Annexure-R/1

BEFORE THE JUVENILE JUSTICE BOARD- I, PRESIDED OVER BY SH. VISHAL SINGH, PRINCIPAL MAGISTRATE, DELHI.

State V/s. Abid Hussain RC No. 09/2011/NIA/DLI

JUDGMENT

1. Sl. No. of the case : 86/2, dated 15.3.2012

2. Date of Commission of the

3. Offence : 07/09/2011

4. Name of the complainant : Sh. Nitish Kumar, S.P., NIA.

5. Name, parentage & address : Abid Hussain Bhwani S/o. Attaullah

of the juvenile. Bhwani R/o. Chinargali, Kishtwar,

Jammu & Kashmir.

6. Offence complained of : Sec. 120-B/302/307/323/325 IPC r/w Sec.

3/4/5 of Explosive Substances Act,

r/w Sec. 16 of Unlawful Activities

(Prevention) Act.

7. Plea of Juvenile : Not Guilty

8. Final Order : Held Involved in commission of offences

U/s. 120-B IPC r/w Sec. 121/121-A/122/123/307/323/325/302/436/440
IPC, U/s. 4,5 Explosive Substances Act and U/s. 16,18,20,38,39 of Unlawful Activities

(Prevention) Act 1957.

9. Date of Order : 07/07/2014.

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

Fage 1

BRIEF FACTS AND REASONS FOR DECISION

1. THE INCIDENT:

On 7.9.2011 at about 10.15 am near the Reception Counter between gate no. 4 & 5 of Delhi High Court, a bomb blast extinguished several precious lives and injured scores of persons present at the spot of blast. Several prosecution witnesses (PW-1 Devender Singh, PW-4 Shominthang Haokip, PW-5 Manju Bhatiani, PW-7 Naimuddin, PW-9 K.V.S.R. Krishna FW-10 Allauddin, PW-18 Radhey Shyam, PW-9 Mahesh Kumar, PW-20 Rejrish Kohli and PW-21 HC Yashpal Singh) deposed about occurrence of plast, death of people at the spot, injuries sustained by them and others and damage caused to property due to blast. On 11.12.2012, JCL Abid Hc ssain admitted the postmortem reports and MLC reports (Colly, EX. D-17 & D-18) of 15 persons who lost their lives and 79 persons who sustained injuries in the blast. In addition, one postmortem report pertains to mutilated human body parts recovered from the spot.

2. REGISTRATION OF CASE

Initially FIR No. 49/11 dated 7.9.2011 u/s. 302/307/323/325/12C-B IPC and U/s. 3,4,5 Explosive Substances Act and U/s. 16 Unlawful Activities (Prevention) Act, P.S. Special Cell/NDR, Delhi was registered and ACP Special Cell investigated the case. On the same day, Ministry of Home Affairs, Govt. of India, through order Ex. PW-27/A, transferred the case to National Investigation Agency (hereinafter referred to as NIA), which

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI Page 2

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registered the FIR vide RC-09/2011/NIA/DLI under the same provision of law. The copy of order of MHA and copy of FIR, EX. D-1/1 to D-1/8 were admitted by the JCL on 11.12.2012. Simultaneously, FIR No. 238/11 P.S. Kishtwar, J&K was registered U/s. 120-B/153-A RPC, u/s. 13 UA (P) Act and u/s. 66 I.T. Act, which was investigated by PW-41 Abrar Chaudhary, the then Dy. S.P., and PW-42, Kulbir Singh, the then Addl. S.P., Kishtwar, J8.K.

3. RECEIPT OF E-MAIL AT THE OFFICE OF AAJ TAK (TV TODAY NET WORK LTD.)

PW-2 Rakesh Chandra, Associate Sr. Producer with Aaj Tik (TV Today Network Ltd.) Jhandewalan, Ext. Videocon Tower, New Delhi, deposed that on 7.9.2011 at 1.14 pm, Aaj Tak Channel received an E-mail from harkatuljihadi2011@gmail.com. The contents of the mail were - "we owe the responsibility of today's blast at High Court, Delhi....Our demand is that Afzal Guru's death sentence should be repealed immediately else we would target major High Courts and THE SUPREME COURT OF INDIA."

