

STATE OF RAJASTHAN

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v.

AJIT SINGH AND ORS.

OCTOBER 12, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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Terrorist and Disruptive Activities (Prevention) Act, 1987:

ss. 3(3), 4(1), 15 and 21—Terrorist acts and disruptive activities— On the statement of one of the accused that they had been smuggling arms and ammunition, 19 persons prosecuted—Confessions of other accused not indicating knowledge on their part that weapons were smuggled for use in terrorist activities—No question put to any accused u/s 313 Cr.P.C. as to their involvement in any terrorist or disruptive activity—HELD: On facts, sine qua non for applicability of ss.3(3) and 4(1), i.e. “knowingly facilitates” commission of the offence, not made out—While recording confessions, provisions of s.15 and r.15 not complied with—There is no evidence to show recovery of weapons, or use thereof in the manner laid down in s.3, therefore, presumption u/s 21 not applicable—Designated court rightly acquitted the accused of the charges.

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s.15—Confessions recorded by Superintendent of Police—Accused in police custody for about 45 days—15-30 minutes time given to accused for reflection before recording confession—HELD: Sufficient cooling off time was not given to accused—Special report under r.15(5) not submitted to Magistrate—Confessions rightly not taken into account for any purpose by designated court—Terrorist and Disruptive Activities (Prevention) Rules, 1987.

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According to the prosecution case, some Customs officials, while on patrol duty on the Indo-Pakistan Border in the State of Rajasthan, suspecting a vehicle stopped it. A-1, the passenger in the vehicle disclosed that they were returning from the house of ‘A-5’, who with the assistance of ‘A-2’ had on several occasions brought

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A arms and ammunition from Pakistan for use in Punjab so as to further terrorist efforts towards creation of Khalistan. 'A2' was said to have confirmed the statement of A-1. An FIR was registered. The investigation led to arrest of many persons, out of whom 7 made confessions before the Superintendent of Police (PW-8). 19 persons
B faced the trial and the designated court acquitted all of them of the offences punishable u/ss. 3(3) and 4(1) of the 1987 Act and convicted A-1 alone u/ss. 3/6 of the Passports Act, 1967.

C The instant appeal filed by the State was confined to the challenge of the judgment of acquittal passed by the trial court only with respect to those seven of the accused-respondents who had made confessions before PW-8. It was contended that a confession made under section 15 of the Act was per se admissible in evidence and that such a confession could be used as corroborative of the
D confessional statement of the other co-accused; that the presumptions in favour of the prosecution under Section 21(1) of the 1987 Act placed a heavy onus on the accused and that this onus was not discharged. For the respondents it was contended that the confessions made by the seven accused before PW-8 were not
E voluntary, and were subsequently retracted. It was submitted that all the accused had been in police custody for 40-45 days when their confessions were recorded and adequate time for reflection was not given; that Rule 15 of the Terrorist and Disruptive Activities (Prevention) Rules, 1987 which required strict compliance with the safeguards stipulated therein before a confession could be recorded,
F too had been violated; and that, in any event the prosecution has failed to make out a case u/ss. 3(3) and 4(1) of the 1987 Act.

Dismissing the appeal, the Court

G **HELD: 1.1.** The Terrorist and Disruptive Activities (Prevention) Act, 1987 is a harsh penal statute and its provisions must, therefore, be construed in that perspective. A bare perusal of sub-s.(3) of Section 3 of the Act would reveal that it would be applicable only if the accused "knowingly" facilitated the commission of a terrorist act or any act preparatory to a terrorist act. It needs to be highlighted
H that the primary circumstance against all the accused are the

confessions made by them and but for the confession of accused-appellant no. 1 none of the other confessions show or betray any knowledge on the part of those making the confessions that the weapons had been smuggled in for use in terrorist activity. It is also significant that no question was put to any of the accused under section 313 Cr.P.C. as to their involvement in any terrorist or disruptive activity. Similarly, a bare perusal of sub-section (1) of Section 4 of the 1987 Act would also show that no evidence to bring home the charge under this provision has been produced against any of the accused. The sine-qua-non for the applicability of sub-section (3) of Section 3 and sub-section (1) of Section 4 of the Act, that is, 'knowingly facilitates' the commission of the offence, is thus not made out on facts. The decision of the designated court on this aspect is well-merited.

