(CR)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MRS. JUSTICE C.S.SUDHA

TUESDAY, THE 11TH DAY OF APRIL 2023 / 21ST CHAITHRA, 1945

CRL.A NO.1359 OF 2022

AGAINST THE ORDER DATED 18.11.2022 IN CRL.M.P NO.183/2022

IN SC 3/2022/NIA OF SPECIAL COURT FOR TRIAL OF NIA CASES,ERNAKULAM

APPELLANTS/PETITIONERS/ACCUSED 5 & 6:

1 **CHAITHANYA (A5)**
AGED 27 YEARS
S/O.RAMAIAH,VEERAMMA COLONY, KONDAMODU POST, RAJUPALEM, GUNTUR DISTRICT, PIN - 522413

2 **V.ANJANEYALU (A6)**
S/O.NADIPPUNAGANNA, YSR COLONY, FLAT NO.231, B.K.PALLI MADANAPALLE TOWN, CHITTUR DISTRICT, PIN - 517325

BY ADVS.
K.S.MADHUSOODANAN
THUSHAR NIRMAL SARATHY
M.M.VINOD KUMAR
P.K.RAKESH KUMAR
K.S.MIZVER
M.J.KIRANKUMAR

RESPONDENTS/RESPONDENT/COMPLAINANT:

UNION OF INDIA
REPRESENTED BY NATIONAL INVESTIGATION AGENCY (N.I.A), GIRINAGAR HOUSING COLONY, GIRINAGAR HOUSING SOCIETY, KADAVANTHRA, ERNAKULAM, PIN - 682020

BY ADV MANU S., DY.SOLICITOR GENERAL OF INDIA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 28.03.2023, THE COURT ON 11.04.2023 DELIVERED THE FOLLOWING:

(C R)

ALEXANDER THOMAS & C.S.SUDHA, JJ.

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Crl.Appeal No. 1359 of 2022

[Arising out of the impugned order dated 18.11.2022 on Crl.M.P.No.183/2022 in S.C.No. 3/2022/NIA on the file of the Special Court for trial of NIA cases, Kerala, Ernakulam]

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Dated this the 11th of April, 2023

J U D G M E N T

ALEXANDER THOMAS, J.

The aforecaptioned appeal has been instituted under Sec. 21(4) of the National Investigation Agency (NIA) Act, 2008, to impugn the order dated 18.11.2022 rendered by the Special Court for trial of NIA cases, Kerala, Ernakulam (hereinafter referred for short as "the Special Court") on Crl.M.P.No.183 of 2022 in S.C.No.3/2022/ NIA/KOC, whereby the plea of the appellants herein (A-5 and A-6), for grant of regular bail under Sec.439 of the Cr.P.C., has been rejected on the ground that the Special Court, after perusal of the case diary records and the final report/charge sheet filed in the case, is of the opinion that there are reasonable grounds to believe that the accusations against the bail applicants/accused persons are prima facie true, as envisaged in the proviso to Sec. 43D(5) of the Unlawful Activities (Prevention) Act, 1967 ("UAPA" for short). The appellants impugn the legality and correctness of the above said verdict of the Special Court, in refusing to grant regular bail to them, on the above ground.

2. Heard Sri.K.S.Madhusoodanan, learned Advocate, instructed and ably assisted by Sri. Thushar Nirmal Sarathy, learned counsel appearing for the appellants/applicants/A-5 & A-6 and Sri. S. Manu, learned Dy. Solicitor General of India, who is the authorized counsel for the respondent (National Investigation Agency – "NIA", for short), instructed and ably assisted by Sri. K. S. Prenjith Kumar, learned Central Government Counsel appearing for NIA.

3. The brief facts leading to the above bail appeal may be stated as hereunder :

The two appellants herein have been arrayed as A-5 & A-6 respectively, among the six accused in the instant Annexure-I crime, registered by the NIA as per FIR No. RC-01/2022/NIA/KOC dated 03.02.2022, for offences punishable, as per Secs.18, 18A, 18B, 20, 38 & 39 of the UAP Act and Sec. 120B of the IPC. The two appellants herein would be referred for convenience as A-5 & A-6 respectively.

4. Earlier, FIR in Crime No.21/2020 of Kelakom Police Station, Kannur District, Kerala State was registered by the Kerala Police on 20.01.2020, in which, initially, four activists of the Communist Party of India (Maoists) have been arrayed as the accused therein, for offences punishable under Secs.20, 38 & 39 of the UAPA and Sec.124A read with Sec.34 of the IPC, in which, subsequently, A-5 and some other persons

have been arrayed as accused. The gist of the allegations in the said FIR/Crime No.21/2020 of Kelakom Police Station, as discernible from Column No.12 of the said FIR, is as follows :

> *"20.01.2020 തീയതി കാലത്ത് 6 .30 മണിയോടെ കൊട്ടിയൂർ അംശം അമ്പായത്തോട് എന്ന സ്ഥലത്ത് നിരോധിതസംഘടനയായ CPI (മാവോയിസ്റ്റ്) പ്രവർത്തകരായ ഒരു സ്ത്രീയടക്കം 4 മാവോയിസ്റ്റ് പ്രവർത്തകർ ദേശവിരുദ്ധകലാപത്തിനും സായുധ സമരത്തിനും അട്ടപ്പാടിയിലെ ചോരയ്ക്ക് പകരം വീട്ടുന്നതിനും ആഹ്വാനം ചെയ്യും സർക്കാരിനെതിരെ മുദ്രാവാക്യം വിളിച്ചും നോട്ടീസ് വിതരണം ചെയ്യുകയും പോസ്റ്റർ പതിക്കുകയും ചെയ്ത ദേശവിരുദ്ധ പ്രവർത്തനം നടത്തി എന്നും മറ്റും"*
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> *[that, on 20.01.2020 at 6.30 a.m. in the morning, at Kottiyoor area, Ambayathode, four Maoist activists, including a woman belonging to the proscribed organization by name "CPI (Maoist)", had raised slogans and had distributed notices and had pasted posters, calling upon and urging for armed struggle and anti-national uprising, in order to wreak vengeance against the blood spilled in Attappadi, etc.]*

5. FIR in Crime No. 29/2020 of Thalappuzha Police Station, Wayanad District, Kerala State, has been registered on 08.02.2020, against one person, named Raman and six other unknown persons, for offences punishable under Secs. 15, 20 & 38 of the UAPA and Sec.7 of the Arms Act and Secs. 143, 147, 148, 124A & 149 of the IPC, in which, subsequently, A-5 herein and some other persons have been named in the accused array. The gist of the allegations in the said FIR, as disclosed in Column No. 12 thereof, is as follows :

> *"08 -02-.2020 തീയതി 12 .50 മണിക്ക് തവിഞ്ഞാൽ വില്ലേജിൽ കമ്പമല ടീ എസ്റ്റേറ്റ് പാഡി എന്ന സ്ഥലത്ത്, രാജ്യത്ത് നിയമം മൂലം നിരോധിച്ച CPI മാവോയിസ്റ്റ് സംഘടനയുടെ പ്രവർത്തകരായ ഒന്നു മുതൽ ഏഴ് കൂടിയ പ്രതികൾ പച്ച നിറത്തിലുള്ള യൂണിഫോം ധരിച്ച നിയമ വിരുദ്ധമായി തോക്കുകൾ കൈ വശം വച്ച് ന്യായ വിരുദ്ധമായി സംഘം ചേർന്ന് സർക്കാരിനെതിരെ സായുധ വിപ്ലവത്തിന് ആഹ്വാനം ചെയ്യും മുദ്രാ വാക്യം വിളിച്ചും സർക്കാരിനെതിരെയുള്ള നോട്ടീസുകൾ വിതരണം ചെയ്യും രാജ്യ ദ്രോഹ പരമായി പോസ്റ്റർ ഒട്ടിച്ചും, രാജ്യ വിരുദ്ധ പ്രവർത്തനം നടത്തി എന്നും മറ്റും "*
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> *[that, on 08.02.2020 at about 12.50 noon, at Kambamala Tea Estate Paddy at Thavinjal Village, seven accused persons, who belong to the proscribed organization by name "CPI (Maoist)", and clad in green uniform, had unlawfully assembled, armed with guns and had called upon the people to resort to armed revolution against the Government and had raised slogans and distributed notices and had pasted anti-national posters and had thus, indulged in anti-*

national activities, etc.].

6. Yet another crime has been registered by the Kerala Police on 25.02.2020, as per FIR No.44/2020 of Aralam Police Station, Kannur District, Kerala State, in which one Ramu has been arrayed as accused No. 1 and an unknown person has been arrayed as accused No. 2 and one Kavitha and Savithri have been arrayed as A-3 & A-4 respectively, for offences punishable under Sec. 20 of the UAPA, Sec.3 read with Sec. 25(1-B)(a) of the Arms Act read with Secs. 143, 147, 148, 506 (II) read with Sec.149 of the IPC, in which A-5 herein was subsequently arrayed as one of the accused therein. The brief of the allegations in the said crime, as disclosed from column No.12 of the said FIR, is as follows :

"2020 ഫെബ്രുവരി 24 -ആം തീയതി 20 .00 മണിക്കും 22 .00 മണിക്കും ഇടയിലും പിന്നീടുള്ള സമയത്തു ആറളം അംശം ആറളം ഫാം Block-13 ൽ താമസിക്കുന്ന പരാതിക്കാരന്റെ വീട്ടിലേക്ക് സർക്കാർ നിരോധിത സംഘടനയായ CPI മാവോയിസ്റ്റ് ആണെന്ന് സ്വയം പരിചയപ്പെടുത്തി ഭക്ഷണം വാങ്ങി കഴിച്ചെന്നും തുടർന്ന് മൊബൈൽ ഫോണും ടോർച്ചും റീ ചാർജ് ചെയ്തു ശേഷം വീട്ടിൽ സൂക്ഷിച്ചതായ സുമാർ 5 കിലോയോളം ലഹരിയും മറ്റ് സാധനങ്ങളും കൈക്കലാക്കി പോയി എന്നും മറ്റും"

[that, on 24.02.2022, between 20 hours (8 p.m.) & 22 hours (10 p.m.), the four accused persons, who claimed to belong to the proscribed organization by name "CPI (Maoist)", had gone to the house of the complainant at Aralam Farm at Block No.13, Aralam Junction and had introduced themselves as activists of the above organization and that, they were armed with guns and that, two of them were women and two of them were men and that, they had threatened the complainant and after threatening the complainant, had taken and eaten food from the complainant and had recharged their mobile phones and torch and had forcibly taken with them five kilograms of rice and other provisions belonging to the complainant, etc.]

7. A fourth crime has been registered, as per FIR No.226/2020 of Kelakom Police Station, Kannur District, for offences punishable under Secs. 20, 38 & 39 of the UAPA, Secs. 3, 25(1-B)(a) of the Arms Act & Secs.

124-A, 447 read with Sec. 34 of the IPC, in which four named persons (comprising of two men & two women), have been arrayed as the accused therein, in which A-2 therein is A-5 herein. The gist of the allegations in the abovesaid FIR, as shown in Sl. No. 12 thereof, is as follows:

> *"28 .04 .2020 തീയതി 18 .30 മണി സമയത്തു പരാതിക്കാരനും കുടുംബവും താമസിക്കുന്ന ശാന്തിഗിരി കോളിത്തട്ട എന്ന സ്ഥലത്തുള്ള വീട്ടിൽ നിരോധിത മാവോയിസ്റ്റ സംഘടനയിൽ പെട്ട 1 മുതൽ 4 വരെ പ്രതികൾ മാരകായുധങ്ങളായ റിവോൾവർ തോക്കുകൾ ഉൾപ്പെടെ കൈയിലേന്തി പരാതിക്കാരന്റെ വീട്ടിൽ അതിക്രമിച്ചു കയറി 21 .30 മണി വരെ പ്രസ്തുത വീട്ടിൽ ചിലവഴിച്ചു വീട്ടു സാധനങ്ങൾ ആവശ്യപ്പെട്ട് പരാതിക്കാരനെയും കുടുംബത്തെയും ഭീഷണിപ്പെടുത്തുകയും പരാതിക്കാരന്റെ മക്കളെ നിരോധിത സംഘടനയിൽ പ്രവർത്തിക്കുന്നതിന് പ്രേരിപ്പിക്കുകയും നിലവിലുള്ള ഗവണ്മെണ്ടിനെതിരെ സായുധ വിപ്ലവം നടത്തുവാൻ ആഹ്വാനം ചെയ്തു ദേശവിരുദ്ധ പ്രവർത്തനം നടത്തി എന്നും മറ്റും "*

> *[that, on 28.04.2020 at about 18.30 hours (6.30 p.m.), the four accused persons therein had gone to the residence of the complainant and his family members at Kolithattu Santhigiri and that, the four accused persons, who belong to the proscribed Maoist organization, had gone there, armed with deadly weapons, like revolver guns, etc., and had unlawfully trespassed into the residence of the complainant and had remained there till 21.30 hours (9.30 p.m. in the night) and had forcibly demanded, by threatening the complainant and his family members to give them provisions and had instigated the children of the complainant to join the above proscribed organization and had called upon the complainant and his family members to participate in anti-government armed revolution and had thus, indulged in such anti-national activities, etc.]*

It appears that some of these four crimes have been entrusted to the Anti Terrorist Squad (ATS) of Kerala Police for investigation and that investigation in all the abovesaid four crimes were still ongoing.

8. Based on the confession statement, said to have been given by A-5 herein, on 24.11.2020 (which has been produced as Anx. III herein) at Piduguralla village, Andhra Pradesh State, crime was registered as FIR No. 606 of 2020 of Piduguralla Police Station, Andhra Pradesh, for offences punishable under Secs. 16, 17, 18, 18A, 18B, 20, 21, 38, 39 and 40 of the

UAPA and Secs. 120B, 121A, 122, 124(a), 143, 144 and 149 of the I.P.C.

9. It appears that various allegations are raised in the abovesaid AP Crime and full details of the same have not been apprised to this Court by both sides and we are given to understand that, among the various allegations, it is also alleged that the accused persons therein have involved themselves in radicalizing youth to join the proscribed terrorist organization- CPI (Maoist) and recruiting them to the said organization and providing training to them, with the intention to threaten the unity, integrity and sovereignty of India. The above crime was registered on 24.11.2020.

10. During the investigation, A-5 herein, who has been arrayed as A-11 in the AP Crime, was also arrested in the above AP Crime. It is also the case of the appellants that all the above accused persons in the AP Crime, more particularly, A-5 and A-6 herein, were granted default bail, as investigation in the said AP Crime could not be completed within the statutory outer time limit. Further, the appellants would state that, when A-5 herein was under judicial custody in the above AP Crime, he was produced before the Sessions Court, Thalassery in connection with 3 out of the 4 aforesaid Kerala crimes, viz., Crime Nos.21/2020, 44/2020 & 226/2020. A-5 herein has also been arrayed as an accused in the aforesaid Crime No.29/2020 of Thalappuzha Police Station, Wayanad, Kerala.

11. Later, the Union Government in the Ministry of Home Affairs has issued Anx. I order dated 31.1.2022 stating that the Union Government has received credible information regarding the 6 accused herein for radicalizing the youth for joining the proscribed terrorist organization and for providing them training with the intention to threaten the unity, integrity and sovereignty of India and that, these activities would attract Sec. 120B of the IPC and Secs. 18, 18A, 18B, 20, 38 & 39 of the UAPA. Further that, the Union Government is of the opinion that a Scheduled Offence, as per the NIA Act, 2008, has thus been committed by the accused persons and having regard to the gravity of the offence and its ramifications on national security, the same is to be investigated by the NIA in accordance with the NIA Act, 2008. Hence, it was ordered in Anx. I proceedings dated 31.1.2022 by the Union Government that, in exercise of the powers conferred under Sec. 6(5) r/w Sec. 8 of the NIA Act, the Union Government thereby directed that the NIA shall take up the investigation of the aforesaid case. A bare reading of Anx. I would make it clear that, there is no explicit reference to the aforesaid AP crime or to any of the aforesaid 4 Kerala crimes.

12. Thereafter, the respondent NIA has registered the instant crime, as per Anx.I(2) FIR No. RC-01/2022/NIA/KOC dated 3.2.2022, in which there are 6 accused persons, including the two appellants, A-5 herein

and A-6 herein. Column No. 5 of Anx. I(2) FIR deals with the place of occurrence and therein, it is stated that the place of occurrence is situated 200 km north of the NIA Police Station, Kochi and that the address of the abovesaid place of occurrence is Makki Forest Area, Kalpetta, Wayanad, Kerala. The 6 accused persons herein are:

(A-1) Sanjay Deepak Rao @ Bikas from Maharashtra,
(A-2) Pinkapani @ Pani from Andra Pradesh.
(A-3) Varalakshmi, Revolutionary Writers Association, A.P.,
(A-4) Sreekanth, Tharithan Village, Mananthavady, Wayanad District, Kerala.
(A-5) Chaithanya @ Surya, Rajupalam Gundur District, A.P.
(A-6) Anjaneyalu @ Sudhakar,
As against Sl. No. 7, it is stated that there are some other unknown persons also.

13. Column No. 12 of the FIR deals with First Information contents, which is a reiteration of the factual aspects stated in Anx. I order dated 31.1.2022.

14. The case of the appellants appears to be that, during the course of the investigation, the formal arrest and judicial custody of A-5 herein and A-6 herein were recorded, when they were undergoing judicial custody in the course of the aforesaid Kerala crimes. In that regard, the formal arrest of A-5 herein was recorded in the instant NIA case on 14.3.2022 and that of A-6 herein was recorded on 12.5.2022 respectively. Further, the case of the appellants appears to be that all the accused persons, including A-5 herein, in some of the aforesaid 4 Kerala crimes, could secure default bail in regard to their involvement in the said crimes, as the investigation thereon could not be completed within the outer time limit. But that, they

were remanded to judicial custody in regard to their involvement in the instant NIA crime. Further that, A-1 to A-4 are absconding. According to the respondent NIA, they have duly completed the investigation in Anx. I (2) NIA crime and has submitted Anx. II Final Report/Charge sheet on 3.9.2022. That, since the investigation in the NIA Crime could be completed before the expiry of the extended outer time limit, the appellants (A-5 & A-6 herein) continued to be under judicial remand. Their regular bail applications, filed before the final report, was dismissed.

15. Further that, since A-1 to A-4 herein are absconding, the Special Court concerned has taken cognizance of the offences alleged as against A-5 herein and A-6 herein, which had led to the institution of the instant Sessions Case S.C. No. 3/2022/NIA/KOC on the file of the Special Court for trial of NIA Cases, Kerala, Ernakulam. The appellants herein (who have been arrayed as A-5 and A-6 in the above NIA crime) have been arrayed as A-1 & A-2 in the instant Sessions Case No. 3/2022, since the other 4 accused persons are absconding. However, the appellants herein will be referred for convenience as A-5 herein and A-6 herein.

16. The plea for regular bail of the appellants was resisted by the respondent NIA. After hearing both sides, the Special Court has rendered the impugned Anx. IV order dated 18.11.2022 on Crl. M.P. No. 183/2022 in the instant S.C. No. 3/2022/NIA/KOC, whereby the bail plea was rejected

on the ground that, after perusal of the case papers and the final report/charge sheet etc., there are reasonable grounds to believe that there is a *prima facie* case against the two appellants herein and hence, in view of the restrictions contained in the proviso to Sec.43-D(5) of the UAPA, the Special Court is constrained to reject the regular bail pleas of these appellants, etc. It is this order, at Anx. IV, that is under challenge in the instant Appeal instituted under Sec. 21 (4) of the NIA Act.

17. It may be pertinent to note the substance of the main allegations raised against these appellants in Anx.II final report/charge sheet dated 3.9.2022 filed by the NIA. Para 16 of Anx.II deals with the brief of the case, which reiterates the aspects borne out from Anx. I order of the Union Government and Anx. I(2) FIR registered by the NIA. Para 17 thereof deals with the facts revealed during investigation and the same comprises of paras 17.1 to 17.19 thereof. Paras 17.1 to 17.4 supra deals with the details of the proscribed organization CPI (Maoist) and the prior history relating to its predecessor organization, etc., and also about the codified organizational constitution of the said organization and the same read as follows:

"17.1 The Communist Party of India (Marxist Leninist) was formed on 22nd April, 1969 and Maoist Communist Centre (MCC) was formed on 20th October, 1969. The members of these organisations, at the behest of its leaders and as per the mandate of the organisation, were involved in violent terrorist activities to create terror in the minds of people, administration of the State, besides to cause disaffection against the State in order to capture power through violence. The Communist Party of India (Marxist-Leninist) Peoples War Group and Maoist Communist Centre (MCC) merged on 21st September, 2004 and formed Communist Party of India (Maoist). Later, on 1st May, 2014, Communist Party of India (Marxist-Leninist) Naxalbari merged into Communist Party of India (Maoist) and continued its terror activities in various parts of India.