4. INVESTIGATING AGENCY (NIA) TRACKED THE ORIGIN OF E-IMAIL TO A CYBER CAFÉ AT KISHTWAR, J&K.

NIA obtained the E-mail address <a href="https://hardicolor.org/ha

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

117.198.230.42 (telephone no. 261337), which belonged to Global Cyber Café, Kishtwar.

5. EVIDENCE OF WITNESSES WHO SAW THE JCL USING COMPUTER AT CYBER CAFE TO SEND E- MAIL

- (i) PW-11 Shariq Khawar Bhat is the friend of the .CL. He stated that on 7.9.2011 he along with JCL Abid went to Global Cyber Café, Kishtwar at around 1.00 pm. He stated that Cabin No. 3 was allotted to JCL Abid while Cabin No. 5 of the café was allotted to him. After spending about 20 minutes in his cabin, he joined JCL Abid in Cabin No. 3. He identified the JCL in the Board. He stated that when they left the café together, he saw JCL Abid spitting something out of his mouth. He further stated that he had discussed his health problem with JCL Abid and asked him for financial help of Rs. 10,000/-.
- (ii) PW-12(protected witness cited as PW-X1), Manager of Global Internet Cyber Café, Kishtwar deposed that on 7.9.2011 at about 1.00 pm, JCL Abid Hussain used Cabin No. 3 of the café. His friend Shariq Khawar Bhat was allotted Cabin no. 5 but he sat in Cabin No. 4 of the café. After about 20 minutes Shariq Khawar Bhat joined JCL Abid in Cabin No. 3. At about 1.30 pm, both of them left the café. Thereafter, one Sunny Sharma came to café and cabin no. 3 was allotted to him. He produced the

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

Register (D-47) of the cafe and identified entries Mark A & B (entry no. 2136 & 2137) related to use of café by JCL Abid and PW-11 Shariq Khawar Bhat from 1.00 pm to 1.30 pm. He identified the JCL in the Board.

(iii) Similarly PW-22 Sunny Sharma deposed that on 7.5..2011 at about 1.30 pm, he had gone to Global Cyber Cafe, Kishtwar. There he saw JCL Abid leaving the café along with his friend.

6. CPU AND HARD DISK OF THE COMPUTER USED FOR SENDING E-MAIL ARE SEIZED AND FORENSICALLY ANALYSED.

- Internet Cyber Café, Kishtwar. He stated that on 7.9.2011, police came to his café to check the computers, if an E-mail from E-mail andress harkatuljihadi2011@gmail.com had been sent from Global Cyber Café. He stated that he checked the browser history of all the six computers installed in his café and found that an E-mail was sent at about 1...5 pm from above said E-mail address from computer installed in Cabin No. 3 of the café.
- (ii) PW-16 stated that NIA seized five hard disks and one computer CPU from his café on 9.9.2011 vide seizure memos Ex. PW-16/B & PW-16/C. The hard disks were

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

- seized by PW-48 Shiv Kumar Sharma, Addl.S.P. of 'NA in presence of PW-32 Inderjeet Singh.
- (iii) PW-50 Mr. Nitish Kumar, DIG, NIA (the then SP, NIA) is the IO of the case. He stated that on 24.11.2C11, a request under MLAT (Mutual Legal Assistance Treaty) was sent through MHA (Ministry of Home Affairs, Govt. of India) to Central Investigation Authority of USA for retrieval of data and analysis of hard disk of the computer used by the JCL for sending the E-Mail.
- (iv) On 4.5.2012, PW-50 received an execution report from USDOJ (United States Department of Justice), through MHA, in the form of a compact disk containing the data of g-mail account <u>harkatuljihadi2011@gmail.com</u>.
- (v) On 27.9.2012, PW-50 received report from CART (Computer Analysis Response Team), FBI, USA regarding analysis of data of the hard disk sent to them. The report was received in the form of a DVD. The copy Ex. PW-50/O of said DVD was prepared in the IT section of N A.