[Para 6, 7 and 8] [259-A; 260-G, H; 261-A, B, E]

Kartar Singh v. State of Punjab, [1994] 3 SCC 569, relied on.

1.2. Besides, the investigating officer (PW-13) admitted in his statement that no investigation was made to follow up the confessions and disclosures of accused-appellant no. 1 that the weapons that he had been smuggling from Pakistan had been handed over to terrorists in Punjab. The designated court accordingly concluded that the confessional statement of accused-appellant no. 1 made before PW 8 incriminated him alone and that there was no evidence against any of the other accused.

[Para 7] [261-B, C, D, E]

2. It will be seen that section 15 of the Act is a clear departure from the general law that a statement made to a police officer is not permissible in evidence. Therefore, the provisions of the Act and the Rules must be scrupulously observed with particular reference to the provisions relating to the recording of confessions. From Ext.P-18, the note recorded by PW-8, as a prelude to the recording of the confession, it transpires that 15 to 30 minutes time was given to the accused for reflection before the actual confessions were recorded. Thus, sufficient cooling off time was not given to the accused, in the background that they had been in police custody over

A a long period of time of almost 45 days in each case. There is no evidence on record to suggest that the special report envisaged under sub-rule (5) of Rule 15 of the Terrorist and Disruptive Activities (Prevention) Rules, 1987 was submitted to the Magistrate. The confessions cannot, therefore, be taken into account for any purpose.

B [Para 10, 12 and 14] [263-F-G; 264-D-F; 265-B]

Ranjit Singh v. State of Punjab, (2002) 4 Cr.L.J. 4694; and *Kartar Singh v. State of Punjab*, [1994] 3 SCC 569, relied on.

C *Jameel Ahmed & Anr. v. State of Rajasthan*, [2003] 9 SCC 673, distinguished.

3. In *Navjot Sandhu's* case, this Court clearly repelled the contention raised by the State that a confession made by an accused could be used as against a co-accused. However, in the instant case, A-6 who said that they received weapons from accused-appellant, is not corroborated by the latter who has not said a word as to whether he had handed over any weapon to any person. There is not even a suggestion in the evidence that the money that had allegedly been handed over to some of the accused was towards payment for the Jonga or the camels used for smuggling arms from Pakistan to be used in Punjab. [Para 17] [269-D, E, F, G]

State (NCT of Delhi) v. Navjot Sandhu, [2005] 11 SCC 600, relied on.

4. As regards presumption under section 21 of the Act that the arms and ammunition were to be used in terrorist activity and a heavy onus lay on the accused to rebut the same, suffice it to say that this provision would be applicable only if it is "proved" that the arms and ammunition had been recovered from the accused and had been used in the manner laid down in section 3. On the contrary it is found that there is no evidence to show any recovery of weapons or that any of the accused (other than accused-appellant) had any knowledge as to the ultimate destination and end use of the weapons that had been brought in. The presumption under section 21(2) cannot, therefore, be raised in the present case. [Para 18] [269-G; 270-A-B]

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.

732 of 2001.

From the Judgment and final Order dated 2.12.2000 of the Designated Court for Rajasthan at Ajmer in TADA Spl. Case No. 20/1992.

Naveen Kumar Singh, Shashwat Gupta and Aruneshwar Gupta for the Appellant.