17.2 The CPI (Maoist) organisation and all its formations and frontal organisations were listed in the First Schedule attached to the UA (P) Act 1967 and is thereby proscribed and declared to be a Terrorist Organisation since 22.06.2009.

17.3 Investigation has also revealed that the proscribed terrorist organisation CPI (Maoist) has a codified Constitution that governs the functioning of the CPI (Maoist), its formations and frontal organizations. The Constitution of CPI (Maoist) defines the Aims and Objectives, Membership, Rights and Duties of Members, Discipline, Organizational Structure, Powers and Responsibilities of various Committees, Internal Debates, Party Functioning in the People's Army, Party Funds etc. It is revealed that the aim of the proscribed party is to capture power by overthrowing the democratically elected Government through various means, but primarily through an armed rebellion by its military wing, the Peoples Liberation Guerrilla Army (PLGA). Investigation has revealed that any person who has reached the age of 16 years and is willing to abide by the ideology and regulations of CPI (Maoist) besides commit himself as a disciplined cadre, can become a member of the proscribed terrorist organization, at the basic unit level, with the approval of the immediate higher formation. It is further revealed that the CPI (Maoist) insists that all its members collectively work persistently for the well-being of the organisation, besides playing a substantial role in the armed rebellion against the State in overthrowing its legitimate Government. It has also been revealed that, CPI (Maoist) has stipulated very strict and elaborate rules of conduct and behaviour for its members, while they are working clandestinely for this proscribed organization and also during the period when they will be arrested by the Police.

17.4 Investigation has revealed that the organizational hierarchy of CPI (Maoist) comprises of the basic unit termed Cell, above which Area/ Sub-Zonal/ Sub-divisional Committee, Divisional/ District/ Regional Committee, State/ Special Zonal/ Special Area Committee, Central Committee and Polit Bureau, functions clandestinely. All the committees are managed by respective Secretaries."

Paras 17.5 to 17.19 thereof, deals with the specific allegations raised by the respondent NIA against these appellants and the same read as follows:

"17.5 Investigation has also revealed that CPI (Maoist) has formed two Zon committees for furthering their terrorist activities in the southern States of India. State of Kerala, Karnataka and Tamil Nadu comes under Western Ghats Special Zonal Committee (WGSZC) of the CPI (Maoist) whereas Andhra Odisha Border Special Zonal Committee (AOB SZC) covers the area of Andhra Pradesh and Odisha. These Zonal committees are headed by Central Committee Members and work as per the directions of Central Committee.

17.6 Investigation has further revealed that as per directions from the Central Committee of CPI (Maoist), the military operations are being conducted by the military wing named People's Liberation Guerrilla Army (PLGA), that wages war against the Government of India. The Central Committee of CPI (Maoist) provides funds to its frontal organizations for conducting programs to attract gullible youths to the proscribed outfit CPI (Maoist).

17.7 Investigation has also revealed that the People's Liberation Guerrilla Army (PLGA) cadres under Western Ghats Special Zonal Committee (WGSZC) of CPI (Maoist) are presently divided into three Dalams (Squads) Kabani Dalam, Nadukani Dalam and Banasura Dalam and are active in furthering the activities of CPI (Maoist) organisation in tri-junction of Kerala, Tamil Nadu and Karnataka.

17.8 Investigation has revealed that the CPI (Maoist) cadres in Andhra Pradesh and Odisha are working under the command AOB SZC for furthering the activities of the proscribed terrorist organization CPI (Maoist) in Andhra Pradesh and Odisha. Akki Raju Haragopal @ Manyam @ RK, a senior Central Committee member who died in October 2021, was in-charge of the AOB SZC.

17.9 Investigation has revealed that the proscribed terrorist organization CPI (Maoist) faced a major setback in Kerala after the death of two cadres of CPI (Maoist) including its Senior Central Committee Member Kuppu Devaraj. To overcome the same, in the year 2017, Sanjay Deepak Rao @ Vikas (A-1), Central Committee Member, met Akki Raju Haragopal @ RK in AOB area, conspired for recruiting the youths into WGSZC of CPI (Maoist) which is active in tri-junction of Kerala, Tamil Nadu and Karnataka.

17.10 The investigation has revealed that accused Pinaka Pani (A-2) and Varalakshmi (A-3) who are the members of Revolutionary Writers Association (VIRASAM), conspired with Akki Raju Haragopal @ RK (CPI (Maoist) Central Committee Member who died in October 2021) in Andhra Odisha Border area to recruit gullible youths to the proscribed terrorist organization through the programs organised by frontal organizations of CPI (Maoist) including Prakruthisheela Karmika Samkhya (PKS), Patriotic democratic Movement (PDM) and Revolutionary Writers Association (VIRASAM) etc.

17.11 Investigation has also revealed that, the accused being the members of the proscribed terrorist organisation CPI (Maoist) and also the members of its frontal organizations, had conducted conspiracy meetings in and

outside Kerala since 2017 for recruiting vulnerable youth to the proscribed terrorist organisation CPI (Maoist), for furthering its activities in various parts of India including Kerala and Andhra Pradesh, thereby waging war against the Government of India.

17.12 In furtherance to the conspiracy hatched by Pinaka Pani (A-2), Varalakshmi (A-3) and others at the behest of Sanjay Deepak Rao (A-1), accused Chaithanya (A-5) and Anjaneyalu (A-6) were recruited into the proscribed terrorist organisation CPI (Maoist).

17.13 Further, Chaithanya (A-5) and Anjaneyalu (A-6) participated in the conspiracy jointly and severally, knowingly and intentionally travelled to Kambamala Estate in Wayanad and physically joined the Kabani Dalam of Peoples Liberation Guerilla Army (PLGA) of the proscribed terrorist organisation CPI (Maoist), in the month of January 2019, with the assistance of Padmaraj @ Sreekanth (A-4) and others at the behest of Sanjay Deepak Rao (A-1).

17.14 Further, Chaithanya (A-5) and Anjaneyalu (A-6), being the members of the proscribed organisation CPI (Maoist), continued the activities of the organisation for furthering its activities and thereby waged war against the Government.

17.15 Investigation has also revealed that the accused Valagutha Anjayanelu @ V Anjineyulu Velugutra @ Anjaneyalu @ Sudhakar @ Anji (A-6) was an active member of Papagni Dalam of Naxalbari during 1999-2002. Since then, he continued his association with the cadres of the proscribed terrorist organisation CPI (Maoist).

17.16 Investigation has also revealed that being the member of the proscribed terrorist organisation CPI (Maoist), Chaithanya (A-5) along with other Maoist cadres visited tribal colonies in Kannur and Wayanad districts of Kerala and distributed notices, pamphlets, raised slogans supporting CPI (Maoist) and conducted classes on CPI (Maoist) organisation and thereby tried to attract vulnerable youth to the banned CPI (Maoist) organisation, to strengthen the proscribed terrorist organisation CPI (Maoist) and to commit terrorist activities for furthering its activities and thereby to wage war against the Government of India.

17.17 Further, Chaithanya (A-5) and Anjaneyalu (A-6), being the members of the proscribed terrorist organisation CPI (Maoist), concealed their knowledge about the design of PLGA at Kabani Dalam from the authorities.

17.18 Investigation has revealed that accused Sreekanth (A-4) had been associated with the cadres of CPI (Maoist) organisation since 2018 and facilitated in transporting the cadres of CPI (Maoist) from various places to the forest area in Wayanad. His confession statement has been recorded u/s 164 of CrPC and petition has been filed before this Hon'ble court for tendering pardon to him and make him an approver in the case.

17.19 Accused Sanjay Deepak Rao (A-1) is absconding and accused Pinaka Pani (A-2) and Varalakshmi (A-3) are not arrested in the case. Further investigation against A-1 to A-3 is sought to be continued to gather more prosecutable evidence."

18. The charges against A-5 and A-6 herein are contained in para 18 of Anx. II final report. The specific factual charge and the offences allegedly committed by A-5, as contained in paras 18.1 and 18.2 supra, read as follows:

"18.1 That, accused Kambhampati Chaitanya @ Chaithanya @ Surya (A-5) got attracted into the ideology of the banned terrorist organisation CPI (Maoist) during his college days, attended various classes and meetings of frontal organisations of the proscribed terrorist organisation CPI (Maoist) conducted by Pinakapani (A-2) and Varalakshmi (A-3) from 2017-2019, got recruited into the proscribed terrorist organisation CPI (Maoist) in January 2019, intentionally conspired with co-accused Anjaneyulu (A-6) and others in the beginning of January 2019, knowingly and intentionally travelled to Kambamala Estate in Wayanad, in Kerala with the intention to physically join the proscribed terrorist organisation CPI (Maoist) and joined the Kabani dalam (squad), an armed squad of Peoples Liberation Guerrilla Army (PLGA) under the Western Ghats Special Zonal Committee (WGSZC) of proscribed terrorist organisation CPI (Maoist). Being a member of the proscribed terrorist organisation CPI (Maoist), for furthering the terronst activities of the proscribed terrorist CPI (Maoist), he along with other armed PLGA cadres acted as a gang and visited the tribal colonies in Kannur and Wayanad districts of Kerala and propogated CPI (Maoist) ideology by distributing notices, pamphlets etc., conducting classes and raising CPI (Maoist) slogans to attract and recruit vulnerable youth into the CPI (Maoist) organisation, to strengthen the proscribed terrorist organisation and with the intention to commit terrorist acts for furthering the activities and objectives of CPI (Maoist) and thereby conspired to wage war against the Government of India Further, being a member of the proscribed terrorist organisation CPI (Maoist), he concealed his knowledge about the designs of waging war against the Union of India, by CPI (Maoist), from the authorities.

18.2 Therefore, accused Kambhampati Chaitanya @ Chaithanya @ Surya (A-5) has committed offences punishable under section 120B, 121A, 122, 123 of IPC, section 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967."

19. The specific factual charge and the offences allegedly committed by A-6, as contained in paras 18.3 and 18.4 supra, read as

follows:

> *"18.3 That, accused Valagutha Anjayanelu @ V Anjineyulu Velugutra @ Anjaneyalu @ Sudhakar @ Anji (A-6) became an active member of CPI (Maoist) through its frontal organisation PKS (Prakruthiseela Karmika Samakya) of Andhra Pradesh and attended various classes and meetings of frontal organisations of the proscribed terrorist organisation CPI (Maoist) conducted by Pinakapani (A-2) and Varalakshmi (A-3) during 2017-2019. He conspired with other co-accused, Pinakapani (A-2) and Varalakshmi (A- 3) in the beginning of January 2019 and became a part of the conspiracy in recruiting Chaithanya (A-5) into the proscribed terrorist organisation CPI (Maoist), knowingly and intentionally travelled to Kambamala Estate in Wayanad, in Kerala with the intention to physically join CPI (Maoist) organisation and thereby joined the Kabani dalam (squad), an armed squad of Peoples Liberation Guerrilla Army (PLGA) under the Western Ghats Special Zonal Committee (WGSZC) of the proscribed terrorist organisation CPI (Maoist) for the purpose of committing terrorist acts and thereby waging war against the Government of India. Being a member of proscribed terrorist organisation CPI (Maoist) and for furthering the terrorist activities of the proscribed terrorist CPI (Maoist), he continued in the gang of Kabani Dalam of the CPI (Maoist) organisation with the intention to commit terrorist acts and for furthering the activities and objectives of CPI (Maoist) and thereby waged war against the Government of India Further, being a member of proscribed terrorist organisation CPI (Maoist), he concealed his knowledge about the design of waging war by CPI (Maoist), from the authorities.*
>
> 18.4 *Therefore, accused Valagutha Anjayanelu @ V. Anjineyulu Velugutra Anjaneyalu @ Sudhakar @ Anji (A-6) has committed offences punishable under section 120B, 121A, 122, 123 of IPC, section 18, 18B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967."*

20. Sri. K.S. Madhusoodanan, learned counsel instructed by Sri. Thushar Nirmal Sarathy, learned Advocate for the appellants, has raised two broad contentions. The first contention is that the impugned Anx. I(2) NIA FIR is only a reiteration of the allegations in Anx. III AP FIR and that the allegations in the instant NIA crime are part of the allegations in the AP crime and the four Kerala crimes. That, therefore, the very institution of the impugned criminal proceedings against the appellants herein by the respondent NIA, is an abuse of the process of law. Further that, various

incidents, referred to in the instant crime, are alleged incidents referred to in Anx. III AP Crime. Most of these factual incidents, more particularly relating to the hatching of the conspiracy, referred to in the instant NIA crime, for the formation and activisation and recruitment of members to the *Dalams* in Kerala area, more particularly Wayanad, etc., have occurred within the territorial limits of Andhra Pradesh. So, the main conspiracy, which is said to have been hatched in Andhra Pradesh, as well as the further actions, alleged to have been done in furtherance of such conspiracy, which may have happened in places like Kerala, could have been investigated and tried only by the Police authorities in Andhra Pradesh and the courts in Andhra Pradesh.

21. Per contra, Sri. S. Manu, learned Dy. Solicitor General of India, who is the authorised counsel of the respondent NIA, has seriously opposed the abovesaid pleas of the appellants and has also pointed out that the first contention as well as various aspects of the second contention, have not even been urged by the appellants before the Special Court and that therefore, since the present proceedings is only an appellate proceedings, arising out of the original proceedings determined by the Special Court, it is well established that such contentions, which have never been raised before the trial court, should not be permitted to be advanced in this appeal.

22. Further that, these contentions have been orally raised by the appellants for the first time through their counsel during the hearing of this appeal and such contentions are not even urged in the appeal memorandum, except a passive contention, based on the alleged parallel investigations referred to in ground 'J', etc. The respondent NIA would urge that these aspects of the matter should be duly considered by this Court, especially since what is involved is not merely regular bail application, in terms of Sec. 439 of the Cr.P.C., but an appeal arising out of a regular bail application in respect of serious and grave offences arising out of the UAPA and since the very jurisdiction of the bail court is circumscribed, not only by the limitations in Sec. 439 of the Cr.P.C., but all the more restricted in view of the provisions contained in the UAPA, more particularly Sec.43D(5) proviso thereof, it has placed additional and serious limitations for the consideration of bail involving offences under Chapters IV and VI of the UAPA.

23. We have heard both sides *in extenso* and considered the rival pleas.

24. We seriously take note of the abovesaid submissions made by the respondent NIA and we proceed to consider the aspects of the first contention based on alleged lack of jurisdiction of the Special Court and the alleged lack of jurisdiction of the investigation agency in the registering of

the crime and the alleged contentions based on the abuse of the process of Court, only from the perspective as to whether the proceedings are vitiated for total inherent lack of jurisdiction.

25. We have also cautioned ourselves about the limitation in considering and adjudicating such issues, relating to the abuse of the process, etc., in bail proceedings and that too which are circumscribed by the serious restrictions in Sec. 43D(5) proviso of the UAPA, especially when independent proceedings have not been initiated by the appellants regarding their contentions based on alleged lack of jurisdiction of the Special Court, the alleged lack of jurisdiction in registration and investigation of the instant crime, on account of alleged parallel investigations elsewhere, etc.

Contention (A)

26. The first contention raised by the appellants is that, the impugned Anx. I(2) NIA FIR is only a reiteration of the allegations in Anx. III AP FIR and the aforesaid 4 Kerala/Kerala ATS crime FIRs or that the allegations in the instant NIA Crime are part of the allegations in the AP Crime and the 4 Kerala crimes. Hence, the appellants would thus urge that the very institution of the impugned criminal proceedings, at Anx. I FIR, and the consequential proceedings, which has resulted in the impugned Anx. II Final report/charge sheet, is an abuse of the process of law. More

particularly, it is urged that most of the alleged factual incidents, especially those relating to the hatching of conspiracy, referred to in the instant NIA Crime, for the formation, activization and recruitment of members into the *Dalams* of the proscribed organization in Kerala State, in places like Wayanad, etc., have occurred within the territorial limits of Andhra Pradesh. That, since the very genesis of the crime is based on the hatching of conspiracy, which has allegedly occurred within the territorial limits of Andhra Pradesh State and not in the State of Kerala and even if the further alleged acts had occurred within the territorial limits of the Kerala, there are serious issues of lack of jurisdiction for the Special Court NIA, Ernakulam in dealing with the instant final report/charge sheet and that the Special Court NIA, Ernakulam has no jurisdiction in the facts of this case, in view of the provisions contained in Sec.13 of the NIA Act. Correspondingly, it is also urged that the jurisdiction of the investigation agency, to investigate into a crime, should also be determined with reference to the jurisdiction of the Criminal Court concerned, going by the principles contained in the Cr.P.C., more particularly in provisions as in Sec.156 of the Cr.P.C., etc.

27. We will initially deal with the abovesaid plea of the appellants.

28. At the outset, it has to be made clear that no proper materials

have been placed before us by the appellants to examine the scope and ambit of the investigation, which is being carried out by the Andhra Pradesh Police in the above AP Crime, especially the specific allegations that are being investigated into by the AP Police and also, as to specifically whether any of the factual aspects, forming part of Anx. I NIA crime and Anx. II final report/charge sheet, are also being investigated by the AP Police. However, we would proceed on the premise that there may be some overlapping of the investigations being carried out by the AP Police and the Kerala Anti-Terrorist Squad (ATS), *vis-a-vis*, the investigation already carried out by the respondent (NIA), which has resulted in Anx. II final report. Even if, we proceed on the premise that the hatching of the conspiracy for the formation, activisation and recruitment of members to the *Dalams* in the proscribed organization and its armed wing, was materialised in Andhra Pradesh, there cannot be any dispute that, going by the allegations in the investigation/prosecution materials, in relation to Anx. I NIA FIR and Anx. II final report/charge sheet, the various subsequent events for carrying out the alleged conspiracy has happened within the territorial limits of the State of Kerala in various places in Wayanad and other places.

29. Sec. 156 is contained in Chapter XII of the Cr.P.C, which deals with information to the Police and their powers to investigate. Sec. 156,

contained in Chapter XII of the Cr.P.C, provides as follows :

> *"**Sec.156. Police officer's power to investigate cognizable case.**-*
> *(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> *(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*
>
> *(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."*

30. Sec.156(1) Cr.P.C stipulates that the Investigating Agency concerned is empowered, even without the order of a Magistrate, to investigate any cognizable case, which a Court having jurisdiction over the local area within the limits of such station would have the power to inquire into or try under the provisions of Chapter XIII of the Cr.P.C. Further, sub-section (2) of Sec.156 mandates that no proceedings of a Police Officer, in any such case, shall, at any stage, be called in question, on the ground that the case was one which such officer was not empowered under this section to investigate, etc.

31. Hence, we will now have to examine the provisions in Chapter XIII of the Cr.P.C., which deals with jurisdiction of criminal courts in enquiries and trials. Secs.177, 178, 179 & 180, contained in Chapter XIII of the Cr.P.C., provide as follows:

> *"**Sec.177. Ordinary place of inquiry and trial**. - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.*
> ***Sec.178. Place of inquiry or trial**. - (a) When it is uncertain in which of several local areas an offence was committed, or*

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

***Sec.179. Offence triable where act is done or consequence ensues**.- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.*

***Sec.180. Place of trial where act is offence by reason of relation to other offence**.- When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done."*

32. Sec.177 stipulates that, ordinarily, every offence shall be inquired into and tried by a Court, within whose local jurisdiction it was committed. Sec.178 further stipulates that, when it is uncertain in which of the local areas an offence was committed or where the offence is committed partly in one local area or partly in another area or where an offence is a continuing one and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. In that regard, it may be apposite to note that local jurisdiction has been defined as per Sec.2 (j) of the Cr.P.C, which has to mean, in relation to a Court or Magistrate, the local area within which the Court or Magistrate may exercise all or any of its or his powers under the Cr.P.C. and such local area may comprise the whole of the Sate, or any part

of the State, as the State Government may, by notification specify. However, Sec.179 deals with offence triable where an act is done or consequence ensues and it is stipulated therein that, when an act is an offence, by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. Further, Sec.180 of the Cr.P.C deals with place of trial, where an act is an offence, by reason of its relation to any other offence and it is stipulated therein that, when an act is an offence, by reason of its relation to any other act, which is also an offence or which would be an offence, if the doer was capable of committing an offence, the first mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done. So, from the abovesaid provisions, in a case where the hatching of the conspiracy was done in one state and the acts in pursuance of the said conspiracy and the various criminal acts in pursuance of such conspiracy has been actually done in another state, then the Courts in either of the two locations will have jurisdiction and therefore, the Court within whose territorial jurisdiction the latter criminal acts were done, in pursuance of the conspiracy, will also have the jurisdiction to conduct the inquiry and trial, as envisaged in the Cr.P.C.