7. JCL APPREHENDED FROM KISHTWAR

PW-41 Abrar Chaudhary, Deputy S.P.(HQ), Kishtwar deposed that JCL Abid was apprehended on 12.9.2011 by J&K police from Kishtwar for his involvement in the present case, registered in P.S. Kishtwar. PW-36 Ct. Vinod Kumar, NIA deposed that on 20.9.2011, Addl. S.P., NIA filed an application in the Court of Ld. Principal Sessions Judge,

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

Pa 2e 6

Kishtwar, to transfer JCL Abid to Delhi in pursuance of production warrant dated 17.9.2011, issued by Special Court, NIA, Delhi. Ld. Principal Sessions Judge, Kishtwar, ordered the transfer of custody of the JCL from Kishtwar to Delhi and granted transit remand to produce the JCL before Ld. Special Judge, NIA, Delhi.

8. <u>JCL OPENED E-MAIL ACCOUNT "harkatuljihadi2011gmail.com" WITH PASSWORD WHILE IN CUSTODY.</u>

- (i) PW-50 deposed that on 3-4.10.2011, based on his disclosure, a computer along with internet connection was provided to JCL Abid in presence of two independent witnesses and he was asked to open the Email account <a href="https://harver.ncbi.org/harver
- (ii) Similarly PW-28 Anil Kumar deposed that during custody, JCL Abid Hussain opened the E-mail account

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

age 7

harkatuljihadi2011@gmail.com by using passwc-rd, in his presence. He deposed that print out of contents of E-mail were taken by the team of NIA. The E-mail account was transferred to a CD which was seized by NIA.

9. ABILITY OF THE JCL TO CREATE AND SEND AN E-MAIL

PW-23 (protected witness described as PW X-13 in the list of witnesses) stated that he runs computer institute by the name of M/s. Silicon Information Technology and Education in Kishtwar, J&K. JCL Abid was his student in Advance Diploma in Computer course in the year 2010-11. He identified the JCL in the Board and stated that JCL regularly attended the course in the initial period of 5-6 months, whereafter, he became irregular. He stated that the students of the said course were taught MS Office and use of Internet. He produced the photo copy of JCL's enrollment form Ex. PW-23/A and relevant photo copies of the attendance register colly. Ex. PW-23/B.

The testimony of PW-23 explains that JCL Abid had the vocational training and ability to create and send an E-mail.

10. EVIDENCE THAT JCL WAS PREACHED TO JOIN JEHAD AND THE CONSPIRACY.

PW-6 Amir Abbas was arrested as an accused in this case before he was tendered pardon u/s. 306 Cr.P.C. and examined as a prosecution witness. He deposed that on

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

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1.7.2011 co-accused Wasim Akram Malik met him at Masjid Mohammadiya at Kishtwar and preached him to join Jehad. Wasim Akram Malik asked him to find some boy who could operate computer and internet.

(ii) PW-6, in turn, motivated JCL Abid Hussain for Jel ad at the house of one Mushtaq Ahmad in Kishtwar. JC. Abid Hussain told that he needs Rs. 12,000/- for the medical treatment of his friend. PW-6 told JCL Abid that the money would be delivered to him after the work was done. In September'2011, Wasim Akram Malik wit + two Bangladeshi boys met him in Masjid Mohammadiya and told that they were planning to attack Delhi High Court. On 5.9.2011, Wasim Akram Malik gave him contents of an E-Mail on a piece of paper, which was in a closed envelop. Wasim asked him to give that envelop to JCL Abid. Wasim instructed him to put the E-Maii on circulation on Internet after seeing the blast in Delhi High Court on 7.9.2011. Wasim also instructed him to chew the paper after sending the mail and throw it in drain. As per the instruction, on 5.9.2011, PW-6 gave the envelop to JCL Abid and told him to put the E-mail on circulation after watching the incident of bomb blast at Delhi High Court on television on 7.9.2011.

State Vs. Abid Hussain RC NO 09/2011/NIA/DLI

Pi ge 9

- (iii) In cross examination, PW-6 replied that JCL Abid had asked for money for his friend Shariq. He replied that he did not know the contents of the envelop given to him by Wasim Akram Malik, who only told him that it contained an E-Mail.
- (iv) The testimony of PW-6 is also indicative of the motive of JCL Abid to join the conspiracy.