J.S. Sodhi, G.S. Sodhi, Pankaj Kumar Singh, Vinod Tewari, J.P.N. Gupta, Ravinder Jarwal, K.L. Janjani and Karan Singh Bhati for the Respondents.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. This appeal under section 19 of the Terrorist and Disruptive Activities (Prevention) Act 1987 (hereinafter referred to as the "Act") has been filed against the judgment of the Designated Court dated 2nd December 2000 whereby all the accused have been acquitted for offences punishable under sections 3 (3) & 4 (1) of the Act though Ajit Singh alone has been convicted under Rule 3/6 of the Pass Port Rules 1950 and awarded a sentence of 6 months simple imprisonment. The facts leading to the appeal are as under:-

2. At about 10 a.m. on 12th August 1991 PW7 Hira Lal along with PW9 Sada Nand, Narender Soni, Inspector Customs and several other officers of the department were on patrol duty on the Indo Pakistan Border in Jaisalmer district of Rajasthan. As they reached village Avaya, a Jonga bearing No. RSS 3479 which was coming from the opposite direction was stopped by them as some suspicions had been raised. On enquiry it transpired that the vehicle driver was Shri Ram Vishnoi and the passenger was Ajit Singh @ Jeeta who disclosed that they were returning from the house of Mehardeen son of Allabachaya, a resident of village Avaya, who with the assistance of one Abdul Aziz, had on several occasions brought arms and ammunition from Pakistan for transportation to Punjab so as to further the terrorist effort towards the creation of Khalistan. Abdul Aziz aforesaid was also interrogated and he confirmed Ajit Singh's statement. Ajit Singh and Abdul Aziz were then handed over to the SHO Police Station Nachna at 9.15 a.m. on 14th August 1991 on which a formal

- A FIR was registered. PW13 S.I. Amara Ram started the investigation which revealed that as many 17 persons along with Ajit Singh and Abdul Aziz had been involved in the smuggling activity and many of the suspects were later arrested. Seven of the accused i.e. Ajit Singh, Abdul Aziz, Noordeen, Mehardeen, Nihal, Sumar and Rasool were also produced before the Superintendent of Police, Jaisalmer, PW8 Shri Rajeev Dasot who recorded their confessions under section 15 of the Act on different dates between September 21, 1991 and February 28, 1992 and as a consequence of the information received thereby, camels and vehicles allegedly used in the smuggling were recovered. Mehardeen's statement in addition led to the recovery of a AK-56 rifle and two magazines with 44 cartridges. It appears that accused Sujia and Danu Ram were discharged by the order of the court, whereas Laldeen was declared an absconder and Noordeen died during the course of the trial. The other accused were accordingly charged under Sections 3(3) & 4(1) of the Act whereas some of the accused were charged in addition for offences punishable under the Arms Act and the Passport Act. The Designated Court examined fifteen witnesses in all. Primary, reliance was placed on the statements of Kishan Ram PW5, PW7 Hira Lal, Rajeev Basot PW8, Sada Nand PW9 and Anara Ram PW13. The prosecution evidence was then put to the accused and they denied their involvement and on the contrary alleged that the Police Officers who were investigating the matter had made demands for illegal gratification and on their refusal to meet their demands they had been involved in a false case. They also produced several witnesses in defence.
3. The trial court held that the confession given by Ajit Singh alias Guru Lal to Customs Officer, PW7 Hira Lal was liable to be believed as Hira Lal's evidence was corroborated by the statement of Customs Inspector PW9 Sada Nand. The trial court further observed that it would have been appropriate for the officers who had investigated the matter and recorded the confession made by Ajit Singh in which he had stated that he had been smuggling arms to Punjab so as to facilitate the creation of Khalistan but PW13 Anara Ram had admitted that he had made no enquiries to verify the correctness of this statement or to make a further investigation in that direction was a glaring circumstance in favour of the accused. The court then examined the statements of PW8 Rajeev Dasot,

