

IN THE SPECIAL COURT FOR THE TRIAL OF NIA CASES,
ERNAKULAM

Present: Sri. Anil.K.Bhaskar, Judge for NIA Cases

Monday the 19th day of September, 2022/ 28th Bhadra, 1944

SESSIONS CASE No.2/2019/NIA/KOC

R.C.No. 2/2018/NIA/KOC

(ISIS WANDOOD CASE)

<u>Complainant:</u>		Union of India represented by National Investigation Agency, Kochi
		By Smt. Sindu Ravishankar Public Prosecutor, NIA
<u>Accused:</u>	1.	Shaibu Nihar V.K @ Abu Mariyam (A1 in FIR), Age 43/2022, S/o. Mohammed V.K, Vattakandathil House, Katharammal, Valiyaparamba P.O, Koduvally, Kozhikode District
	2.	Muhammad Mansoor @ Abu Haniya Al Hindi @ Cheriya Mansoor (A2 in FIR), 38/2022, S/o. Mohammed Kutty, Palakkal House, Mathamkulam, Kadappadi, Karippur, Pallikkal Village, Kondotty, Malappuram Dist. (Absconding)
	3.	Mansoor Nittoor Veettil @ Abu Hajar Al Hindi @ Valiya Mansoor (A3 in FIR), Age 45/2022, S/o. Moidu, Grace House, Poolakandipara, Chorode Old Gate, Vatakara, Kozhikode district. (Absconding)
	4.	Shahanad @ Abu Yasar Al Hindi (A4 in FIR), Age 34/2022, S/o. Yahya, Kunhamina's House, Near Juma Masjid, Chalad, Kannur District. (Absconding)
	5.	Fajid Hamza @ Abu Mohamed (A5 in FIR), Age 39/2022, S/o.Hamza MKC, Chithram House, Darsan Mukku, Near Railway station, Koyilandy, Kozhikode District. (Absconding)
	6.	Safeer Rahman @ Abu Hisaan (A7 in FIR), Age 42/2022, S/o. Abdu Rahman, Valappil Thachayil House, Chelakkulam, Vengola, Perumbavoor, Ernakulam District. (Absconding)

	7.	Mukhadis Poolat (A8 in FIR), Age 34/2022, S/o.Sidiq, Pooladan House, Old Vaniyambalam, Wandoor, Malappuram District. (Absconding)
		A1 - By Adv.Mohamed Sabah

Offences charged:- : U/s. 120B and 125 of IPC besides Sections 38, 39 and 40 of the UA(P) Act, 1967.

Plea of the accused : Guilty

Finding:- : Guilty

Sentence or Order:- : The accused is convicted and sentenced to undergo rigorous imprisonment for three years under Section 120B IPC. The accused is convicted and sentenced to undergo rigorous imprisonment for five years under Section 125 IPC and to pay a fine of ₹10,000/-, in default rigorous imprisonment for a period of six months. The accused is convicted and sentenced to undergo rigorous imprisonment for five years under Section 38 of UA(P) Act. The accused is convicted and sentenced to undergo rigorous imprisonment for five years under Section 39 of UA(P) Act. The accused is convicted and sentenced to undergo rigorous imprisonment for five years under Section 40 of UA(P) Act. Substantive sentence of imprisonment shall run concurrently. Accused is entitled to get set off under Section 428 Cr.P.C.

Description of accused

Sl. No	Name	Fathers Name	Religion	Occupation	Residence	Age
1.	Shaibu Nihar V.K @ Abu Mariyam	Mohammed V.K	Islam	Advertisement Business in Bahrain	Vattakandathil House, Katharamma, Valiyaparamba P.O, Koduvally, Kozhikode District	43

2.	Muhammad Mansoor @ Abu Haniya Al Hindi @ Cheriya Mansoor	Mohammed Kutty	Islam	Engineer in Bahrain	Palakkal House, Mathamkulam, Kadappadi, Karippur, Pallikkal Village, Kondotty, Malappuram Dist.	38
3.	Mansoor Nittoor Veettil @ Abu Hajar Al Hindi @ Valiya Mansoor	Moidu	Islam	IT Manager in Al Kanoon International School, Bahrain	Grace House, Poolakandipara, Chorode Old Gate, Vatakara, Kozhikode district.	45
4.	Shahanad @ Abu Yasar Al Hindi	Yahya	Islam	Sales man in Bahrain	Kunhamina's House, Near Juma Masjid, Chalad, Kannur District.	34
5.	Fajid Hamza @ Abu Mohamed	Hamza MKC	Islam	Sales man in Bahrain	Chithram House, Darsan Mukku, Near Railway station, Koyilandy, Kozhikode District.	39
6.	Safeer Rahman @ Abu Hisaan	Abdu Rahman	Islam	Business in Bahrain	Valappil Thachayil House, Chelakkulam, Vengola, Perumbavoor, Ernakulam District.	42
7.	Mukhadis Poolat	Sidiq	Islam	Engineer in Bahrain	Pooladan House, Old Vaniyambalam, Wandoor, Malappuram District.	34

Date of

Occurrence	Complaint	Apprehension	Release on bail	Commitment/ Date of filing
01.01.2008 to 23.10.2017	01.06.2018	A1- 09.04.2019 A2 to A7- absconding	A1-Judicial custody A2 to A7- absconding	04.10.2019

Commence ment of trial	Close of trial	Date of Judgment	Sentence / Order	Service of copy of judgment or finding on accused	Explanation for delay.
---	---	14.09.2022	19.09.2022	19.09.2022	No delay.

