REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 482 OF 2002

ASHRAFKHAN @ BABU MUNNEKHAN PATHAN … **APPELLANT**

VERSUS

STATE OF GUJARAT …**RESPONDENT**

WITH

CRIMINAL APPEAL NOS. 486-487 OF 2002

YUSUFKHAN @ LAPLAP KHUDDADKHAN PATHAN & ORS. … **APPELLANTS**

VERSUS

STATE OF GUJARAT …**RESPONDENT**

CRIMINAL APPEAL NOS. 762-765 OF 2002

STATE OF GUJARAT … **APPELLANT**

VERSUS

YUSUFKHAN @ LAPLAP KHUDADATTKHAN PATHAN & ORS. …**RESPONDENTS**

CRIMINAL APPEAL NOS. 766-768 OF 2002

STATE OF GUJARAT … **APPELLANT**

VERSUS

ABDUL KHURDUSH ABDUL GANI SHAIKH & ORS. …**RESPONDENTS**

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

These appeals have been filed against the judgment and order dated 31st of January, 2002 passed by Additional Designated Judge, Court No.3, Ahmedabad City in TADA Case Nos. 15/1995 and 6/1996 consolidated with TADA Case Nos. 32/1994 and 43/1996.

According to the prosecution, Abdul Wahab Abdul Majid Khan was arrested in a case of murder. On being interrogated in that case, he made startling and shocking revelations. He disclosed that accused Yusuf Laplap, who is involved in illegal business of liquor and running a gambling den is in

possession of four foreign made hand grenades, revolvers and AK-47 rifles. The fountainhead of the weapons, according to the information is notorious criminal Abdul Latif Shaikh and came at the hand of accused Yusuf Laplap through his close associate accused Abdul Sattar @ Sattar Chacha. Sattar gave the arms and explosives to accused Siraj @ Siraj Dadhi, a constable attached to Vejalpur Police Station. He in turn delivered those arms and explosives to accused Imtiyaz Nuruddin, the servant of Yusuf Laplap at latter's instance. The aforesaid information was passed on to A.K. Suroliya, the Deputy Commissioner of Police, Crime Branch. The police party searched the house of the accused Yusuf Laplap in the night and found him leaving the house with two bags. From one of the bags one revolver with ISI mark and five foreign made hand grenades were recovered and from another bag five detonators having clips affixed to it were found.

According to the allegation, the arms and explosives seized were similar to those used in the Ahmedabad City earlier by gang of criminals and intended to be used in the forthcoming "Jagannath Rath Yatra". The information given by the Police Inspector, U.T. Brahmbhatt led to registration of Crime No. 1-CR No. 11 of 1994 dated 9th of June, 1994, at the Crime Branch Police Station under Section 120B of the Indian Penal Code, Section 3 & 5 of Terrorist and Disruptive Activities (Prevention) Act (hereinafter referred to as 'TADA'), Section 7 & 25 (1) of the Arms Act and Section 4, 5 and 6 of the Explosive Substances Act against seven accused persons[1].

It is the case of the prosecution that the Police Inspector U.T. Brahmbhatt, before recording the first information report, sought prior approval of the Deputy Commissioner of Police, Crime Branch, for registration of the case which was granted. It is only thereafter, the first information report

[1] List of persons named in Crime No. 1-CR No. 11 of 1994 dated 9th of June, 1994 is appended at Schedule No.-I.

was registered and the investigation proceeded. It is also their case that another approval was granted on 15th of June, 1994 by the Additional Chief Secretary, Home Department. Not only that, the Deputy Commissioner of Police, Crime Branch, PW-65 A.R. Suroliya gave another approval on 11th of August, 1994.

During the course of investigation, the complicity of large number of persons surfaced. In all 46 AK-56 rifles, 40 boxes of cartridges, 99 bombs, 110 fuse pins and 110 magazines were brought to Ahmedabad and seized by the investigating agency from various accused persons. These were distributed to the accused persons for killing and terrorising the Hindu community during "Jagannath Rath Yatra". All those persons who were either found in possession or involved in transporting or facilitating transportation of those weapons were charge-sheeted. All these were intended to be used to disturb peace and communal harmony during "Jagannath Rath Yatra".

Ultimately, the investigating agency, on 16th of December, 1994 submitted first[2] charge-sheet against 14 accused persons under Section 120B, 121A, 122, 123 and 188 of Indian Penal Code, Section 3 and 5 of TADA, Section 4, 5 and 6 of Explosive Substances Act, Section 25(1A) of Arms Act, Section 135 of Customs Act and Section 135 (1) of Bombay Police Act. Second[3] charge-sheet came to be filed on 23rd of May, 1995 against 2 accused persons. Investigation did not end there and third[4], fourth[5] and fifth[6] charge-sheets were submitted on 17th of April, 1996, 20th of December, 1996 and 24th of May, 2000 against 33, 11 and 2 accused persons respectively. Thus, altogether 62 persons were charge-sheeted.

[2] List of persons charge-sheeted in the first charge-sheet dated 16th of December, 1994 is appended at Schedule No.–II.

[3] List of persons charge-sheeted in the second charge-sheet dated 23rd May, 1995 is appended at Schedule No.–III.

[4] List of persons charge-sheeted in the third charge-sheet dated 17th of April, 1996 is appended at Schedule No.–IV.

[5] List of persons charge-sheeted in the fourth charge-sheet dated 20th of December, 1996 is appended at Schedule No.–V.

[6] List of persons charge-sheeted in the fifth charge-sheet dated 24th of May, 2000 is appended at Schedule No.–VI.