SP of Jaisalmer who had recorded the confessions under section 15 of the Act and observed that no infirmity had been pointed out with respect to the procedure adopted and though the Court could record a conviction on the basis of the confession it would not be safe to do so on this basis alone and that it was appropriate that the confessional statement should be corroborated by other evidence. The Court also noted that though Ajit had admitted his involvement in terrorist activities none of the other accused had made incriminating confessions. The court also observed that though the confession made by an accused could be used against a co-accused but it was clear from the confessional statements that none of the accused had admitted that they had been aware of Ajit Singh's involvement in terrorist activities and the mere fact that they had accepted that they had received payment for assisting him in smuggling arms and ammunition did not by itself indicate that they were aware of the end use of the weapons and as such the rules of prudence required evidence beyond their confessions to support the prosecution story. The court then concluded that the only evidence which was available against the accused were the recoveries of Rs.5,000/- and a camel from Abdul Aziz and camels from Mehardeen, Mohammed, Kasam, Ibrahim, Naseer, Nihal, Rasool and Kamardeen, a Jonga Jeep from Shri Ram and another Jeep from Danu Ram (since discharged) but rejected the inference of culpability holding that there was no evidence to show that the jeeps or the camels and the cash had been used in the attempt to smuggle arms and ammunition from Pakistan. The trial court accordingly acquitted all the accused for the offences punishable under Sections 3(3) and 4(1) of the Act and under the Arms Act and on the basis of the above discussion, only Ajit Singh was convicted for having violated the Passport Rules. This appeal at the instance of the State has been filed against the judgment of acquittal.

4. We have heard the learned counsel for the parties at great length. The learned counsel for the State appellant has, at the very outset, and fairly, pointed out that he was confining his challenge only with respect to those of the accused respondents who had made confessions before Shri Rajeev Basot PW8, as admittedly no evidence against the other accused had come on record. He has drawn our attention to *Jameel Ahmed & Anr. v. State of Rajasthan* [2003] 9 SCC 673 to contend that a

A confession made under section 15 of the Act was per-se admissible in evidence and that such a confession could be used as corroborative of the confessional statement of the other co-accused. He has also argued that the presumptions in favour of the prosecution under section 21(1) of the Act placed a heavy onus on the accused and that this onus had not been discharged in the course of the trial. He has also submitted that the statements of the Customs Officers with regard to the confessions made by Ajit Singh and Abdul Aziz had also to be taken as a corroborative factor vis-à-vis these two accused. It has finally been pleaded that it was clear from the statements of the accused and the other evidence that Ajit Singh and Mehardeen had committed offences under section 25(3) of the Arms Act as well.

5. Mr. J.S. Sodhi the learned counsel for some of the accused has, however, submitted that no offence even prima facie under the Act had been made out against the accused and that it could, if at all, and its best be said for the prosecution that an offence under section 3(3) of the Act stood proved against Ajit Singh alone and no offence under section 4(1) was made out against him as well. He has also urged that no question had been put to any of the accused in their statements recorded under section 313 of the Cr.P.C. as to their involvement in terrorist activities in Punjab which made the prosecution story completely bereft of merit. Referring to the value of the confessions made by the seven accused, he has pointed out that they were not voluntary, and had subsequently been retracted, and the story projected was inherently improbable and that Rule 15 of the Terrorist and Disruptive Activities (Prevention) Rules, 1987 hereinafter called “the Rules” which required strict compliance with the safeguards stipulated therein before a confession could be recorded, too had been violated. He has also urged that confession of an accused could not be used as corroborative of the statement of another accused, as held by the Supreme Court in *State (NCT of Delhi) v. Navjot Sandhu*, [2005] 11 SCC 600. It has finally been pleaded that there was no evidence to implicate any of the accused in the Arms Act case as Ajit Singh had at no stage admitted that he had handed over the weapons to Mehardeen.

6. We have considered the arguments advanced by the counsel and gone through the record carefully. At the very outset, it must be

emphasized that the Act is a harsh penal statute and its provisions must therefore be construed in that perspective. In *Kartar Singh v. State of Punjab*, [1994] 3 SCC 569, this Court while upholding the constitutional validity of the Act served a note of caution and laid down certain guidelines in applying the statute to individual cases. It has therefore to be seen at the very initial stage as to whether the case would fall within the mischief of sections 3(3) and 4(1) of the Act.

Section 2 is the definition clause. Sub-clause (d) of sub-section (1) of section 2 of the Act describes 'disruptive activities' as having the same meaning assigned to it under section 4 whereas 'terrorist Act' under sub-clause (h) of sub-section (2) defines "Terrorist Act" as having the same meaning assigned to it in sub-section (1) of section (3) of the Act. We reproduce sections 3 and 4 (1) and (2) of the Act hereinbelow:-

"Sec.3. Punishment for terrorist acts.- (1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely effect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(2)Whoever commits a terrorist act, shall, -

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend

A to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or *knowingly facilitates* the commission of, a terrorist act or any act preparatory to a terrorist to act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to five.”