This case having been come up for final hearing before me on 14.09.2022 in the presence of the learned Public Prosecutor and the learned counsel for the accused and the court on 19.09.2022 delivered the following:-

JUDGMENT

1. The accused Shaibu Nihar V. K. (A1) was called upon to face the charge, along with six co-accused (A2 to A7) who are Muhammad Mansoor, Mansoor Nittoor Veettil, Shahanad, Fajid Hamza, Safeer Rahman, Mukhadis Poolat, based on the final report filed by Inspector, NIA, Kochi, in RC.02/2018/NIA/KOC (ISIS Wandoor case) for the offences punishable under Sections 120 B and 125 of IPC, besides Sections 38, 39 and 40 of UA(P) Act.

2. **Facts that lead to the registration of this case:-** Hamsa @ Taliban Hamsa, 5th accused in RC.02/2017/NIA/KOC (ISIS Valapattanam case) was arrested by Dy.S.P. Kannur on 25.10.2017 and while in custody, he had given confession statement to the police and in the said statement he had revealed out the affiliation and support rendered by the accused in the present case to ISIS a proscribed terrorist organisation, and upon receiving this information enrooted through DGP, North Zone Kozhikode, the SHO of Wandoor Police Station registered the above case on 06.11.2017 as crime no:263/17 of Wandoor Police

Station u/s.38 and 39 of UA(P) Act against eight accused persons, who are the seven persons mentioned above and one Ashraf Ali M.

3. Later, considering the gravity of the offences, the Government of India, Ministry of Home Affairs by its order dated 31.05.2018 directed the NIA to take up the investigation of the aforesaid case. Accordingly, NIA took over the investigation and re-registered the case as RC.02/2018/NIA/KOC on 01.06.2018 under sections 38 and 39 of UA(P) Act against the very same eight accused persons. During investigation sections 120B and 125 of IPC besides section 40 of UA(P) Act were incorporated in this case.

4. **Facts disclosed during the investigation:-** Investigation has revealed that during 2006, Shaibu Nihar @Abu Mariyam (A1), who was working in Bahrain since 1999, had befriended Hamsa U. K. @ Taliban Hamsa an ardent supporter of *hijra* (migration to a territory under puritan Islamic rule), and armed *jihad*, and got radicalized on such anti-democratic ideology. As instigated by Hamsa U. K. @ Taliban Hamsa, Shaibu (A1) had attended classes at Al Ansar Centre, Bahrain, which is an Islamic institute having links with *Salafi* scholars from Kerala. While attending the classes in 2010, A1 befriended A2 to A7 and also Ashraf Ali M., who were all working in Bahrain and used to attend the classes. A1 had done street *dawah* (Islamic propagation) work during weekends along with accused Muhammed Mansoor and Mansoor Nittoor Veetil and had also attended Qu'ran classes conducted by accused Safeer Rahman at Farooq Masjid, Bahrain. Accused Muhammad Mansoor, Mansoor Nittoor Veetil, and Shahanad also attended these classes.

5. In mid-2014, after the declaration of the so-called Islamic State in Iraq and Syria by the globally designated terrorist and ISIS/Daish Chief Aboobaker Al Baghdadi, accused persons associated themselves with ISIS/Daish and hatched a criminal conspiracy to further its activities. While all the accused persons were in Bahrain, they met at Al Ansar Centre, at the houses of accused Muhammed Mansoor and Safeer Rahman in Bahrain besides at some restaurants for the purpose. As arranged by A1 in early 2015, they carried out further discussions with Hamsa over the phone, who by that time had returned home and settled at Thalassery. Accordingly, all the accused persons decided to migrate to Syria and physically join ISIS/Daish in Syria, for fighting on its behalf, against the Syrian Government.

6. In furtherance of the said conspiracy accused Shahanad left Bahrain for Syria in September/October 2015. accused Muhammed Mansoor and Mansoor Nittoor Veettil along with their families also left Bahrain and joined ISIS/Daish in Syria. They remained in touch with A1 and others and guided them to proceed on *hijra* to Syria for joining ISIS/Daish and waging war on its behalf. Accused Muhammed Mansoor while in ISIS, translated a book written by Ibn Nuhas in Arabic on armed *jihad* to the Malayalam language during 2016 and widely circulated the same online with a view to further the activities of ISIS/Daish in Kerala by recruiting vulnerable Muslim youths and the printouts of the said books was seized from the accused in other related cases (RC.05/2016/NIA/KOC (ISIS Omar Al Hindi Case)).

7. In 2016, accused Fajid Hamza, Safeer Rahman, and Mukhadis Poolat visited Kerala and hatched criminal conspiracies with Hamsa U. K. and others during March and April at the houses of accused Moukhadis and Ashraf Ali at Vaniyambalam near Wandoor in Malappuram district besides at the houses of Safeer Rahman and Hamsa U. K. in Ernakulam and Kannur districts, respectively. After returning to Bahrain on 12.04.2016, Safeer Rahman disposed of his business in Bahrain and left for Syria on 15.07.2016 and joined ISIS/Daish along with his wife and daughters. Accused Mukhadis Poolat also left Bahrain during the same period and joined ISIS/Daish, in Syria. Meanwhile, accused Shaibu Nihar, Fajid Hamza and others maintained contact with Safeer Rahman and as guided by Safeer Rahman, during September 2016, Fajid Hamza also left Bahrain, reached Turkey, crossed over to Syria in January 2017, and joined ISIS/Daish. Accused Fajid Hamza, while being in Turkey, had maintained contact with A1, Hamsa U. K. @Taliban Hamsa and witness Manauf Rahman @ Minof and others over phone and internet-based social media platforms and guided them on proceeding to Syria for furthering the activities of ISIS/Daish.

