PARVEEN SINGH
Addl. Sessions Judge 03
New Delhi District,
Room No. 39 MEA Building
Patiala House Court, New Delhi

**IN THE COURT OF SH. PARVEEN SINGH,
ADDL. SESSIONS JUDGE – 03 (NEW DELHI)
PATIALA HOUSE COURTS : NEW DELHI**

RC-10/2017/NIA/DLI

State (National Investigation Agency)

Versus

**Mohd. Yasin Malik @ Aslam,
son of Sh. Mohammad Ghulam Qadir Malik,
r/o Yasin Gali, Maisuma, Srinagar,
Jammu & Kashmir.** **.....Convict.**

25.05.2022

ORDER ON SENTENCE

Convict Mohd. Yasin Malik @ Aslam stands convicted for offences punishable u/s 120B IPC, 121 IPC, 121A IPC, 13 UAPA r/w 120B IPC, 15 UAPA r/w 120B IPC, 17 UAPA, 18 UAPA, 20 UAPA, 38 UAPA and 39 UAPA.

2. On 10.05.2022, separate charges u/s 120B IPC, 121 IPC, 121A IPC, 13 UAPA r/w 120B IPC, 15 UAPA r/w 120B IPC, 17 UAPA, 18 UAPA, 20 UAPA, 38 UAPA and 39 UAPA was framed against convict Mohd. Yasin Malik, to which he pleaded guilty.

3. Vide judgment dated 19.05.2022, convict Mohd. Yasin

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Malik was convicted for offences punishable u/s 120B IPC, 121 IPC, 121A IPC, 13 UAPA r/w 120B IPC, 15 UAPA r/w 120B IPC, 17 UAPA, 18 UAPA, 20 UAPA, 38 UAPA and 39 UAPA.

4. Today, the matter is listed for deciding the quantum of sentence to be awarded to the convict.

5. In view of the judgment of Hon'ble Delhi High Court in **Vishal Yadav v. State of Govt of UP in Crl. A. 910/2008,** socio economic report of the convict was called for.

6. The socio economic report of convict Mohd. Yasin Malik reflects that the convict owns a three storey residential house at Maisuma Lal Chowk, Srinagar where his mother and divorced sister alongwith her 02 sons used to reside. With regard to social status of convict, it is submitted that the convict was acting as JKLF Chairman and was an influential person. He had a number of supporters within his locality before declaration of JKLF as banned organization. It is further submitted that the family of convict consists of 11 members including his mother, wife, 03 sisters, one daughter, two nephew and three maternal uncles.

7. In order to further find the chances of reformation, the court had summoned convict's conduct report from the jail. Further in view of judgment of **Karan v. State of NCT of Delhi in Crl. A.No. 352/2020,** an affidavit detailing the assets and income of convict was

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asked for.

8. As per the jail conduct report of convict, the conduct of convict has been satisfactory in the jail. As per jail records, no jail punishment has been recorded against him. Regarding the convict's inclination towards reformation, it is submitted that during his incarceration, behaviour of convict towards co-inmates as well as jail administration has remained cordial and peaceful. Convict seems to be inclined towards reformation.

9. As per the affidavit filed by the convict, the annual income of convict from all sources is Rs.50,000/-. Regarding the immovable property, the convict has stated in affidavit that he has 11.5 kanal land in Zolangham, Kokennag, Anantnag, J&K. That in the year 2014, the value of the said land was Rs.5 lacs/ kanal. He sold 04 kanals of land in Rs.20 lacs and from that money, he had bought a shop for the son of his sister. He has stated that he has no bank account or investments.