C Section 4. Punishment for disruptive activities. – (1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, or *knowingly facilitates* the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

D (2) For the purposes of sub-section (1), “disruptive activity” means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,-

E (i) which questions, disrupts or is intended to disrupt whether directly or indirectly, the sovereignty and territorial integrity of India; or

F (ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.”

G 7. The question which must be posed at the outset is as to whether the activities of the accused as alleged by the prosecution fall within the parameters of Section 3(3) and 4(1), the two provisions under which they have been charged. A bare perusal of Section 3(3) would reveal that it would be applicable only if the accused “knowingly” facilitated the commission of a terrorist act or any act preparatory to a terrorist act. It needs to be highlighted that the primary circumstance against all the accused are the confessions made by them and but for the confession of Ajit Singh none of the other confessions show or betray any knowledge on the part of those making the confessions that the weapons had been smuggled in

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for use in terrorist activity. It is also significant, and we have perused the statements very carefully, that no question was put to any of the accused under section 313 of the Cr.P.C. as to their involvement in any terrorist or disruptive activity. The sine-qua-non for the applicability of sub-section (3) of Section 3 and sub-section (1) of Section 4 of the Act that is 'knowingly facilitates' the commission of the offence is thus not made out on facts. We have in addition gone through the statement of PW13 Anara Ram, the investigating officer, and he admitted that no investigation had been made to follow up the confessions and disclosures of Ajit Singh that the weapons that he had been smuggling from Pakistan had been handed over to terrorists in Punjab, although, he admitted that a Deputy Superintendent of Police, one Dilip Singh, had come from Punjab and had told him that Ajit Singh was indeed a hardened terrorist. Anara Ram also admitted that he had received a letter from Dilip Singh to that effect but had not made a mention of this communication in his case diary and had not even appended it with the challan. The trial court has, therefore, in our view rightly observed that had an investigation been directed towards the terrorist activities in Punjab, the possibility that something more incriminating against the accused could have been revealed but in the absence of any evidence a decision in favour of accused was liable to be taken. The court accordingly concluded that the confessional statement of Ajit Singh made before PW 8 Rajeev Basot incriminated him alone in terrorist activities and that there was no evidence against any of the other accused.

8. A bare perusal of sub-section (1) of section 4 would also show that no evidence to bring home the charge under this provision has been produced against any of the accused. To our mind, the decision of the designated court on this aspect too is well-merited.

9. The learned counsel for the appellant has however laid great emphasis on the value of the confessions made by seven of the accused under section 15 of the Act to Shri Rajeev Basot PW8 Superintendent of Police Jaisalmer. Section 15 of the Act and Rule 15 of the Rules are reproduced hereinbelow:-

"Sec.15. Certain confessions made to police officers to be taken into consideration.- (1) Notwithstanding anything in the Code or

A in the Indian Evidence Act, 1872 (1 of 1872), but subject to the
provisions of this section, a confession made by a person before
a police officer not lower in rank than a Superintendent of Police
and recorded by such police officer either in writing or on any
mechanical device like cassettes, tapes or sound tracks from out
B of which sounds or images can be reproduced, shall be admissible
in the trial of such person (*or co-accused, abettor or
conspirator*) for an offence under this Act or rules made
thereunder:

C Provided that co-accused, abettor or conspirator is charged
and tried in the same case together with the accused.

(2) The Police Officer shall, before recording any confession
under sub-section (1), explain to the person making it that he is
not bound to make a confession and that, if he does so, it may be
used as evidence against him and such police officer shall not
D record any such confession unless upon questioning the person
making it, he had reason to believe that it is being made voluntarily.”

Rule 15. Recording of confession made to police officers. – (1) A
E confession made by a person before a police officer and recorded
by such police officer under section 15 of the Act shall invariably
be recorded in the language in which such confession is made and
if that is not practicable, in the language used by such police officer
for official purposes or in the language of the Designated Court
and it shall form part of the record.

