

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 351 OF 2022

Hany Babu

... Appellant

V/s.

1. National Investigation Agency
(FIR No. 1 of 2020)

2. State of Maharashtra

... Respondents

.....

Dr Yug Mohit Chaudhary for the Appellant.

Mr Anil C. Singh, Additional Solicitor General with Mr. Sandesh Patil, Mr Chintan Shah for the Respondent No.1.

Ms S.D. Shinde, Assistant Public Prosecutor for the Respondent No.2.

.....

**CORAM: NITIN JAMDAR AND
N.R. BORKAR, JJ.**

Dated : 19 SEPTEMBER 2022

JUDGMENT : (Per Nitin Jamdar, J.)

By this appeal filed under Section 21(4) of the National Investigation Agency Act, 2008, the Appellant has challenged the

judgment and order dated 14 February 2022 passed by the Special Court (NIA), Greater Mumbai rejecting the application filed by the Appellant for bail. The Appellant prays that he may be released on bail on such reasonable terms and conditions as the Court may deem fit.

2. The Appellant is accused No.12 in Special Case No.414/2022, pending before the Special Court (NIA), Greater Mumbai. The Appellant was arrested on 28 July 2020. According to Respondent - NIA, the investigation has revealed that the Appellant and the other named accused are members of the Communist Party of India (Maoist)- CPI (Maoist), a banned terrorist organisation and are deeply involved in furthering its agenda through different means. The main agenda of CPI (Maoist) was to establish a 'people's Government' by a revolution aided by a protracted armed struggle to undermine and seize power from the State. According to Respondent NIA, the Appellant is alleged of the offences punishable under the Indian Penal Code (IPC) and the Unlawful Activities (Prevention) Act, 1967 (UAP Act.)

3. Facts leading to this appeal, as seen from the supplementary charge sheet filed by NIA, are as follows.

3.1 An FIR No. 4 of 2018 was filed on 8 January 2018, stating that a program was organised at Shaniwar Wada, Pune, on 31

December 2017 under the banner of one Elgar Parishad. Short plays, dances and songs were performed on the stage. The speakers gave provocative speeches and distributed pamphlets. The performances were also provocative and had the effect of disrupting communal harmony. The Complainant stated that the banned terrorist organisation CPI (Maoist) had a role in organising the program. It wanted to inculcate and boost its ideology and thoughts amongst the impoverished classes and misguide them toward violent unconstitutional activities. The activists of Kabir Kala Manch, who performed at the event, perpetuating the object of CPI (Maoist) with distorted historical narration, incited the masses by raising objectionable slogans. This led to violence and the death of an innocent person near Bhima Koregaon near Pune on 1 January 2018.

3.2 Houses of Rona Wilson, Surendra Gadling, Sudhir Dhawale, Harshali Potdar, Sagar Gorakhe, Deepak Dhengale, Ramesh Gaichor and Jyoti Jagtap were searched by the police. The articles and material seized during the search were sent to Forensic Science Lab, Pune. The analysis of seized electronics/digital articles confirmed that the accused Surendra Gadling, Rona Wilson, Shoma Sen, Mahesh Raut, Comrade M. @ Milind Teltumbade (now deceased), Comrade Prakash @ Navin @ Ritupan Goswami (absconding), Comrade Manglu (absconding), Comrade Dipu (absconding) were involved in the crime. During the investigation, the investigating officer invoked the provisions of Sections 13, 16, 17, 18, 18(B), 20, 38, 39, and 40 of the UAP Act.

3.3 The accused Surendra Gadling, Rona Wilson and Sudhir Dhawale were arrested on 6 June 2018. The residences of Shoma Sen and Mahesh Raut were searched, and the Police seized digital devices and other articles. On 6 June 2018, Shoma Sen and Mahesh Raut were arrested. The articles and material showed the involvement of more accused, that is, Varavara Rao, Arun Ferreira, Sudha Bharadwaj, Vernon Gonsalves, Anand Teltumbade, Stan Swamy and Gautam Navlakha. Their names were added on 23 August 2018.