8. In continuation of same, A1 along with Hamsa U. K. and Manauf Rahman made preparations and planned to leave for Syria in December 2016. A1 prepared a Power of Attorney and got the same attested from Indian Embassy in Bahrain and transferred his properties in Kerala to his mother as he had planned to leave along with his wife and daughter from Bahrain to the Islamic State in Syria through Turkey. A1 obtained visa to Turkey for the purpose and he in connivance with accused Fajid Hamza and others, including Thasleem @ Abu Bilal @ Rockey

@ Aslam [charge-sheeted accused (A16) in RC.02/2017/NIA/KOC] who is a native of Pappinissery in Kannur district and had been working in the UAE, guided Manauf Rahman and Hamsa U.K. about reaching Turkey, through the UAE and Iran for further crossing over to the Islamic State in Syria. Accused Shaibu Nihar and Fajid Hamza collected the details of Manauf Rahman and his family besides the details of Hamsa U. K. by email to obtain an Iranian visa. Meanwhile, Manauf Rahman and Hamsa U. K. had obtained a visa for the UAE and purchased air tickets. Manauf Rahman and his family were intercepted at Mangalore airport on 23.12.2016, when they were to exit India for Sharjah, in UAE, on their way to Islamic State in Syria through Iran and Turkey. Consequently, Hamsa U. K. who had booked his air ticket from Calicut to UAE on 25.12.2016, dropped his plans for the time being, to proceed to ISIS in Syria, through Iran and Turkey and he also canceled his air ticket. A1, who was in Bahrain and had obtained a visa to Turkey, during that period, also dropped the plan, for the time being, to proceed to Islamic State in Syria, through Turkey.

9. Even after the interception of his associate Manauf Rahman at Mangalore airport, instead of refraining from furthering the activities of ISIS/Daish, A1 continued his association with the proscribed organization and maintained contact with co-accused Fajid Hamza and Safeer Rahman, both of whom were in Syria. Consequently, A1 continued his attempts to proceed from Bahrain to Syria to physically join ISIS/Daish for waging war on its behalf against the Syrian Government. Further, A1 was also involved in raising funds, from Bahrain, for furthering the activities of the proscribed terrorist organization ISIS/Daish in Syria.

While in Bahrain, A1 had collected 3000 Bahrain Dinars and arranged to transfer the same to Safer Rahman in Syria, through secret channels, during February-April 2017.

10. In March 2017, A1 arranged to transfer his property to his mother, through a Power of Attorney attested by the Indian Embassy in Bahrain. Again, A1 arranged for the transfer of property of his wife Rahna to her mother, through a Power of Attorney attested by the Indian Embassy in Bahrain on 29.06.2017. Further, A1 sold his business in Bahrain named "Moving Super show Advertising and Trading" and took a visa to Turkey intending to travel to Syria, to physically join ISIS/Daish. Eventually, A1, along with his wife Rahna and daughter Mariyam left Bahrain and reached Istanbul on 28.07.2017. However, he could not proceed further to Syria, since the Turkish authorities canceled the visa and deported them back to Bahrain.

11. The investigating agency, upon getting information that A1 Shaibu Nihar had left Bahrain and taken shelter at some unknown location in the Gulf countries, probably in Qatar, filed CrI.M.P.148/2018 before this Court on 29.08.2018 and obtained open dated Non-Bailable Warrant against A1. Later, on 09.04.2019, Emigration Authorities at Calicut International Airport intercepted A1 Shaibu Nihar who arrived from Qatar by Qatar Airways flight at 2:20 hrs, and after due formalities handed over Shaibu Nihar to NIA and then NIA arrested A1 Shaibu Nihar at 5:15 hrs and about 3.10 P. M. was produced before this court and from that date onwards he is detained in prison in the judicial custody of this court.

12. Among the eight accused arrayed in the FIR, except A1 Shaibu Nihar and Ashraf Ali (A6 in the FIR), all others performed hijra to Syria and there are unconfirmed reports that they have been killed in Syria while waging war against the Syrian government.

13. Ashraf Ali @ Ashraf Moulavi (A6 in FIR) who returned to Kerala from Bahrain in January 2016, even though had participated in the conspiracy meetings held in Kerala, later backed out and refused to perform hijra. On the application of the Investigating officer, his confessional statement was recorded by a Judicial Magistrate on 21.08.2019 in terms of section 164 of Cr.P.C. He disclosed true facts of the crime regarding his involvement as well as the involvement of the co-accused. The prosecution wants to treat him as an approver.

14. After completing the investigation and obtaining sanction from the Central Government ; (a) u/s.45 of the UA(P) Act for prosecuting the accused persons for the offences punishable u/s.38, 39, and 40 of UA(P) Act, (b) u/s.196 of Cr.P.C. for prosecuting the accused persons for the offences punishable under section 120B, 125 of the IPC and (c) u/s.188 of Cr. P.C for the prosecution of the accused persons for the offences committed outside India, NIA filed final report before this court on 04.10.2019 against A1 Shaibu Nihar, A2 Muhammad Mansoor, A3 Mansoor Nittoor Veetil, A4 Shahanad, A5 Fajid Hamza, A6 SafeerRahman and A7 Mukhadis Poolat (A1,2,3,4,5,7&8 in the crime), excluding Ashraf Ali (A6 in the crime). On its basis this court took cognizance of the offences against seven accused persons (A1 to A7) and the present case was numbered as SC No.02/2019/NIA

15. The prosecution would allege that during the period 2014-16, A1 Shaibu Nihar and his co-accused had conspired together at various places in India and abroad, physically and through other means, and together hatched a criminal conspiracy with the intention to associate, support, and to raise funds for ISIS/Daish, and to further its terrorist activities and also to move to Syria to physically join the terrorist organisation and to wage war against Syria an Asiatic power at peace with the Government of India, and thereby committed the offences punishable u/s.120B and 125 IPC besides sec.38, 39 and 40 of UA(P) Act.