F (2) The confession so recorded shall be shown, read or played
back to the person concerned and if he does not understand the
language in which it is recorded, it shall be interpreted to him in a
language which he understands and he shall be at liberty to explain
or add to his confession.

G (3) The confession shall, if it is in writing, be –

(a) signed by the person who makes the confession and

(b) by the police officer who shall also certify under his own hand

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that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession to the following effect:-

“ I have explained to (name) that he is not bound to make a confession and that, if does not, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and recorded by me and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Sd/--- Police Officer.”

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) in so far as it is applicable and a declaration made by the person making the confession that the said confession recorded on the mechanical device has been correctly recorded in his presence shall also be recorded in the mechanical device at the end of the confession.

(5) Every confession recorded under the said Section 15 shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded version so received to the Designated Court which may take cognizance of the offence.”

10. It will be seen that section 15 is a clear departure from the general law that a statement made to a police officer is not permissible in evidence. In *Kartar Singh's* case (supra), this Court while upholding the vires of section 15 repeatedly dwelt on the severity of this provision as one laying down altogether a new procedure and emphasized that the provisions of the Act and Rules must be scrupulously observed with particular reference to the provisions relating to the recording of confessions.

11. A serious challenge has been made by Mr. Sodhi to the effect that the confessions had not been recorded as per the procedure laid down

A and that Rule 15(5) which provided for the submission of a special report
to the Illaka Magistrate had been infringed. It has also been emphasized
that all the accused had been in police custody for 40 to 43 days when
their confessions had been recorded and it appeared that adequate time
for reflection had not been given which raised the possibility that they had
B been hustled into their confessions. The learned counsel has cited *Ranjit
Singh v. State of Punjab*, (2002) 4 Cr.L.J. 4694 to argue that if
adequate time for reflection was not given a confession could be said to
involuntary. He has also drawn our attention to the statement of PW-8
C Shri Rajeev Basot who deposed that before the confessions had been
recorded the accused concerned had been released from police custody
and he had been asked as to whether he was being coerced into giving a
confessional statement and fore-warned that the confession could be used
against him.

D 12. We have perused the confession of the seven accused and the
prefatory proceedings relating thereto. We first examine the confession
made by Noordeen. From Ext.P-18, the note recorded by Shri Ranjit
Dasot as a prelude to the recording of the confession, it transpires that
he had been produced before him at 12.30 p.m. on the 21st September
1991 and after the completion of the formalities the recording of the
E confession had started at 12.45 p.m. Likewise Ajit Singh @ Guru Lal
Singh had been produced before the officer at 10.50 a.m. and the
recording of the confession had started half an hour later. We have seen
the record of confessions of the other accused as well and it shows that
15 to 30 minutes time was given to the accused for reflection before the
F actual confessions were recorded. We accordingly find that sufficient
cooling off time had not been given to the accused, in the background
that they had been in police custody over a long period of time. It has
been held in *Ranjit Singh's* case (supra):

G “According to the deposition of P.W.3 in cross-examination,
the accused were in police custody 18-20 days prior to recording
of their confessional statements. P.W.3 has deposed that he gave
the requisite warning to the accused that they were not bound to
make the confessional statement and if they make it will be used

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as evidence against them, but despite the warning they were prepared and willing to make the statement. After recording the introductory statement in this behalf in question answer form he still considered it proper to give them some time for rethinking and for this purpose they were allowed to sit in separate room for some time and brought to him after about half an hour and expressed their desire to make statement and thereafter the confessional statement were recorded.

Before advertng to the facts said to have been narrated by the accused as recorded in the two confessional statements, it deserves to be noticed that in case the recording officer of the confessional statement on administering the statutory warning to the accused forms a belief that the accused should be granted some time to think over the matter, it becomes obligatory on him to grant reasonable time for the purpose to the accused. In other words, the cooling time that is granted has to be reasonable. What time should be granted would, of course, depend upon the facts and circumstances of each case. At he the same, however, when the time to think over is granted that cannot be a mere farce for the sake of granting time. In a given case, depending on facts, the recording officer without granting anytime may straightway proceed to record the confessional statement but if he thinks it appropriate to grant time, it cannot be a mechanical exercise for completing a formality.