Arguments:

10. Sh. Neel Kamal, Ld. Sr. PP for NIA, during the course of arguments on sentence, has drawn the attention of the court to various paras of order on charge where the allegations against the convict and findings of the court on those allegations had been given. He has contended that the acts of the convict had led to severe chaos and

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unrest in the valley and had resulted in loss of numerous lives and damage to property. The acts for which convict had conspired had been found to be terrorist acts. The convict has also found to be engaged in activities of terror funding, being a member of terrorist gang and supporting terrorist organizations as well as for offences u/s 121 IPC and 121A IPC whereby he had been found to have waged war against UOI. The convict has not denied these allegations and chose not to contest these allegations. He has further contended that it has settled jurisprudence that while awarding punishment to convict, there have been certain theories in prevalence which are to be considered. He has contended that theories which have been used by the courts during various periods include preventive theory, retributive theory, deterrent theory and reformative theory. He has contended that the acts of the convict and the results thereof whereby he had waged war against UOI and had attempted to wage such war had resulted in loss of life and property and thus, a message needs to be sent to the society that in such cases, no leniency can be shown. He has contended that punishment awarded to the convict should serve as a deterrent and to set an example to prevent others from joining terrorist organization and waging war against UOI. He has further contended that State seeks maximum punishment for all the offences for which convict has been convicted as there are no mitigating circumstances in favour of

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the convict. He further contends that the maximum punishment for waging war against UOI is death and State seeks death sentence for offences u/s 121 IPC and similarly, seeks maximum punishment for other offences for which convict has been convicted. He has further contended that the mitigating circumstances which are to be considered by the court are a part of reformative theory of punishment. However, the convict himself has pleaded guilty to the charges and has admitted taking wrong path. He has further contended the convict was responsible for genocide and exodus of Kashmiri Pundits. The convict is a hard core criminal and thus, there are no chances of his reformation. Therefore, the convict should be awarded death penalty for offence u/s 121 IPC and maximum punishment for other offences for which he has been convicted.

11. Countering it, Sh. Akhand Pratap Singh, ld. Amicus Curiae has contended that retributive theory has no place in Indian judicial system and thus, there are only three theories i.e. preventive theory, deterrent theory and reformative theory, which are to be considered by the court while awarding sentence to the convict. He has further contended that with regard to the sentence being awarded to the convict for preventing him from committing similar offences and awarding maximum sentence on the basis of that theory is concerned, there is no rational to apply that theory in this case. He has

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contended that there are no allegations that since the arrest of the convict and during his confinement, he had engaged in any of the activities for which he had been convicted and thus, even if preventive theory is applied, the incarceration of the convict can serve that purpose and there is no requirement of extinguishing the life of convict for preventing re-commission of these offences. He has further contended that even for the purpose of deterrence, maximum punishment need not be awarded to the convict as it is the own case of NIA that apart from this case and one more case pending in Srinagar, there is no other criminal case pending against the convict. The convict has not been convicted in the case at Srinagar. Therefore, for the offences for which he had voluntarily pleaded guilty and had been convicted by the court, theory of deterrence cannot be stretched to the extent that he has to be made an example. He has further contended that convict is not a habitual offender as there are only two cases against him. He has further contended that while awarding punishment to the convict, the age of the convict, mental state of convict and social and economic status of convict need to be considered by the court by drawing and balance and then award just punishment. He has contended that demand of death sentence is highly unjustified as the case of the convict does not fall into the category of rarest of the rare case. He has further contended that the fact that convict himself has

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pleaded guilty should be taken into consideration and as a pointer towards inclination of the convict to reform. He has therefore contended that minimum sentence be awarded to the convict.

12. Convict Yaseen Malik was also given an opportunity to state his case on the point of sentence. The convict has contended that he had given up violence in the year 1994. Before the year 1994, he had picked up a gun and he had never shied away from this fact and at that time also, he was known by his name as a person who was engaged in armed struggle. After the cease fire in the year 1994, he had declared that he would follow peaceful path of Mahatma Gandhi and would engage in non violent political struggle. He has further contended that since then there is no evidence against him that in the last 28 years, he had provided any hide out to any militant or had provided any logistic support to any terrorist organization. He has further contended that many a times, it has been raised that he had a meeting Prime Minister Manmohan Singh but he had not only met one Prime Minister. All the Prime Ministers from the time of Sh. V.P Singh till Sh. Atal Bihar Vajpayee had engaged with him and had given him a political platform. Government of India had provided him all the platforms to express his opinion in India as well as outside and government cannot be considered to be a fool to give an opportunity to a person who was engaged in terrorist acts. He has further

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contended that it has been alleged that he was engaged in acts of violence in the valley post killing of Burhan Wani. However, immediately after the death of Burhan Wani, he was arrested and remained in custody till November 2016. Therefore, he could not have engaged in violent protests.