33. Hence, going by the cumulative application of the aforesaid provisions contained in Chapter XIII of the Cr.P.C. and Chapter. XII thereof, more particularly, Secs. 179, 180 & 156, it has to be held that the Courts in Kerala will have jurisdiction to inquire into or try such a cognizable case and correspondingly, the Investigating Agency concerned in the State of Kerala, will also have the power to register a crime and conduct an investigation thereon.

34. Sec.6 under Chapter III of the National Investigation Agency Act, 2008 (NIA Act) deals with the investigation of scheduled offences. There is no dispute that the UAP Act, 1967 (Central Act 37 of 1967) is enumerated as item No.2 in the Schedule framed under Sec.2(1)(f) of the NIA Act. In the instant case, there are offences, as per Secs.18, 18B, 20, 38 & 39 of the UAP Act alleged against the appellants. Hence, such investigation into scheduled offences, as per the NIA Act, are covered by Sec.6 of the NIA Act. Sec.6(4) of the NIA Act mandates that, where the Union Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the National Investigation Agency, it shall direct the Agency to investigate the said offence, etc.

35. Sec.11 in Chapter IV of the NIA Act deals with the power of the Central Government to designate the Court of Sessions as the Special

Court. There is no dispute that it is in exercise of the powers under Sec. 11 of the NIA Act, that the present Special Court for trial of NIA cases, Ernakulam, has been notified as a Special Court for conducting inquiries and trials, in respect of cases investigated by the National Investigation Agency. In this regard, the main contention urged by Sri. K.S. Madhusoodanan, learned counsel appearing for the appellants, is that, going by the provisions contained in Sec. 13, contained in Chapter IV of the NIA Act, the Special Court, NIA, Ernakulam, Kerala, will not have jurisdiction and that therefore, the instant Anx. I crime/FIR could not have been registered in Kerala, in view of the abovesaid aspects relating to the hatching of the conspiracy in Andhra Pradesh State. The learned counsel for the appellants would emphasise that Sec.13(1) of the NIA Act contains a non-obstante clause, *vis-a-vis*, the Cr.P.C and that, therefore, Sec.13(1) mandates that, notwithstanding anything contained in the Cr.P.C., every Scheduled Offence, investigated by the Agency, shall be tried only by a Special Court, within whose local jurisdiction it was committed. The fine tuned plea of the appellants is that, since the main conspiracy has been hatched in the Andhra Pradesh State, even if it is a Scheduled Offence, only the Special Court in Andhra Pradesh will have jurisdiction, going by the mandate in Sec.13, etc., and more particularly, as Sec.13(1) has a non-obstante clause *vis-a-vis* the Cr.P.C.

36. We have anxiously considered the abovesaid pleas of the appellants, based on Sec. 13(1) of the NIA Act.

37. It is by now well established, by rulings, as the one rendered by the Full Bench of this Court in the case in ***Mastiguda Aboobacker v. NIA***, [2020 (6) KLT 522 (FB), para 35 = 2020 (6) KHC 26 (FB)] that, on a plain reading of Sec. 5 of the Cr.P.C., ordinarily the Cr.P.C. will not affect (1) any special law (ii) any local law, (iii) any special jurisdiction and power and (iv) any special form of procedure. The Apex Court in the decision in ***State (Union of India) v. Ram Saran*** [AIR 2004 SC 481] has held that, where any special law envisages special procedure for the manner or place of investigation, the provisions thereof must prevail and no provisions of the Cr.P.C. can apply. The Full Bench of this Court has held, in para 35 of the decision in ***Mastiguda Aboobacker's case*** [2020 (6) KLT 522 (FB)], that the contention therein, based on Sec. 5 of the Cr.P.C., that a special form of procedure has been prescribed by the NIA Act and therefore, it excludes the invocation of the provisions of the Cr.P.C., as in Sec. 482, cannot be accepted, for the simple reason that the NIA Act actually does not prescribe a special procedure for investigating, inquiring into or trying the offences under the Act. The Full Bench categorically declared the law that the NIA Act is intrinsically interlinked with the provisions of the Cr.P.C., in the matter of investigation and trial, etc. In

that regard, it has to be borne in mind that Chapter III of the Cr.P.C. deals with the power of courts and Sec. 26, contained in Chapter III of the Cr.P.C., deals with "*courts by which offences are triable*". Sec. 26 of the Cr.P.C. provides as follows:

> *"**Sec.26.Courts by which offences are triable**. -Subject to the other provisions of this Code,--*
>
> *(a) any offence under the Indian Penal Code (45 of 1860) may be tried by--*
>
> *(i) the High Court, or*
>
> *(ii) the Court of Session, or*
>
> *(iii) any other Court by which such offence is shown in the First Schedule to be triable:*
>
> *(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by--*
>
> *(i) the High Court, or*
>
> *(ii) any other Court by which such offence is shown in the First Schedule to be triable."*

38. Sec. 26 deals with the status or rank of the court, which has the power to try the case, as to whether it is the High Court, the court of Sessions or any other court by which such offence is shown in the First Schedule to the Cr.P.C. to be triable or any other court, like the Magistrate's court, etc., by which such offences, shown in the First Schedule, to be triable. Moreover, Clause (b) of Sec. 26 of the Cr.P.C. specifically mandates that any offence under any other law shall, when any court is mentioned in that behalf in such law, be tried by such court and when no court is so mentioned, it may be tried by the courts covered by items (i) and (ii) of Clause (b) of Sec. 26. So, it can be seen that clause (a) of Sec. 26 deals with offences under the IPC and the three courts, mentioned

under Clause (a) of Sec. 26, would deal with the stipulations in the Cr.P.C. as to the status or rank of the courts concerned and not the territorial jurisdiction.

39. In addition, it will also be pertinent to refer to Sec.2(1)(d) of the UAPA, which defines "court" as follows:

> *"Sec.2 Definitions. — (1) In this Act, unless the context otherwise requires—*
> *(a) ....*
> *xxx xxx xxx*
> *(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act and includes a Special Court constituted under section 11 or under section 22 of the National Investigation Agency Act, 2008 (34 of 2008)."*

40. A combined reading of the relevant provisions contained in the UAPA, NIA Act and the Cr.P.C. would lead to the situation that the non-abstante clause, envisaged in Sec.13(1) of the NIA Act, could only be *vis-a-vis* any general stipulations in Sec. 26 of the Cr.P.C. and not *vis-a-vis* the territorial jurisdiction of the court concerned. The legislature, by the engraftment of Sec. 13(1) of the NIA Act, has made it clear like the day light that, notwithstanding anything contained in the Cr.P.C., every scheduled offence, as per the NIA Act, investigated by the agency concerned shall be tried only by the special court within whose local jurisdiction it was committed. The said stipulation does not, in any manner, deal with the territorial jurisdiction of the court concerned, making it clear that, even if there are any contra provisions in Sec.26 of the Cr.P.C., it can only be the special court, envisaged as per NIA Act, within whose territorial

jurisdiction it was committed, that will have the jurisdiction to try the offence. Going by the earlier discussion, the criminal court concerned in the State of Kerala will have territorial jurisdiction to conduct enquiries and trial into an offence, where the conspiracy may have been hatched in another state and the criminal acts, done in pursuance of such conspiracy, has been done in the State of Kerala. In the absence of the special prescriptions in NIA Act, then to identify as to which is the court concerned, one would have to go by the provisions contained in the Cr.P.C., including Part I of the First Schedule thereof, which deals with offences under the IPC or Part II of the First Schedule, which deals with offences as per the special laws. But, in view of the abovesaid special prescription in the NIA Act, the Special Court concerned, as envisaged in the NIA Act, will have the territorial jurisdiction in regard to the above in the abovesaid criminal acts.

41. Going by the abovesaid provisions contained in the NIA Act, UAPA and the Cr.P.C., in respect of scheduled offences, where the conspiracy was hatched in one State and the criminal acts were done in another State, either the Special Court, as per the NIA Act, in the former State or the Special Court, as per the NIA Act in the latter State, will have territorial jurisdiction. Hence, in the instant case, there is no dispute that the Special Court for trial of NIA Act cases, Kerala, is the court established

as per Sec.11 of the NIA Act for trying scheduled offences, as per the NIA Act. So, the Special Court concerned for NIA cases in Kerala will have territorial jurisdiction to try the case and correspondingly, the investigating agency concerned in Kerala State will have the jurisdiction to register FIR and conduct investigation in Kerala State thereof. Going by the prescriptions contained in Sec.6(5), Anx. I FIR has been registered by the NIA based on the directions issued by the Union Government. In the light of these provisions, we are of the view that it cannot be said that the impugned proceedings at Anx. I FIR and Anx. II final report/charge sheet, etc. are vitiated by inherent lack of jurisdiction or total lack of jurisdiction. We make it clear that the abovesaid findings have been made by us only in the limited context of considering this bail plea and the abovesaid findings will not have any impact on any other proceedings, including trial or any other appropriate proceedings, that may be set in motion by the applicants/appellants.

42. Apart from the above, there are some other crucial and cardinal aspects which would constrain us not to countenance the abovesaid pleas of the appellants. It is well established that the State Police investigation agency is statutorily authorized, as per the provisions contained in Chapter XII of the Cr.P.C., more particularly, Secs. 154, 156, etc., to register FIRs, where information relating to cognizable offences is

disclosed and so also, special laws concerned may also make appropriate provisions in that regard. However, the National Investigation Agency Act (NIA Act) was the statutory basis for the creation and constitution of the NIA by the Union Government, as envisaged in Chapter II, more particularly, Chapter III thereof. Chapter III deals with investigation by the NIA. Secs.6 to 10 of the NIA Act provide as follows:

> *"**Sec.6. Investigation of Scheduled Offences**. (1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.*
>
> *(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.*
>
> *(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.*
>
> *(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.*
>
> *(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.*
>
> *(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.*
>
> *(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.*
>
> *(8) Where the Central Government is of the opinion that a Scheduled Offence has been committed at any place outside India to which this act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.*

(9) For the purposes of sub-section (8), the Special Court at New Delhi shall have the jurisdiction.

***Sec.7.Power to transfer investigation to State Government.**-While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—*

(a) if it is expedient to do so, request the State Government to associate itself with the investigation; or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.

***Sec.8. Power to investigate connected offences.**-While investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence.*

***Sec.9.State Government to extend assistance to National Investigation Agency**.-The State Government shall extend all assistance and co-operation to the Agency for investigation of the Scheduled Offences.*

***Sec.10.Power of State Government to investigate Scheduled Offences.**-Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force.'*

43. A reading of the abovesaid provisions of the NIA Act would make it clear that the NIA is not statutorily authorized by the above Act to directly register FIR in respect of the offences envisaged as per the Act, viz., the scheduled offences and it cannot directly register FIRs and conduct investigations, except with the directions of the Union Government, as can be seen from provisions as in sub-sections 4 & 5 of Sec.6. In the instant case, the abovesaid statutory mandate has been complied with and it is not as if the respondent NIA has directly registered Anx. I(2) FIR dated 3.2.2022 and proceeded to conduct investigation thereof. But on the other hand, it is on the basis of the specific directives issued by the Union Government, as per Anx. I order dated 31.1.2022, that the respondent NIA

was directed by the Union Government, in exercise of the powers conferred under Sec.6(5) of the Act.

44. Going by the scheme and structure of the NIA Act, the respondent NIA has no discretion or jurisdiction to refuse to comply with the abovesaid directions of the Union Government, issued in terms of the provisions as per sub-sections 4 & 5 of Sec.6 of the NIA Act and the only option available to the NIA is to comply with the same and to register the FIR in the scheduled offences, etc. and to conduct investigation thereon. So, unlike in a matter involving the State Police conducting investigation, to investigate into cognizable offences, in terms Secs.154 & 156 of the Cr.P.C., etc., the respondent NIA has no such power or competence to directly register FIRs, in terms of the NIA Act, but will get jurisdiction only with the junction and intervention of the Union Government, as provided above. So, in a proceedings, where issues relating to the legality and validity of an FIR is raised in appropriate proceedings before a court of law, and the case is the one investigated by the State Investigating Agency, etc., as above, then the State through the Police investigating agency alone need be made party to the said proceedings and not the State Government concerned. On the other hand, where the issues, as in the present nature, involving the legality and validity of the FIR registered by the NIA is concerned, it is utmost imperative that the Union Government in the

Home Department is also a party to the said proceedings, as it is not only merely a proper party but also a necessary party to the said proceedings. So also, ordinarily, in bail applications, it may not be appropriate for impleadment of an authority, like the Central Government and therefore, *prima facie*, we are of the view that these issues are to be raised in an appropriately constituted proceedings, as envisaged in the provisions as per Sec.482 of the Cr.P.C., wherein not only the NIA is a party as a respondent, but also the Union Government is also a party. Therefore, apart from the serious limitations in even, otherwise, considering these issues relating to the legality of FIRs in bail proceedings, in cases of this nature, we would *prima facie* opine that, these issues may have to be raised in other appropriate proceedings, wherein the Central Government in the Home Department is also duly impleaded. At any rate, the Union Government is not made a party in this proceedings, as Union of India through NIA is the sole respondent. Further, Anx. I(2) FIR was registered as early as on 3.2.2022 and the appellants had not chosen to challenge the same through appropriate proceedings at any point of time and the investigation has been completed and Anx. II final report/charge sheet has been filed before the Special Court as early as on 3.9.2022 and the Special Court has also taken cognizance of the offences and has registered the case as Sessions Case, S.C. No. 3/2022/NIA/KOC. Therefore, this Court is of the

view that it may not be right and proper to fully entertain the abovesaid pleas on merits in a bail proceedings. However, the limited perspective that could be taken is to examine as to whether the abovesaid criminal proceedings, arising out of Anx.I(2) FIR, in Anx. II Final Report, are vitiated by the total absence or lack of jurisdiction and we have already held hereinabove that such is not the case.

45. In that regard, an aspect of this nature has been dealt with in a very recent verdict of a 3-Judge Bench of the Apex Court, rendered as per judgment dated 24.03.2023 in Crl. Appeal No. 889/2007 & connected cases (in the case in ***Arup Bhuyan*** *v.* ***State of Assam & anr.***) [2023 SCC OnLine 338]. In ***Arup Bhuyan*** *v.* ***State of Assam & anr.*** {(Crl.A.No.887/2007, decided on 03.02.2011) [(2011) 3 SCC 377]}, ***Indra Das*** *v.* ***State of Assam*** {(Crl.A.No.1383/2007, decided on 10.02.2011) [(2011) 3 SCC 380]} and ***State of Kerala*** *v.* ***Raneef*** [(2011) 1 SCC 784], a 2-Judge Bench of the Apex Court had read down the provisions contained in Sec.3(5) of the TADA Act and the provisions contained in Sec.10 and some other provisions of the UAPA, by holding that though Sec.3(5) & Sec.10 of the TADA Act invites criminal culpability, in relation to a mere membership of a banned organization, the fundamental rights guaranteed by the Constitution requires a more broader approach and held that, mere membership of a banned organization will not invite criminal culpability of

a person, unless he/she resorts to violence or incites people to violence or creates disorder by violence or incitement to violence, etc.

46. The 2-Judge Bench therein placed reliance on various decisions of the US Supreme Court and held as above. The abovesaid verdicts were rendered by the Apex Court, without the impleadment of the Union Government, even though those judgments have seriously read down the provisions contained in the UAPA, which is a Union Legislation. Aggrieved thereby, the Union Government had preferred review petitions in ***Arup Bhuyan's case*** supra [(2011) 3 SCC 377] and ***Indra Das's case*** supra[(2011) 3 SCC 380] and those review petitions, along with some other connected cases were referred subsequently by a 2-Judge Bench {***Arup Bhuyan*** *v.* ***State of Assam & anr.*** [(2015) 12 SCC 702]}, for determination by a 3-Judge Bench, regarding the correctness of the aforesaid impugned 2-Judge Bench verdicts. Later, the 3-Judge Bench of the Apex Court has rendered the abovesaid judgment dated 24.03.2023 in the aforesaid Crl. Appeals & connected matters [(2023) SCC OnLine 338]. Therein, it has been *inter alia* held by the 3-Judge Bench that the reading down of the provisions of the UAPA, which is a Central Legislation, without the impleadment and hearing of the Union Government, is not correct, etc. [see paras 64, 65 & 66).

47. The abovesaid declaration of law made by the Apex Court, is

analogically importable to the facts of this case, as the NIA has no powers to independently investigate into any offences, as above, without the junction and intervention of the Union Government, as envisaged in Sec.6(4) of the NIA Act and hence, the pleas of the petitioner and that too, especially in an appellate bail proceedings, regarding the issues of legality or otherwise of the FIR, is not legally tenable. As already held hereinabove, ordinarily, even impleadment of the Central Government or State Government in bail proceedings, may be in-apposite and improper and therefore, any such challenge is to be considered only in appropriately constituted proceedings, in the manner known to law, that too, after impleading not only the NIA, but also the Central Government in the Home Department as respondents.

48. Yet another facet of the abovesaid broad plea raised by the appellants is that the registration of Anx. I FIR by the NIA, is totally illegal and ultra vires, as it is a reiteration or forms part of the allegations covered by the earlier four crimes registered by the Kerala ATS and the earlier crimes registered by the Andhra Pradesh Police.

49. The argument of the appellants is that, initially, the 4 Kerala Police FIRs were registered on 20.1.2020, 8.2.2020, 25.2.2020 and 29.4.2020, which have been later entrusted for investigation to the Kerala Anti-Terrorist Squad and thereafter, the AP Crime was registered on

24.11.2020, pursuant to Anx. III. That, it is thereafter that the instant Anx. I(2) FIR has been registered by the NIA, Kochi, Kerala on 3.2.2022, pursuant to Anx. I directives of the Union Government on 31.1.2022. That, the allegations in the instant Anx. I(2) NIA FIR are only reiterations of the allegations in the above 4 Kerala ATS FIRs and the AP FIR or that, the allegations in the NIA FIR mainly forms part of the allegations in the afore 5 FIRs registered earlier. That, A-2, A-3, A-5 & A-6 herein are also accused persons among the 27 accused persons in the AP Crime and that, A-5 herein is also one among the accused in the aforesaid 4 Kerala ATS Crimes. That, the accused persons in the AP Crime could secure default bail on account of non completion of investigation within the outer time limit. So also, A-5 herein could secure default bail in some of the four Kerala ATS Crimes. That, since the allegations are substantially the same, the legally correct option for the NIA was to take over the investigation of the aforesaid four Kerala ATS Crimes and the sole AP Crime, by getting directives of the Union Government under Sec.6(4) of the NIA Act and then deal with the matter, in accordance with law. But that, since the accused have secured default bail in some of those criminal proceedings, as above, the respondent Union Government and the respondent NIA have taken the illegal route of registering a separate crime, as per Anx. I, so that the plea of the accused persons for bail was rejected in the present NIA

Crime and that, this is an illegality and abuse of the process. Further that, it is trite that only a single FIR could be registered as against a crime incident and that, fresh investigation, based on second and successive FIRs on the same crime incident, not being a counter case, filed in connection with the same or connected cognizable offence, alleged to have been committed in the course of the same transaction, is legally impermissible and liable for interdiction, etc. To buttress the said point, the applicants would place reliance on the decisions of the Apex Court in cases as in ***T.T.Antony v. State of Kerala & Ors.*** *[(2001) 6 SCC 181]*, ***Amitbhai Anil Chandra Shah v. CBI &Anr***. *[(2013) 6 SCC 348]*, etc.

50. In ***T. T. Antony's*** case supra *[(2001) 6 SCC 181],* the Apex Court has held that, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident giving rise to one or more cognizable offences, consequent upon the filing of successive FIRs whether before or after the filing of the final report under Sec.173(2) Cr.P.C., and that, it would be beyond the purview of Secs.154 & 156 Cr.P.C., and would amount to an abuse of the statutory power of investigation in a given case. It was held therein that, a case of fresh investigation, based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence, alleged to have been committed in the

course of the same transaction, in respect of which, pursuant to the first FIR, either the investigation is underway or final report, under Sec.173(2) of the Cr.P.C., has been filed, then it could be a fit case for exercise of the power under Sec.482 of the Cr.P.C., or under Article 226 or 227 of the Constitution of India. In the said case, the main prayer was quashment of the subsequent FIR, which was alleged to be filed in respect of the same transaction and the plea for quashment was allowed by the Apex Court.