In *Sarwan Singh Rattan Singh v. State of Punjab*, AIR (1957) SC 637, where a Magistrate granted about half an hour to the accused to think over and soon thereafter recorded the confessional statement, this Court reiterated that when an accused is produced before the Magistrate by the Investigating Officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the

A time which should be allowed to an accused person in any given case.”

B 14. Applying the aforesaid principles to the facts of the present case, we are of the opinion that adequate time had not been given to any of the accused as they had been in police custody for almost 45 days in each case. We also observe that there is no evidence on record to suggest that the special report envisaged under sub-rule (5) of Rule 15 had been submitted to the Magistrate. The confessions cannot therefore be taken into account for any purpose. ...

C 15. The learned Government counsel has nevertheless argued that in the light of the judgment of this Court in *Jamil Ahmed's* case (supra) the confessional statement made by Ajit Singh implicated all the other accused in terrorist and disruptive activities and as such could be used against them as well. We notice Jamil Ahmad's matter pertained to an incident which happened in December 1990. In paragraph 22 this Court while dealing with the questions as to whether sections 25 to 30 of the Evidence Act would apply to confessions recorded under section 15 of the Act observed:

E “Since the prosecution case in these appeals is primarily founded on various confessions of the accused involving themselves as well as other co-accused, we will first consider the argument of the appellants that, assuming that the confessional statements have been proved to have been made in accordance with law and voluntary and truthful, even then can such confessions be relied upon solely to base a conviction on the maker of the confession, and if so, can it also be used against a co-accused and if so whether such confession requires corroboration or not, and if so required whether such corroboration need be general or should be of all material facts in the confession. The argument of learned counsel in this regard is that the prosecution should prove the involvement of the accused by other evidence first and the confession of an accused can only be used as a corroborative piece of evidence and not as a substantive piece of evidence, that too against the maker only. This argument is basically founded on an assumption that sections 25 to 30 of the Evidence Act also apply to the

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confessions recorded under section 15 of the TADA Act. In support of this argument, the learned counsel relies on the line of judgments of this Court which considered the scope of sections 25 to 30 of the Evidence Act and the probative value of such a confession; one of such judgments is Mohd. Khalid v. State of W.B. The passage relied upon by the appellants in support of this contention of theirs in the said judgment runs thus : (SCC p.357, para 31)

“It is only when the other evidence tendered against the co-accused points to his guilt then the confession duly proved could be used against such co-accused if it appears to effect (sic) him as lending support or assurance to such other evidence.”

16. It has accordingly been emphasized that the statement made by the accused could be used one against the other. Mr. Sodhi has however pointed out that the decision in Jamil Ahmed’s case had been rendered without noticing that the words in section 15(1) of the Act (which have been underlined above) that is “or co-accused, abettor or conspirator” had been inserted in the Act in 1993 and as such could not be retrospectively applied to an incident of 12th August 1991. He has also referred us to *State (NCT of Delhi) v. Navjot Sandhu* [2005] 11 SCC 600 to submit that this issue had been specifically raised and while noticing the addition made in 1993 it had been observed that a confessional statement recorded under section 15 would be sufficient to base a conviction on the maker of the confession but on the other proposition whether such a confession could be used against a co-accused was another matter. This Court distinguished Jamil Ahmed case and observed thus in Paragraph 49:

“It is, however, the contention of the learned counsel Shri Gopal Subramaniam that Section 32(1) can be so construed as to include the admissibility of confession of the co-accused as well. The omission of the words in POTA “or co-accused, abettor or conspirator” following the expression “in the trial of such person” which are the words contained in Section 15(1) of TADA does not make material difference, according to him. It is his submission that the words “co-accused”, etc. were included by the 1993