16. This court issued repeated non bailable warrants against A2 to A7 and had also taken coercive steps u/s.82 and 83 of Cr.P.C., still their presence cannot be secured.

17. On production of the first accused Shaibu Nihar, before this court, copies of the relevant records were furnished to him. He is represented by the counsel engaged by himself.

18. When A1 Shaibu Nihar was brought before the court, the learned Prosecutor opened the case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. The prosecution had cited altogether 76 witnesses (3 protected witnesses) and relied upon 91 documents and the list of material objects consisting of 11 items.

19. Coming to the witness statements, the three protected witnesses had given statements directly on the point and it covers all aspects including conspiracy, association, support, and funding of the proscribed terrorist organisation ISIS by the accused persons including A1 Shaibu Nihar and the

performance of hijra by the co-accused of A1 as well as the attempt made by A1 to reach Syria. Coming to the remaining witnesses, CW4 is a relative of accused Safeer Rahman. He had spoken about the money transfer made by accused Safeer Rahman to Ashraf Ali as well as one Abdul Manaf brother of accused Mukhadis Poolat, in the year 2015-16. In the year 2016 March accused Safeer Rahman had taken CW4 to Bahrain. He speaks about the conspiracy meetings held by A1, Safeer Rahman, and others in Bahrain, and also about the performance of hijra by accused Safeer Rahman on 15.07.2016 in furtherance of the said conspiracy meetings. CW5 is one of the approvers in SC 2/18 the case of Hamsa @ Taliban Hamsa. He had spoken about the close contacts A1 Shaibu Nihar had with Hamsa an ardent advocate of violent jihad ideology. This witness had spoken about the deliberations Shaibu Nihar had with Hamsa and the planning made to perform hijra to Syria and also regarding the conspiracy meetings held in Kerala by the co-accused persons. He had also spoken about the motivation given by A1 Shaibu Nihar in this regard and also the preparations made by Shaibu Nihar to dispose of his wife's property before performing hijra to Syria. CW6 is a person who made a failed attempt to perform hijra in Syria along with another group of persons motivated by Hamsa.

20. CW7 is the Emigration officer who witnessed the arrest of A1 from Calicut Airport and CW8 and CW9 are the office staffs of the local Grama Panchayat who witnessed the search conducted in the wife's house of A1. CW10 to CW12 are the official witnesses who had spoken about the extraction of the social media accounts of A1. CW13 to CW15 are the officials attached to the Sub

Registrar's office who had spoken about the transfer of the property standing in the name of the wife of A1 Shaibu Nihar in the year 2016-17.

21. CW16 is the father-in-law of A1 Shaibu Nihar. He had spoken about the changes he observed in the character of A1 Shaibu Nihar. It is stated that by the time A1 came on leave during 2015-16, he had completely turned out to be a hard-core religious man, a believer in Mujahid ideology. He had also spoken about the execution of Power of Attorney by the wife of Shaibu and the sale of her property by using this Power of attorney. He had also spoken about the migration of Shaibu and his family to an unknown place which was not disclosed to him at that time. CW17 is the wife of A1 Shaibu Nihar. She had spoken in detail about the things that transpired in Bahrain. She had stated about the close association Shaibu Nihar had with the other co-accused and the regular meetings they had with each other, the religious lectures they attended. More importantly, she had stated that from 2015-16 onwards Shaibu was attracted to the ISIS ideology and was always insisting to perform hijra to Syria, and on his request, she had executed power of attorney to transfer her property. She had also stated that Shaibu had also transferred his business establishments in Bahrain and in 2016 they had booked flight tickets to go to Turkey and then to cross to Syria, but on getting information about the apprehension of CW5 Manauf Rahman the friend of Shaibu they dropped the plan and in December 2017 Shaibu left to Qatar. CW18 and CW19 are the father and mother of Shaibu. They had also noticed the changes in the character of Shaibu when he came on leave in 2015-16. They had also spoken about the disposal of the property and business of the Shaibu in 2017.

22. CW20 and CW21 speak about the search made by the Investigating agency in the house of Ashraf Ali and CW22 speaks about the seizure of a mobile phone and SIM cards from Ashraf Ali.

23. CW23 to CW25 are the relatives of accused Mukhadis Poolat. They had spoken about the performance of hijra to Syria by Mukhadis and also about the affiliation his brother Abdul Manaf had with A1 Shaibu Nihar at Bahrain and the deliberations they made and the religious lectures they attended. It is to be noted that Abdul Manaf was also attracted to ISIS ideology and participated in the conspiracy meetings. These witnesses had also spoken about the meetings held from the house of accused Mukhadis Poolat, attended by the co-accused of A1 and Hamsa@Taliban Hamsa. CW26 to CW29 are the relatives of accused Muhammed Mansoor. These witnesses had also spoken about the performance of hijra to Syria by accused Muhammed Mansoor. CW30 to CW32 are the father, mother, and wife of accused Fajid Hamza. These witnesses had spoken about the changes that occurred in the character of Fajid Hamza and about his performance of hijra to Syria to join ISIS. His wife stated that all these changes occurred after Fajid Hamza started to attend religious lectures at Al Ansar Centre in Bahrain. She also stated about the close contacts he had with accused Shahanad. CW33 is the sister of accused Mansoor Nittoor Veetil. She had spoken about the inclination Mansoor had towards ISIS ideology and the performance of hijra by him to Syria to join ISIS. CW34 is the father of accused Shahanad. He had spoken about the performance of hijra by Shahanad to Syria. CW35 is running a travel agency. He stated that accused Safeer Rahman had once contacted him and enquired how to