51. In ***Amitbhai Anilchandra Shah v. CBI*** (2013) 6 SCC 348, the Apex Court dealt with a case, wherein the prayer was for quashing the impugned FIR, on the ground that it amounted to a second FIR, arising out of the same transaction and also praying that the impugned final report/charge sheet, filed in respect of the said impugned FIR, be treated as a supplementary charge sheet in the first FIR, etc. [see para 6 thereof].

52. In that view of the matter, the Apex Court held that the filing of the second FIR and the fresh final report is illegal and accordingly, had quashed the second FIR and ordered that the charge sheet filed, in pursuance of the second FIR, be made a supplementary charge sheet in the first FIR, etc.

53. It has to be borne in mind that there are serious limitations for a bail court, which is circumscribed by the restrictions in Sec.439 of the Cr.P.C as well as the additional and greater restrictions imposed by

Sec.43-D(5) proviso of UAPA, to consider pleas of the above nature, which essentially amounts to the alleged illegality of the FIR and plea based on the abuse of the process. For the limited purpose of consideration of the present bail plea, we have already held that the registration of Anx. I FIR and filing of Anx. II final report by the NIA, cannot be said to be vitiated on account of total absence of lack of jurisdiction. We have held only from the limited perspective of consideration of the bail plea. Further, more crucially, the Parliament, while setting out the gravity of the offences, envisaged as per Chapters IV & VI of the UAPA, as engrafted in the proviso to Sec.43-D(5) of the UAPA therein, it has been mandated that, in respect of offences as per Chapters IV & VI of the UAPA, such accused persons shall not be released on bail, if the court, on perusal of the case diary or the report made under Sec.173 of the Cr.P.C., is of the opinion that there are reasonable grounds for believing that the accusation against such persons is *prima facie* true.

54. The parameters for considering a bail plea, in the light of the abovesaid restrictions contained in Sec.43-D (5) proviso of the UAPA Act, has been dealt with by the Apex Court in decisions as in ***NIA v. Zahoor Ahmad Shah Watali*** [(2019) 5 SCC 1, paras 23 to 28]. The Apex Court has declared the position of law therein that, in such cases, the court should examine the case diary materials and the final report and without

getting into issues of admissibility of documents or probabilities or improbabilities of the events alleged by the prosecution, should assess as to whether there are reasonable grounds for believing that the allegations against the accused person is *prima facie* true. Therein, the materials gathered by the Investigating Agency and presented along with the final report, including the case diary, have to be reckoned and in that stage, the question of discarding the document, on the ground of inadmissible in evidence, is not permissible and that, the issues of admissibility of the document or evidence would be a matter of crime and that the court has to necessarily look into the contents of the allegations and materials and take the same into account as it is. The abovesaid grave restrictions have been imposed by the Parliament, as per the proviso to Sec. 43-D(5) of the UAPA, taking note of the nature and gravity of the offences, envisaged as per Chapters IV & VI of the UAPA, which deals with punishment towards terrorist activities (Chapter IV) and terrorist organizations and individuals (Chapter VI). Hence, the main parameters for consideration of the bail plea, as in the instant one, should be with reference to the parameters in Sec. 43-D(5) proviso of the UAPA and just as the bail court is not permitted to examine issues of admissibility of the evidence and documents and also to assess probabilities of the allegations of the Investigating Agency, it may not also be permissible for the bail court to examine issues regarding

legality of the FIR and abuse of the process, in such bail proceedings. This is so, as the Parliament has mandated that the jurisdiction of the bail court is circumscribed by the grave restrictions stipulated as per Sec. 43-D(5) proviso of the UAPA. However, *prima facie,* we may only venture to observe that, in a case of this nature, if regular bail could have been secured by the accused persons in all the previous FIRs, as in the four Kerala ATS FIRs and the AP FIR, on merits and not merely default bail on account of the default of the Investigating Agency in not completing the investigation within the statutory outer time limit or extended time limit, then the scenario would have been possibly different. In the instant case, going by the version of the appellants, the default bail was secured in the AP crime and two out of the 4 Kerala ATS crimes, on account of the default of the Investigating Agency in not completing the investigation within the time limit. We are told that investigation was completed in the other remaining two ATS Crimes within the time limit and that the appellants could not get bails/default bails in those two cases and that final report has been filed later in the other two ATS crimes.

55. It is by now well settled that the mere securing of default bail, by itself, may not confer indefatigable rights to such bailed out accused, to seek an immunity that it is not legally permissible for cancellation of such default bail, even after the completion of the investigation. It has been held

by the Apex Court in various decisions, including a recent one in the case, ***State through CBI*** *v.* ***T.Gangi Reddy @ Yerra Gangi Reddy*** [(2023) SCC Online 25] (paras 28, 34, 40, 41, 44, etc.), that, once an accused is released on default bail under Sec. 167(2) of the Cr.P.C., his bail, so secured, could be cancelled in a case where a final report/charge sheet is later filed, after the accused is released on default bail and a strong case is made out and on special reasons being disclosed from the final report/charge sheet that the accused has committed a grave non-bailable offence, in considering the grounds set out in Sec. 437(5) & Sec. 437(2) of the Cr.P.C and so, his default bail can be canceled on merits and the courts are not precluded from considering the application for cancellation of bail on merits. That, mere filing of the final report/charge sheet, is not sufficient, but, a strong case has to be made out from the final report/charge sheet, that the accused had committed a grave, non-bailable offence and he deserves to be in custody, etc. This position of law has also been laid down by the Apex Court in decision as in ***Mohd. Iqbal Madar Sheikh*** *v.* ***State of Maharashtra*** [(1996) 1 SCC 722] (para 10), ***Rajnikant Jivanlal & Anr.*** *v.* ***Intelligence Officer, Narcotic Control Bureau, New Delhi*** [(1989) 3 SCC 532] (paras 13 & 14), ***Raghubir Singh & Ors.*** *v.* ***State of Bihar*** [(1986) 4 SCC 481] (para 22), etc.

56. True that, the restrictive conditions mandated by the Parliament, as per Sec.43-D(5) proviso of the UAPA, are conditions that are quite onerous and place serious restrictions on the personal liberty of the accused. But, those subsections have been mandated by the Parliament, taking note of the gravity of the offences envisaged as per Chapters IV & VI of the UAPA, which deals with terrorist acts and terrorist organizations, etc., and taking note of the national interest arising out of considerations of the sovereignty, unity, integrity and security of the country and for tackling the grave problems of terrorism and related issues. Hence, we are of the view that, it may not be right and proper for us to consider the abovesaid pleas regarding the alleged illegality of the FIR and the final report/charge sheet in the present bail appellate proceedings and the parameters for consideration for grant of bail will have to strictly comply with the mandate contained in Sec. 43-D(5) proviso supra. However, where there is grave curtailment of the fundamental right of the accused persons in such cases, arising out of equal access to justice and right of speedy trial, the Apex Court has categorically held, in decisions as in ***Union of India*** *v.* ***K.A.Najeeb*** [(2021) 3 SCC 713] that, where the trial in such cases is unduly and unreasonably prolonged and the accused persons faced unreasonably long incarceration, on account of refusal of bail, then, out of consideration of the fundamental rights of such accused persons, in terms

of Article 21 of the Constitution of India, more particularly in relation to equal access to justice and right of speedy trial etc., the constitutional courts, like the High Courts and the Supreme Court, can consider grant of bail in such scenarios, notwithstanding the restrictions contained in the proviso to Sec.43-D(5) of the UAPA. The said scenario does not come into play at this stage of this case. As of now, this Court has to act within the discipline and rigors stipulated by the mandate of the Parliament, contained in Sec.43-D(5) proviso of the UAPA and so, this Court is not in a position to countenance the abovesaid pleas of the appellants based on the alleged illegalities and abuse of the process alleged in relation to the instant Anx. I FIR and Anx. II final report/charge sheet. This view is so taken in the limited context of this appellate bail plea and this will not, in any manner, prejudice them to advance their contentions in that regard, in other appropriate proceedings, in the manner known to law.

57. Further, there is yet another aspect of the matter. In decisions as in ***T. T. Antony's*** case supra *[(2001) 6 SCC 181],* the Apex Court has categorically held that registration of a second FIR, in respect of the same transactions, related to the earlier FIR, is illegal and in a case where the investigation in the first FIR is already completed, then formal permission may be sought from the competent criminal court and then the police investigating agency has to further investigate the case. That, in such cases,

further investigation can be conducted in respect of such subsequent information disclosed and in a case where the investigation in the first FIR has already been completed, by submission of the final report, the investigating agency is still at liberty to secure the formal permission of the criminal court and then conduct further investigation in the matter and to file additional/supplementary final report, etc.

58. In ***Amitbhai Anil Chandra Shah's*** case supra [(2013) 6 SCC 348], the Apex Court has held that where a second FIR is registered in respect of the same transactions covered by the earlier FIR and where a final report/charge sheet is filed in the second FIR, then the second FIR is liable to be interdicted, but the final report/charge sheet filed in the second FIR will have to be treated as an additional/supplementary final report/supplementary charge sheet pertaining to the earlier FIR. So, in other words, even in such a scenario, though the second FIR may be liable for interdiction, the result of the investigation conducted thereon will not be liable for interdiction, on the ground that the second FIR was registered without jurisdiction for the above reason, but that, the final report/charge sheet, filed on the completion of the second FIR, will have to be treated as a supplementary final report/supplementary charge sheet pertaining to the first FIR, where a final report may have already been filed.

59. Going by these well settled principles, we are of the view that,

even if we assume that the appellants may succeed in the interdiction of Anx. I(2) FIR, that may not automatically lead to the interdiction and quashment of the final report/charge sheet filed thereto, as in Anx. II and such a final report/charge sheet may have to be treated as a supplementary final report/supplementary charge sheet, etc.

60. In the instant case, the appellants have pointed that investigation in respect of 2 out of the 4 Kerala ATS crimes and the AP Crime have so far not been completed and the final report has been filed in respect of remaining 4 Kerala ATS Crimes. Hence, for the limited purpose of consideration of this appellate bail plea, this Court is of the considered view that the abovesaid contentions of the appellant cannot be countenanced. In other words, this Court is bound to examine the case in the light of the mandate made by the Union Legislature, as per the UAPA as well as by the law laid down by the Apex Court, in decisions as in ***Watali's*** case supra *[(2019) 5 SCC 1],* to examine as to whether the case materials, like Anx. II final report, disclose reasonable grounds to believe that the accusations against the accused persons are *prima facie* true.

Contention B

61. The appellants would point out various factual aspects and would urge that even if the entirety of the Case Diary materials and Anx. II Final Report/Charge Sheet, along with its contents are taken into account,

still no reasonable grounds are made out to believe that the accusations against the appellants herein are *prima facie* true. Hence, it is submitted that the appellants have overcome the restrictions envisaged in the proviso to Sec. 43D(5) of the UAPA, even though offences, as per Secs. 18,18B, 20, 38 & 39 of the UAPA, which are contained in Chapters IV and VI thereof, are involved in this case. Per contra, the respondent NIA would urge, on the basis of materials, that strict adherence to the dictum laid down by the Apex Court as in decisions as in ***Watali's*** case supra [(2019) 5 SCC 1, paras 23 to 27], will have to be made to by this Court and issues of admissibility and probabilities of the alleged incident have to be eschewed out from consideration and if those materials are taken as it is, then there are good grounds to believe that the allegations against the appellant accused persons in this case are *prima facie* true and that being so, the Special Court has not committed any illegality in considering the impugned order and so, no appellate intervention is warranted in the facts of this case.

62. Further, the learned Dy. Solicitor General of India, who is the authorized counsel of the respondent (NIA), would point out that the UAPA offences alleged against A-5 & A-6 are those punishable under Secs. 18, 20, 38 & 39 thereof and in addition thereto, A-6 is also alleged to have committed the offence as per Sec. 18B thereof and that, the offences as per

Secs. 18, 18B & 20 are contained in Chapter IV of the UAPA and that as per Secs. 38 & 39 in Chapter VI thereof. So, it is argued that, if a prima facie case, in terms of Sec. 43-D(5) proviso, is made out against both the accused, at least in respect of one among the abovesaid offences contained in Chapters IV & VI of the UAPA, then, in view of the abovesaid restrictive conditions in Sec.43-D(5) proviso, bail plea is only to be rejected and that this is so, even if it is assumed that no *prima facie* case is made out against the appellants, as against the other offences included in Chapters IV & VI, as above.

63. Further, there is no necessity for us to reiterate the details of the various aspects by both sides and we proceed to determine the above rival pleas. Before doing so, it will be pertinent to refer to some of the relevant provisions of the UAPA as well as some of the case laws governing the same.

Relevant provisions of the UAPA

64. Chapters IV & VI of the UAPA will be referred for short as "Chapter IV" & "Chapter VI" respectively. Chapter IV deals with punishment for terrorist activities and contains Secs.15 to 23. Chapter VI deals with terrorist organizations and individuals and it contains Secs.35 to 40. Sec.15 deals with terrorist acts. Sec.2(1)(k), Sec.2(1)(l) & Sec.2(1)(m) deals with the definitions of "*terrorist act*", *"terrorist gang"* & "*terrorist*

organizations" respectively.

65. Sec.15 and Sec.18 deal with terrorist acts and punishment for conspiracy, etc. respectively and the same provide as follows:

> *"**Sec.15. Terrorist act.**— [(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—*
>
> *(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—*
>
> *(i) death of, or injuries to, any person or persons; or*
>
> *(ii) loss of, or damage to, or destruction of, property; or*
>
> *(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or*
>
> *(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or*
>
> *(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or*
>
> *(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or*
>
> *(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.*
>
> *Explanation.—For the purpose of this sub-section,—*
>
> *(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;*
> *(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.*
>
> *(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule".*

> *"**Sec.18. Punishment for conspiracy, etc.**—Whoever conspires or attempts to commit, or advocates, abets, advises or 3 [incites, directly or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist 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 fine."*

Sec.18B deals with punishment for recruiting of any person or persons for terrorist act and the same reads as follows:

> *"**Sec.18B. Punishment for recruiting of any person or persons for terrorist act**.—Whoever recruits or causes to be recruited any person or persons for commission of a terrorist 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 fine."*

Sec.20 deals with punishment for being member of terrorist gang or organization and the same reads as follows:

> *"**Sec. 20. Punishment for being member of terrorist gang or organisation**.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine."*

66. As mentioned above, the aforesaid provisions are contained in Chapter IV. Sec.38 deals with offence relating to membership of a terrorist organisation. Sec.39 deals with offence relating to support given to a terrorist organisation. Both Secs.38 and 39 are contained in Chapter VI and the same read as follows:

> *"**Sec.38. Offence relating to membership of a terrorist organisation.**—(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:*
>
> *Provided that this sub-section shall not apply where the person charged is able to prove—*
>
> *(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and*
>
> *(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.*

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both."

*"**Sec. 39. Offence relating to support given to a terrorist organisation**.—(1) A person commits the offence relating to support given to a terrorist organisation,—*

(a) who, with intention to further the activity of a terrorist organisation,—

(i) invites support for the terrorist organization; and

(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is—

(i) to support the terrorist organization; or

(ii) to further the activity of the terrorist organization; or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1) shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both."

Sec. 35 deals with Amendment of Schedule, etc. and Sec. 36 deals with denotification of a terrorist organisation and the same read as follows:

*"**Sec.35. Amendment of Schedule, etc.**-- (1) The Central Government may, by notification, in the Official Gazette,--*

(a) add an organisation to the First Schedule or the name of an individual in the Fourth Schedule;

(b) add also an organisation to the First Schedule, which is identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, or the name of an individual in the Fourth Schedule to combat international terrorism;

(c) remove an organisation from the First Scheduleor the name of an individual from the Fourth Schedule;

(d) amend the First Schedule or the Fourth Schedule in some other way.

(2) The Central Government shall exercise its power under clause (a) of sub-section (1) in respect of an organisation or an individual only if it believes that such organisation or individual is] involved in terrorism.

(3) For the purposes of sub-section (2), an organisation or an individual shall be deemed to be involved in terrorism if such organisation or individual]--

(a) commits or participates in acts of terrorism, or

(b) prepares for terrorism, or

(c)promotes or encourages terrorism, or

(d) is otherwise involved in terrorism.

(4) The Central Government may, by notification in the Official Gazette, add to or remove or amend the Second Schedule or Third Schedule and thereupon the Second Schedule or the Third Schedule, as the case may be, shall be deemed to have been amended accordingly.

(5) Every notification issued under sub-section (1) or sub-section (4) shall, as soon as may be after it is issued, be laid before Parliament.

*"**Sec.36. Denotification of a terrorist organisation**.—(1) An application may be made to the Central Government for the exercise of its power under clause (c) of sub-section (1) of section 35 to remove an organisation from the Schedule.*

(2) An application under sub-section (1) may be made by—

(a) the organisation, or

(b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been rejected, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 37 within one month from the date of receipt of the order of such refusal by the applicant.

(5) The Review Committee may allow an application for review against rejection to remove an organisation from the Schedule, if it considers that the decision to reject was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order to such effect.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the First Schedule or the name of an individual from the Fourt Schedule."

67. The Apex Court has categorically laid down the position of law in ***Watali's case supra*** [(2019) 5 SCC 1], in paras 23 to 27 thereof, that, in view of the grave restrictions contained in the proviso to Sec. 43D(5)of UAPA, where the accused seeking bail is alleged to have committed any

offence under Chapters IV and VI of the UAPA, then he/she shall not be released on bail, if the court, on perusal of the case diary or the final report, is of the opinion that there are reasonable grounds for believing that the accusations against such person are found to be true. That, in that regard, the materials with the case diary and final report/charge sheet must be taken as it is and the court is not empowered to examine the issues of admissibility of documents/evidence etc. The court is also barred from examining the issues of probabilities or otherwise of the alleged factual incidents and the alleged facts disclosed from such materials should be taken as it is and then the court should make an assessment as to whether the court is of the opinion that it has good reason to believe that the accusations against the accused persons are prima facie true. Through this process of assessment, if the court considering the bail plea finds that such a prima facie case is made out, based on such materials taken as it is, after eschewing out consideration of admissibility, probabilities, etc., then bail plea will have to be repelled. On the other hand, if the abovesaid assessment leads to the situation that the court has reasonable grounds to believe that such accusations against the accused persons, who are alleged to have committed any offence involved in Chapters IV and VI, are not prima fracie true, then the bail plea could be considered. Paras 23 to 27 of the decision in ***Watali's case supra*** [(2019) 5 SCC 1] read as follows:

"23. *By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act. Nevertheless, we may take guidance from the exposition in Ranjitsing Brahmajeetsing Sharma [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] , wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paras 36 to 38, the Court observed thus : (SCC pp. 316-17)*

> "*36*. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?
>
> *37*. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.
>
> *38*. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be

construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. … What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea."

And again in paras 44 to 48, the Court observed : (SCC pp. 318-20)

"*44*. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* [*Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] this Court observed : (SCC pp. 537-38, para 18)

'*18*. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in *Puran* v. *Rambilas* [*Puran* v. *Rambilas*, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] : (SCC p. 344, para 8)

"*8*. … Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. … That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."

We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.'

> *48*. In *Jayendra Saraswathi Swamigal* v. *State of T.N.*[*Jayendra Saraswathi Swamigal* v. *State of T.N.*, (2005) 2 SCC 13 : 2005 SCC (Cri) 481] this Court observed : (SCC pp. 21-22, para 16)
>
> '*16*. … The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State* v. *Jagjit Singh* [*State* v. *Jagjit Singh*, (1962) 3 SCR 622 : AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and *Gurcharan Singh* v. *State (UT of Delhi)* [*Gurcharan Singh* v. *State (UT of Delhi)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.'"

24. *A priori, the exercise to be undertaken by the Court at this stage —of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.*

25. *From the analysis of the impugned judgment [Zahoor Ahmad Shah Watali v. NIA, 2018 SCC OnLine Del 11185] , it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.*

26. *Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.*

27. *For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence*

would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is."