A Amendment of TADA by way of abundant caution and not
because the unamended section of TADA did not cover the
confession of the co-accused. According to the learned Senior
Counsel, the phrase “shall be admissible in the trial of such person”
B does not restrict the admissibility only against the maker of the
confession. It extends to all those who are being tried jointly along
with the maker of the confession provided they are also affected
by the confession. The learned Senior Counsel highlights the crucial
words “in the trial of such person” and argues that the confession
C would not merely be admissible against the maker but would be
admissible in the trial of the maker which may be a trial jointly with
the other accused persons. Our attention has been drawn to the
provisions of Cr.P.C. and POTA providing for a joint trial in which
the accused could be tried not only for the offences under POTA
D but also for the offences under IPC. We find no difficulty in
accepting the proposition that there could be a joint trial and the
expression “the trial of such person” may encompass a trial in which
the accused who made the confession is tried jointly with the other
accused. *From that, does it follow that the confession made
E by one accused is equally admissible against others, in the
absence of specific words? The answer, our view, should be in
the negative. On a plain reading of Section 32(1), the
confession made by an accused before a police officer shall
F be admissible against the maker of the confession in the course
of his trial. It may be a joint trial along with some other
accused; but, we cannot stretch the language of the section
so as to bring the confession of the co-accused within the fold
G of admissibility. Such stretching of the language of law is not
at all warranted especially in the case of a law which visits a
person with serious penal consequences [vide the observations
of Ahmadi, J. (as he then was) in *Niranjan Singh v. Jitendra*, SCC
at p.86, which were cited with approval in *Kartar Singh* case]. We
would expect a more explicit and transparent wording to be
employed in the section to rope in the confession of the co-accused
H within the net of admissibility on a par with the confession of the
maker. An Evidentiary rule of such importance and grave*

consequence to the accused could not have been conveyed in a deficient language. It seems to us that a conscious departure was made by the framers of POTA on a consideration of the pros and cons, by dropping the words “co-accused”, etc. These specific words consciously added to Section 15(1) by the 1993 Amendment of TADA so as to cover the confessions of the co-accused would not have escaped the notice of Parliament when POTA was enacted. Apparently, Parliament in its wisdom would have thought that the law relating to confession of the co-accused under the ordinary law of evidence, should be allowed to have its sway taking a cue from the observations in Kartar Singh case at para 255. The confession recorded by the police was, therefore, allowed to be used against the maker of the confession without going further and transposing the legal position that was obtained under TADA. We cannot countenance the contention that the words “co-accused”, etc. were added in Section 15(1) of TADA, *ex majore cautela*.”

17. It is therefore clear that the Division Bench in Navjot Sandhu’s case clearly repelled the contention raised by the State counsel that a confession made by an accused could be used as against a co-accused. Some argument has also been addressed (based on the observations in *Jameel Ahmed* and *Navjot Sandhu’s* cases (supra)) that even assuming that confessions had been made it had still to be found whether they were a true and accurate narrative of the facts. We have gone through the confessional statements of the seven accused and we observe that Noordeen who says that they had received weapons from Ajit Singh is not corroborated by Ajit Singh who has not said a word as to whether he had handed over any weapon to any person. We reiterate that there is not even a suggestion in the evidence that the money that had allegedly been handed over to some of the accused was payment for the Jonga or the camels used for smuggling arms from Pakistan to be used in Punjab.

18. The learned counsel for the State has however submitted that in the light of the presumptions drawn under section 21 of the Act it had to be found that the arms and ammunition were to be used in terrorist activity and a heavy onus lay on the accused. We find this provision would be

- A applicable only if it is “proved” that the arms and ammunition had been recovered from the accused and had been used in the manner laid down in section 3. We have on the contrary found that there is no evidence to show a recovery of weapons or that any of the accused (other than Ajit Singh) had any knowledge as to the ultimate destination and end use of
- B the weapons that had been brought in. The presumption therefore under section 21(2) cannot therefore be raised in the present case. In the light of what has been held, we are of the opinion that the other arguments raised by the learned counsel for the parties with regard to the recoveries etc. pale into insignificance and do not require any discussion. We
- C accordingly dismiss the appeal.

R.P.

Appeal dismissed.