The Designated Court framed charges against 60 accused persons under Section 120B of the Indian Penal Code, Section 3 and 5 of TADA, Section 4, 5 and 6 of the Explosive Substances Act and Section 25 (1A) of the Arms Act. However, Accused No. 57 namely, Mohmad Harun @ Munna @ Riyaz @ Chhote Rahim, has been discharged by the Designated Court by its order dated 24th of August, 2001. During the course of trial six accused namely, Adambhai Yusufbhai Mandli (Shaikh), Accused No. 11, Fanes Aehmohmad Ansari, Accused No. 18, Abdullatif Abdulvahab Shaikh, Accused No. 35, Ikbal Jabbarkhan Pathan, Accused No. 38, Firoz @ Firoz Kankani, Accused No. 56 and Jay Prakash Singh @ Bachchi Singh, Accused No. 60 died. One accused namely, Accused No. 9, Mohmad Ismail Abdul Shaikh absconded.

In order to bring home the charge, the prosecution altogether examined 70 witnesses and a large number of documents were also exhibited. The

accused were given opportunity to explain the circumstances appearing in the evidence against them and their defence was denial simpliciter. The Designated Court, on analysis of the evidence, both oral and documentary, vide its order dated 31st of January, 2002 convicted 11 accused persons[7] under Section 3 and 5 of TADA, Section 7 and 25(1A) of the Arms Act and Section 4, 5 and 6 of the Explosive Substances Act. They have been sentenced to undergo rigorous imprisonment for five years for the offence punishable under Section 3 and 5 of TADA and fine with default clause. The Designated Court further sentenced those convicted under Section 4, 5 and 6 of the Explosive Substances Act to suffer rigorous imprisonment for five years and fine with default clause. They were further sentenced to undergo rigorous imprisonment for five years and fine with default clause under Section 7 and 25(1A) of the Arms Act. All the sentences were directed to run concurrently. The Designated

[7] List of persons convicted by Designated Court vide its order dated 31st of January, 2002 is appended at Schedule No.-VII.

Court, however, acquitted 41 accused[8] of all the charges leveled against them.

Those found guilty have preferred Criminal Appeal No. 482 of 2002 (Ashrafkhan @ Babu Munnekhan Pathan & Anr. Vs. State of Gujarat) and Criminal Appeal Nos. 486-487 of 2002 (Yusufkhan @ Laplap Khuddadkhan Pathan & Ors. Vs. State of Gujarat). State of Gujarat, aggrieved by the inadequacy of sentence, preferred Criminal Appeal Nos. 762-765 of 2002 (State of Gujarat Vs. Yusufkhan @ Laplap Khudadattkhan Pathan & Ors.) and also preferred Criminal Appeal Nos. 766-768 of 2002 (State of Gujarat Vs. Abdul Khurdush Abdul Gani Shaikh & Ors.) against acquittal.

As all these appeals arise out of the same judgment, they were heard together and are being disposed of by this common judgment.

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[8] List of persons acquitted by Designated Court vide its order dated 31st of January, 2002 is appended at Schedule No.-VIII.

- All Schedules appended shall form part of the judgment.

We have heard Mr. Sushil Kumar and Mr. Ranjit Kumar learned Senior Counsel, Mr. Garvesh Kabra, learned *amicus curiae*, Mr. Sanjay Jain and Ms. Meenakshi Arora, learned counsel on behalf of the accused. Mr. Yashank Adhyaru, learned Senior Counsel was heard on behalf of the State of Gujarat.

In order to assail the conviction several submissions were made by the learned counsel representing the accused. However, as the conviction has to be set aside on a very short ground, we do not consider it either expedient to incorporate or answer those submissions.

We may record here that we have incorporated only those parts of the prosecution case which have bearing on the said point and shall discuss hereinafter only those materials which are relevant for adjudication of the said issue.

It is the contention of the accused that the first information report under the provisions of

TADA was registered without approval of the District Superintendent of Police as contemplated under Section 20-A(1) of TADA and this itself vitiates the conviction.

Plea of the State, however, is that such an approval was granted by A.R. Suroliya, the Deputy Commissioner of Police, Crime Branch, who is an officer of the rank of District Superintendent of Police. Alternatively, the State contends that Section 20-A of TADA is a two tiered provision which provides for approval by the Deputy Commissioner under Section 20-A(1) and sanction by the Commissioner under Section 20-A(2) of TADA. In the absence of challenge to the sanction, challenge only to the approval, to use the counsel's word "would be curable defect under Section 465 of the Code of Criminal Procedure". It has also been pointed out that the accused having not challenged the sanction granted by the Commissioner of Police under Section 20-A(2) of TADA, they cannot assail their conviction on the ground of absence of

approval under Section 20-A(1) by the Deputy Commissioner. In order to defend the conviction, the State of Gujarat further pleads that the Designated Court having taken cognizance and decided to try the case by itself under Section 18 of TADA, the prior defects, if any, are rendered irrelevant and cannot be raised. It has also been pointed out that the Designated Court having been empowered to take cognizance under Section 14 of TADA irrespective of absence of compliance of Section 20-A(1) of TADA, its non-compliance would not be fatal to the prosecution. It has also been highlighted that several safeguards have been provided under the scheme of TADA including the power of the court to take cognizance and proceed with the trial and once cognizance has been taken, defects prior to that cannot be allowed to be raised. In any view of the matter, according to the State, absence of approval under Section 20-A(1) of TADA would not vitiate the

conviction of the accused persons under other penal provisions.

In view of the rival submissions the question for determination is as to whether the Deputy Commissioner, A.R. Suroliya gave prior approval on 9th of June, 1994 or 11th of August, 1994 for recording the first information report as contemplated under Section 20-A(1) of TADA and in case it is found on facts that no such approval was granted, the effect thereof on the conviction of the accused. Further, the effect of approval by the Additional Chief Secretary, Home Department on 15th of June,1994 is also required to be gone into.