68. Further, from the submissions of the appellants, it appears that the appellants have also complained that if this process of multi FIRs is permitted, then the same accused may have to face trial for the same offence, involving the same factual incidents, in more than one trial, which would be hit by the constitutional embargo in clause (2) of Art. 20 of the Constitution of India, which also has special statutory protection in terms of Sec. 300 of the Cr.P.C. and in that regard, it is pointed out by the appellants that A-5 is facing allegations of Sec. 20 (punishment for being a member of the terrorist organization) in not only the NIA case but also in the Kerala crimes and AP crimes and that the allegations raised against A-5, in respect of the offences as per Secs. 38 and 39, etc., may also be overlapping in this case, etc. Further that, A-6 herein is alleged to have committed the offence as per Sec. 18B (punishment for recruitment of any person/ persons for terrorist act) in both the said NIA case and the AP crime, etc. In this bail proceedings, after consideration of these pleas, this Court would only venture to observe that these are issues that have to be raised by the appellants in appropriate proceedings, in the manner known to law, especially in the trial, in relation to the pleas of double jeopardy and after factually establishing that the offences alleged against the accused persons in different trials are in in respect of the same factual transactions.

At this stage, from the submission of the appellants, it appears that final report has not been filed in the Andhra Case, though Final Reports are said to have been filed in the Kerala ATS crimes. Therefore, these pleas will have to be taken in appropriate proceedings at the appropriate stage, in the manner known to law.

69. Further, the Apex Court in the decisions as in ***Thwaha Fasal v. UOI*** [2021 SCC OnLine SC 1000] have reiterated the above dictum laid down by the Apex Court in ***Watali's case supra*** [(2019) 5 SCC 1]. In para 21 of ***Thwaha Fasal's case*** supra [2021 SCC OnLine SC 1000] the Apex Court has relied on the dictum laid down in para 23 of ***Watali's case supra*** [(2019) 5 SCC 1]. So, the competent courts determining bail pleas, be it at the original or appellate stage, are bound by the discipline of the mandate given by the Parliament, as per the proviso to Sec. 43(D)(5) of the UAPA and also to strictly adhere to the dictum laid down by the Apex Court in cases as in ***Watali's case supra*** [(2019) 5 SCC 1], etc. Ordinarily, any deviation therefrom would go against the mandate given by the Legislature as well as lead to non adherence to the law declared by the Apex Court, in terms of Art. 141 of the Constitution of India. However, that is not the last word on the subject, inasmuch as a 3-Judge Bench of the Apex Court in ***UOI v. K.A.Najeeb*** [(2021) 3 SCC 713] has held that, where long incarceration of such accused persons,

where courts are constrained to deny their bail pleas, in view of the restrictions in Sec. 43D(5) proviso and due to the undue prolongation of trial process, then where it is established that such unreasonable delay in completing the trial process would amount to deprivation of the right to equal access to justice and the right to speedy trial, which form part of Art.21 of the Constitution of India, then, to protect such constitutionally guaranteed rights, the Constitutional courts, like the High Courts and the Apex Court, have the discretion to consider the bail pleas, in view of these aspects and grant the same for good and convincing reasons in appropriate and rare cases and this could be even notwithstanding the restrictions contained in Sec. 43D(5) proviso. That aspect of the matter will come into play only when the requirements envisaged in the dictum laid down by the Apex Court in ***K.A. Najeeb's case*** supra [(2021) 3 SCC 713] are met, in the matter of unreasonable prolongation of trial process and deprivation of the fundamental right of equal access to justice and right to speedy trial, etc. It may be pertinent to refer to paras 15 and 17 of the dictum laid down by the Apex Court in ***K.A.Najeeb*** [(2021) 3 SCC 713], which read as follows:

> ***"15.*** *This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v.Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse*

consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

xxx xxx xxx

17. *It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."*

70. In the instant case, we are of the view that such a scenario has not arisen in the facts of the instant case, inasmuch as this Court has been apprised by the two appellants herein that they have been under judicial remand in this particular only since 21.3.2022 and 19.5.2022 respectively.

71. The substantial pleas of the petitioners in this regard are that, even if the entire materials, as per the case diary and Anx. II final report/charge sheet, are taken into account, still there are no reasonable grounds for a court of law to believe that the accusations against the present appellants are *prima facie* true and hence, in the facts and circumstances of this case, the appellants can successfully cross the restrictive barriers imposed as per the proviso to Sec. 43-D(5).

72. Both sides have made extensive submissions in this regard. There is no necessity for us to get into the details of the rival contentions of the parties. Hence, we proceed to examine and determine these issues.

(a) Legal aspects relating to Secs.20 & 18B of the UAPA

73. Sec. 20 is with the caption "punishment for being member of terrorist gang or terrorist organisation" and it provides that "*any person who is a member of a terrorist gang or a terrorist organisation, which is involved in a terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine*". Sec.2(1)(k) defines "*terrorist act*", by stating that it has the meaning assigned to it in Sec.15 and the expressions "*terrorism*" and "*terrorist*" shall be construed accordingly. Sec.2(1)(l) defines "*terrorist gang*" as follows :

> *"**Sec.2. Definitions**.—(1) In this Act, unless the context otherwise requires,—*
>
> *xxx xxx xxx*
>
> *xxx xxx xxx*
>
> *"(l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;*

Sec. 2(1)(m) defines "*terrorist organisation*" as follows :

> *"**Sec.2. Definitions**.—(1) In this Act, unless the context otherwise requires,—*
>
> *xxx xxx xxx*
>
> *xxx xxx xxx*
>
> *(m) "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;*

74. The aspects relating to Sec.35, more particularly the deeming

provision relating to an organisation or individual who are involved in terrorism and the parameters thereof, as envisaged in sub-section (3) of Sec. 35 and also the related aspects in respect of Sec. 36 thereof, etc., will be dealt with a little later.

75. The Apex Court in the celebrated case in ***Kalpnath Rai*** *v.* ***State through CBI*** [(1997) 8 SCC 732], has *inter alia* dealt with the issues relating to attracting the culpability for the offence, as per Sec. 3(5) of the Terrorist & Disruptive Activities (Prevention) Act, 1987 (TADA Act, for short), as can be seen from a reading of paras 34 & 35 thereof. It may be apposite to make a brief reference to the facts, which are relevant for the purpose of appreciating the dictum laid down by the Apex Court in paras 34 & 35 of ***Kalpnath Rai's case*** supra [(1997) 8 SCC 732], relating to the requirements for attracting the criminal culpability for the offence, as per Sec.3(5) of the TADA Act.

76. A reading of para 2 thereof would indicate that the first alleged terrorist act in that case is said to have happened on 30.04.1991 and the second alleged terrorist act was said to have happened on 12.03.1993. Sub-section (5) was inserted to Sec.3 of the TADA Act, by Amendment Act 43 of 1993, which came into force only on 23.05.1993 (see para 34 thereof). The Apex Court, in para 34, held that, by virtue of the constitutional protection under Article 20(1), *"no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an*

offence". Accordingly, Sec.2(h) of the TADA Act defines "*terrorist act*", by stating that it has the same meaning assigned to it in Sec.3(1) thereof and that, the expression shall be construed accordingly. Sec.3(1) dealt with terrorist act and its punishment. Sec.3(1) of the TADA Act provided as follows :

> *"**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 affect 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 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."*

Sec.3(3) of the TADA Act stipulated as follows :

> *"**Sec.3**. **Punishment for terrorist acts**. –*
>
> *xxx xxx xxx xxx*
> *xxx xxx xxx xxx*
>
> *(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 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 fine."*

77. As mentioned hereinabove, Sec.3(5) was introduced by way of amendment, which came into force only on 23.05.1993. The Apex Court held, in para 35 of ***Kalpnath Rai's case*** supra [(1997) 8 SCC 732], that there are two postulates for attracting the ingredients in sub-section (5) of Sec.3. The first is that the accused should have been a member of a "terrorist gang" or "terrorist organisation", after coming into force of sub-

section (5) of Sec.3, i.e., on or after 23.05.1993. The second is that the said "gang" or "organisation" should have been involved in terrorist acts, subsequent to the coming into force of Sec.3(5), which came in the Statute book only for the first time with effect from 25.03.1993. Accordingly, the Apex Court held that, unless both postulates exist together, Sec.3(5) cannot be invoked against the person. In para 36 thereof, reference has been made to "terrorist act", as defined in Sec.2(h) read with Sec.3(1). The requirements of Sec.3(1) have been dealt with in para 37. In para 38 it was observed that an accused, who does a terrorist act, falling within the abovesaid meaning, is liable to be punished under Sec.3(2). But that, there are some acts closely linked with the above act, but not included in Sec.3(1), such as entering into a conspiracy to do the above acts or abet, advise, incite, facilitate the commission of such acts and such acts are also made punishable under sub-section (3). In para 39, it was further held that it would be illogical to delink the lesser acts, enumerated in Sec.3(3), from the graver acts, specified in Sec.3(1), for understanding the meaning of "terrorist act", as indicated in Sec.3(5). In para 40, it was held that it is a cardinal principle of interpretation of law, that the definition given in the Statute is not always exhaustive, unless it is expressly made clear in the Statute itself and that the key words in Sec.2 of the TADA Act "*in this Act, unless the context otherwise requires*", are a clear guide to show that the

definitions given thereunder, are to be appropriately varied if the context so warrants. Hence, it was held by the Apex Court, in para 41 thereof, that, for the purpose of punishment, provided as per Sec.3(2), the culpable acts are terrorist acts, as specified in Sec.3(1). But, whereas, for the purpose of Sec.3(5), the terrorist act would not only embrace those enumerated in Sec.3(1), but also those other acts closely linked to them, as indicated in Sec.3(3). In other words, the Apex Court categorically declared the position of law that, for attracting the criminal culpability, as envisaged in Sec.3(5) of the TADA Act, which deals with membership of a "terrorist gang" or "terrorist organisation", which is involved in terrorist acts, the expression "*terrorist act*", appearing in Sec.3(5), would consist not only of the graver acts, envisaged in Sec.3(1), but also the lesser acts envisaged in Sec.3(3). However, in the facts of that case, the Apex Court noted, in paras 42 & 43, that though A-1 to A-6 were charged for the offence under Sec.3(5) of the TADA Act, none of the charges framed against the said accused contain any specification that any terrorist act, as envisaged above, i.e. the graver acts, as per Sec.3(1) or the lesser acts, as per Sec.3(3), have been committed by the organisation or gang, on or after 23.05.1993, on which day only the amendment laying down criminal culpability, as per Sec.3(5), was introduced in the Statute Book. It was also observed, in para 44 that, in view of the stark paucity of materials in evidence and in view of the total

want of any averment in the charges, in relation to the occurrence of any activity, either in terms of Sec.3(1) or Sec.3(3), that has happened on or after 23.05.1993, there was no necessity in the facts of that case to probe into the width and amplitude of the expressions "*terrorist gang*" or "*terrorist organisation*" or as to whether A-1 to A-6, who were alleged to have committed Sec.3(5) of the TADA Act were, in fact, members of any such gang or organisation. According to para 45, the Apex Court held that the conviction of A-1 to A-6 therein, who were alleged to have committed the offence as per Sec.3(5) of the TADA Act, cannot be sustained in law. Paras 34 to 45 of ***Kalpnath Rai's case*** supra [(1997) 8 SCC 732], read as follows :

> ***"34.*** *Sub-section 3(5) was inserted in TADA by Act 43 of 1993 which came into force on 23-5-1993. Under Article 20(1) of the Constitution "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence". So it is not enough that one was member of a terrorists' gang before 23-5-1993.*
>
> ***35.*** *There are two postulates in sub-section (5). First is that the accused should have been a member of "a terrorists' gang" or "terrorists' organisation" after 23-5-1993. Second is that the said gang or organisation should have involved in terrorist acts subsequent to 23-5-1993. Unless both postulates exist together Section 3(5) cannot be used against any person.*
> ***36.*** *"Terrorist act" is defined in Section 2(h) as having the meaning assigned to it in Section 3(1). That sub-section reads thus:*
>
> > *"3. (1) Whoever with intent to overawe the government as by law established or to strike terror in people or any section of the people or to alienate any section of the people or to adversely affect 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 firearms 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."

37. *The requirements of the sub-section are: (1) the person should have done an act in such a manner as to cause, or as is likely to cause death or injuries to any person or damage to any property, or disruption of any supplies; (2) doing of such act should have been by using bombs, dynamite, etc.; (3) or alternatively he should have detained any person and threatened to kill or injure him in order to compel the government or any other person to do or abstain from doing anything.*

38. *He who does a terrorist act falling within the aforesaid meaning is liable to be punished under sub-section (2) of Section 3. But there are some other acts closely linked with the above but not included in sub-section (1), such as entering into a conspiracy to do the above acts or to abet, advise, incite or facilitate the commission of such acts. Such acts are also made punishable under sub-section (3) which reads thus:*

"3. (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 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 fine."

39. *Can it be said that a person who conspires, abets, advises or incites or facilitates the commission of the acts specified in sub-section (1) was not committing a terrorist act? It would be illogical to delink the acts enumerated in sub-section (3) from those specified in sub-section (1) for the purpose of understanding the meaning of "terrorist act" indicated in Section 3(5).*

40. *It is a cardinal principle of interpretation of law that the definition given in a statute is not always exhaustive unless it is expressly made clear in the statute itself. The key words in the definition section (Section 2) themselves are a clear guide to show that the definitions given thereunder are to be appropriately varied if the context so warrants. The key words are these: "In this Act, unless the context otherwise requires."*

41. *Therefore the meaningful understanding should be this. For the purpose of sub-section (2) the terrorist acts are those specified in sub-section (1) whereas for the purpose of sub-section (5) the terrorist acts would embrace not only those enumerated in sub-section (1) but those other acts closely linked to them and indicated in sub-section (3) also.*

42*. When so understood, if there is any evidence to show that the gang to which A-1, A-2, A-3 or A-6 or any of them was a member, has done any such act after 23-5-1993 then the accused concerned is liable to be convicted under Section 3(5) of TADA.*

43. *But the fact is, in none of the charges framed against the above accused there is any specification that any terrorist act has been committed by a gang subsequent to 23-5-1993, nor has any evidence, whatsoever, been adduced to show that any terrorists' gang (of which those accused are the members or not) has committed any terrorist act after the said date.*

44. *In the light of stark paucity of materials in evidence and in view of total want of any averment in the charges regarding any activity after the said date it would be an idle exercise to further probe into the width and amplitude of the expression "terrorists' gang" or "terrorists' organisation" or as to whether A-1, A-2, A-3 or A-6 were members of any such gang.*

45. *The result of the above discussion is that conviction of A-1 to A-6 for the offence under Section 3(5) of TADA cannot be sustained under law."*

78. It is to be noted that Sec.15 of the UAP Act, dealing with terrorist act, would be broadly similar to Sec.3(1) of the TADA Act. The provisions in Sec.15 have already been quoted hereinabove and it can be seen that the provisions in Sec.15 are more wider in scope and ambit than the restricted contents of Sec.3(1) of the TADA Act. Sec.16 of the UAP Act is broadly corresponding to Sec.3(2) of the TADA Act. Sec.18 of the UAP Act, quoted herein above, is broadly similar to Sec.3(3) of the TADA Act. Sec.20 of the UAP Act, dealing with punishment for being a member of terrorist gang or terrorist organisation, is broadly similar to Sec.3(5) of the TADA Act. However, it has to be borne in mind that the TADA Act, 1987 contained no explicit definitions for the terms "terrorist organisation", or "terrorist gang", as appearing in Sec.3(5). It is also to be borne in mind that their Lordships of the Apex Court, in para 44 of ***Kalpnath Rai's case*** supra [(1997) 8 SCC 732], has also specifically observed that, in the facts of that case, there is no necessity to examine the width and amplitude of the expressions "terrorist gang" or "terrorist organisation", appearing in Sec.3(5) of the TADA Act. However, in stark contra distinction to this, Sec.2(1)(l) & Sec.2(1)(m) of the UAP Act provides explicit definitions for both terrorist gang and terrorist organization, respectively.

79. The First Schedule to the UAPA is referable to Sec.2(1)(m),

Secs.35, 36 & 38(1) and the heading thereunder, is “terrorist organisation”. Sec.2(1)(m) is referable to the definition of “terrorist organisation” and Secs.35 & 36 deals with amendment of the Schedule and de-notification of terrorist organisation, etc., respectively and Sec.38 deals with offences relating to membership of a terrorist organisation, etc. Item No.34 of the First Schedule is the “Communist Party of India (Maoist)”, all its formations and front organisations”. Item No.34 supra of the First Schedule is seen to have been inserted as per Statutory Order, S.O.No.1525(E) dated 22.06.2009. Further, the process of amendment of the Schedule, including addition of an organisation in the First Schedule or inclusion of the name of an individual in the Fourth Schedule, addition of an organisation in the First Schedule, which is identified as a terrorist organisation in a resolution of the Security Council under Chapter VII of the UN Charter, etc., removal of an organisation from the First Schedule or the name of an individual from the Fourth Schedule, etc., are contained in Sec.35(1). More crucially, Sec.35(2) mandates that the Central Government shall exercise its power under Sec.35(1)(a), in respect of an organisation or an individual, only if it believes that such organisation is involved in terrorism. The cardinal aspect of the matter is that sub-section (3) of Sec.35 further mandates that, for the purpose of Sec.35(2), an organisation or an individual, shall be deemed to be involved in terrorism,

if such organisation or individual–(a) commits or participates in acts of terrorism or (b) prepares for terrorism, or (c) promotes or encourages terrorism or (d) is otherwise involved in terrorism. So, the legislative mandate made by the Parliament, in the engraftment of Sec.35 under Chapter VI of the UAP Act, is that, on the one hand, the Union Government can exercise its discretionary power under Sec.35(1)(a) in respect of an organisation or individual, only if it believes that such organisation or individual is involved in terrorism. Further, crucially, for the purpose of Sec.35(2), an organisation or individual shall be deemed to be involved in terrorism, if such organisation or individual fulfills the ingredients in either of the four clauses, as per clauses (a) to (d) thereunder. We are not concerned with the case of a terrorist individual in this case. So, in other words, an organisation shall be deemed to be involved in terrorism, not only if it commits or participates in acts of terrorism or prepares for terrorism, but it has to be deemed to be involved in terrorism, if the organisation either promotes or encourages terrorism, or is otherwise involved in terrorism. So, by the scheme and structure of the UAP Act, more particularly, Chapter VI thereunder, as well as Sec.2(1)(m), dealing with the definition of "*terrorist organisation*", once an organisation is listed in the First Schedule or an organisation operates on the same name, as an organisation so listed in the First Schedule, then it fulfills the

definition of "*terrorist organisation*". If an organisation is so listed in the First Schedule, as per Sec.35(2) thereof, then it shall be deemed to be involved in terrorism, if it fulfills any of the four parameters, as per clauses (a) to (d) under Sec.35(3). It is not necessary that such an organisation should actually commit or participate in actual terrorism or should prepare for terrorism, as envisaged in clauses (a) & (b) thereof and even if such an organisation promotes or encourages terrorism or is otherwise involved in terrorism, i.e., it is involved in terrorism by any scenarios, other than those envisaged as per clauses (a), (b) or (c) under Secs.35 (2), it has to be deemed to be a terrorist organisation and once it is included in the First Schedule, either in the unamended original Schedule or by the process of amendment to the Schedule, then such an organisation has to be deemed to be involved in terrorism. In other words, such an organisation so listed, either by way of inclusion in the original unamended Schedule or amendment to the Schedule, would fulfill the definition of Sec.2(1)(m) of the Act, relating to terrorist organisation. However, where the abovesaid inclusion of the name of the organisation in the First Schedule is interdicted, in the manner known to law, either by virtue of the exercise of the powers of judicial review, subject to its limitations or by amendment of the Schedule or by de-notification of the terrorist organisation, as per Sec.36, then the scenario would be different. So long as the organisation,

like the CPI (Maoist), is included in the First Schedule, as per the unamended original version or by the amendment thereto and the same is not interdicted or altered or de-notified, in the manner known to law, such an organisation would fulfill the definition of "*terrorist organisation*", as per Sec.2(1)(m) and it is deemed to be involved in terrorism, in the eye of the law. Hence, for these reasons and for other reasons to be given hereinafter, we are of the view that there is a cardinal change in the legislative scheme, after the repeal of TADA and as per the subsequent provisions of the UAPA, as above and so, there is no necessity that, for attracting the criminal culpability, as per Sec.20 of the UAP Act, for being a member of a terrorist gang or terrorist organisation, the accused person should not only be a member of the terrorist gang, which is included in the First Schedule, but that, the organisation should actually commit some terrorist acts either as envisaged, as per Sec.15 or as envisaged as per Sec.18. Even if it is to be held that the organisation of the accused person should not only be a member of the terrorist organisation, as defined in Sec.2(1)(m), but also that the said organisation should be involved in terrorist act, it has to be borne in mind that, applying the dictum laid down by the Apex Court, in paras 38 to 41 of ***Kalpnath Rai's case*** supra [(1997) 8 SCC 732], the expression "*terrorist act*", used in the context of Sec.20, could consist of either the graver acts, as envisaged in Sec.15 or the

lesser acts, as envisaged in Sec.18 of the UAPA. This is so, as we have already referred to the broad similarities of Sec.3(1) of the TADA Act, *vis-a-vis* Sec.15 of the UAPA as well as that of Sec.3(3) of the TADA Act, *vis-a-vis* Sec.18 of the UAP Act and Sec.3(5) of the TADA Act, *vis-a-vis* Sec.20. A comparative reading of Sec.15 of the UAP Act and Sec.3(1) of the TADA Act would make it clear that the provisions in Sec.15 of the UAPA are more broader and wider than the restricted contents of Sec.3(1) of the TADA Act. That apart, though Sec.18 of the UAP Act, stipulates for criminal culpability, not only for conspiracy or attempt to commit commission of a terrorist act or conspiracy or attempt to commit any act preparatory to the commission of a terrorist act, etc., the same can also invite criminal culpability, when any person advocates or advises the commission of a terrorist act or advocates or advises the commission of any act preparatory to the commission of a terrorist act, etc.