3.4 Searches were conducted on 28 August 2018 at the residences/workplaces of Varavara Rao, Sudha Bharadwaj, Arun Ferreira, Gautam Navlakha, Stan Swamy and Vernon Gonsalves. The Police arrested Varavara Rao, Sudha Bharadwaj, Gautam Navlakha, Arun Ferreira and Vernon Gonsalves and put them under house arrest. On 15 November 2018, Pune Police filed a charge sheet under sections 153 (A), 505(1)(B), 117, 120 (B), 121, 121 (A), 124 (A) and 34 of IPC and sections 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the UAP Act against Sudhir Dhawale, Surendra Gadling, Shoma Sen, Mahesh Raut, Rona and five absconding accused persons namely Kishan da @ Prashanto Bose, Milind Teltumbde, Prakash @ Rituparn Goswami, Deepu and Manglu. Subsequently, on 21 February 2019, the Police filed a supplementary charge sheet under sections 153 (A), 505(1)(B), 117, 120 (B), 121, 121 (A), 124 (A) & 34 of IPC and section 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the UAP Act

against Varavara Rao, Arun Ferreira, Vernon Gonsalves and Sudha Bharadwaj and one absconding accused namely Ganapathy @ Mupalla Laxman Rao.

3.5 On 10 September 2019, the Police raided the Appellant's house. Some books, laptops, hard disks, pen drives, a mobile phone with two sim cards and a piece of paper with an e-mail ID and password were seized from the Appellant.

3.6 On 24 January 2020, the Under Secretary to the Government, Ministry of Home Affairs, New Delhi, directed the Respondent -NIA to take up the investigation of FIR No. 4/2018 of Vishrambaug Police Station. The NIA registered FIR RC-01/2020/NIA/Mum u/s. Section 153A, 505(1)(b), 117, 34 of the IPC and Section 13, 16, 18, 18B, 20 and 39 of the UAP Act on 24 January 2020.

3.7 On 10 July 2020 and 24 July 2020, NIA issued a notice to the Appellant. The Appellant was arrested on 28 July 2020. On 28 July 2020, one mobile phone, one sim card, and a digital storage were seized from the Appellant. The Appellant was remanded by the Special Judge (NIA) on 29 July 2020 for seven days in police custody. On 2 August 2020, the NIA searched the Appellant's house and one hard disk, one data card, one USB, one pen drive, some books, printed receipts and handwritten and printed papers

were seized from the Appellant's house. On 4 August 2020, the Appellant was remanded by the learned Special Judge (NIA) for three days to police custody. The learned Special Judge (NIA), on 8 August 2020, remanded the Appellant to judicial custody.

3.8 National Investigation Agency filed a supplementary charge sheet against the Appellant -Hany Babu Musaliyarveetil Tharayil @ HB @ Venkat (A-120 and other accused -Anand Teltumbde, @ AT (A-10); Gautam Navlakha @ Darbar @ G @ GN (A-11); Sagar @ Yogesh Tatyaram Gorkhe (A-13); Ramesh @ Akash S/o. Murlidhar Gaichor (A-14); Jyoti @ Vaishali Jagtap (A-15); Stan Swamy S/o Late Lourdu Swamy (A-16); Milind Teltumbde (WA-1) under sections 153(A), 505(1)(B), 115, 120(B), 121, 121(A), 124(A), 201 & 34 of Indian Penal Code and sections 13, 16, 17, 18, 18(A), 18(B), 20, 38, 39 and 40 of the UAP Act.

4. The Appellant applied for bail by Criminal Application No.535/2021 in the NIA Special Court on 5 October 2021. The Appellant contended that the prosecution case against him at the most related to offences punishable under Sections 38 and 39 of the UAP Act, that is, associating, membership and having a terrorist organisation and supporting a terrorist organisation. He contended that there is no material to suggest that the Appellant was involved in any conspiracy to overthrow the government. The Appellant claimed that there were over fifty witnesses and that the charge sheet

contained 30,000 pages; therefore, it would take time for the conclusion of the trial, and thus, the Appellant prayed to release him on bail. The Respondent- NIA opposes the application. The NIA claimed that there is evidence against the Appellant and the co-accused having a link with the members of the banned organisation and active members in its activities. Incriminating e-mails in this regard were recovered from the e-mail account of the Appellant. NIA contended that the Appellant is in contact with the banned organisation CPI (Maoist), which has assigned him to carry out various essential works; therefore, the Appellant should not be released on bail.

5. The learned Special Judge rejected the bail application by the impugned judgment and order dated 14 February 2022. Hence, the Appellant is before us in appeal. The Respondent -NIA has filed an affidavit in reply and has placed a compilation of documents seized during the investigation on record.