11. JUDICIAL CONFESSION STATEMENT OF THE JCL

- (i) PW-3, Ld. MM Sh. Viplav Dabas stated that he recorded the confession statement of JCL Abid, U/s. 164 Cr.P.C. on 12.10.2011. Through proceedings Ex. PW-3/A, he checked the voluntariness of the statement of JCL. Thereafter, he recorded the confession statement Ex. PW-3/B, running into 11 pages. In cross examination he denied the suggestion that the juvenile was under pressure or coercion at the time of recording of his statement.
- (ii) JCL Abid did not retract from his confession statement during the inquiry proceedings held by the Board. Even in his statement recorded U/s 281 Cr.P.C., after the conclusion of prosecution evicence, JCL Abid merely stated that NIA pressurized him to make the statement before the Magistrate. He stated that he was asked by NIA to make the statement of

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

Fage 10

confession after which NIA promised to release him. NIA stated that it will show a very limited role on his part and will release him after the recording of confession statement.

- (iii) JCL neither cross examined any prosecution veitness appearing from NIA nor led any evidence in defence to substantiate the claim of involuntariness of confession statement or alleged promise made by NIA. Thus, the confession statement of the JCL shall be admitted in evidence as such.
- (iv) The confession statement of JCL is congruent with prosecution case. As per the confession statement, JCL was preached by Amir Abbas (Amir Hafiz) at the house of one Mushtaq Ahmad to join Jehad. He met Amir Hafiz between 2.9.2011 and 5.9.2011. On 05.09.2011 Amir Hafiz instructed him to send an E-Mail on 7.9.2011 after looking into the news of bomb blast at Delhi High Court. JCL had asked him for Rs. 12,000/- to help his friend Shariq Khawar Bhat for medical treatment. Amir Hafiz told him that amount will be delivered after the work was done. On 7.9.2011, JCL Abid saw the news of bomb blast at Delhi High Court and went to Global Cyber Cafe, Kishtwar at 1.00 pm along with his friend Shariq Khawar Bhat, JCL sat in Cabin No. 3 of the cafe and

State Vs. Abid Hussain RC NO. 09, 2011/NIA/DLI Ship?

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sent the E-Mail as per the instructions contained in the envelop.

12. REPLY OF THE JCL TO THE NOTICE FRAMED AGAINST HIM U/S. 251 CR.P.C.

The JCL was put to the notice u/s. 251 Cr.P.C. in reference to commission of offences u/s. 121/121-A/122/123/120-B/307/323/325/302/436/440 IPC, u/s. 4,5 Explosive Substances Act and u/s. 16,18,20,33,39 of Unlawful Activities (Prevention) Act 1957.

In answer to notice, JCL replied thus-"In Kishtwar people keep sending E-Mails to each other out of fun, similar to the mail which I had sent. I had thought that it was a joke being done. I was not aware of any conspiracy hidden behind it. I did not know anything about the High Court Bomb Blast or plan thereof. I got trapped as I was only trying to have fun as other children of my age also keep sending similar E-mails to each other. Everything has been done by Shariq. He had given me his T-Shirt on which address of his company was written. I could not understand the hidden purpose behind it."

The answer of JCL to the notice leads to adverse interence against the JCL to the extent of sending the E-Mail in question

13. EXPLOSIVE EXAMINATION REPORT:

The exhibits lifted by team of NIA from the spot of bomb blast were sent for scientific examination to Ballistics Div., CFSL (CBI), New Delhi.

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

The CFSL examined the exhibits and gave its report that the exhibits gave positive test for presence of 'PETN' based High Explosives mixed with 'Ammonium Nitrate' and 'Oil'. It opined that Improvised Explosive Charge based on PETN, Ammonium Nitrate and Fuel Oil has been used in the explosion in question. The report Ex. D-59'1 was admitted by JCL Abid on 11.12.2012.

14. SANCTION FOR PROSECUTION OF JCL

PW-27 Sh. O.S.Ashok, the then Under Secretary, Ministry of Home Affairs, Govt. of India, deposed that on 12.3.2012, he issued sanction order Ex. PW-27/B for prosecution of the JCL for the offences punishable u/s. 120-B/121/121-A/122/123/302/303/323/325/436/440 IPC r/w. sec. 16/18/20/38 Unlawful Activities (Prevention) Act, 1967 and u/s. 3/4/5 of Explosive Substances Act.