80. Further, it is also to be noted that the abovesaid dictum laid down by the 2-Judge Bench of the Apex Court in ***Kalpanath Rai's case*** supra [(1997) 8 SCC 732], paras 35, etc., have been relied on by a subsequent 3-Judge Bench of the Apex Court in ***Tarun Bora @ Allok Hazarika*** *v.* ***State of Assam*** [(2002) 7 SCC 39, paras 5 & 6], which read as follows :

> "***5.*** *At this stage, let us go straight to one of the arguments advanced by Mr P.K. Goswami, learned Senior Counsel, which deserves consideration. It is the submission of Mr Goswami that the appellant is not liable to be*

convicted for an offence under Section 3(5) of the Act as the alleged offence had taken place on 18-8-1991 and Section 3(5) was inserted in TADA by Act 43 of 1993 which came into force on 23-5-1993, subsequent to the date of incident. Admittedly, the offence alleged to have been committed by the appellant had taken place on 18-8-1991. This fact is uncontroverted. This point had been set at rest by this Court in Kalpnath Rai v. State [(1997) 8 SCC 732 : 1998 SCC (Cri) 134] and batch of appeals, where a similar question was raised before this Court. Justice K.T. Thomas (as His Lordship then was) speaking for the Bench, while considering the applicability of Section 3(5) of the Act, in para 35 of the judgment said : (SCC p. 747)

> "*35*. There are two postulates in sub-section (5). First is that the accused should have been a member of 'a terrorists' gang' or 'terrorists' organisation' after 23-5-1993. Second is that the said gang or organisation should have involved in terrorist acts subsequent to 23-5-1993. Unless both postulates exist together Section 3(5) cannot be used against any person."

6. *In view of the decision of this Court in Kalpnath Rai [(1997) 8 SCC 732 : 1998 SCC (Cri) 134] the conviction of the appellant under Section 3(5) of the Act is not sustainable in law."*

81. A 2-Judge Bench of the Apex Court, in the case ***Thwaha Fasal v. Union of India*** *[2021 SCC OnLine SC 1000],* has held, in para 12 thereof, that the offence punishable under Sec.20 of the UAPA is attracted when the accused is a member of a terrorist gang or a terrorist organization which is involved in terrorist act. Sec.20 is not attracted unless the terrorist gang or terrorist organization of which the accused is a member is involved in terrorist act, as defined in Sec.15. Para 12 of ***Thwaha Fasal's*** case supra, reads as follows:

> *"12. The offence punishable under Section 20 is attracted when the accused is a member of a terrorist gang or a terrorist organisation which is involved in terrorist act. Section 20 is not attracted unless the terrorist gang or terrorist organisation of which the accused is a member is involved in terrorist act as defined by Section 15. Section 20 provides for a punishment of imprisonment for a term which may extend to imprisonment for life and fine."*

82. At the outset, it has to be borne in mind, that the abovesaid observation made by the Apex Court, in para 12 of ***Thwaha Fasal's*** case

supra *[2021 SCC OnLine SC 1000]*, will have to be understood in the light of the dictum earlier laid down by the 3-Judge Bench of the Apex Court in ***Tarun Bora's*** case supra [(2002) 7 SCC 39*, paras 5 & 6]*, which, in turn, has relied on the dictum laid down by the 2-Judge Bench of the Apex Court, in ***Kalpnath Rai's*** case supra [(1997) 8 SCC 732], more particularly para 35 thereof.

83. The dictum laid down in ***Tarun Bora's*** case supra and in ***Kalpnath Rai's*** case supra [(1997) 8 SCC 732] was regarding the requirements of Sec.3(5) of the TADA Act. So also, the perspective taken by the 2-Judge Bench of the Apex Court in ***Thwaha Fasal's*** case supra, should also be understood in the light of the subsequent dictum laid down by a 3-Judge Bench of the Apex Court in the recent verdict rendered on 24.3.2023, in Criminal Appeal No. 889/2007& connected cases *[**Arup Bhuyan v. State of Assam & Anr.** (2023) SCC OnLine SC 338]*. Discussions on these aspects will be made hereinafter.

84. This, we say so because, though the 2-Judge Bench verdict of the Apex Court in ***Thwaha Fasal v. UOI*** [2021 SCC OnLine SC 1000] has been referred to in the recent 3-Judge Bench verdict in ***Arup Bhuyan's* case supra**, there is no detailed discussion in the said recent verdict. The 2-Judge Bench of the Apex Court in ***Thwaha Fasal v. UOI*** [2021 SCC OnLine SC 1000], has held as follows, in paras 13 to 16:

"13. *On plain reading of Section 38, the offence punishable therein will*

be attracted if the accused associates himself or professes to associate himself with a terrorist organisation included in First Schedule with intention to further its activities. In such a case, he commits an offence relating to membership of a terrorist organisation covered by Section 38. The person committing an offence under Section 38 may be a member of a terrorist organization or he may not be a member. If the accused is a member of terrorist organisation which indulges in terrorist act covered by Section 15, stringent offence under Section 20 may be attracted. If the accused is associated with a terrorist organisation, the offence punishable under Section 38 relating to membership of a terrorist organisation is attracted only if he associates with terrorist organisation or professes to be associated with a terrorist organisation with intention to further its activities. The association must be with intention to further the activities of a terrorist organisation. The activity has to be in connection with terrorist act as defined in Section 15. Clause (b) of proviso to sub-section (1) of Section 38 provides that if a person charged with the offence under sub-section (1) of Section 38 proves that he has not taken part in the activities of the organisation during the period in which the name of the organisation is included in the First Schedule, the offence relating to the membership of a terrorist organisation under sub-section (1) of Section 38 will not be attracted. The aforesaid clause (b) can be a defence of the accused. However, while considering the prayer for grant of bail, we are not concerned with the defence of the accused.

14. *Section 39 deals with the offences relating to support given to a terrorist organisation. It covers three kinds of offences under clauses (a), (b) and (c) of sub-section (1) of Section 39. The offences punishable under clauses (a), (b) and (c) of sub-section (1) of Section 39 are attracted only when the actions incorporated therein are done with intention to further the activities of a terrorist organisation. As observed earlier, the activities must have some connection with terrorist act. Clauses (a), (b) and (c) are attracted only if actions/activities specified therein are done with intention to further the activities of a terrorist organisation.*

15. *Thus, the offence under sub-section (1) of Section 38 of associating or professing to be associated with the terrorist organisation and the offence relating to supporting a terrorist organisation under Section 39 will not be attracted unless the acts specified in both the Sections are done with intention to further the activities of a terrorist organisation. To that extent, the requirement of mens rea is involved. Thus, mere association with a terrorist organisation as a member or otherwise will not be sufficient to attract the offence under Section 38 unless the association is with intention to further its activities. Even if an accused allegedly supports a terrorist organisation by committing acts referred in clauses (a) to (c) of subsection (1) of Section 39, he cannot be held guilty of the offence punishable under Section 39 if it is not established that the acts of support are done with intention to further the activities of a terrorist organisation. Thus, intention to further activities of a terrorist organisation is an essential ingredient of the offences punishable under Sections 38 and 39 of the 1967 Act.*

16. *The punishment prescribed for both the offences is imprisonment for a period not exceeding 10 years or with fine or with both. The offence under Section 20 is more serious as it attracts punishment which may extend to imprisonment for life and fine. Depending upon the gravity of offence committed under Section 38 and/or 39 and other relevant factors, the accused can be let off even on fine."*

Further, in that regard, it is also to be noted that it is well-settled that the offences as per Secs.38 & 39 of the UAPA can be committed either by a member or non-member of a terrorist organization. Sec.38 envisages that there should be an intention to further the activities of the terrorist organization etc. Proviso appended to Sec.38(1) would make it clear that the offence under Sec.38(1) can also be committed by a member of the terrorist organization and the said proviso to Sec.38(1) reads follows:

> *"Provided that this sub-section shall not apply where the person charged is able to prove—*
> *(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and*
> *(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation"*

85. Further, the Apex Court, in para 13 of ***Thwaha Fasal's case supra*** [2021 SCC OnLine SC 1000], has inter alia observed that, if the accused is associated with a terrorist organization, then the offence punishable under Sec.38, relating to membership in terrorist organization is attracted, only if he associates with the terrorist organization or professes to be associated with a terrorist organisation and that the association must be with the intention to further its activities and that the activity has to be in connection with the terrorist act. So also, it has been observed, in para 14 thereof, that Sec.39 deals with offences relating to support given to a terrorist organization and it covers 3 kinds of offences under Clauses (a), (b) & (c) of Sec.39(1) and that offences punishable under

Clauses (a), (b) & (c) of Sec.39(1) are attracted only when the actions incorporated therein are done with the intention to further the activities of a terrorist organization and that the activities must have some connection with the terrorist act, etc. Here again, it has to be noted that the offences punishable as per Secs.38 & 39, included in Chapter VI of the UAPA, are having much lesser seriousness and gravity compared to the offence as per Sec.20, included in Chapter IV of the UAPA. That aspect of the matter has also been inter alia observed by the Apex Court in para 13 of ***Thwaha Fasal's case supra*** [2021 SCC OnLine SC 1000]. So, the observation that the activity has to be in connection with the terrorist act, as referred to in paras 13 & 14 of ***Thwaha Fasal's case supra*** [2021 SCC OnLine SC 1000], in the context of Secs. 38 & 39, will also have to be understood in the wider perspective of the expression 'terrorist act', appearing in Sec.20 in Chapter IV of the UAPA in view of the analogical implications of the earlier dictum laid down by the Apex Court in the 2-Judge Bench in para 35 of the ***Kalpnath Rai's*** case supra [(1997) 8 SCC 732] and in para 5 of the 3-Judge Bench verdict in ***Tarun Bora's case*** [(2002) 7 SCC 39], which was in relation to the criminal culpability under Sec.3(5) of the TADA Act. So, in other words, the intention to further the activities of a terrorist organization, as envisaged in Secs.38 & 39 of the UAPA, should fulfill the requirements as per Secs.38 & 39 and the activity or activities

and the expression 'further its activities', appearing in Sec.38 and the expression 'further the activity of a terrorist organization', appearing in Sec.39, should be understood in the wider context of 'terrorist act' in the context of the second ingredient of Sec.20 of the UAPA. In other words, the terrorist acts in the wider sense, can be the graver activities envisaged in Sec.15 or less graver activities envisaged in Sec.18 of the UAPA or could even be other activities, as encouraging or promoting terrorism or involved in terrorism in any other means referred to in Sec.35(3), as discussed supra. We are saying so only in the context of a terrorist organization, as defined in Sec.2(1)(m), which is included in the First Schedule of the UAPA.

86. This Court is of the considered view that this should be the correct perspective to be taken into account for making an analogical application of the dictum laid down by the Apex Court in regard to the requirements of the offence, as per Sec. 3(5) of the TADA Act, as held in paras 35 to 40 in ***Kalpnath Rai's*** case supra [(1997) 8 SCC 732], for the understanding of the requirements of Sec. 20 of the UAPA, in view of the substantial change in the legal architecture of the UAPA.

87. Incidentally, it is to be noted that the Prevention of Terrorism Act, 2002 ("POTA" for short) is a post-TADA enactment and a law prior to Chapters IV and VI of UAPA. Both TADA and POTA have not provided for

any explicit definition for “terrorist gang” or “terrorist organization”, unlike the definition for the same in Secs.2(1)(m) & 2(1)(l) of the UAPA. TADA also did not contain any scheduling of any terrorist organization or any provision for laying down the parameters for the concept of a terrorist organization, which is deemed to be involved in terrorism, as envisaged in Sec.18(4) of POTA and Sec.35(3) of TADA. Sec.3(5) of POTA is broadly similar to Sec.3(5) of TADA and Sec.20 of UAPA. Sec.3(5) of POTA has made certain improvisations compared to Sec.3(5) of TADA, inasmuch as Sec.3(5) of POTA is appended with the explanation thereunder that, for the purpose of sub-sec. (5) of Sec.3 of POTA, terrorist organization means an organization, which is concerned with or involved in terrorism. Whereas, Sec.18, in Chapter III of POTA, deals with declaration of a terrorist organization, which is broadly similar to Sec.35 of the UAPA. Secs.18(3) and 18(4) of POTA are broadly similar to Sec.35(2) and Sec.35(3) of the UAPA, inasmuch as these provisions stipulate that the Central Government may exercise its powers of scheduling, in respect of any organization, only if it believes that it is involved in terrorism and further that, an organization is deemed to be involved in terrorism, if it satisfies any other parameters, as per clauses (a) to (d) thereof. etc.

88. A 2-Judge Bench verdict of the Apex Court in ***State of Kerala v. Raneef*** *[(2011) 1 SCC 784],* arose out of an appeal preferred by the State

of Kerala to impugn the order dated 17.9.2010 in B. A. No. 5360/2010 rendered by this Court. A reading of the said bail order would indicate that the accused therein/A-9 (Raneef) was alleged to have committed various offences as per the IPC and the Explosive Substances Act and also offences under Sec.15 read with Secs.16, 18, 18B, 19 & 20 of the UAPA, in respect of a crime incident which is said to have happened on 4.7.2010. Without getting into the details, the learned Single Judge of this Court has held in the above impugned order that, the main *actus reus* alleged as against the accused A-9 therein (Dr. Raneef) is that, he, who is otherwise a Dentist by profession, had sutured the wound on the back of the injured accused person under local anesthesia and dressed the wound, etc. The prosecution case was that, this had helped the injured accused to escape apprehension by the police in a very sensitive UAPA case and the organization therein was not prepared or banned, either in terms of Sec.3 of the UAPA or in terms of the First Schedule read with Sec.35 of the UAPA. In short, the learned Single Judge, held that, going by the abovesaid allegations of overt act attributed against the accused therein, he could be granted regular bail. This was impugned by the State of Kerala, which led to the decision of a 2-Judge Bench of the Apex Court in ***Raneef's*** case supra *[(2011) 1 SCC 784]* dated 3.1.2011, wherein in para 8 thereof, reference was made to the restrictions in grant of bail, as per the proviso to Sec. 43D(5) of the UAPA.

The 2-Judge Bench of the Apex Court dismissed the Criminal Appeal filed by the State and upheld the impugned bail order granted by this Court and the Apex Court, further, after placing reliance on certain reported decisions of the US Supreme Court, regarding the Right to form associations, etc., for the distinction between "knowing membership" and "passive membership" and held that the decisions of the US Supreme Court, cited therein, would apply to our legal system as well, etc.

89. ***Arup Bhuyan v. State of Assam*** *[(2011) 3 SCC 377]* is the decision rendered on 3.2.2011 and it arose out of an appeal filed by the accused instituted under Sec.19 of the TADA Act and appears to challenge the conviction rendered by the trial court for the offence as per Sec.3(5) of the TADA Act.

90. The case of the prosecution therein appears to be that mere membership of a proscribed organization concerned would amount to criminal culpability in terms of Sec. 3(5) of the TADA Act. The Apex Court has held that their Lordships have already taken a view in ***Raneef's case supra*** [(2011) 1 SCC 786] based on the US Supreme Court decisions cited therein that the doctrine of guilt by mere association will not attract criminality and held that mere membership of a banned or proscribed organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intending to create disorder or

disturbance public peace by resort to violence. The 2-Judge Bench of the Apex Court, in paras 9 and 12 of ***Arup Bhuyan's case supra,*** held that the US Supreme Court decisions cited therein would also apply in the Indian context, as otherwise, it would amount to violation of the Constitutional guarantees under Arts. 19 and 21 of the Constitution and hence, it was reiterated that mere membership in a banned or proscribed organization will not make a person a criminal unless he resorts to violence, as above. On this basis, the Apex Court has allowed the criminal appeal and set aside the conviction and sentence rendered for the offence under Sec. 3(5) of the TADA Act.

91. ***Indra Das v. State of Assam*** [(2011) 3 SCC 380] is yet another decision of the 2-Judge Bench of the Apex Court rendered on 10.2.2011 on a criminal appeal filed by the accused under Sec.19 of the TADA Act. Therein also, the impugned conviction was under Sec.3(5) of the TADA Act. The Apex Court therein has again placed reliance on its previous decision in ***Raneef's case supra*** [(2011) 1 SCC 786)] and ***Arup Bhuyan's case*** supra [(2011) 3 SCC 377] and also placed reliance on various decisions of the US Supreme Court cited therein and held that guilt merely by association with a proscribed organization would not suffice for criminality and would go against constitutional guarantees. A reading of para 41 thereof would indicate that reference is made to Sec. 3(5) of the

TADA as well as Sec. 10 of UAPA. In that view of the matter the Apex Court allowed the appeal. So, it can be seen that the 2-Judge Bench of the Apex Court, in the aforecited 3 decisions, has substantially read down the provisions contained in the afore Union legislations, as in Sec. 3(5) of the TADA Act and Sec. 10 of the UAPA in the case of second and third decisions supra and Sec. 18B, Sec. 20 of the UAPA as per the aforecited first decision.

92. Now, it is very imperative to refer to the very recent verdict of the three-judge Bench of the Apex Court rendered on 24.3.2023 in the case ***Arup Bhuyan*** *v.* ***State of Assam & anr.***) [Crl. Appeal 889/2007 along with review petitions and special leave petitions, 2023 SCC OnLine 338]. The said 3-Judge Bench decision dealt with the correctness or otherwise of the dictum laid down in three decisions of the 2-Judge Bench of the Apex Court in ***State of Kerala v. Raneef*** [2011 (1) SCC 784], ***Arup Bhuyan v. State of Assam*** [(2011) 3 SCC 377] and ***Indra Das v. State of Assam*** [(2011) 3 SCC 380].

93. The Union Government, being aggrieved by the aforesaid views, preferred separate review petitions both in ***Indra Das's case*** supra [(2011) 3 SCC 380] and ***Arup Bhuyan's case supra*** and contended that reading down of the said Union legislations was not proper, inasmuch as the constitutional validity of those legislations was not under

challenge and also that the said reading down could have been made only after hearing the Central Government, as it involved Central legislations and challenged those decisions. A 2-Judge Bench of the Apex Court, as per order dated 26.8.2014, in the case in ***Arup Bhuyan v. State of Assam*** [(2015) 12 SCC 702] referred those decisions for authoritative determination by a 3-Judge Bench.