6. We have heard Dr Yug Chaudhary for the Appellant, Mr Anil Singh, Additional Solicitor General for Respondent No.1-NIA and Ms S.D. Shinde, Assistant Public Prosecutor for Respondent No.2-State.

7. The case of the NIA is that the Appellant, along with other accused, are members of the banned terrorist organisation CPI

(Maoist) and were deeply involved in furthering its agenda through different means. Since the allegation against the Appellant is also of conspiracy with the other members of the banned organisation, it will be necessary to refer to the case of the NIA in respect of the activities of CPI (Maoist) and its frontal organisation and the objects and working of these banned organisations. The case is as follows :

7.1 CPI (Maoist) is a merger of the Communist Party of India (Marxist-Leninist), the People's War (People's War Group), and the Maoist Communist Centre of India (MCC). CPI (Maoist) was notified as a terrorist organisation on 22 June 2009 under UAP Act.

7.2. The objectives and goals of CPI (Maoist) are to engage in revolution supported by a commitment to protracted armed struggle. The eventual objective is to establish a 'people's government' by undermining and seizing power from the State. The Communist Party of India (Marxist-Leninist)– People's War with its formation and front organisations are banned under the UAP Act and are designated as terrorist organisations.

7.3 CPI (Maoist) works systematically. It has a party constitution and hierarchical system with the decisions taken by a Politburo. The Central Committee receives commands from the Politburo, which are sent to the members as per the hierarchy. The Central Military Commission is the main armed body of the CPI (Maoist). It has

regional bureaus such as State Committees, Zonal Committees, District Committees and armed squads. The task of these organisations is to attack Government forces. The Central Technical Committee (CTC) is responsible for assembling and creating weapons from explosives looted by attacking the Government armed forces. The CPI (Maoist) has formulated some primary documents in its Unit Congress. These are: 'Constitution of the Party'; 'Party Program'; 'Strategy and Tactics of the India Revolution'; 'Holding High the Bright Red Banner of M.L.M.'; and 'Political Resolution'. As per the core documents, the main task is to seize political power to annihilate the armed forces of the State through war, mobilising the people on a large scale, both militarily and politically; the CPI (Maoist) Politburo, Central Committee and People's Army (PLGA), and United Front (a frontal organisation) will coordinate the armed struggle, which will be the main form of struggle.

7.4. According to the CPI (Maoist), a unified front and armed struggle are the primary weapons for defeating 'the enemy' and storming and shattering the 'enemy's position (the enemy being the Indian State). The CPI (Maoist) is working to assimilate the unemployed youth living in impoverished rural and urban areas, teachers, intellectuals and employees in other fields into the party organisation. The revolutionary front of CPI (Maoist) is the primary entity undertaking revolutionary movements and countering campaigns carried out by the security forces of the State. Under the

pretext of democratic rights organisations, under the directions of CPI (Maoist), adverse reports are published directly affecting the anti-Naxal operations carried out by the State security forces.

7.5 The CPI (Maoist) has planned a detailed strategy and programmes to unite the struggles of various oppressed nationalities into a common fighting united front against the Indian State. The documents seized from the accused refer to urban movement and military task and the urban movement being complementary to rural armed struggle. The movement involves sending cadres to the countryside, infiltrating enemy ranks, organisations in critical industries, sabotaging actions in coordination with rural armed struggle and generating intellectual support.

7.6 The CPI (Maoist) has established executive committees to work according to the revolutionary objective. The mass organisation has been divided into three sectors- Underground Revolutionary Mass Organizations, 'Open and Semi-open Revolutionary Mass Organizations' and 'Mass Organizations not directly linked to any party'- under such cover-up as Elgar Parishad at Pune. Mass Organisations not directly linked to the party are subdivided into three categories- 'Fractional Work', 'Party Formed Cover Organization', and 'Legal Democratic Organization'. Some methods include creating activist groups at the factories, mines, industrial estates, offices, branches, or any other level that is a unit

for organising. Activist groups are to be formed in slums, chawls, streets, societies that are residential areas and also educational institutions. Party Cells will include organising masses, politicising, educating and recruiting them into the party. Party Fractions are non-party organisations that ensure that members within the organisations pursue uniform tactics.

7.7 The literature of CPI (Maoist) refers to the military task of the urban movement as secondary and complementary to the military strategy of the revolution. The urban organisations are to perform tasks complementary to the rural armed struggle. The military tasks performed in the urban areas are about the defence of the urban movement, helped by the urban organisation to the rural armed struggle and direct military operations conducted under a central direction. Elaborate means of personal communication using couriers and precautions to be taken during communications and meetings are evolved.