To prove prior approval by the Deputy Commissioner before the lodging of the first information report, the prosecution has mainly relied on the evidence of the Inspector of Police U.T. Brahmbhatt, PW-10 and Deputy Commissioner A.R. Suroliya, PW-65. Xerox copy of the approval (Exh. 775)has also been brought on record to establish

that. It is not in dispute that officer of the rank of Deputy Commissioner is equivalent to District Superintendent of Police. U.T. Brahmbhatt has stated in his evidence that "Mr. Suroliya passed an order, sanctioned the same and an endorsement is also made regarding that". This witness has been subjected to cross-examination and in the cross-examination he has admitted that the letter asking for approval to investigate and the report under Section 157 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') has been lost while producing the same in the Supreme Court. A.R. Suroliya, PW-65, in his evidence has supported the case of the prosecution regarding prior approval. While explaining the absence of the original approval, this witness has stated in his evidence that he had gone to the Supreme Court for hearing of the application filed by the accused Yusuf Laplap and handed over the original papers to the senior counsel. According to him, the senior counsel told him that after producing the necessary

papers before the Supreme Court, the original papers would be sent back but it has not come and despite efforts and inquiry, it could not be traced out. According to his evidence "as the original letter of approval thereof is not found" the xerox copy thereof was produced. It was marked as Exh.775. In the cross-examination, he reiterated that he had gone to the Supreme Court along with original approval letter and in the bail application of accused Yusuf Laplap, the said approval was produced. He feigned ignorance as to whether entry was made into outward register regarding approval and denied suggestion that he did not receive any proposal for approval nor granted the same and with a view to see that the case does not fall, he had deposed falsely regarding approval. In his cross-examination he has stated as follows:

> "I do not know whether there is any such paper in my office or not for grant of approval for which I have deposed."

The Designated Court accepted the case of the prosecution and held that prior approval was granted by the Deputy Commissioner under Section 20-A(1) of TADA. While doing so, the Designated Court observed as follows:

> "…The original documents were sent to the honorable Supreme Court for the purpose of producing the same in court in connection with the same petition and thereafter the same have been misplaced or lost…."

It further observed as follows:

> "….On receiving certain information from Abdul Wahab and Yusuf Laplap Mr. Brahmbhatt lodged the FIR against seven accused persons and it was sent for the approval of DCP and on getting the approval under section 20-A(1), the offence was registered under the TADA Act. Thereafter on perusal of the deposition, it becomes clear that there was total compliance of Section 20-A(1) of the TADA Act before lodging the FIR and on getting the approval from DCP the offence was registered.

Having given our anxious consideration to the facts of the present case and the evidence on record, we are of the opinion that the case of the

prosecution that the Deputy Commissioner granted approval under Section 20-A(1) of TADA before registration of the case is fit to be rejected. It is interesting to note that the Deputy Commissioner A.R. Suroliya has categorically stated in his evidence that he had gone to the Supreme Court with original records, which included the first information report, on which he had granted approval and handed over the same to the counsel. Thereafter, according to him, the said original first information report got lost or misplaced. It has been brought to our notice that accused Yusuf Laplap had not come to this Court for grant of bail and, therefore, the Deputy Commissioner had no occasion to come with the original record in connection with that case. True it is that some of the accused persons in the case had approached this Court for various reliefs, but in the face of the evidence of the Deputy Commissioner A.R. Suroliya that he came along with the record in connection

with the case of the accused Yusuf Laplap is fit to be rejected. There are various other reasons also to reject this part of the prosecution story.

As stated earlier, charge-sheet in the case has been filed in five stages. Further, report under Section 157 of the Code has been filed and all these acts had taken place before the alleged loss of the document in the Supreme Court and, therefore, should have formed part of the charge-sheet and the report given under Section 157 of the Code. It has also come on record that later on, the Assistant Commissioner of Police, Crime Branch had sought for approval of the Deputy Commissioner which he granted on 11th of August, 1994. The communication of the Assistant Commissioner of Police (Exh.1173) does not refer to any approval granted by the Deputy Commissioner earlier and, not only that, the Deputy Commissioner while giving approval on 11th of August, 1994 has nowhere whispered that earlier he had already granted the

approval. No explanation is forthcoming from the side of the prosecution that when Deputy Commissioner A.R. Suroliya had already granted approval on 9th of June, 1994, what was the occasion to write to him for grant of another approval and the Deputy Commissioner granting the same. To prove prior approval, the prosecution has produced the xerox copy. According to the evidence of Deputy Commissioner A.R. Suroliya, he had got it prepared from the copy kept in his office. We wonder as to how and why when a copy of the approval was kept in the office of the Deputy Commissioner itself, xerox copy was produced. It is relevant here to state that this witness, in his cross-examination, has admitted that he does not remember whether "there is any such paper in my office or not for grant of approval for which" he had deposed.

In the face of what we have observed above the case of the prosecution that prior approval was

granted on 9th of June, 1994 is fit to be rejected. It seems that the prosecution has come out with a story of grant of prior approval under Section 20-A(1) of TADA in view of the decision of this Court in the case of ***Mohd. Yunus v. State of Gujarat, (1997) 8 SCC 459***. There the prosecution has propounded the theory of oral permission which was rejected. In that case also the prosecution has pressed into service the permission granted on 11th of August, 1994 by the same Deputy Commissioner i.e. A.R. Suroliya and earlier oral permission. While rejecting the same this Court has observed as follows:

> **"4.** It is, however, contended by the prosecution that on the very date when investigation had been made in this case, the Commissioner of Police, Ahmedabad was present and he had given oral permission under Section 20-A(1) of TADA. We may indicate here that considering the serious consequences in a criminal case initiated under the provisions of TADA, oral permission cannot be accepted. In our view, Section 20-A(1) must be construed by indicating that prior approval of the statutory authority referred to in the

> said sub-section must be in writing so that there is transparency in the action of the statutory authority and there is no occasion for any subterfuge subsequently by introducing oral permission."

From the analysis of the evidence on record, we have no manner of doubt that the Deputy Commissioner A.R. Suroliya did not grant prior approval before registration of the case.

As stated earlier, the prosecution has relied on another approval dated 11th of August, 1994 granted by the Deputy Commissioner. In order to prove this, reference is made to the letter of the Assistant Commissioner addressed to the Deputy Commissioner of Police (Exh. 1173). In the said letter, the Assistant Commissioner of Police has observed that the Home Department of the Government has given approval to apply sections of TADA and the approval of the Deputy Commissioner is necessary in this regard. The Deputy Commissioner of Police on the same day granted approval.