15. **EXAMINATION OF WITNESSES**

Prosecution examined total 51 witnesses. The material parts of deposition of witnesses, relevant in reference to the JCL, have been dealt with under specific captions.

16. STATEMENT OF JUVENILE ABID U/S. 281 Cr.P.C.

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

Fage 13

The entire incriminating evidence was put to the JCL, to which he

made perfunctory denial and claimed that he was falsely implicated in this case. JCI. did not wish to lead evidence in his defence.

17. FINAL ARGUMENTS

Ld. Defence counsel argued that even if it was established that JCL visited Global Cyber Café, Kishtwar on 7.9.2011, the prosecution failed to establish that the E-mail in question was sent by him to Aaj Tak Ltd. In addition, it was not proved that JCL was part of the conspiracy to carry out bomb blast at Dethi High Court.

On the other hand, Ld. Spl. PP for NIA relied upon the oral and documentary evidence led by prosecution witnesses to bring home the charged offences against the JCL.

18. ANALYSIS AND OBSERVATION

- (i) Indeed, carrying out the bomb blast in the premises of Delhi High Court was a terrorist act, amounting to waging or attempt to wage war against the Govt. of India. As stated hereinabove, the explosion extinguished several precious human lives, maimed others and destroyed public and private property
- (ii) After the explosion, which occurred at around 10.15 am on 7.9.2011, an E-Mail was received by AAJ TAK ("V TODAY NETWORK LTD) at 1.14 pm on the same day. The sender claimed the responsibility of the bomb blast and threatened to carry out similar explosions in various High Courts in India and

State Vs. Abid Hussain EC NO. 09/2011/NIA/DLI

Pa ge 14

SUPREME COURT OF INDIA, if the demand mentioned in the Mail was not met. The origin of the E-Mail was tracked by NIA, which led to a cyber café in Kishtwar, J&K. The Manager of the café, the friend of the JCL who accompanied him to café, and a public witness disclosed that JCL had visited the café and used its internet service during the time when E-Mail in question was sent from the café to Aaj Tak Ltd. As per scientific evidence, an E-Mail account harkatuljihadi2011@gmai..com was created in Global Cyber Café, Kishtwar at 1.04 pin on 7.9.2011 through which a terror mail was sent to AAJ TA $\!<\!$ (TV TODAY NETWORK LTD) at 1.14 pm on the same day. The CPU &Hard Disk of computer installed in Cabin No. 3 of the café, from which the E-mail originated, were seized and got forensically analyzed through FBI, USA. After the JCL was apprehended on 12.9.2011, he opened the said E-Mail for O of the case, in presence of two independent witnesses. This is how the prosecution established that the terror mail was sent by the JCL.

(iii) Juvenile did not carry out the bomb blast at the soct. Nevertheless, he sent the E-mail to claim responsibility of the bomb blast. A co-conspirator, who later turned approver (PW-6), deposed that he preached Jehad to the JCL. On 5.9.2011, he instructed the JCL to circulate the E-Mail on internet on 7.9.2011 after watching the news of blast at Delhi High Court. Thus, JCL cannot be heard saying that he did not

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

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know anything about the conspiracy to carry out bomb blast at Delhi High Court. If that were not so, there was no reason for him to rush to create and send the E-mail to Aaj Tak Ltd. As per JCL's own judicial confession, which was not retracted till the end, he knew about the conspiracy to carry out the blast.

- (iv) Conspiracies are hatched in secrecy, thus, direct proof of conspiracy to commit an illegal act is seldom available. The conspiracy can be proved by circumstantial evidence. It is also not necessary that each conspirator knows about the whole conspiracy; he may only know and play his part in the conspiracy, letting the others play theirs. There may be only one or a few masterminds who act as common thread which binds the conspirators together.
- (v) Similarly in this case, circumstances indicate that intention of JCL became common with the persons who carried out bomb blast in Delhi High Court when he agreed to circulate E-Mail on internet after looking into news of the bomb blast. JC_ parrook in the conspiracy to carry out the bomb blast during his meetings with PW-6 Amir Abbas between 2.9.2011 and 5.9.2011. Actual sending of the E-Mail on 7.9.2011 at 1.14 pm was the execution of JCL's part in the conspiracy.