7.8 The CPI (Maoist) operates in secret, and important communications are made through couriers and the appointment channel. One of the CPI (Maoist) agendas is to keep the cadre's morale high. Systematic support is offered from the frontal organisations to Naxals and their families. The Revolutionary Democratic Front (RDF), a banned organisation, is active in this endeavour. RDF organises conferences and fact-finding missions.

The accused are also active members of other frontal organisations, namely, Anuradha Ghandy Memorial Committee, Kabir Kala Manch, Persecuted Prisoners Solidarity Committee, Committee for release of political prisoners, Committee for Protection of Democratic Rights, Peoples Union for Democratic Rights, Coordination of Democratic Rights Organization, Democratic Students Union, Visthapan Virodhi Jan Vikas Aandolan, Revolutionary Writers Association, Committee for defence and release of G.N.Saibaba.

7.9 CPI (Maoist) does not believe in peace talks but only in protracted armed struggles. CPI (Maoist) has attacked and killed various government officials and looted weapons and explosives. CPI (Maoist) raises funds for unlawful activities by levying taxes on Tendu leaves, Bambu and road contractors. To keep their identity secret, they use different alias names. CPI(Maoist), frontal organisation members procure gelatin from illegal mining contractors, use Soda-Sulphur combination as explosive, and use Calcium-Ammonium Nitrate for carrying out attacks on the forces of the State. The accused are involved in procuring weapons and ammunition from Maoist in Nepal situated abroad through the 'Manipur Maoist' channel.

7.10 The policy of CPI (Maoist) is to exploit the discontent amongst the weaker sections to propagate hardcore Maoist

philosophy of violence to drive them on the path of violence. As a part of pursuing this policy, street plays leading to incidents such as one in Bhima-Koregaon resulting in arson, violence and the death of one person are deliberately undertaken.

8. This, according to NIA, broadly is the outline of the aims and objects of CPI (Maoist) and the conspiracy and that the Appellant is part of the same. According to NIA, these objectives are being implemented by the Appellant, and his role must be seen in the context of this larger canvas and not in isolation.

9. Offences invoked against the Appellant under the Indian Penal Code are as under :

- Section 121 is about waging or attempting to wage war, or abetting waging of war, against the Government of India.
- Section 121A is a conspiracy to commit offences punishable by Section 121 of I.P.C.
- Section 124A is the offence of sedition.
- Section 153A speaks of the offence of promoting enmity between different groups and doing acts prejudicial to the maintenance of harmony.
- Section 505(1)(b) provides punishment for offences of causing fear or alarm resulting in an offence against the State.

10. Offences invoked against the Appellant under UAP Act are as under :

Chapter IV

- Section 13 provides punishment for unlawful activities.
- Section 16 provides punishment for a terrorist act.
- Section 17 provides punishment for raising funds for a terrorist act.
- Section 18 provides punishment for conspiracy, etc.
- Section 18B provides punishment for recruiting any person or persons for a terrorist act.
- Section 20 provides punishment for being a member of a terrorist gang or organisation.

Chapter VI

- Section 38 provides punishment for the offence relating to membership of a terrorist organisation.
- Section 39 provides punishment for the offence relating to support given to a terrorist organisation.
- Section 40 provides for the offence of raising funds for a terrorist organisation.

11. Turning now to the rival contentions.

12. Dr Yug Chaudhary, the learned Counsel for the Appellant, submitted as follows: Taking the case of the prosecution as it is, at the highest, the offences that can be alleged against the Appellant are under sections 38 and 39 of the UAP Act, for which punishment is not more than ten years. The house of the Appellant was raided on two occasions, yet the Appellant did not attempt to abscond or to run away. The Appellant did not attempt to destroy any evidence despite raids being conducted. The Appellant is an academician, a professor in Delhi University, and the only allegation against the Appellant in the charge sheet is that he is instrumental in alleging legal defence for accused S (Saibaba), which is not a crime. The documents seized from the Appellant's laptops, letters and documents received from the laptops and other devices of the co-accused do not link the Appellant to the conspiracy of the terrorist act. The Appellant has not committed any act necessary to attract the offence of conspiracy. In the charge sheet, sections 153A, 505B and 201 of IPC and sections 18A and 18B of the UAP Act are not charged against the Appellant, yet in reply filed by the Respondent-NIA, the same has been mentioned as has been committed by the Appellant. The learned Special Judge has also made the same mistake and has gone by the offence, which the charge sheet does not allege. Section 15 of the UAP Act defines a terrorist act for which there must be an act, intent and means which, in the Appellant's case, do not arise. Section 18 of the UAP Act speaks of conspiracy, but the charge sheet does not state any terrorist act. There is no allegation