However, Deputy Commissioner A.R. Suroliya, in his evidence, has nowhere stated about the approval granted on 11th of August, 1994 though he had deposed about the approval granted on 9th of June, 1994. In the face of it, the case of the prosecution that Deputy Commissioner A.R. Suroliya gave another approval on 11th of August, 1994 is fit to be rejected.

Another approval said to have been granted by the Additional Chief Secretary, Home Department for "using TADA sections" (Exh. 439) has also been proved by the prosecution to establish compliance of Section 20-A(1) of TADA. Accused has not joined issue on this count and in view of the evidence on record, we have no hesitation in accepting the case of the prosecution that the Additional Chief Secretary, Home Department, on 15th of June, 1994 had given approval. However, its consequences on the conviction of the accused shall be discussed later on.

Having found that the Deputy Commissioner has not granted the prior approval, as required under Section 20-A(1) of TADA, we proceed to consider the consequence thereof. For that, we deem it expedient to reproduce Section 20-A of TADA which reads as under:

> **20-A Cognizance of offence.**
>
> (1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.
>
> (2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police.

It is worth mentioning here that TADA, as originally enacted, did not contain this provision and it has been inserted by Section 9 of the Terrorist and Disruptive Activities (Prevention) Amendment Act (Act 43 of 1993). From a plain

reading of the aforesaid provision it is evident that no information about the commission of an offence shall be recorded by the police without the prior approval of the District Superintendent of Police. The legislature, by using the negative word in Section 20-A(1) of TADA, had made its intention clear. The scheme of TADA is different than that of ordinary criminal statutes and, therefore, its provisions have to be strictly construed. Negative words can rarely be held directory. The plain ordinary grammatical meaning affords the best guide to ascertain the intention of the legislature. Other methods to understand the meaning of the statute is resorted to if the language is ambiguous or leads to absurd result. No such situation exists here. In the face of it, the requirement of prior approval by the District Superintendent of Police, on principle, cannot be said to be directory in nature. There are authorities which support the view we have taken. Reference, in this connection, can be made to a

three-Judge Bench decision of this Court in the case of ***Anirudhsinhji Karansinhji Jadeja v. State of Gujarat, (1995) 5 SCC 302.*** As in the present case, in the said case also the permission granted by the Additional Chief Secretary was considered. The effect of absence of prior approval by the District Superintendent of Police and the grant of approval by the Additional Chief Secretary were not found to be in conformity with the scheme of TADA. Paragraph 11 of the judgment which is relevant for the purpose reads as follows:

> **"11.** The case against the appellants originally was registered on 19-3-1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If

> the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20-A(1) was not exercised by the DSP at all."

The effect of non-compliance of Section 20-A(1) of TADA also came up for consideration before this Court in the case of ***Mukhtiar Ahmed Ansari v. State (NCT of Delhi), (2005) 5 SCC 258*** and while holding that absence of prior approval would vitiate the conviction, the Court observed as under:

> **"23.** We are unable to uphold the argument. In this case, the Deputy Commissioner of Police himself had been examined as prosecution witness (PW 4). In his deposition, he had not stated that he had given any such direction to PW 11 Ram Mehar Singh to register case against the accused under TADA. On the contrary, he had expressly stated that he had granted sanction (which was in writing) which is at Ext. P-4/1. As already adverted earlier, it was under the Arms Act and not under TADA.

> **24.** In our opinion, therefore, from the facts of the case, it cannot be held that prior approval as required by Section 20-A(1) has been accorded by the competent authority under TADA. All proceedings were, therefore, vitiated. The contention of the appellant-accused must be upheld and the conviction of the appellant-accused under TADA must be set aside."

In the present case, we have found that no prior approval was granted by the Deputy Commissioner of Police and in the face of the judgments of this Court in the case of ***Anirudhsinhji Karansinhji Jadeja (supra)*** *and* ***Mukhtiar Ahmed Ansari (supra)***, the conviction of the accused cannot be upheld. It is worth mentioning that this Court had taken the same view in the case of ***Mohd. Yunus (supra)*** and on fact, having found that no permission was granted, the charge was held to have been vitiated. It is worth mentioning here that in ***Mohd. Yunus (supra)*** this Court observed that no oral permission is permissible but in ***Kalpnath Rai v. State, (1997) 8***

SCC 732 this Court held that District Superintendent of Police, in a given contingency, can grant oral approval and that would satisfy the requirement of Section 20-A(1) of TADA.

The conflict between the decisions of this Court in ***Mohd. Yunus (supra)*** and ***Kalpnath Rai (supra)*** was considered by a three-Judge Bench in the case of ***State of A.P. v. A. Sathyanarayana, (2001) 10 SCC 597*** and this Court held that oral approval is permissible and while over-ruling the decision in the case of ***Mohd. Yunus (supra)***, upheld the ratio laid down in the case of ***Kalpnath Rai (supra)*** that the prior approval may be either in writing or oral also. But, at the same time, the decision in the case of ***Mohd. Yunus (supra)*** that prior approval is *sine qua non* for prosecution, has not been watered down and, in fact, reiterated. This would be evident from paragraph 8 of the judgment which reads as follows:

> **"8.** Having applied our mind to the aforesaid two judgments of this Court, we are in approval of the latter judgment and we hold that it is not the requirement under Section 20-A(1) to have the prior approval only in writing. Prior approval is a condition precedent for registering a case, but it may be either in writing or oral also, as has been observed by this Court in *Kalpnath Rai case, 1997 (8) SCC 732* and, therefore, in the case in hand, the learned Designated Judge was wholly in error in refusing to register the case under Sections 4 and 5 of TADA. We, therefore, set aside the impugned order of the learned Designated Judge and direct that the matter should be proceeded with in accordance with law."
>
> (underlining ours)