obtain visiting visa to go to Turkey. CW36 is one of the persons who had given religious discourse in Al Ansar Centre, Bahrain. He had spoken about the pro-ISIS ideology of the accused. He always preached against ISIS ideology. He had spoken about an incident wherein a group of persons picked quarrels with him arguing in favour of ISIS ideology. The prosecution would say that the accused in this case were part of this group that propagated ISIS ideology. CW37 to CW40 are related to accused Safeer Rahman. They had spoken about the performance of hijra by Safeer Rahman to Syria to join ISIS and also about the meetings held by Safeer Rahman with the other co-accused together with Hamsa@Taliban Hamsa, from their residential premises.

24. CW41 is the Assistant Director, RFSL, Thrissur who had examined the mobile phone of Asharaf Ali and submitted a report before the court. CW42 is the NIA official who witnessed the arrest of A1 and the seizure of his mobile phone.

25. CW43 and CW44 are related to Ashraf Ali. They had spoken about the conspiracy meetings held from their house at Vaniyambalam attended by the co-accused of A1 and Hamsa@Taliban Hamsa. They had also spoken about the receipt of Rs.45,000/- in the bank account of the wife of Ashraf Ali.

26. CW45 to CW60 are the Manager of various banks and other foreign exchange financial institutions who had produced documents to prove bank transfers and foreign exchange transactions between the accused. CW61 is the owner of an Internet cafe at Thalassery. He stated that Hamsa @ Taliban Hamsa mailed a copy of his photo and passport to Shaibu Nihar through his Internet cafe. CW62 and CW63 are the Secretaries of the local bodies who issued ownership

certificates of the houses in question wherein some of the conspiracy meetings were held. CW64 is the Judicial Magistrate who recorded the 164 statements of accused Asharaf Ali.

27. CW65 is an NIA official and CW66 is the Undersecretary MHA, Government of India who issued sanction for prosecution. CW67 is the Sub Inspector of Kerala Police who registered the FIR. CW68 to CW76 are the NIA officials who re-registered the FIR and the members of the investigation team. CW76 is the chief investigation officer.

28. Documentary evidence includes FIRs, Forensic Reports, Social media extracts, Identity documents of the accused, Bank account statements, application submitted for the purchase of foreign exchange, Power of Attorneys and Sale deeds, Letters, Books circulated, Passports of Shaibu Nihar and Ashraf Ali, Boarding pass of Shaibu Nihar, Seizure mahazars, Search list, Prosecution sanction order, etc. The material objects include seized mobile phones of Shaibu Nihar and Ashraf Ali, Pen drives and DVDs containing extracted emails and social media accounts of accused, etc. The documentary evidence and the material objects fully support the prosecution case.

29. Learned Prosecutor submitted there exists overwhelming evidence sufficient on all aspects to complete a chain of events to establish the factum of conspiracy, association, and support given by A1 Shaibu Nihar and the co-accused to the proscribed terrorist organisation ISIS/Daish to further its activities, arrangement of funds to facilitate the terrorist activities, attempts made by Shaibu Nihar to go to Turkey in order to cross the Syrian border and to physically join ISIS,

and when the attempt was failed he crossed to Qatar to find out a safe hideout. It is submitted that his attempt to enter the territory of Syria was nothing but to aid the proscribed organisation ISIS in waging war against the then Government of Syria.

30. On 06.10.2021, this court, considering the materials on record and hearing both sides, formed an opinion that there are grounds to presume that the accused Shaibu Nihar has committed the offences punishable under sec 120B and 125 of IPC besides u/s.38, 39, and 40 of UA(P) Act, framed charge against the accused for the offences mentioned above and read over and explained the charge to accused Shaibu Nihar who was physically present before the court, pleaded not guilty. Subsequently, he filed Crl.M.P.80/2022 requesting the court to once again read over the charge against him for the reason that, on the earlier occasion, he was undergoing extreme mental stress thinking about the continuing ailments of his family members and due to this, he was not able to give proper attention to the contents of the charge framed against him by the court, and he mechanically answered the same without applying his mind. He submitted that, to be honest, the accusation against him is true, and he expressed his willingness to plead guilty. At once, this court reminded him that pleading guilty will lead to conviction and sentence and he will have to face the consequence that follows. He was allowed to seriously think about it and decide. His parents were present before the court. He was permitted to deliberate with his parents as well as his advocate. Later, after hearing both sides and taking note of the decisions of **the Hon'ble Apex Court in State of Maharashtra Vs. Sukdeo Singh (AR 1992 SC 2100)** and that of our **Hon'ble High Court in Santhosh Vs. State of Kerala (2003 KHC 135)** wherein it

was held that “there is nothing in this chapter (Chapter XVIII) which prevents the accused from pleading guilty at any subsequent stage of the trial”, this court allowed the application and the case adjourned to 14.09.2022.