that the Appellant has possessed any arms, ammunition or explosives or committed, abetted or advocated any acts of violence. Unless there is a terrorist act committed, sections 16, 17, 18 and 20 would not be attracted. There is a difference between waging war as an objective and waging war. No offence section 511 of the Indian Penal Code is applied. Sections 38 and 39 of the UAP Act are separate offences for membership of banned organisations; therefore, there is nothing more than an allegation of membership of a banned organisation. Even considering the case within the parameters of section 43D (5) of the UAP Act, this Court can grant bail as taking the case of the prosecution, at the highest, no offence for which punishment is beyond ten years is attracted. There is no allegation of the Appellant promoting any enmity or dissatisfaction on the ground of religion. The documents put against the Appellant are written by persons who are not identified and not witnesses or accused. According to the prosecution, the letter alleged to be addressed on 18 April 2017 refers to the Appellant, but even then, it is in a different context. There is no *prima facie* evidence against the Appellant of any offences for which the charge sheet is filed against the Appellant. The trial will take time, and charges are yet to be framed. There is no terror act committed by the Appellant. No act of violence which could be punishable by life imprisonment to be called a terrorist act under section 15 of the UAP Act is shown in the entire material placed on record. The Hon'ble Supreme Court in the case of *Dr P. Varavara Rao Vs National Investigation Agency & Anr*¹ on some of

¹ Criminal Appeal No. 1206 of 2022, dated 10 August 2022

the considerations based on which granted bail to *Varvara Rao*, the co-accused, apply to the Appellant's case, such as, because some of the accused not having been apprehended, the matter is not being taken for consideration. In the case of *Union of India v. K.A Najeed*² the Hon'ble Supreme Court has made it clear that statutory restrictions under section 43-D(5) of the UAP Act *per se* do not oust the ability of the constitutional courts to grant bail on the ground of violation of fundamental rights enshrined in the Constitution of India. There has to be concrete material, and the courts cannot imagine the missing links, as observed by the Hon'ble Supreme Court in the case of *Hanumant, son of Govind Nargundkar vs State of Madhya Pradesh*.³, which had referred to the warning addressed by Baron Alderson to the jury in *Reg v. Hodge (1838) 2 Lew 227*. In the order passed by the Hon'ble Supreme Court in the case of *Vernon Vs The State of Maharashtra & Anr.*⁴ it is observed that some of the accused are still absconding, and the matter is not being taken up for consideration. Since the Appellant has been in custody since July 2020 in violation of his fundamental right under Article 21 of the Constitution of India, the case is made out for a grant of bail even considering the provisions of section 45-D(5) of the UAP Act.

13. Mr Anil Singh, the learned Additional Solicitor General, opposed the bail application and relied on the material collected during the investigation, which is referred to later. The learned ASG,

² 2021 3 SCC 713

³ AIR 1952 SC 343

⁴ Petition(s) for Special Leave to Appeal (Crl.) No (s) 5423/2022 dated 18.08.2022

in short, is submitted as follows. The case against the Appellant is that he and the other accused are members of the CPI (Maoist). The CPI (Maoist) party was designated as a terrorist organisation on 22.06.2009. The CPI (Maoist) Party is working systematically to establish a people's Government through the armed struggle to undermine and seize power from the State. The object is to wipe out the forces of the Indian State through war and establish in its place the people's democratic state and their political authority, to wage not the old type of conventional war but a people's war by mobilising the people on a massive scale both militarily and politically. The Appellant, along with other accused, are working for different mass organisations to further the activities of the CPI(Maoist), which has a detailed strategy for the furtherance of its role to overthrow the Government, and the co-accused and the Appellant adopt the same strategy and tactics. The material recovered from the Appellant cannot be seen in isolation and will have to be read in totality, such as material recovered from the charge-sheeted accused and other material on record. The CPI (Maoist) and its members, including the Appellant, do not believe in peaceful negotiations. The party and its frontal organisation have killed and attacked many government security forces and looted equipment, ammunition and walkie-talkies. The accused have indulged in the procurement of weapons and ammunition from Nepal. The investigation has revealed Elgar Parishad Programme was used to establish underground contact with the banned organisation CPI (Maoist) Party through its activists