Another question which needs our attention is the effect of approval dated 15th of June, 1994 given by the Additional Chief Secretary, Home Department of the State. Section 20-A of TADA authorises the District Superintendent of Police to grant approval for recording the offence and Additional Chief Secretary of the Home Department or for that matter, State Government does not figure in that. The legislature has put trust on

the District Superintendent of Police and therefore it is for him to uphold that trust and nobody else. Hence approval by the Additional Chief Secretary is inconsequential and it will not save the prosecution on this count, if found vulnerable otherwise. We may however observe that in order to prevent the abuse of TADA, the State Government may put other conditions and prescribe approval by the Government or higher officer in the hierarchy but the same cannot substitute the requirement of approval by the District Superintendent of Police. Not only this, the District Superintendent of Police is obliged to grant approval on its own wisdom and outside dictate would vitiate his decision. This view finds support from the decision of this Court in the case of ***Anirudhsinhji Karansinhji Jadeja (Supra).***

Now we proceed to consider the submission advanced by the State that non-compliance of Section 20-A(1) i.e. absence of approval of the

District Superintendent of Police, is a curable defect under Section 465 of the Code. We do not have the slightest hesitation in holding that Section 465 of the Code shall be attracted in the trial of an offence by the Designated Court under TADA. This would be evident from Section 14 (3) of TADA which reads as follows:

> **"S.14.Procedure and powers of Designated Courts**
>
> xxx xxx xxx
>
> (3) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before the Court of Session."

From a plain reading of the aforesaid provision it is evident that for the purpose of trial Designated Court is a Court of Session. It has all the powers of a Court of Session and while trying

the case under TADA, the Designated Court has to follow the procedure prescribed in the Code for the trial before a Court of Session. Section 465 of the Code, which falls in Chapter XXXV, covers cases triable by a Court of Session also. Hence, the prosecution can take shelter behind Section 465 of the Code. But Section 465 of the Code shall not be a panacea for all error, omission or irregularity. Omission to grant prior approval for registration of the case under TADA by the Superintendent of Police is not the kind of omission which is covered under Section 465 of the Code. It is a defect which goes to the root of the matter and it is not one of the curable defects.

The submission that absence of sanction under Section 20-A(2) by the Commissioner of Police has been held to be a curable defect and for parity of reasons the absence of approval under Section 20-A(1) would be curable is also without substance and reliance on the decision of ***Lal Singh v. State of***

Gujarat, (1998) 5 SCC 529, in this connection, is absolutely misconceived. An Act which is harsh, containing stringent provision and prescribing procedure substantially departing from the prevalent ordinary procedural law cannot be construed liberally. For ensuring rule of law its strict adherence has to be ensured. In the case of **Lal Singh (supra)** relied on by the State, Section 20-A(1) of TADA was not under scanner. Further, this Court in the said judgment nowhere held that absence of sanction under Section 20-A(2) is a curable defect. In **Lal Singh (supra)** the question of sanction was not raised before the Designated Court and sought to be raised before this Court for the first time which was not allowed. This would be evident from the following paragraph of the judgment

> **"4.** Sub-section (2) makes it clear that when the objection could and should have been raised at an earlier stage in the proceeding and has not been raised, mere error or irregularity in any sanction of

> prosecution becomes ignorable. We therefore do not permit the appellants to raise the plea of defect in sanction."
>
> (underlining ours)

The decision of this Court in the case of ***Ahmad Umar Saeed Sheikh v. State of U.P., (1996) 11 SCC 61***, relied on by the State, instead of supporting its contention clearly goes against it. As observed earlier, the omission to grant approval does not come within the purview of Section 465 of the Code and, hence, the rigors of Section 465 (2) shall be wholly inapplicable. Otherwise also, the accused have raised this point at the earliest. Grant or absence of approval by the District Superintendent of Police is a mixed question of law and fact. The very existence of the approval under Section 20-A(1) of TADA has been questioned by the accused during the course of trial, which is evident from the trend of cross-examination. Not only this, it was raised before the Designated Court during argument and has been rejected. Thus,

it cannot be said that it was not raised at the earliest.

The plea of the State is that the Commissioner of Police having granted the sanction under Section 20-A(2) of TADA, the conviction of the accused cannot be held to be bad only on the ground of absence of approval under Section 20-A(1) by the Deputy Commissioner. As observed earlier, the provisions of TADA are stringent and consequences are serious and in order to prevent persecution, the legislature in its wisdom had given various safeguards at different stages. It has mandated that no information about the commission of an offence under TADA shall be recorded by the police without the prior approval of the District Superintendent of Police. Not only this, further safeguard has been provided and restriction has been put on the court not to take cognizance of any offence without the previous sanction of the Inspector-General of Police or as the case may be,

the Commissioner of Police. Both operate in different and distinct stages and, therefore, for successful prosecution both the requirements have to be complied with. We have not come across any principle nor we are inclined to lay down that in a case in which different safeguards have been provided at different stages, the adherence to the last safeguard would only be relevant and breach of other safeguards shall have no bearing on the trial. Therefore, we reject the contention of the State that the accused cannot assail their conviction on the ground of absence of approval under Section 20-A(1) of TADA by the Deputy Commissioner, when the Commissioner of Police had granted sanction under Section 20-A(2) of TADA.