INQUIRY FINDINGS

State Vs. Abid Hussain RC NO. 09/2011/NIA/DLI

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The necessary outcome of above mentioned analysis is that JCL is held invo ved in commission of offence U/s. 120-B IPC r/w Sec. 121/121-A/122/123/307/323/325/302/436/440 IPC, U/s. 4,5 Explosive Substances Act and U/s. 16,18,20,38,39 of Unlawful Activities (Prevention) Act 1957, i.e. crim nal conspiracy to wage or attempt to wage war against Govt. of India by causing bomb explosion in Delhi High Court, which terrorist act resulted in death of 15 persons, bodily injuries to 79 persons and destruction of public and private property.

Announced in open Board Dated: 07/07/2014

VISHAL SIÑGH PRINCIPAL MAGISTRATE JJB-I, DELHI

American Sh. VISHAL SMIGH
Principle of diversion of the Straight S

State Vs. Abid Hussain RC = 09/2011/NIA/DLI

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ORDER U.S. 15 J.J. ACT.

Pr: Special PP Mr. Amit Sharma for NIA.

JCL Abid Hussain produced from Place of Safety, Majnu Ka Tila.

None from the family of JCL.

Sh. Anil Kumar Tiwari, Ld. Legal Aid Counsel for JCL.

Today the matter is fixed for order U/s. 15 JJ Act. JCL has been held involved in commission of offence U/s. 120-B IPC r/w Section 121/121A.122/123/302/307/323/325/436/440 IPC, U/s. 4.5 Explosive Substances Act and U/s. 16,18,20,38,39 of Unlawful Activities (Prevention) Act, 1957, i.e. criminal conspiracy to wage or attempt to wage war against the Govt. of India by causing bomb explosion in Delhi High Court, which terrorist act resulted in death of 15 persons, bodily injuries to 79 persons and destruction of public and private property.

La. Legal Aid Counsel Sh. Anil Tiwari states that the JCL Abid Hussain is already in process of reformation and rehabilitation and has no association with any person involved in criminal activities. JCL is running a hardware shop in Kishtwar, Jammu & Kashmir. In addition, his mother is not alive and he has to take care of his aging father.

and rehabilitated without keeping him under institutionalized care and protection firstly because of the nature of offence committed by him and secondly because he is still living in the same environment in which he came to be associated with the conspirators of the bomb blast.

The offence committed by the JCL is not an ordinary, everyday offence. The JCL has been proved to be part of conspiracy to wage war against the State, through a terrorist act. The association of JCL with terrorists is a matter of grave concern. The reformation and rehabilitation of the juvenile could be a long, effortful journey, requiring constant

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Kangeway Comp. Line 11.11999 psychological counseling and motivating him to unlearn what he has

len nt while in association with the enemies of the State. To achieve the desired reformation and rehabilitation of the JCL, he needs to be sent to Special Home, away from the vitiated atmosphere in which he lives presently. Accordingly, JCL Abid Hussain is sent to stay at Special Home for three years w.e.f. today, subject to review. The period of judicial custody / protective custody already undergone by JCL Abid Hussain in this case shall be set off against the term of three years of stay in Special Home. Since the JCL is an adult now, he be kept at Place of Safety, Main: Ka Tila.

Superintendent of Special Home/Place of Safety, Majnu Ka Tila is directed to take special care of safety and security of JCL Abid Hussain, against potential danger to his life.

Superintendent, Special Home/Place of Safety is further directed to allow only closest blood relatives of the JCL to meet him.

Individual Care Plan of the JCL be prepared by Superintendent, Place of Safety, within a week and be presented before the Board on next date.

JCL be produced on 23/07/2014.

Copy of udgment dated 07/07/2014 and order U/s. 15 JJ Act be

supplied to the JCL.

Shaila M Varghese Member

Dr. K.C. Virmani Member

Vishal Singh Principal Magistrate J.J.B.-I, Delhi. 09/07/2014

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