working in Delhi, including the Appellant. This led to unrest and the death of one person. The material collected through investigation from the Appellant and others relating to CPI (Maoist) Party is accessible only to party members. Therefore, the role of the Appellant cannot be seen separately as sought to be put forth by the learned Counsel for the Appellant. It will have to be seen in the light of the charge of conspiracy as to the entire case of the National Investigation Agency in this regard. The Appellant's role was not only arranging the legal defence for G.N. Saibaba, but he was fully entrenched in the activities of the CPI (Maoist) Party, a banned organisation and Revolutionary Dramatic Front (RDF), also a banned organisation. He was instrumental in setting up appointments, fact-finding missions, and coordinating with Maoists from other countries, and his role in the material shows him as an important party member along with other co-accused. The chart showing e-mail communications and contacts between the accused is part of the record. The offences invoked against the Appellant carry maximum life or death penalty punishments. Section 43-D (5) of the UAP Act would require the Court to proceed based on the material collected during the investigation. The offences which Appellant is guilty of are grave and he should not be released on bail. The learned ASG submitted that the learned Special Judge has committed no error in rejecting the bail application and that the appeal be dismissed.

14. Since the charge sheet filed against the Appellant involves offences under Chapters IV and VI of the UAP Act, it will be necessary to note Section 43-D of the UAP Act, which circumscribes the ambit of the present enquiry. The relevant part of Section 43-D reads thus:

“43-D. Modified application of certain provisions of the Code—

(1)

(2)

(3)

(4).....

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code, is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) *The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.*

(7)”

(emphasis supplied)

15. The court's powers for consideration of bail in respect of Section 43-D (5) of the Act were dealt with *in extenso* by the Bench of three learned Judges of the Hon'ble Apex Court in the case of *National Investigation Agency Versus Zahoor Ahmad Shah Watali*.⁵, The facts, in this case, were that Zahoor Ahmed Shah Watali was accused in a case registered by the National Investigation Agency, Delhi, wherein sections 120-B, 121, 121-A of the Indian Penal Code and sections 13, 16, 17, 18, 20, 38, 39 and 40 of the UAP Act were applied, similar as the present Appellant. The allegation against Watali was of being involved in unlawful acts and terror funding in conspiracy with other accused persons. He had acted as a conduit for the transfer of funds received from terrorists Accused and helped them wage war against the Government of India. Watali was alleged to be part of a larger conspiracy to upturn the establishment. Watali applied for bail before the Designated Court, and the learned Special Judge rejected his application. The High Court of Delhi reversed the order and directed Watali's release, which the National Investigation Agency impugned in the Hon'ble Supreme Court. The Hon'ble

⁵ (2019) 5 SCC 1

Supreme Court analysed the rival submissions. The Hon'ble Supreme Court observed that, apart from the basic considerations for the grant of bail, something more must be considered in view of section 43-D of the 1967 Act. The Hon'ble Supreme Court observed that under the proviso to sub-section (5), it is the court's duty to be satisfied that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true or otherwise. By its very nature, the expression "*prima facie* true" would mean that the materials/evidence collated by the investigating agency about 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. The Hon'ble Supreme Court held that the duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding based on broad probabilities. It was further held that exercise to be undertaken by the court is different from discussing merits or demerits of the evidence. The court is merely expected to record a finding based on broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise. The Hon'ble Supreme Court, observing that High Court had overstepped the jurisdiction under Section 43-D (5) by holding a mini-trial and weighing evidence, set aside the order passed by the High Court.

16. Another case under Section 43-D (5) dealt with by the Hon'ble Supreme Court in the case of *Union of India v. K.A Najeeb (supra)*. In this case, the prosecution case was that a question paper in a college examination in Kerala contained a question considered objectionable against a particular religion by certain sections of society. The case against Najeeb was that he and other members decided to avenge this act and attacked the professor with choppers and knives. Country-made bombs were also hurled at bystanders to create panic and terror. During the investigation, it was revealed that the attack was part of a pre-planned larger conspiracy. Along with the offences under the Indian Penal Code, sections 16, 18, 18-B, 19 and 20 of the UAP Act were also invoked. Najeeb was arrested on 10 April 2015. He approached the Special Court and the High Court around six times; however, bail was rejected on the ground that he had prior knowledge of the offence and assisted the attack. The bail was rejected considering the provision of section 43-D (5) of the UAP Act. Najeeb again approached the High Court in May 2019, and the High Court released him, noting that the trial was yet to begin and Najeeb had been in custody for more than five years. The Union of India challenged this order in the Hon'ble Supreme Court. While analysing the challenge, the Hon'ble Supreme Court emphasised at the outset the distinction between considering the application for bail and an application for cancellation of bail. In the context of the facts in that case, that many co-accused were