94. It was held by the 3-Judge Bench that, in the light of the earlier decisions of the Apex Court, as in ***Subramanian Swamy & Ors. v. Raju, through Member, Juvenile Justice Board & Anr.*** *[(2014) 8 SCC 390]*, the reading down of a legislative provision to save it from unconstitutionality is not permissible, unless and until the constitutional validity of such a provision is under challenge and if the law is a Central law, an opportunity is given to the Union Government to defend the impugned Parliamentary statute. It was held that, in the impugned decisions, neither was there a direct challenge to the constitutional validity of Sec. 3(5) of the TADA Act, Sec. 10(a)(i) and the other provisions of the UAPA nor was any opportunity given to the Central Government before reading down of those central statutes. It was also *inter alia* held therein that, the US Supreme Court decisions cited in the impugned judgments, were not applicable in the context of the provisions of Sec. 3(5) of the TADA Act, Sec. 10(a)(i) and other provisions in the UAPA, etc. Ultimately,

it was held by the Apex Court, in para 98-100 thereof, as hereunder:

> ***"98.*** *In view of the above and for the reasons stated above we hold that the view taken by this Court in the cases of State of Kerala v. Raneef, (2011) 1 SCC 784; Arup Bhuyan v. Union of India, (2011) 3 SCC 377 and Sri Indra Das v. State of Assam, (2011) 3 SCC 380 taking the view that under Section 3(5) of Terrorists and Disruptive Activities (Prevention) Act, 1987 and Section10(a)(i) of the Unlawful Activities (Prevention) Act, 1967 mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence and does an act intended to create disorder or disturbance of public peace by resort to violence and reading down the said provisions to mean that over and above the membership of a banned organization there must be an overt act and/or further criminal activities and adding the element of mens rea are held to be not a good law. It is observed and held that when an association is declared unlawful by notification issued under Section 3 which has become effective of sub-section 3 of that Section, a person who is and* ***continues*** *to be a member of such association is liable to be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine under Section 10(a)(i) of the UAPA, 1967.*
>
> ***99.*** *Any other decisions of the High Court taking a contrary view are held to be not a good law and are specifically overruled by this Judgment.*
>
> ***100.*** *Reference is answered accordingly."*

95. So, it can be seen that the 3-Judges' Bench of the Apex Court, in the recent verdict rendered on 24.3.2023, in Criminal Appeal No.889/2007 & connected cases *[**Arup Bhuyan v. State of Assam & Anr. (2023 SCC Online 338**]* has now categorically held that the earlier view taken by the three 2-Judges' Bench of the Apex Court in ***Raneef's*** case supra *[(2011) 1 SCC 784]*, ***Arup Bhuyan's*** case supra [*(2011) 3 SCC 377]* & ***Sri Indra Das's*** *case supra [(2011) 3 SCC 380]* does not reflect the correct legal position. Accordingly, it was declared that the said earlier view under Sec.3(5) of the TADA Act and Sec.10(a)(i) of the UAPA, etc., that mere membership of a banned organization will not criminally incriminate a person unless he resorts to violence or incites people to

violence and does an act intended to create disorder or disturbance of public peace by resorting to violence, etc., by reading down the said provisions, to mean that, over and above the membership of a banned organization, there must be some overt act and/or further criminal activities and adding a criminal element of *mens rea,* are held to be not good law.

96. The further legal dictum laid down therein that, once an association is declared as unlawful, by notification issued under Sec.3 of the UAPA and such notification becomes effective under Sec.3(3), then a person, who is and continues to be a member of that association, is liable for punishment, as per Sec.10(a)(i) of the UAPA etc., which would apply with equal or more vigour in the case of Sec.20 of the UAPA. Hence, the legal position is that, if an accused person is a member of a terrorist organization/unlawful association, as the case may be, then membership of such banned/proscribed organization is sufficient to invite criminality and there is no necessity that the accused person should indulge in overt acts of violence or incite others to violence, etc., to invite the criminal culpability in terms of Sec.20 or Sec.10(a)(i) of the UAPA, as the case may be.

97. Further, the appellants have relied on the dictum laid down in para 25 of the decision of the Division Bench of the Guahati High Court rendered on 01.07.2011 on Crl. Appeal No. 73/2011 in the case ***Londhoni***

Devi vs. NIA [2011 SCC Online Gau 278 = (2012) 4 Gau Law Report 120], wherein it has been inter alia held that Sec.20 of the UAPA provides for great latitude in the imposition of a sentence. Sec.20 provides for a sentence from the rising of the Court to imprisonment for life, etc, inasmuch as the said provision stipulates that the sentence may extend to life imprisonment. That, the reason for this wide margin is quiet obvious that it caters to the extent of involvement in the activities of terrorist organization or terrorist gang and if the involvement of the accused is superficial, minimal sentence may be imposed by the trial court and if the involvement is overwhelming, even life imprisonment may be imposed. There is no quarrel with the said proposition, inasmuch as the wordings of Sec.20, regarding the sentence, are clear. It is also true that Sec.3(5) of TADA provided for a sentence of not less than five years which may extend upto life imprisonment and/or fine, whereas Sec.3(5) of POTA consists of sentence which may extend to life imprisonment or fine or both. Certainly, both in Sec.20 of UAPA and Sec.3(5) of repealed POTA, there is no minimum sentence, as conceived in Sec.3(5) of TADA etc. Therefore, we would only *prima facie* venture to observe that wider latitude of discretion is available at the stage of sentencing for the offence as per Sec.20 of the UAPA, depending upon the gravity and involvement of the accused in the activities of the terrorist organization or terrorist gang.

98. The argument of the learned counsel for the appellants, based on para 25 of the Gauhati High Court Division Bench decision in ***M.Londhoni Divi's case supra*** [2011 SCC OnLine Gau 278], is that, as the minimum sentence of not less than 5 years stipulated for the offences as per Sec.3(5) of the TADA Act has been taken away in the subsequently enacted Sec.20 of UAPA, the dictum laid down in the recent 3-Judge Bench decision in ***Arup Bhuyan's case supra*** [2023 SCC OnLine 338], in relation to Sec.3(5) of the TADA Act, cannot have any application in the case of Sec.20 of the UAPA. In this regard, it has to be borne in mind that the minimum sentence of not less than 5 years, envisaged in Sec.3(5) of the TADA Act, has been taken away from Sec.20 of the UAPA, but the maximum punishment (life imprisonment) continues to be the same. Further, merely because minimum sentence is not envisaged for Sec. 20 of UAPA is no ground for this Court to accept the abovesaid contention of the appellants. Further, there is a tectonic shift in the other provisions of the UAPA compared to TADA in the engraftment of terrorist organization as per Sec.2(1)(m) read with First Schedule thereof and Sec. 35 of the UAPA, etc. and therefore, what is involved is that the understanding of the expression “terrorist act”, appearing in Sec. 20 of the UAPA, is much wider in scope and ambit compared to the same expression appearing in Sec.3(5) thereof. Hence, the abovesaid contention of the appellants cannot be

countenanced by this Court. Further, the aspects regarding the deletion of the minimum sentence and the observations made by the Gauhati Division Bench, in para 25 of the decision in ***M.Londhoni Devi's case supra*** [2011 SCC OnLine Gau 278], are matters to be reckoned at the sentencing process which is post-conviction stage. We are now only concerned with issues of regular bail, after filing of the final report.

99. We have already held that, as regards the second ingredient of Sec.20 of the UAPA, mere membership of the accused in a terrorist organization included in the First Schedule would be sufficient and that, once such terrorist organization is included in the First Schedule, then going by the impact of Sec.35(3) of the UAPA, the said organization is deemed or treated to be involved in terrorism. This position is a direct fallout of the legal position laid down by the 3-Judge Bench of the Apex Court in the recent verdict in ***Arup Bhuyan's*** case supra [*(2023) SCC OnLine SC 338]*.

100. We have also held, that, the contention of the accused, that, what is envisaged in the second requirement of Sec.20 of the UAPA is that the terrorist organization is involved in terrorist act and not merely a terrorist organization which is deemed to be involved in terrorism, as envisaged in Sec.35(3) of the UAPA, is hyper-technical in nature. The answer to such hyper-technical contention is that, satisfying the second

requirement under Sec.20, the prosecution need to have some materials to show that the terrorist organization, so included in the First Schedule, has done some acts to encourage or promote terrorism or is involved in terrorism in some other means and that, it is not necessary that in all cases, the terrorist organization included in the First Schedule should necessarily commit or participate in the acts of terrorism or prepares for terrorism.

(b) Legal aspects of Sec.18B of the UAPA

101. Sec.18B of the UAPA deals with *'punishment for recruiting of any person or persons for terrorist act'* and it is stipulated therein that, whoever recruits or causes to recruit any person or persons for the commission of a terrorist 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 fine.

102. It has to be borne in mind that the act of recruiting any person or persons, as envisaged in Sec.18B, could be for various purposes. *Prima facie*, there could be various scenarios that could possibly arise under Sec.18B. For instance, it is not as if the criminality under Sec.18B would arise only if a recruitment is done by a terrorist organization or terrorist gang or terrorist individual. There could be even cases where the terrorist organization or terrorist gang or terrorist individual may, for the purpose of secrecy and confidentiality, entrust the task to an outside person for

recruiting a person or persons for commission of a terrorist act, as envisaged in Sec.18B. So also, it is not as if the criminal culpability would arise only if the person is to be recruited as a member of a terrorist organization or terrorist gang. There could be multifarious scenarios, including recruitment as a mercenary or hired professional and not as a member. Therefore, there is no necessity for us to have an all comprehensive overview on the scope and amplitude of Sec.18B.

103. The allegation in the facts of this case is that, there was recruitment to membership of the terrorist organization, involved in this case, which is an organization included in the First Schedule of the UAPA. *i.e.*, an organization which would fulfill the definition of 'terrorist organization', as per Sec.2(1)(m) read with the First Schedule of the UAPA. So also, the specific allegation is that, certain members/activists of the said proscribed organization has recruited or caused to recruit the persons concerned as members of the said terrorist organization.

104. An allegation of that amplitude, that member/members of a terrorist organization has recruited or caused to recruit person/persons as members of the said terrorist organization, would also come within the scope and ambit of Sec.18B. When the allegation is that of recruiting or causing to recruit any person/persons as members of the Scheduled terrorist organization, then we are of the view that the expression 'terrorist

act', appearing in Sec.18B, should be understood in the broader perspective, as understood in the expression 'terrorist act', appearing in Sec.20 of the UAPA. We are taking this view only in the context of the present allegation of members of the terrorist organization having done acts to recruit or causing to recruit person/persons as members of the said terrorist organization and not in any other scenarios, as such scenarios does not arise in the particular case before us. This we say so, as, in a case where a member of a terrorist organization recruits or causes to recruit any person as a member of the said terrorist organization, then the said stage is penultimate to the stage of actual membership of the latter person in the terrorist organization, as envisaged in Sec.20 of the UAPA. Therefore, in such a case, which involves acts of recruitment or causing recruitment of the latter person as a member of the terrorist organization, then at that stage, there is no question of any actual commission of a terrorist act, except the broader acts arising out of Sec.18 or Sec.35(3). Hence, the expression 'terrorist act' appearing in Sec.18B in the facts of this case has to be understood in the very same broader perspective as it is to be understood *vis-à-vis* the expression 'terrorist act' appearing in Sec.20.

105. So, in other words, in a scenario, as in the instant one, where the allegation is that members of the terrorist organization has recruited or caused to recruit persons as members of the terrorist organization for the

purpose of enlarging their membership base and for strengthening and augmenting their activities and objectives, then what is to be evolved is that, such recruitment or causing of recruitment as members of the terrorist organization is with the intention of either committing any grave activities, as envisaged in Sec.15 or even lesser activities, as envisaged in Sec.18 or for doing any acts for encouraging or promoting terrorism or to be involved in the objectives of terrorism in any other manner.

106. So, in the present case of allegations of recruitment or causing to recruit as members of the terrorist organization, the first requirement is the act of recruitment or causing recruitment of the person/persons concerned as members of the terrorist organization and the second requirement is the terrorist act envisaged in Sec.18B, which is to be understood broadly. In other words, the recruitment or causing of recruitment as members of terrorist organization is in the context of the broader perspective, as above, and it is not necessary that in all cases, it should be for involving in activities of graver nature, but could also be for involving in much lesser graver activities, for encouraging or promoting of terrorism or for involvement in the objective of terrorism, by any other means.

107. So, the twin requirements of Sec.18B, in the factual context of this case, are that, there should be acts of recruitment or causing of

recruitment of person/persons as members of the terrorist organization included in the First Schedule and secondly that, the second requirement in the context of Sec.18B should also be satisfied. Going by entry 34 of the First Schedule, the terrorist organisation could be CPI (Maoist), all its formations and all its frontal organisations.

(c) Legal aspects regarding Sec. 18 of the UAPA

108. Sec.18 of the UAPA deals with *'punishment for conspiracy'* and it is stipulated therein that, whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist 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 fine.

109. Reference has already been made to the above provision. The said provision deals not only with conspiracy, but also other acts like attempts to commit, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or even any act preparatory to the commission of a terrorist act. In other words, even if the accused person advocates or advises, etc., the commission of any act preparatory to the commission of a 'terrorist act', as understood in Sec. 15, then the criminal culpability in Sec. 18 could be attracted.

110. In this context, it has to be borne in mind that the scope and ambit of Sec.3(5) of the TADA Act is much more restricted and narrower than the corresponding section in Sec.15 of the UAPA. For instance, the requisite *mens rea* is contained in the operative portion of Sec.15(1). The requisite *actus reus* are contained in Clauses (a), (b) & (c) appended under Sec.15(1).

111. Sec.15(1)(a)(i) envisages the scenario where, whoever does any act with the requisite *mens rea* as above,

> *(a)..... by any other means of whatever nature to cause or likely to cause*
> *(i) ..... or injuries to any person/persons,*

then the same would attract the criminal culpability thereunder. So also, going by Sec.15(1)(a)(ii), if any person does any act with the afore requisite *mens rea*,

> *(a)..... by any other means or whatever nature to cause or likely to cause.....*
> *(ii) loss of or damage to or destruction of property, etc.,*

then the same also would entail the afore criminality.

112. Further, if, as envisaged by Sec. 15(1)(c), whoever does any act with the afore requisite *mens rea*,

> *(c)..... or does any other act in order to compel..... any other person to do or abstain from doing any act,*

then also the criminal culpability, as per Sec.15, for 'terrorist act' would be entailed.

113. In this bail application, there is no necessity for us to get into

the fine-tuned and nuanced understanding of those ingredients, as to whether the rules of interpretation, like *'ejusdem generis'*, *'noscitur a socii',* etc., are to be applied and if so, in what manner. The purpose of this discussion is only to have an understanding that the abovesaid provisions of Sec.15 of the UAPA would clearly show that those provisions are much more wider than its corresponding provisions in Sec.3(1) of the TADA Act. In other words, the ingredients in Sec.18, in a case where the accused person advocates or advises, etc., the commission of any act preparatory to the commission of a 'terrorist act', will have to be understood in the context of wider provisions in Sec.15, as in the afore extracted provisions, as in Secs.15(1)(a)(i) and (ii) or Sec.15(1)(c), etc.

(d) Aspects relating to Secs.38 & 39 included in Chapter VI of the UAPA

114. The provisions contained in Secs. 38 & 39 have already been extracted hereinabove.

115. The offence as per Sec.20 of the UAPA has been alleged against both A-5 & A-6. Whereas, offence as per Sec.18B is alleged against A-6. The general objectives and general activities of the prescribed orgnisation are dealt with in paras 17.1 to 17.4 of Anx. II Final Report and the same has already been extracted in para 17 of this judgment. The summary of the allegations is contained in para 17 of Anx. II final report, more particularly, paras 17.5 to 17.19, which has already been extracted

hereinabove (see para 17 of this judgment).

116. Offences as per Secs.38 & 39 of the UAPA are alleged against both A-5 & A-6, which is provided in paras 17.14, 17.16 & 17.17 of Anx. II final report (refer para 17 of this judgment). Offence as per Sec.18 of the UAPA has been alleged as against both A-5 & A-6., which is provided in para 17.11 of Anx. II (refer para 17 of this judgment). The analysis of the factual allegations disclosed from the materials of the CD, final report, etc., have been referred to in paras 9 to 14, more particularly, paras 9, 11, etc. thereof of the impugned bail rejection order of the Special Court.

117. As per the final report, there are 5 protected witnesses, as envisaged in terms of Sec.44 of the UAPA and they have been nomenclatured as Protected Witnesses A, B, C, D and E respectively. The said Protected Witnesses will be referred for convenience as A, B, C, D and E respectively. A-4 has been made approver and he will be referred for short as 'A-4 approver'. The other charge witnesses will be referred as per their charge witness status assigned in the final report. Protected Witnesses are said to be formerly activists of the proscribed organization or its frontal organizations and according to the prosecution, they have voluntarily decided to co-operate with the prosecution in this case.

118. Perusal of the statements would reveal that, A has stated about his background and how he got influenced to join the above terrorist

organization, CPI (Maoist) and that, he had married a fellow Maoist cadre of a *Dalam* in 2017. The prosecution case would indicate that *Dalam* is an Armed Squad of the Peoples Liberation Guerrilla Army (PLGA), which is said to be the Armed Force Wing of the proscribed organization and that, it is the part and parcel of the said terrorist organization, as it constitutes armed force/armed wing. Various incidents relating to Maoist Cadres, including A-1, the spouse of A-4, etc., have been stated by him about the operations of the PLGA in the Western Ghat Zone. Further, crucially, he would state, in para 5 thereof, that in the first week of January, 2019, he was instructed by a leader/member of the organization, as per the direction of A-1, to bring two cadres, who belonged to Andhra Pradesh from Gundlupet in Karnataka. A code for the APT (Appointments of Place and Time) meeting was also arranged as per the usual procedure. He further stated that, A, along with A-4 approver, of Kambamala Estate in Wayanad, and his friend B, had started from Kambamala in A-4 approver's jeep and from Mananthavady in Wayanad, they had rented a car to go to Gundlupet in Karnataka. Further that, after reaching Gundlupet, they had arranged the transactions/meeting as per their code and two persons were collected from there. Thereafter, they proceeded to Sulthan Bathery etc. During the journey, A could learn that the two persons were A-5 & A-6. They got down at Kambamala Estate and A-5 & A-6 were taken into the forest by him and

certain other people. Thereafter, A-5 had joined the Kabani Dalam, which, as per the abovesaid version, would mean that A-5 had joined as a member of the *Dalam*-Armed Squad of the Armed Force Wing of Kabani in Wayanad, Kerala. Further that, A-6 wanted to go back to Andhra Pradesh, for which he got permission from the organization, and after one week, A had dropped A-6 near Thirunelli Temple and A-6 had thus gone back to Andhra Pradesh and A-5 continued in Kabani Dalam. Later, A-5 took part in the Southern Zonal Committee meeting of the Armed Force Wing held at Banasura Dalam. Further that, A and A-5 had worked together in PLGA (Armed Force Wing) for more than one year and that, A-5 had told him that it was A-6 who had prompted him to join PLGA (Armed Force Wing) of the Western Ghat Special Zonal Committee (WGSZC) in Kerala. Further that, after working for one year in Kabani Dalam, A-5 was transferred to Nadukani Dalam. Later, A-5 went to Andhra Pradesh after two months of joining the Nadukani Dalam, in the last quarter of 2020 and he went to his home town, where he was arrested by the Police. Further, Protected Witness A would say that he was fed up with the life in forest and after knowing the government policies for the welfare of the tribal people, he wanted to quit the CPI (Maoist) and hence, he had surrendered before the District Police Chief, Wayanad, Kerala, etc.

119. The abovesaid version has been broadly reiterated by

Protected Witness A in his Sec. 164 Cr.P.C. Statement, recorded before the learned Magistrate concerned, wherein the learned Magistrate has specifically noted, after interaction with A, that he was fully aware of the consequence of his version and that, he has made the said disclosure voluntarily, etc.

120. Protected Witness B, in his statement, has given his background details and that, he had acquaintance with A-4 approver for more than 10 years and that, he went for long trips in the jeep of A-4 approver. Further that, in the last quarter of 2018, B had got acquaintance with various members of the CPI (Maoist). Then, he and A-4 approver had gone to Mangalore along with another person. Further crucially, he would state, in para 5 thereof, about the afore incident that occurred in January, 2019, which was earlier stated by Protected Witness A. The details of said journey from Kambamala in the jeep of A-4 approver and as to how they met A-5 & A-6 and how they had travelled together with A-5 & A-6 are narrated by him. Further, he would state that, during their conversation, he came to know that the two new persons so collected were A-5 & A-6. He had also broadly stated about the said journey and that, A-5 & A-6 had gone to forest along with Maoist cadres in the tea estate. He would also state about further trips made in the jeep of A-4 approver, etc.

121. Protected Witness B has also given Sec.164 Cr.P.C. Statement

before the learned Magistrate, who has noted that the consequences of the disclosure were made known to B and that, he was fully prepared to make the disclosure voluntarily, etc. The abovesaid incident relating to the rendezvous meeting with A-5 & A-6, as narrated earlier by Protected Witness A, has also been reiterated by him, as can be seen from a reading of pages 6 & 7 of the Sec.164 Cr.P.C. Statement given by Protected Witness B.