As regards submission of the State that the Designated Court having taken cognizance and decided to try the case by itself in exercise of the power under Section 18 of TADA, the prior defects, if any, are rendered irrelevant and cannot

be raised, has only been noted to be rejected. Section 18 of TADA confers jurisdiction on the Designated Court to transfer such cases for the trial of such offences in which it has no jurisdiction to try and in such cases, the court to which the case is transferred, may proceed with the trial of the offence as if it had taken cognizance of the offence. The power of the Designated Court to transfer the case to be tried by a court of competent jurisdiction would not mean that in case the Designated Court has decided to proceed with the trial, any defect in trial, cannot be agitated at later stage. Many ingredients which are required to be established to confer jurisdiction on a Designated Court are required to be proved during trial. At the stage of Section 18 the Designated Court has to decide as to whether to try the case itself or transfer the case for trial to another court of competent jurisdiction. For that, the materials collected during the course of investigation have only to be seen. The

investigating agency, in the present case, has come out with a case that prior approval was given for registration of the case and the allegations made do constitute an offence under TADA. In the face of it, the Designated Court had no option than to proceed with the trial. However, the decision by the Designated Court to proceed with the trial shall not prevent the accused to contend in future that they cannot be validly prosecuted under TADA. We hasten to add that even in a case which is not fit to be tried by the Designated Court but it decides to do the same instead of referring the case to be tried by a court of competent jurisdiction, it will not prevent the accused to challenge the trial or conviction later on.

The submission of the State that the Designated Court having been empowered to take cognizance under Section 14 of TADA irrespective of absence of compliance of Section 20-A(1) of TADA, its non-compliance would not be fatal to the prosecution, does not commend us. Section 14 of TADA confers

jurisdiction on a Designated Court to take cognizance of any offence when the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such facts. The offence under TADA is to be tried by a Designated Court. The Designated Court has all the powers of Court of Session and it has to try the offence as if it is a Court of Session. The Code provides for commitment of the case for trial by the Court of Session. Section 14(1) of TADA provides that the Designated Court may take cognizance on receiving a complaint of facts or upon a police report. Had this provision not been there, the cases under TADA would have been tried by the Designated Court only after commitment. In any view of the matter, the accused during the trial under TADA can very well contend that their trial is vitiated on one or the other ground notwithstanding the fact that the Designated Court had taken cognizance. Taking

cognizance by the Designated Court shall not make all other provisions inconsequential.

Lastly, it has been submitted that absence of approval under Section 20-A(1) of TADA would not vitiate the conviction of the accused under other penal provisions. As stated earlier, the accused persons besides being held guilty under Section 3 and 5 of TADA, have also been found guilty under Section 7 and 25(1A) of the Arms Act and Section 4, 5 and 6 of the Explosive Substances Act. According to the State, the conviction under the Arms Act and the Explosive Substances Act, therefore, cannot be held to be illegal. It is relevant here to state that the Designated Court, besides trying the case under TADA, can also try any other offence with which the accused may be charged at the same trial if the offence is connected with the offence under TADA. When the Designated Court had the power to try offences under TADA as well as other offences, it is implicit that it has the power to convict also and that conviction is permissible to be

ordered under TADA or other penal laws or both. In our opinion it is not necessary for the Designated Court to first order conviction under TADA and only thereafter under other penal law. In view of the five-Judge Constitution Bench judgment of this Court in ***Prakash Kumar v. State of Gujarat, (2005) 2 SCC 409***, this point does not need further elaboration. In the said case this Court has observed that "the Designated Court is empowered to convict the accused for the offence under any other law notwithstanding the fact that no offence under TADA is made out." This would be evident from paragraph 37 of the judgment which reads as follows:

> **"37.** The legislative intendment underlying Sections 12(1) and (2) is clearly discernible, to empower the Designated Court to try and convict the accused for offences committed under any other law along with offences committed under the Act, if the offence is connected with such other offence. The language "if the offence is connected with such other offence" employed in Section 12(1) of the Act has great significance. The

> necessary corollary is that once the other offence is connected with the offence under TADA and if the accused is charged under the Code and tried together in the same trial, the Designated Court is empowered to convict the accused for the offence under any other law, notwithstanding the fact that no offence under TADA is made out. This could be the only intendment of the legislature. To hold otherwise, would amount to rewrite or recast legislation and read something into it which is not there."

We have held the conviction of the accused to have been vitiated on account of non-compliance of Section 20-A(1) of TADA and thus, it may be permissible in law to maintain the conviction under the Arms Act and the Explosive Substances Act but that shall only be possible when there are legally admissible evidence to establish those charges. The Designated Court has only relied on the confessions recorded under TADA to convict the accused for offences under the Arms Act and the Explosive Substances Act. In view of our finding that their conviction is vitiated on account of non-compliance of the mandatory requirement of

prior approval under Section 20-A(1) of TADA, the confessions recorded cannot be looked into to establish the guilt under the aforesaid Acts. Hence, the conviction of the accused under Section 7 and 25(1A) of the Arms Act and Section 4, 5 and 6 of the Explosive Substances Act cannot also be allowed to stand.

As we have held the conviction and sentence of the accused to be illegal and unsustainable, the appeals filed by the State against acquittal and inadequacy of sentence have necessarily to be dismissed.

We appreciate the anxiety of the police officers entrusted with the task of preventing terrorism and the difficulty faced by them. Terrorism is a crime far serious in nature, more graver in impact and highly dangerous in consequence. It can put the nation in shock, create fear and panic and disrupt communal peace

and harmony. This task becomes more difficult when it is done by organized group with outside support. Had the investigating agency not succeeded in seizing the arms and explosives, the destruction would have been enormous. However, while resorting to TADA, the safeguards provided therein must scrupulously be followed. In the country of Mahatma, “means are more important than the end”. Invocation of TADA without following the safeguards resulting into acquittal gives an opportunity to many and also to the enemies of the country to propagate that it has been misused and abused. District Superintendent of Police and Inspector General of Police and all others entrusted with the task of operating the law must not do anything which allows its misuse and abuse and ensure that no innocent person has the feeling of sufferance only because “My name is Khan, but I am not a terrorist”.

The facts of the case might induce mournful reflection how an attempt by the investigating

agency charged with the duty of preventing terrorism and securing conviction has been frustrated by what is popularly called a technical error. We emphasize and deem it necessary to repeat that the gravity of the evil to the community from terrorism can never furnish an adequate reason for invading the personal liberty, except in accordance with the procedure established by the Constitution and the laws.