acquitted, those who were convicted were sentenced to not more than eight years, and Najeeb was in custody for more than five years; the Hon'ble Supreme Court did not interfere with the order of the High Court. The learned ASG contends that this decision has not diluted the dicta laid down in the case of *Watali*.

17. The third decision is in the case of *Thwaha Fasal v. Union of India*⁶. The learned Counsel for the Appellant submitted that though it is placed on record, he is not relying on this decision. The learned ASG, however, pointed out that the Appellant had relied upon this decision before the learned Special Judge, and therefore, he has proceeded to analyse the same to point out that the facts in this case before the Hon'ble Supreme Court were different. We may note that in this decision, the Hon'ble Supreme Court has noted and referred to the decision in the case of *Watali (supra)*. The Hon'ble Supreme Court observed that association and support have to be to further the activities of a terrorist organisation, and in a given case, such intention can be inferred from the overt acts or acts of active participation of the accused in the activities of a terrorist organisation which are borne out from the materials forming a part of the charge sheet. In the facts of that case, the Hon'ble Supreme Court held that there was no material in the charge sheet to project active participation of appellants in the terrorist organisation and accordingly granted bail to the appellants before it.

⁶ 2021 SCC OnLine SC 1000

18. Thus, the guiding principle laid down by the Hon'ble Supreme Court in the case of *Watali* is not differed from in the subsequent judgments. Section 43-D of the 1967 Act applies 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, and that the offences under these Chapters are invoked against the Appellant, we will have to consider the totality of the material gathered by the investigating agency and not analyse individual pieces of evidence or circumstance to ascertain whether there are reasonable grounds for believing that the accusations made against him are *prima facie* true. This Court is not supposed to weigh the material, but form an opinion based on the material before it on broad probabilities.

19. As the Appellant endeavours to restrict the scrutiny only to the acts of the Appellant, Section 10 of the Indian Evidence Act, 1872 and the illustration appended to it will have to be kept in mind. Section 10 and the illustration read thus:-

“10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons about their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of

showing that any such person was a party to it.

Illustration

1. Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the [Government of India].

2. The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it."

20. The broad principle emerging from the above provision is that the acts and declarations of the conspirators which have been undertaken during various times and places are admissible in evidence to show that by the act of conspiring together, the conspirators as a body has assumed themselves individuality and whatever is done and said by one in furtherance of a common design is an act of all. The illustration appended to Section 10 would show that the material placed on record, which gives an account of the conspiracy and reference to the terrorist acts, would be relevant

against the Appellant, and this provision applies to the case at hand. In view of Section 43-D(5) and the dicta of the Hon'ble Supreme Court referred to above, material placed before us in totality will have to be accepted at this stage, and accordingly, the role and the material against the Appellant will have to be examined.

21. Respondent -NIA has placed before us two sets of documents. The first compilation is of the documents seized from the Appellant. The second compilation is the one seized from the co-accused and other material relevant to the case of the Appellant. The index of the first compilation (documents seized from the Appellant) is reproduced for the sake of convenience :

Compilation 1

(The documents seized from the Appellant)

Sr.No.	Exhibit No.	File Name	Path
1	Ex-2	MO on UW 1.doc	CHIP19\Urban Work
2	Ex-2	Mumbai Perspective both parts.doc	CHIP19\Urban Work
3	Ex-2	Mumbai Perspective.doc	CHIP19\Urban Work
4	Ex-2	Secrecy handbooks.doc	CHIP19\Urban Work
5	Ex-2	Size growth rate distribution of population..pdf	CHIP19\Urban Work
6	EX-2	Surat Perspective July 2013.doc	CHIP19\Urban Work
7	EX-2	Urban	CHIP19\Urban Work