Findings

13. I have considered the rival submission and perused the record very carefully.

14. The prosecution has demanded the maximum penalty as provided and the ld. Amicus Curiae for convict has prayed for minimum sentence.

15. The prosecution has based its claim on the deterrent theory of punishment and has contended that undue leniency towards convict need not be shown and that a message needs to be sent to the society that in such cases, law shall deal with the offenders with a heavy hand so that others who are considering to take the same path think twice before acting upon such idea.

16. On the other hand, Ld. Amicus Curiae has contended that convict need not be made an example for the society and that there are strong chances of the convict being reformed as is visible from his conduct during his jail and fact that during his incarceration, he has not been found to be involved in any activities for which he has been

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convicted. The convict himself has indirectly stressed upon the reformative theory and his chances of reformation when he claimed that since giving up arms in the year 1994, he has not been found to be engaged in terrorist activities, sheltering any terrorist or providing any logistic support to any terrorist organization. He has further contended that the fact that the convict is reforming has been recognized by the government of India which has given platforms to the convict to propagate his ideas.

17. It has not been well settled that while awarding sentence the court has to consider aggravating and mitigating circumstances in order to arrive at a just sentence to be awarded to the convict. It has also been now well settled that there is no straight jacket formula for awarding sentence based upon any individual theory of punishment and that each case has to be decided on its own facts and circumstances.

18. The Hon'ble Apex court in **State of Madhyapradesh vs Mehtab,(Cri.Appealno.290/2015,dated13.02.2015)** has observed that, "we find force in the submission it is the duty of the court to award just sentence to a convict against whom charge is proved. While mitigating and aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to

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the accused but also the victim and the society."

19. In **Shailesh Jasvantbhai and Another v. State of Gujarat and Others, [(2006)2 SCC 359]** the Hon'ble Apex Court held that :

> "In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration."

20. In **Alister Anthony Pareira Vs. State of Maharashtra (AIR 2012 SC 3802),** the Hon'ble Apex Court held:

> 12. "Sentensing policy is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing and accused on proof of crime. The courts have evolved certain principles: twin objectives of the sentencing policy are deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most

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relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence."

21. Therefore, the twin objective of sentencing as decided by Hon'ble Apex Court is deterrence and correction. Deterrence is in relation to the crime committed and correction is in relation to the criminal.

22. The crimes for which convict has been convicted are of very serious nature. These crimes were intended to strike at the heart of the idea of India and intended to forcefully secede J&K from UOI. The crime becomes more serious as it was committed with the assistance of foreign powers and designated terrorists. The seriousness of crime is further increased by the fact that it was committed behind the smoke screen of an alleged peaceful political movement.

23. Coming onto the criminal, it has been claimed on behalf of and by convict Yaseen Malik that there are chances of convict reforming because firstly, during his custody, his conduct has been found to be satisfactory which points towards his chances of reformation and secondly, as claimed by the convict, after giving up arms in 1994, he has never sheltered or provided logistic support to any terrorist of terrorist organization. It has also been claimed that the fact that many Prime Ministers of Govt. Of India has meaningfully

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engaged and given him platforms to express his ideas, reflects that even the Government of India had accepted that he was a reformed person.