We have been told that many of the accused, because of poverty or for the reason that they had already undergone the sentence, have not preferred appeals before this Court. Further, this Court had not gone into the merits of the appeals preferred by few convicts on the ground that they have already served out the sentence and released thereafter. The view which we have taken goes to the root of the matter and vitiates the conviction and, hence, we deem it expedient to grant benefit of this judgment to all those accused who have been held guilty and not preferred appeal and also those

convicts whose appeals have been dismissed by this Court as infructuous on the ground that they had already undergone the sentence awarded.

In the result, we allow the appeals preferred by those accused who have been convicted and sentenced by the Designated Court and set aside the judgment and order of their conviction and sentence. However, we dismiss the appeals preferred by the State against the inadequacy of sentence and acquittal of some of the accused persons.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI,
SEPTEMBER 26, 2012.

SCHEDULE - I

List of persons named in Crime No. 1-CR No. 11 of 1994 dated 9th of June, 1994.

Sr.No.	Names of accused persons	Accused Nos.
1	Yusufkhan Khudadatkhan Pathan @ Laplap	Accused No. 1
2	Abdul Latif Abdul Vahab Shaikh	Accused No. 2
3	Rasulkhan @ Yaz	Accused No. 3
4	A.H.C. Sirajmiya Akbarmiya @ Siraj Dadhi	Accused No. 4
5	Imtiyaz	Accused No. 5
6	Gulal	Accused No. 6
7	Sattar Battery @ Sattar Chacha	Accused No. 7

SCHEDULE – II

List of persons named in the First Charge-Sheet dated 16th of December, 1994

Sr.No.	Names of accused persons	Accused Nos.
1	Yusufkhan @ Yusuf Laplap Khudadatkhan Pathan	Accused No. 1
2	Shirajmiya Akbarmiya Thakore	Accused No. 2
3	Abdulkhurdush Abdulgani Shaikh	Accused No. 3
4	Mohmad Farukh @ Farukbawa Allarakha Shaikh	Accused No. 4
5	Sajidali @ Benimohmadali Saiyed	Accused No. 5
6	Anwarkhan Mohmadkhan Pathan	Accused No. 6
7	Mohmad Jalaluddin @ Jalababa Tamizuddin Saiyed	Accused No. 7
8	Gulamkadar Gulamhusain Shaikh	Accused No. 8
9	Mohmad Ismail Abdul Vahab Shaikh	Accused No. 9
10	Haiderkhan Lalkhan Pathan	Accused No. 10
11	Adambhai Yusufbhai Mandli (Shaikh)	Accused No. 11

Sr.No.	Names of accused persons	Accused Nos.
12	Mohmad Soyeb @ Soyeb Baba Abdul Gani Shaikh	Accused No. 12
13	Iqbal @ Bapu Saiyed Husain Saiyed	Accused No. 13
14	Mohmad Hanif @ Anudin Husain Miya Shaikh	Accused No. 14

SCHEDULE - III

List of persons named in the Second Charge-Sheet dated 23rd of May, 1995

Sr.No.	Names of accused persons	Accused Nos.
1	Gajanfarkhan @ Gajukhan	Accused No. 15
2	Asrafkhan @ Babu	Accused No. 16

SCHEDULE – IV

List of persons named in the Third Charge-Sheet dated 17th of April, 1996

Sr.No.	Names of accused persons	Accused Nos.
1	Munavar Ullakhan @ Imtiyaz Ullakhan @ Pappu	Accused No. 17
2	Fanes Aehmohmad Ansari	Accused No. 18
3	Afzalhusain	Accused No. 19
4	Samimulla @ Sammu	Accused No. 20
5	Barikkhan @ Abdulsalim	Accused No. 21
6	Babukhan @ Lala	Accused No. 22
7	Maksud Ahmed Fatehahmed Shaikh	Accused No. 23
8	Mohmedsafi Abdul Rahman Saikh	Accused No. 24
9	Hafizudin Fajiudin Kaji	Accused No. 25
10	Sohrabduin @ Salim	Accused No. 26
11	Abdulgafar @ Gafar	Accused No. 27
12	Abdulkayam Nizamudin Shaikh	Accused No. 28
13	Mohmed Rafik @ Haji Rafikbhai Kapadia	Accused No. 29
14	Usmangani Musabhai Vohra	Accused No. 30

Sr.No.	Names of accused persons	Accused Nos.
15	Abdulvahab Abdulmajid Baloch	Accused No. 31
16	Abdul Sattar @ Sattar Battery	Accused No. 32
17	Abdulrauf @ Rauf	Accused No. 33
18	Imtiyazahmed Nurharanmiya Kadri	Accused No. 34
19	Abdullatif Abdulvahab Shaikh	Accused No. 35
20	Sabbirhusain Husainmiya Shaikh	Accused No. 36
21	Mustak Ahmed Istiyak Ahmed Pathan	Accused No. 37

22	Ikbal Jabbarkhan Pathan	Accused No. 38
23	Ayub @ Lala	Accused No. 39
24	Kadarbhai Musabhai Mandli	Accused No. 40
25	Musabhai Yusufbhai Madli	Accused No. 41
26	Daubhai Musabhia Shaikh	Accused No. 42
27	Mohmedamin @ Amin Chobeli	Accused No. 43
28	Musrafkhan Gorekhan Pathan	Accused No. 44
29	Mehmood @ Pepa Pelhwan Husenkhan Nilgaramal	Accused No. 45

Sr.No.	Names of accused persons	Accused Nos.
30	Sahibudin @ Konjibaba	Accused No. 46
31	Husanbhai @ Bhajia	Accused No. 47
32	Ahmedbhai Haji Kasambhai Ajmeri	Accused No. 48
33	Gulam Mohmed @ Gulu	Accused No. 49

