and considered view that there is sufficient cause for declaring JKDFP as an unlawful association under Section 3(1) of the UAPA, 1967, vide the notification dated 5th October, 2023. Thus, an order is passed under Section 4 (3) of the UAPA, 1967 confirming the declaration made in the notification bearing no. SO 4348(E) published in the official gazette on 5th October, 2023 issued under Section 3 (1) of the Unlawful Activities Prevention Act, 1967.

JUSTICE SACHIN DATTA,
Unlawful Activities (Prevention) Tribunal

APRIL 03, 2024"

[F.No.14017/30/2024-NI-MFO]

ABHIJIT SINHA, Jt. Secy.

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