24. I have considered this contention.

25. Admittedly, the convict had been engaged in violent terrorist activities prior to 1994.The claim of the convict is that he gave up the gun in the year 1994 and thereafter, he was recognized as a legitimate political player which is evident by the fact that the government of India has been engaging with him and had been providing him the platforms to express his opinions. On the face of it, it seems to be a very sound argument which would give an impression that convict has already reformed. However, in my opinion, there was no reformation of this convict. It may be correct that the convict may have given up the gun in the year 1994, but he had never expressed any regret for the violence he had committed prior to the year 1994. It is to be noticed that, when he claimed to have given up the path of violence after the year 1994, the government o f India took it upon its face value and gave him an opportunity to reform and in good faith, tried to engage in a meaningful dialogue with him and as admitted by him, gave him every platform to express his opinion. However, as discussed in the order on charge, the convict did not desist from violence. Rather, betraying the good intentions of government he took

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a different path to orchestrate violence in the guise of political struggle. The convict has claimed that he had followed Gandhian principle of non violence and was spear heading a peaceful non violent struggle. However, the evidence on the basis of which charges were framed and to which convict has pleaded guilty, speaks otherwise. The entire movement was planned to be a violent movement and large scale violence ensued is a matter of fact. I must observe here that the convict cannot invoke the Mahatma and claim to be his follower because in Mahatma Gandhi's principles, there was no place for violence, howsoever high the objective might be. It only took one small incident of violence at Chauri Chaura for the Mahatma to call off the entire non cooperation movement but the convict despite large scale of violence engulfing the valley neither condemned the violence nor withdrew his calendar of protest which had led to the said violence.

26. I accordingly find that in the present case, the primary consideration for awarding sentence should be that it should serve as deterrence for those who seek to follow a similar path.

27. In view of my above discussion after weighting the aggravating and mitigating circumstances, the convict is sentenced as under:-

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28. U/s 120B IPC

The convict is sentenced to rigorous imprisonment 10 years. A fine of Rs.10,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 06 months.

29. U/s 121 IPC

30. For the offence punishable u/s 121 IPC, as detailed in arguments above, the prosecution has sought death sentence and it has been contended on behalf of accused by Ld. Amicus Curiae that the case does not call for the highest penalty provided under law.

31. It is correct that section 121 IPC provides for punishment of death sentence in case a person is proved to have committed an offence punishable u/s 121 IPC and the convict has been convicted for the offence u/s 121 IPC.

32. However, it has now been well settled that merely because the offence provides for capital punishment, the same cannot be handed over to the convict in a routine manner or as a matter of rule.

33. In **Bachchan Singh v. State of Punjab, AIR 1980 SC 898,** Hon'ble Supreme Court while interpreting sections 354 (3) and 235 (2) Cr.P.C had held that the extreme penalty of death (1) need not

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to be inflicted except in the gravest cases of extreme culpability (2) before opting for death penalty, the circumstances of the offender are also required to be considered along with the circumstances for the crime (3) life imprisonment is a rule and death sentence is an exception. Death sentence must be imposed only in cases where after looking at the circumstances of the crime, life imprisonment seems inadequate and it remains as the only option and (4) for arriving upon the conclusion regarding the extreme penalty to be imposed, the court is required to consider the aggravating and mitigating circumstances in order to strike a just balance between aggravating and mitigating circumstances.

34. The said principle was reiterated and further elaborated by Hon'ble Supreme Court in **Machhi Singh v. State of Punjab, (1983) 3 SCC 470.**

35. Therefore, the net result of the judicial pronouncements is that death penalty should be awarded in exceptional cases where the crime by its nature shocks the collective consciousness of the society and has been committed with unmatched cruelty and in a gruesome manner.

36. The crime u/s 121 IPC no doubt is of a very serious nature as it is intended to strike at the core of the principles upon which this nation was formed and in such cases, certainly death

sentence can be awarded. However, it can only be done when the case of the convict falls within the criteria as laid down by Hon'ble Supreme Court in **Bachchan Singh (supra)** and **Machchi Singh (supra)**.