SCHEDULE – V

List of persons named in the Fourth Charge-Sheet dated 20th of December, 1996

Sr.No.	Names of accused persons	Accused Nos.
1	Mahebub Bag @ Mehbub Senior	Accused No. 50
2	Mohmad Rafik @ R.D. @ Mustak @ Nazim	Accused No. 51
3	Gulam Mohmad@ Gulal @ Arif	Accused No. 52
4	Imtiyaz @ Fatush	Accused No. 53
5	Parminder Singh @ Kaka	Accused No. 54
6	Aminkhan @ Alamkhan	Accused No. 55
7	Firoz @ Firoz Kankani	Accused No. 56
8	Mohmad Harun @ Munna @ Riyaz @ Chhote Rahim	Accused No. 57
9	Mujfarkhan @ Nasir Luhar	Accused No. 58
10	Mohmad Yakil @ Yakil	Accused No. 59
11	Jay Prakash Singh @ Bachhi Sing	Accused No. 60

SCHEDULE – VI

List of persons named in the Fifth Charge-Sheet dated 24th of May, 1994

Sr.No.	Names of accused persons	Accused Nos.
1	Jahangir Khan Fazalkhan Pathan	Accused No. 61
2	Mohmad Anwarkhan @ Rushi Pathan	Accused No. 62

SCHEDULE – VII

List of persons convicted by Designated Court vide its order dated 31st of January, 2002

Sr.No.	Names of accused persons	Accused Nos.
1	Yusufkhan @ Yusuf Laplap Khudadadkhan Pathan	Accused No. 1
2	Shirajmiya Akbarmiya Thakore	Accused No. 2
3	Sajidali @ Deni Mohammedali Saiyed	Accused No. 5
4	Iqbal @ Bapu Saiyedhussein Saiyed	Accused No. 13
5	Gajnafarkhan @ Gajjukhan Sabdrkhan Pathan	Accused No. 15
6	Asharafkhan @ Babu Munnakhan Pathan	Accused No. 16
7	Shohrabuddin @ Salim Anvaruddin Shaikh	Accused No. 26
8	Abdulsattar @ Sattar Battery Abdulgani Shaikh	Accused No. 32
9	Abdul Raoof @ Raoof Abdul Kadar Shaikh	Accused No. 33
10	Hussainbhai @ Bhajiya Mohammedbhai Patani	Accused No. 47
11	Mujffarkhan @ Nashir Luhar Umardarajkhan Pathan	Accused No. 58

SCHEDULE – VIII

List of persons acquitted by Designated Court vide its order dated 31st of January, 2002

Sr.No.	Names of accused persons	Accused Nos.
1	Abdul Khurdush Abdul Gani Shaikh	Accused No. 3
2	Mohammed Faruq @ Faruqbava Allarakha	Accused No. 4
3	Anvarkhan Mohammedkhan Pathan	Accused No. 6
4	Mohammed Jalaluddin @ Jalalbaba Tamijuddin Saiyed	Accused No. 7
5	Gulam Kadar Gulam Hussain Shaikh	Accused No. 8
6	Hyderkhan Lalkhan Pathan	Accused No. 10
7	Mohammed Soeb @ Soebbava Abdul Gani Shaikh	Accused No. 12
8	Mohammed Hanif @ Anudi Husseinmiya Shaikh	Accused No. 14
9	Munavarullakhan @ Imtiyazullakhan @ Pappu Mohammed Safiullakhan	Accused No. 17
10	Afzalhussain Ajgarhussein Rangrej	Accused No. 19
11	Shamtullakhan @ Sammu Mohammed Safiulla Pathan	Accused No. 20
12	Bariqkhan @ Abdul Salim Hussein Khan @ Abdul Hussein Shaikh	Accused No. 21

13	Babukhan @ Lala Niyajkhan @ Niyajmohammed Pathan	Accused No. 22
14	Maksud Ahmed Fatehmohammed Shaikh	Accused No. 23
15	Mohammed Safi Abdul Rehman Saikh	Accused No. 24
16	Hafizuddin Fazluddin Kazi	Accused No. 25
17	Abdulgafar @ Gafar Party Mohammed Rafiq Shaikh	Accused No. 27
18	Abdul Kaiyum Nizamuddin Shaikh	Accused No. 28
19	Mohammed Rafiq @ Haji Rafiqbhai Husseinbhai Kapadia	Accused No. 29
20	Usmangani Musabhai Vora	Accused No. 30
21	Abdul Wahab Abdul Majid Baloch	Accused No. 31
22	Imtieaz Ahmed Noorhadanmiya Kadari	Accused No. 34
23	Sabbirhussein Husseinmiya Shaikh	Accused No. 36
24	Mustaq Ahmed Istiyaq Ahmed Pathan	Accused No. 37
25	Aiyub @ Lala Yusufbhai Mandali	Accused No. 39
26	Kadarbhai Musabhai Mandali	Accused No. 40
27	Musabhai Yusufbhai Mandali	Accused No. 41
28	Daoodbhai Musabhai Shaikh	Accused No. 42
29	Mohammed Amin @ Amin Chotely Rahimmiya	Accused No. 43

30	Musharrafkhan Gorekhan Pathan	Accused No. 44
31	Mehmood @ Pepa Pahelvan Hussainkhan Nilgadamal	Accused No. 45
32	Shahbuddin @ Kanijbaba Badruddin Shaikh	Accused No. 46
33	Ahmedbhai Haji Kasambhai Ajmeri	Accused No. 48
34	Gulammohammed @ Gulu Gulam Hyder Momin	Accused No. 49
35	Mehboobbeg @ Mehboob Senior Chhotubeg Mogal	Accused No. 50
36	Mohammed Rafiq @ R.D. @ Mustaq @ Nazim Majidkhan	Accused No. 51
37	Gulam Mohammed @ Gulal @ Arif Abdul Kadar Shaikh	Accused No. 52
38	Imtiyaz @ Fetas Ibrahim Ismial Bhathiyara	Accused No. 53
39	Parmindarsing @ Kaka Maliksing Sikh	Accused No. 54
40	Aminkhan @ Alamkhan Mojkhan Pathan	Accused No. 55
41	Mohammed Yaakil @ Aakil Maiyuddin Malek	Accused No. 59