31. On that day accused was physically produced before this court. The framed charge was read over to the accused in English and Malayalam. The contents of each offences included in the charge were explained to him. The accused is conversant in both English and in the Malayalam language. A copy of the charge was furnished to him. He was given time to go through it and to deliberate with his counsel as well as his parents who continue to be present before the Court. Accused, after going through the charge and fully understanding its contents, voluntarily pleaded guilty. He was again warned about the consequences to be followed. He was specifically asked about three aspects and his statement was recorded. He was asked whether he is pleading guilty to any threat or coercion. He answered that he is voluntarily pleading guilty. He was asked whether he is aware of the maximum punishment that can be inflicted for the offences he is pleading guilty. He answered that the maximum punishment is life imprisonment. He was asked whether he knew that this court can award the prescribed maximum punishment for the offences he is pleading guilty to. He answered that he is aware of it. Still, he doesn't change his mind and he pleaded guilty with regard to all the offences charged against him.

32. Section 229 Cr. P.C says that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

22. *The discretion vests with the court under Section 229 Cr. P.C has been explained by the Hon'ble Supreme Court in **State of Maharashtra v. Sukhdeo Singh AIR 1992 SC 2100**. The Apex Court held, "... Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 next provides that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that if the accused pleads guilty the Judge has to record the plea and thereafter decide whether or not to convict the accused. The plea of guilt tantamounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clear, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the case to record a conviction based on the plea of guilt".*

33. Therefore, it is abundantly clear that, in law, there is no absolute bar, on the part of the Court of Sessions, to convict an accused on his plea of guilty; but before the conviction of the accused is based entirely on his plea of guilt, the Court

must take care to ensure that the plea of the accused is voluntary, clear, unambiguous and unqualified, that the accused understood the nature of the allegations made against him and admits them and that the accused admits all such facts, which are necessary and essential to constitute the offence.

34. It presupposes that the Court must also be satisfied that the facts placed before it in support of the plea of guilt are in themselves sufficient to sustain the offence charged with. In other words, the Court must have before it, all such facts, which are essential to constitute the offence, and such facts must be admitted by the accused before the plea of guilt of the accused is acted upon or conviction is based thereon.

35. Here, the first offence charged is under Section 120B IPC r/w sec.125 IPC, 38, 39, and 40 of UA(P) Act. The allegation is that A1 Shaibu Nihar who is in close contact with Hamsa @ Taliban Hamsa an ardent advocate of violent jihad ideology had conspired with the other accused at various places in Bahrain, and through Hamsa, A1 arranged conspiracy meetings in various places in Kerala and hatched a criminal conspiracy to strengthen and further the objectives of the proscribed terrorist organisation ISIS which is waging war with Asiatic powers that are in alliance with the Government of India, arranged funds and distributed the same among the co-conspirators to further its terrorist activities. Hamsa @ Taliban Hamsa stands convicted by this court in SC.02/18 for the offences u/s.120B, 125 IPC as well as Sec.38, 39, and 40 of UA(P) Act. The prosecution was able to prove the relevant facts that constitute a chain of events sufficient to prove the

conspiracy. That means, the factual ingredients essential to constitute the offence of conspiracy are placed before the court by the prosecution.

36. The second offence charged is under Section 125 IPC. The prosecution case is that except A1 and Ashraf Ali, all the other co-accused persons performed hijra to Syria and physically joined ISIS/Daish and themselves had engaged in waging war against the then Government of Syria an Asiatic power in alliance with the Government of India, and the accused Shaibu Nihar who continued his contacts with these accused, made vehement attempts to go to Turkey in order to cross the border to Syria and to physically join ISIS and to thereby to wage war against the Government of Syria. Only because Turkish authorities canceled his visa he was not able to complete his journey.

37. Even an attempt to wage such war attracts Section 125 so also abetment. Upon considering the materials placed before the court, the existence of an intention to aid and abet the proscribed organisation in waging war with the then Government of Syria is so probable, hence can be taken as proved. That means the factual ingredients essential to constitute the offence under section 125 IPC are placed before the court by the prosecution.

38. The third offence is under section 38 of UA(P) Act. What is made punishable here is the association of any person with any terrorist organisation or his allegiance to that organisation, when it is done with the intention of furthering the activities of that organisation. ISIS/Daish is a proscribed terrorist organisation. Islamic State (IS)/Islamic State of Iraq and Levant (ISIL)/Islamic State of Iraq and Syria (ISIS)/Daish has been proscribed by the Central Government as a terrorist

organization, under section 35 of the Unlawful Activities (Prevention) Act, 1967 and included in the 1st schedule of the Act, vide S.O. No.534(E) dated 16th February 2015. Back to the facts, there is sufficient evidence on the side of the prosecution to prove that the accused Shaibu Nihar and co-conspirators had associated with ISIS/Daish, and following the footsteps of his co-conspirators, accused Shaibu Nihar had also made vehement attempts to physically join ISIS and to indulge in the terrorist activities, and for that purpose, he had obtained visa to reach up to Turkey and to cross the Syrian border. That means the factual ingredients essential to constitute the offence under section 38 of UA(P) Act, are placed before the court by the prosecution.

39. The fourth offence is under Section 39 of the UA(P) Act. What is made punishable here is the support given by any person to a terrorist organisation, to further its activities, in the following manner. a) Invite support for a terrorist organisation. b) arrange, manage or assist in arranging a meeting; or c) address a meeting for encouraging support for the terrorist organisation or further its activity. The prosecution has collected evidence to prove that accused Shaibu Nihar is actively involved in arranging meetings inviting support to ISIS and motivating people to join the proscribed terrorist organisation. That means the factual ingredients essential to constitute the offence under section 39 of UA(P) Act, are placed before the court by the prosecution.