37. In the present case, the manner in which the crime was committed was in the form of conspiracy whereby there was an attempted insurrection by instigating, stone pelting and arson and a very large scale violence led to shut of the government machinery and ultimate secession of J&K from UOI.

38. However, the manner of the commission of crime, the kind of weaponry used in the crime lead me to a conclusion that the crime in question would fail the test of rarest of rare case as laid down by Hon'ble Supreme Court. Ld. Sr. PP for NIA has tried to impress upon the court that while awarding sentence court should consider that the convict was responsible for the genocide of Kashmiri Pundits and their exodus. However, I find that as this issue is neither before this court, nor has been adjudicated upon and thus court cannot allow itself to be swayed by this argument.

39. I accordingly find that this case does not call for awarding death sentence as demanded.

40. As already discussed, the case does not fall within the category of rarest of rare case, convict is therefore, sentenced to life

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imprisonment. A fine of Rs.10,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 06 months.

41. U/s 121A IPC

The convict is sentenced to rigorous imprisonment 10 years. A fine of Rs.10,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 06 months.

42. U/s 13 UAPA r/w section 120B PC

The convict is sentenced to rigorous imprisonment 05 years. A fine of Rs.5,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 03 months.

43. U/s 15 UAPA as punishable u/s 16 UAPA r/w section 120B IPC

The convict is sentenced to rigorous imprisonment 10 years. A fine of Rs.10,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 06 months.

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44. U/s 17 UAPA

Financing is the backbone of any operation including terrorist activities. In the present case, the order on charge specifies how funds were raised and how they were received from Pakistani establishment as well as designated terrorist Hafeez Saeed and through other hawala operations. It is these funds that were used to create unrest where under the guise of public protests, paid terror activities of stone pelting and arson at mass scale were committed. Had there been no such funding for the convict to conspire to commit these acts and to pay the perpetrators, the violence and mayhem at this scale could not have been committed. Therefore, in my considered opinion, it is high time that it is recognized that terror funding is one of the gravest offences and has to be punished more severely.

45. ***Accordingly, for commission of offence u/s 17 UAPA, convict is sentenced to life imprisonment. A fine of Rs.10,00,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period of two and a half years.***

46. Here I must observe that I'm mindful of the mandate of Sec. 63 IPC that fine imposed upon the convict should not be excessive and therefore, I find it necessary to give reasons for imposition of a fine of rupees ten lacs.

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47. The convict has been convicted for offence of terror funding u/s 17 UAPA. As detailed in order on charge, convict was a part of the group which had been receiving funds which were raised for terrorist activities and as per D-132/A, he had received Rs.10 lacs on 29.04.2015 from accused Zahoor Ahmad Shah Watali. Thus, the fine as imposed above is equivalent to the terror fund which he had received.

48. <u>U/s 18 UAPA</u>

The convict is sentenced to rigorous imprisonment 10 years. A fine of Rs.10,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 06 months.

49. <u>U/s 20UAPA</u>

The convict is sentenced to rigorous imprisonment 10 years. A fine of Rs.10,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 06 months.

50. <u>U/s 38 UAPA</u>

The convict is sentenced to rigorous imprisonment 05

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years. A fine of Rs.5,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 03 months.

51. <u>**U/s 39 UAPA**</u>

The convict is sentenced to rigorous imprisonment 05 years. A fine of Rs.5,000/- is also imposed upon convict and in default of payment, he shall further undergo simple imprisonment for a period 03 months.

52. **All the sentences shall run concurrently. Benefit of section 428 Cr.P.C shall be given to the convict.**

53. Copy of order on sentence be given to the convict free of cost.

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Announced in open court
today on 25.05.2022.

(This order contains 20 pages
and each page bears my signatures.)

(Parveen Singh)
Special Judge (NIA)
ASJ-03, New Delhi Distt.,
Patiala House Court, N. Delhi.

Additional Sessions Judge-03
New Delhi District, N. D.

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