122. Protected Witness C, in his statement, has also given his background details, as to how he came to know about the Maoist organization and that, he had joined the CPI (Maoist) organization in the first week of January, 2017. Further that, he was given weapons' training in use of rifles and revolvers and that, he was also entrusted to meet tribal students' schools, hostels and colleges and to identify potential use to work for the party and to propagate the ideology of the CPI (Maoist) and he had conducted various meetings and classes at various schools and he had around 50 students as followers in 10 villages in a district in Andhra Pradesh. He had contacted them very frequently to survey about the problems faced by villagers and students. Various other incidents relating to the activities of the organization are graphically described by him. Suffice to say, in para 6 of his statement, he has stated that in the month of May, 2017, A-3 & A-2 had visited a powerful leader of the organization

(Name of the said leader is mentioned in the statement and there is no necessity to disclose the name herein) and C had received them and they had travelled for 5 kms through a thick forest. On the next day, a meeting was convened in the named district in Odisha. The said leader had instructed them to widen their activities and to conduct secret study classes to attract youths in urban areas. That, in reply, A-3 had told that they have identified two persons, namely A-5 & A-6, and motivated them to join the Armed Forces Wing of the PLGA and the said leader had also handed over Rupees Two Lakhs to A-2 for furthering their activities. Protected Witness C has also given statement before the learned Magistrate under Sec. 164 Cr.P.C. There also, the Magistrate has recorded the procedure and has stated that C had voluntarily given the said statement. The abovesaid aspects in the afore statement are broadly reiterated by C in his Sec. 164 Cr.P.C. Statement. Pages 4 & 5 thereof contains the narration of the aforesaid incidents of meeting of A-3 & A-2 with the aforesaid leader, in the presence of C.

123. Protected Witness D has also stated the background as to which he was attracted to the Maoist ideology and he had joined the CPI (Maoist) organization in 2005. But that, as a party member and armed cadre, he had performed various duties, like sentry, patrolling, conducting party classes in schools in his area in Odisha. Further that, he was trained

in using various weapons, like rifles, guns, etc., including AK-47. That, he was an important functionary of the PLGA and took part in 30 encounters with security forces during his association with PLGA. Various other incidents are also graphically narrated by him. More crucially, he would state, in para 8 of the statement, that, in the beginning of the year 2017, A-1, who is a central committee member of the organization, had visited the aforesaid leader mentioned hereinabove and discussed about the activities of the organization in South India and during that conversation, A-1 had discussed about the setback faced by the afore terrorist organization in the tri-junction of Kerala-Tamil Nadu-Karnataka after the death of a central committee member in police encounter and A-1 also emphasised for the need for revival of the organization, by inducting new cadres and that, A-2 & A-3 had also come to meet the earlier mentioned leader. They discussed about the importance of strengthening the urban squads of the Armed Wing and recruiting new persons to the PLGA. In reply, they said that they have identified two people, who are willing to join PLGA and the afore leader instructed them to concentrate more on urban activities and handed over a few bundles of currency notes to A-2 to further the activities of the urban area. Protected Witness D has also given Sec.164 Cr.P.C. statement before the learned Magistrate, as above. The aforesaid aspects in his statement have also been reiterated by him in his Sec. 164 Cr.P.C.

Statement.

124. Protected Witness E, in his statement, has also given various details and about the distribution of money by the aforesaid leader and that, another person (who is named in the said statement) used to collect lots of money from outside, in the name of the organization and he used to given only a portion of the same to the aforesaid leader and the said leader had warned the other person a few times about the misappropriation of funds. Further that, he had acquaintance with A-2 & A-3 and has given the details. In para 8 of the said statement, he has stated that he knows A-5 for the last 6 years. That, A-5 was made a convener of a frontal organization, by name PKS, in Chitore and that, after his arrest in the aforesaid Andhra Pradesh Crime, he came to know that A-6 was entrusted with the work of transporting cadres from forest to urban areas and vice versa and assisted cadres in getting medical aid and that, he is involved in many criminal cases. Further, crucially, he would state, in para 9 thereof, that, in the month of January, 2019, A-5 was taken to Kerala by A-6 to join the *Dalam* without the knowledge of another leader. That, after the arrest of A-5, leaders of a frontal organization came to know about it and there was serious rift between the leaders of the two organizations. Further that, even after the return of A-6, he had concealed the details of his journey and his close acquaintance with the organization to Protected Witness E, though he

had discussed about various other matters. Further that, later, A-5 had returned from Kerala in November, 2020, and he had also concealed details of his journey. But, the Police came to know about his return and he was arrested at Piduguralla, after few days of his reaching the native place. During interrogation, A-5 had disclosed about A-6. Only after A-5's disclosure did the frontal organization come to know about the involvement of A-6 in transporting A-5 to Kerala. Thereafter, E, as the State President of the organization, had called a State Working Committee Meeting, to expel him (presumably A-6) from the organization. Later, the Co-ordination Committee, consisting of A-2, A-3 and another person, had denied the proposal of E in their meeting and the same was conveyed to him by another person. Further that, he had come out of the frontal organization in the month of February, 2022, due to difference with other leaders, because of their lifestyle and involvement of members in criminal activities. That, many members of the said frontal organization were involved in criminal cases and the organization was not ready to correct or expel them, after repeated requests. That, hence, he was constrained to co-operate with the Police, by disclosing these factual aspects and that, he does not want any more youth to be trapped by the above outfit, etc.

125. The process of granting pardon to A-4, so as to legally confer the status of approver, as per Sec.306 of the Cr.P.C. was not completed

prior to the filing of the final report. Hence, we wanted clarifications from the respondent NIA in that regard. Accordingly, statement dated 24.3.2023 has been filed on behalf of the respondent NIA, in which it has been inter alia stated, in para 3 on pages 2 & 3 thereof, that Anx. II final report was filed in this case on 3.9.2022 and even prior thereto, Criminal Miscellaneous Petition, Crl.M.P.No.202/2022 in RC 1/2022/NIA/KOC in the above crime was filed by the NIA before the Special Court under Sec.306 of the Cr.P.C., praying that pardon be granted to A-4. Further, in Anx. II final report, it is specifically stated that statement of A-4 under Sec.164 Cr.P.C. has been recorded and the petition has been submitted before the special court for grant of pardon. Later, the Special Court, as per Anx. R-1 (a) Order dated 30.9.2022, has allowed the said application and A-4 was tendered pardon, which he accepted on the condition that he shall make full and true disclosure to the whole of the circumstances and facts to his knowledge relating to the offence and to every other person concerned, etc. Further, it is stated in para No. 4 on page 3 of the said statement, that Sec.164 Cr.P.C. statement of A-4 approver is part of the final report as protected document, etc. Further that, the process of including A-4 as additional witness in S.C.No.3/2022 is in progress and that A-4 will be examined as a witness once the trial commences.

126. We have also perused through the Sec.164 Cr.P.C. statement of

A4 approver, recorded by the learned Magistrate, which forms part of the final report. The learned Magistrate has recorded the procedure followed, pursuant to which, he has stated that he has reasons to believe that the approver has made the disclosure voluntarily despite knowing the consequences. A-4 has stated about the acquaintance he developed with various Maoist cadres. He stated that on a day in the beginning of the year 2018, while returning home, which is the first acquaintance he had with Maoist cadres, near the house of another person near Kambamala Estate, in which Protected Witness A and 3 others were in the group, all of them were in green uniform carrying guns. They inquired about the wages. Various other interactions with them are also mentioned. Further, it is stated, in pages 10 & 11 thereof, that as requested by protected witness 'A', the approver had taken 'A' along with 'B' to Gundlepete on January 5th, 2019. From Gundlepete, they had collected two persons to come back to Kambamala Estate, Wayanad. From their conversations, the approver could realize that one of them is A-5 and the other is A-6. When they had reached Kambamala Estate, two persons were waiting for them. From there, A-5 and A-6, along with A, had gone to the Forest. He could realize that the said two new persons, viz A-5 and A-6 had come from Andhra Pradesh to Wayanad to join the Kabani Dalam Arms Squad of the Armed Wing of the CPI (Maoist). Protected Witness B in his Sec. 164 statement

has also stated that when A-5 and A-6 were identified, A-5 and A-6 told protected witness A about their respective names and A had told that their regular names should not be used and that A-5 should henceforth be called as '*Surya*' and A-6 should be called as '*Sudhakar*'. The prosecution has a specific case that this naming ceremony is an important aspect of conferring membership to the Dalam, the armed force wing.

127. A brief overview of the statements given by CWs 5, 6, 9, 10, 11 & 12 would also be pertinent. CW-5 and CW-6 have stated about the incident on 08.02.2020, when 4 males and 3 females, with guns and wearing green uniforms had come to Kambamala Tea Estate junction, Wayanad and they chanted anti-governmental slogans and pasted posters against the Government on the walls of the bathroom of the said Tea Estate Junction. Many colony inmates had gathered there to listen to the speeches of those Maoists. The Maoists also asked about the problems faced by the people of the colony. Later, on 25.02.2020, various officials along with one person, who was one among the aforesaid 4 males, had come to the Kambamala Estate Ground. From the Police personnel, they could understand that the said person is A-5, etc. CW 9 has stated that on 24.02.2020, at about 8 pm in the evening, when two women and two men wearing green uniform and holding arms, had come to his house near Aralam Farm near Kannur District, they asked him about the difficulties

faced by people in the Aralam Farm and also asked for food grains. Some food grains were given to them. Later, CW-11 also came there and he could also see the above Maoist. CW-10 has also stated that on 24.02.2020, at about 7.30 pm, two men and two women, wearing green uniforms and holding arms, had come to his house near Aralam Farm. Later they asked for food and grains. Since he did not have food grains stock, he could not offer them. They came to his house, and charged their mobile phones and torches and from there, they went to the residence of CW-9. Later, CW-9 told him (CW-10) that the above 4 Maoists had collected food grains from him. Later, when the Aralam Police had shown the photographs of the Maoists, CW-10 could identify A-5 herein as one among them. CW-9 has also spoken about the incident near Aralam Farm on 24.02.2020. At about 8.15 pm on that day, when he had gone to the house of CW-9, he could see two women and two men wearing green uniforms and holding arms. They had told that they are members of CPI (Maoist) Organization and worked for the welfare of the tribal and backward community. Incidentally, CW-9 has also said that when the above 4 Maoists had asked for food and grains, he was forced to give some food grains to them due to their constant pressure, even though he did not have much food with him. That, at that time, CW-11 had also come to his house. Later, CW-11 has also reiterated the above version of CW-9 that CW-9 was forced to give food grains to the

above Maoists. Later, when the Aralam Police had showed him the photographs of the Maoists, he could identify one among the 4 as A-5. CW-12 had stated that he is residing with his family in Ambayyathode colony and on 20.01.2020, at about 6.30 am, he heard slogans raised against the Prime Minister and the Chief Minister of Kerala and they had seen one woman and three men wearing green uniforms holding arms and raising slogans. They pasted posters against the Government in the town premises and served Maoist notice to him and few other persons who were present in the town. Later, when the Police had shown the photographs of the Maoist cadres, CW-12 could identify one among them as A-5.

128. CWs 17 to 21 have also, *inter alia*, stated about their previous knowledge of acquaintance about A-5 and A-6. They know about their involvement in the CPI (Maoist) Party and its frontal organizations and about various other incidents in relation to the accused persons.

129. Document No. 31 is the disclosure cum pointing out statement of A-5 in this NIA crime. Therein, it is stated that during the course of the said interrogation, on 18.03.2022, A-5 had voluntarily disclosed that if he is taken to Kambamala Estate, he would show the place at which he, along with A-6, were there. Pursuant to the said disclosure statement, A-5 had led the Police team and pointed out the place at Kambamala Estate on 19.03.2022 and he pointed out that the place is a tri-junction of roads and

he identified the tri junction and stated that he (A-5) along with A-6 were brought there. Whereas, document No. 30 is the disclosure cum pointing out statement of A6. That, A6 had made disclosure statement on 22.05.2022 that if he is taken to Gundlepet in Karnataka, he will show the place from where he (A-6), along with A5, was picked up by Protected Witness A, A4 Approver and Protected Witness B in the first week of January 2019 and that, if he is taken to Kambamala Estate in Wayanad, he will show the place to which he (A-6) brought A-5 with the help of Protected Witness A, Approver (A4) and Protected Witness B in the first week of January 2019. That, pursuant to the said disclosure statement, A-6 had pointed out the above said locations etc. We have also perused through the other contents of the final report. It is to be noted that Entry No. 34 of the First Schedule of UAPA is as follows:

> *"34. Communist Party of India (Maoist), all its formations and front organizations".*

So, the terrorist organizaition notification, scheduled as per Entry No.34 of the First Schedule is not only the CPI (Maoist) party, but all its formations and front organizations. So, if a person happens to be a member of either the CPI (Maoist) party or any of its formations or any of its front organizations, then it has to be held that he is a member of the said terrorist organization. So also, if a person recruits or causes to recruit another person, as a member of the said organization, including its armed

wing, which forms the *dalams* of the PLGA or any of its front organizations, then it would also amount to person who recruits or causes to recruit the latter person for criminal culpability, in terms of Sec. 18B. Of course, the ingredients of the wider connotation of "terrorist acts", as explained above, should also be kept in mind.

130. A perusal of the abovesaid materials would broadly reveal that some of the accused persons, including A-6, have taken steps to recruit or cause to recruit A-5 as a member of one of the *Dalams* (Armed squads), which is the armed force wing of the CPI (Maoist) party. So also, materials would broadly reveal that A-5 and A-6 are thus members of the above said organization. The materials would also broadly indicate that at least the organization consisting of some of its members, some of whom happen to be the above accused persons, have also indulged in acts of advocating or advising or facilitating the commission of certain acts preparatory to the commission of a terrorist act, as understood in Sec. 18. Some of the alleged incidents would also indicate that some of the acts may be Sec.18 preparatory acts for acts covered by Clause (a) of Sec.15(1), to the extent it involves acts by any other means of whatever nature to cause or likely to cause injuries to any person or persons or may fulfill Sec.18 preparatory acts of acts covered by Clause (c) of Sec. 15(1).

131. Some of the alleged acts, like forcing the charged witnesses to

part with their food grains and creating fear among the locals by going there in green uniforms of Maoists along with arms, raising anti-national slogans against the State authorities, distributing pamphlets and pasting posters for disseminating the Maoist ideology, etc. would at least broadly come within the acts, by way of advocating, advising, inciting, etc., commission of at least preparatory acts to the commission of terrorist acts, as to doing acts to compel any person to do or abstain from doing any act etc., or does any act by other means of whatever nature to cause or likely to cause injuries to any person or loss or damage to property, etc. So also, some of the aforesaid acts of anti-national distribution of pamphlets and pasting of posters for spreading the violent Maoist ideology, etc., would certainly come within the acts of promoting or encouraging terrorism, as understood above. Hence, assessing the abovesaid materials as it is, without getting into the issues of admissibility of evidence or document or probabilities of alleged events, etc, it can be seen that the broad ingredients of offences as per Secs. 18 and 20 are made against both A5 & A6. So also, the ingredients of Sec. 18B are brought out against A-6.

132. Some of the aforesaid acts would also come within the ingredients of the lesser offences as per Secs.38 & 39 in Chapter VI of the UAPA, as it amounts to doing of acts with the intention to further the activities of the terrorist organization, as envisaged in Sec.38, at any rate,

as regards the requirement laid down in ***Thwala*** **Fazal's case supra** [2021 SCC Online 1000], that the said further activities should have some nexus with terrorist acts. It has to be borne in mind that the said furthering activities should have some nexus with terrorist acts, as understood broadly in the context of Secs.20, 18B, etc. inasmuch as the offences as per Secs.38 & 39 are much lesser in gravity. So, it can be said that some of the abovesaid activities would amount to at least the lesser activity of promoting and encouraging terrorism or advocating, inciting, commission of preparatory acts, as envisaged in Sec. 18. Further, some of the abovesaid acts done by A-5 & A-6 would amount to furthering the activities, so as to invite support for the CPI (Maoist) party and its frontal organizations and the support is not necessarily restricted to seeking of money, etc. or other property. The alleged acts of meeting the villagers in the locality and exhorting them that the Maoists would take care of their problems, etc., would also amount to acts as conceived in some of the sub-clauses of clause (a) of Sec. 39(1) or clause (c) of Sec. 39(1). Hence, on an overall evaluation of the materials on record, in the light of the legal position adumbrated above, would lead to the result that taking those materials as it is, there are reasonable grounds for this Court for believing that the accusations against A-5 & A-6 are prima facie true, as understood in Sec. 43-D(5) proviso. We have gone through the statements of the charge witnesses concerned and

hence, are of the opinion that the findings and factual analysis made by the Special Court in paras 11, 14 of the impugned Anx. IV bail rejection order are broadly reasonable and proper and, at any rate, they cannot be branded as unreasonable. Hence, in the light of the dictum laid down by the 3-Judge Bench of the Apex Court in ***Watali's case supra*** [(2019) 5 SCC 1 paras 23 to 27], this Court is not in a position to hold that the considered view taken by the Sessions Court, as per the impugned Annexure IV order is in any manner vitiated by grave illegality or unreasonableness or that this Court should overrule the said decision and grant regular bail to the accused.

133. Further, we also note that there are sufficient materials to show that the accused (A-5 & A-6) are actually involved in the *dalams* of the PLGA of the CPI (Maoist) party. There are 5 protected witnesses, as envisaged in Sec.44 of the UAPA read with Sec.17 of the NIA Act. The materials would also show that A-6 was earlier an active member of the above terrorist organization and had later surrendered before the Police and had disobeyed the organization. Much later, he has now again been actively involved in the said organization, etc. The Prosecution has alleged that there are various cases against A-6 as well as A-5. Whereas, the appellants would urge that A-6 has been acquitted in almost all the serious cases. Since there are materials to show that A-5 & A-6 have been actively

involved in the above terrorist organization and that too, located in various States, there is serious likelihood of both of them absconding or fleeing away from the long arm of the law, in case they are released on bail. A-1 to A-3 are said to be absconding and A-4 has been accorded approver status. Sub-sec.6 of Sec.43D of the UAPA mandates that the restrictions in Sec.43D(6), etc. in the grant of bail are an addition to the restrictions under the Cr.P.C. for the grant of regular bail, as per Sec.439 of the Cr.P.C. Further, we note that the nature and gravity of the allegations raised in these cases, as disclosed from the prosecution materials, including the final report, are quite serious and grave.

134. The submission of the Prosecution that, in case the appellants are released on bail, then there is serious likelihood of them threatening or endangering the security of protected witnesses, cannot be easily brushed aside by this Court. Hence, even otherwise, this Court is inclined to take the view that it will not be right and expedient to grant regular bail to the appellants, taking note of the parameters and restrictions governing the exercise of the discretion, in terms of Sec.439 Cr.P.C. Further, the exceptional scenario of violation of fundamental rights, as envisaged in the 3-Judge Bench decision of the Apex Court in ***K. A. Najeeb's case supra*** [(2021) 3 SCC 713], does not arise in the fact scenario as of now, nor has such case been, in any manner, strongly urged either before the bail court

or before us.

135. The upshot of the above discussion is that there are no grounds to interdict with the verdict of the special court in refusing bail to the appellants and for this Court to grant the relief. It is made clear that the abovesaid observations and findings are made only from the limited perspective of consideration of the issues in this appellate bail proceedings and these observations and findings shall not, in any manner, even remotely prejudice the contentions in the other appropriate proceedings that may be raised in the manner known to law.

With these observations and directions, the above Criminal Appeal will stand dismissed.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-
C.S.SUDHA, JUDGE

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APPENDIX OF CRL.A 1359/2022

PETITIONERS' ANNEXURES

ANNEXURE I	**COPY OF THE ORDER OF GOVERNMENT OF INDIA DATED 31/01/2022 ALONG WITH FIR IN RC 1/2022/NIA/KOC**
ANNEXURE II	**COPY OF RELEVANT PART OF CHARGE SHEET IN SC NO.3/2022 IN THE FILES SPECIAL COURT FOR TRIAL OF NIA CASES, KOCHI**
ANNEXURE III	**COPY OF REPORT FILED BY INSPECTOR OF POLICE, PIDUGURALLA POLICE STATION BEFORE THE COURT OF JUNIOR CIVIL JUDGE, IDUGURALLA FOR REMANDING 1ST APPELLANT**
ANNEXURE IV	**ACCUSED COPY OF ORDER IN CR.M.P 183/2022 IN SC 3/ 2022 DATED 18/11/2022 OF NIA COURT, KOCHI**