40. The last offence is u/s.40 of the UA(P) Act. What is made punishable here is the funding for a terrorist organisation. It can be by inviting another person to provide money or other property, receiving money or other property, and

providing money or other property, knowing that or has reasonable cause to suspect that it would or might be used for terrorism. The evidence collected by the prosecution is sufficient to establish that accused persons had invited, received, and provided money among them with a clear intention to use the same to meet their expenses for their journey to Syria to physically involved in the terrorist activities of ISIS. In effect, it amounts to funding the terrorist organisation. That means, the factual ingredients essential to constitute the offence u/s.40 of UA(P) Act are placed before the court by the prosecution.

41. To sum up, the facts placed by the prosecution sufficiently constitutes the offences charged. All the relevant facts constituting the offences charged were explained to the A1 Shaibu Nihar and the accused clearly understood the gravamen of the accusation on which he has been sought to be tried. He fully realised the consequence that may ensue based on the admission of the guilt, and only thereafter he made his plea.

42. Being fully convinced that the A1 Shaibu Nihar has voluntarily, clearly, unambiguously, and unequivocally pleaded guilty to the offences for which he has been charged, fully understanding its contents, and further that the evidence collected and produced by the prosecution, if admitted will be sufficient on all aspects to prove each and every offences charged against the accused, the plea of guilt made by the accused is hereby recorded and accepted.

43. Since the plea of guilt made by the accused Shaibu Nihar, stands accepted, he is convicted thereof for the offences punishable under Sections. 120B IPC r/w sec.125 IPC, Sections 38, 39 and 40 of UA(P) Act and separately for the

individual offences punishable under sec.125 IPC, Sections 38, 39, and 40 of UA(P) Act.

44. Considering the gravity of the offence committed by the accused, I find that this is not a fit and proper case to apply the benevolent provision of Probation of Offenders Act. Therefore before imposing sentence, the accused is to be heard as provided u/s.235(II) of Cr.P.C. Heard the accused. Both sides made detailed submissions. For pronouncing sentence, adjourned to 19.09.2022.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 14th day of September 2022.

Sd/-
Anil K. Bhaskar
Judge, Special Court of NIA Cases

45. Heard the accused on the question of sentence under Section 235(II) Cr.P.C. He is a young man of 41 years of age. His family consists of his wife three children and aged parents. His mother is a cancer patient. His two children are battling health issues and one requires immediate surgery. He is much concerned about his family and occasionally applied and obtained escort parole to visit his family members. He is not involved in any other cases. He would submit that, in Bahrain he had been leading a completely secular life and residing with his business partner Sanoj who was a Hindu, but later on, misunderstanding on matters of religion and bad companionships derailed the course of his life took and harmful thoughts began to dictate his actions. He is remorseful for the acts committed by him. He wants to return to the mainstream, be productive in society and lead a peaceful family life, be in love with all living beings. He has made it

clear that he is totally against the ideology of ISIS which propagates violence. According to him, he was merely carried away by the propaganda of some of his companions who favoured ISIS, without fully understanding what it really meant. He has reiterated that he is totally against violence. He wants this court to trust him and has assured that in the future no such incident will occur. He prayed for leniency in awarding sentence. His aged parents are present in court. They would submit that they have always led a secular life and further they assured to take care of accused Shaibu Nihar.

46. The learned Prosecutor contended that the convict had made fervent attempts to reach Syria to psychically join ISIS. He was not able to reach there only because Turkish authorities canceled his visa. He propagated the ideology of ISIS. He is not an illiterate person but an educated person. The learned Prosecutor argued for awarding adequate sentence proportionate to the crime. The learned prosecutor wants to impress upon this court to impose sentence at par with the quantum of punishment awarded by this court in SC.01/2017 which was confirmed by the Hon'ble Supreme Court in appeal.

47. Learned defence counsel would add that accused Shaibu Nihar is the only person to look after his aged parents and support the family. The convict has clean antecedents. He is remorseful for the acts committed by him. He is in jail for the last three years. No adverse report was ever filed by the jail authorities. Considering his young age he must be given a chance to reform. It is submitted that the ultimate aim of the sentencing policy is reformation and a person who is remorseful for the wrongs committed, needs special consideration, especially in

cases like this wherein the accused was prey to religious terrorism. It is further pointed out that he had not waged war against the Government of Syria. Even the prosecution doesn't have such a case. Therefore, the court shall be pleased to award nominal punishment under Section 125 of IPC. It is pointed out that under Sections 38, 39 and 40 of UA(P) Act the court has the discretion to award imprisonment or fine. The counsel prayed for a lenient view in this regard.

48. The learned Prosecutor doesn't have a case that this accused is involved in any other criminal cases past or present. Bonafides of the statement made by the accused that "he is remorseful for the prior acts committed by him and that, he doesn't believe in the ideology of violence propagated by ISIS", is not seen doubted by the prosecution.

49. The conviction follows sentence. Punishment is a sanction imposed on the offender for the infringement of law committed by him. It is the duty of the court to award adequate sentence. Hon'ble Supreme Court in **Ramashraya Chakravarti v. State of Maharashtra (1976) 1 SCC 281** held that "*In judging the adequacy of a sentence the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or society, effect of the punishment on the offender, eye to correction and reformation of the offender, are some amongst many other factors which would be ordinarily taken into consideration by courts*".

50. In SC No.1/2017, the case referred by the learned Prosecutor, ultimately Hon'ble Supreme Court awarded 3 years rigorous imprisonment under Section 120 B and 7 years rigorous imprisonment under Section 38 of UA(P) Act to

accused Yasmin Mohammed Zahid who faced trial in that case. In fact the Hon'ble Supreme Court restored the sentence imposed by the trial court setting aside the order of the Hon'ble High Court reducing the quantum of sentence to RI for one year under Section 120 B and RI for three years under Section 38 of UA(P) Act. The Hon'ble Supreme Court observed that there is no room for invoking sympathetic consideration when the involvement and intensity of participation in supporting terrorist organisation are clearly made out. Definitely, this is an aggravating circumstance to be considered while arriving at the quantum of sentence.

51. At the same time following facts requires attention. The convicted accused is, in fact, a prey to religious terrorism. An extremist coming under this classification believes that he is a person following God's mandate as he sees them outlined in the Holy book and that his actions are blessed by God. He will be having a lot of misconceptions regarding religion, democracy, the concept of brotherhood and other related aspects. Redemption of this class of accused is relevant not only from the point of view of the accused but also for the benefit of society. If the accused is not reformed his release will be a security concern for the entire society. To know that the misconceptions regarding religion, the concept of brotherhood, etc are cleared is a positive thing. Religion should rediscover love and thereby merge with God. One cannot claim to love God if he cannot love his fellow men and fellow creatures. Accused had now realised this and it is very constructive. To add, the convict has clean antecedents. The conduct of the convict in jail is satisfactory. The convict is remorseful for the acts committed by him and

has voluntarily pleaded guilty to the offences which show that the convict wants to reform. He disowned the ideology of the terrorist organisation which propagates violence. He aspires for a peaceful future of love and brotherhood. These are all mitigating circumstances relevant for consideration in arriving at the adequate quantum of sentence. **Hon'ble Delhi High Court in State (Govt. of NCT of Delhi) vs. Sonu** CrI.A. 1256/2019 decided on 21.11.2019 held that:

“19. The fact that the respondent-accused had voluntarily pleaded guilty merits consideration, especially in view of our overburdened judicial system. As judicial capital' in terms of manpower and resources is extremely limited, the accused who enters the plea of guilt cannot stand on the same pedestal as an accused who is convicted and sentenced after a full-fledged trial. The Law Commission in its 142nd Report titled —Concessional Treatment For Offenders Who On Their Own Initiative Choose To Plead Guilty Without Any Bargaining” has observed as under:-

It is not just and fair that an accused who feels contrite and wants to make amends or an accused who is honest and candid enough to plead guilty in the hope that the community will enable him to pay the penalty for the crime with a degree of compassion and consideration should be treated on par with an accused who claims to be tried at considerable time-cost and money-cost to the community. (emphasis supplied).

20. This Court is also of the opinion that the fact that the respondent-accused had voluntarily pleaded guilty, without any threat, pressure or coercion indicates that he is capable of reformation. One of the main

objectives of sentencing is the possibility of the convict being reformed and the society benefiting at large”.

52. Here it is also to be taken note that the convict has not waged war against any government in alliance and peace with the government of India. It was only found that he had taken flight tickets to Turkey intending to cross the border with Syria and to aid and assist the terrorist organisation which is engaged in war with the then Government of Syria. Therefore some leniency can be shown while fixing the quantum of sentence for the offence under Section 125 IPC.

53. Considering the whole facts and circumstances of the case, evaluating the aggravating and mitigating circumstances, and the chance of reformation of the convict, it appears to me that the following will be the just sentence to be imposed on the convict. He shall undergo rigorous imprisonment for three years under Section 120B IPC, rigorous imprisonment for five years under Section 125 IPC, and also do pay a fine of ₹10,000/-, in default of payment of fine undergo rigorous imprisonment for a period of six months and rigorous imprisonment for five years each under Section 38, 39 and 40 of UA(P) Act. The sentence of imprisonment can be ordered to run concurrently and the accused shall be given the benefit of Section 428 Cr.P.C.

54. A2 to A7 the co-accused are reported to be killed in Syria. But no official confirmation received so far. Therefore, A2 to A7 can only be treated as absconding accused. Hence, the case against A2 to A7 split up and re-filed as SC No. 02/2022. The material objects produced in this case shall be retained till the culmination of the proceedings in the split-up case.

In the result,

- a) A1 Shaibu Nihar is convicted and sentenced to undergo rigorous imprisonment for three years under Section 120B IPC.
- b) A1 Shaibu Nihar is convicted and sentenced to undergo rigorous imprisonment for five years under Section 125 IPC and to pay a fine of ₹10,000/-, in default rigorous imprisonment for a period of six months.
- c) A1 Shaibu Nihar is convicted and sentenced to undergo rigorous imprisonment for five years under Section 38 of the UA(P) Act.
- d) A1 Shaibu Nihar is convicted and sentenced to undergo rigorous imprisonment for five years under Section 39 of the UA(P) Act.
- e) A1 Shaibu Nihar is convicted and sentenced to undergo rigorous imprisonment for five years under Section 40 of the UA(P) Act.
- f) Substantive sentence of imprisonment shall run concurrently.
- g) A1 Shaibu Nihar is entitled to get set off under Section 428 Cr.P.C.
- h) Case against A2 to A7 is split up and re-filed as SC No.02/2022. The material objects produced in this case shall be retained till the culmination of the proceedings in the split-up case.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 19th day of September, 2022.

Sd/-
Anil K Bhaskar
Judge, Special Court for NIA Cases

Appendix:- Nil.

Id/-
Judge, Special Court for NIA Cases
(By Order)

// True Copy//

Sd/-
Sheristadar