		Booklet(ERB).pdf	
8	Ex-2	Urban letter for CCMs.doc	CHIP19\Urban Work
9	Ex-2	urban militia.txt	CHIP19/Urban Work
10	Ex-2	Urban paper.doc	CHIP19\Urban Work
11	Ex-2	Urban Perspective-E.pdf	CHIP19\Urban Work
12	Ex-2	Urban Policy Outline.doc	CHIP19\Urban Work
13	Ex-2	urban selections.pdf	CHIP19\Urban Work
14	Ex-2	Urban_H.pdf	CHIP19\Urban Work
15	Ex-2	WC Guidelines – Outline.doc	CHIP19\Urban Work
16	Ex-2	2 INCH by Ramananna-H.pdf	CHIP19
17	Ex-2	21-2610.doc	CHIP19
18	Ex-2	A.C-G-B.pdf	CHIP19
19	Ex-2	Abhay Internet Security.docx	CHIP19
20	Ex-2	AJ SS-1-Indian army-English.pdf	CHIP19
21	Ex-2	Anand.pdf	CHIP19
22	Ex-2	BJ-SAC-RE.pdf	CHIP19
23	Ex-2	BOLSHEVIK-7 FINAL Jan-sep-2016.pdf	CHIP19
24	Ex-2	Book Formet.pdf	CHIP19
25	Ex-2	br2406.doc	CHIP19\Urban Work
26	Ex-2	CC Jail Letter_Sep 13, 2017_Final_Hin.pdf	CHIP19\Urban Work
27	Ex-2	CC4th_MeetResolution_2013.pdf	CHIP19\Urban Work

28	Ex-2	CMC Circular on Functioning of Military Commissions and Commands_2002_English.pdf	CHIP19\Urban Work
29	Ex-2	Code Jan-Dec 2018.pdf	CHIP19\Urban Work
30	Ex-2	Commissions-Commands_Tel.pdf	CHIP19\Urban Work
31	Ex-2	Company Drill_Hindi.pdf	CHIP19\Urban Work
32	Ex-2	Communique,4th Cong-Eng.pdf	CHIP19\Urban Work
33	Ex-2	Dear comrades.docx	CHIP19\Urban Work
34	Ex-2	Digital_security_for_activists.pdf	CHIP19\Urban Work
35	Ex-2	Dines Account 2.xlsx	CHIP19\Urban Work
36	Ex-2	Dines Account 1.xlsx	CHIP19\Urban Work
37	Ex-2	Dines Account.xlsx	CHIP19\Urban Work
38	Ex-2	epm 1-june2014.pdf	CHIP19\Urban Work
39	Ex-2	Feb-Min.doc	CHIP19\Urban Work
40	Ex-2	For foreign delegates.pdf	CHIP19\Urban Work
41	Ex-2	1107-2.doc	CHIP19\Urban Work
42	Ex-2	i210315IT.txt	CHIP19\Urban Work
43	Ex-2	Info-Letter-19Aug15.docx	CHIP19\Urban Work
44	Ex-2	IntBull-2019-EN-FNAL.pdf	CHIP19\Urban Work
45	Ex-2	it2506.txt	CHIP19\Urban Work
46	Ex-2	Jail-Commune-1.pdf	CHIP19\Urban Work
47	Ex-2	Let 2NN, 8 th Cong-	CHIP19\Urban Work

		Bangla.docx	
48	Ex-2	Let 2 NN, 8 th Cong-Eng.docx	CHIP19\Urban Work
49	Ex-2	Lr 2 Hyd 25Jan.pdf	CHIP19\Urban Work
50	Ex-2	Lr 2 SZC_Oct_2016.pdf	CHIP19\Urban Work
51	Ex-2	Lr to com.P-Aug17.pdf	CHIP19\Urban Work
52	Ex-2	Meeting confi.docx	CHIP19\Urban Work
53	Ex-2	MergDec.doc	CHIP19\Urban Work
54	Ex-2	Mspi.txt	CHIP19\Urban Work
55	Ex-2	Naya Bitarka 4-Oct,15.docx	CHIP19\Urban Work
56	Ex-2	Naya Bitarka 5-May, 16.docx	CHIP19\Urban Work
57	Ex-2	On Mad Revenue Serv-final-23.5.2017.pdf.	CHIP19\Urban Work
58	Ex-2	Preface.doc	CHIP19\Urban Work
59	Ex-2	Review_on_the_Perspective_of_B_GZ[1].pdf	CHIP19\Urban Work
60	Ex-2	Secret-File.docx	CHIP19/Urban Work
61	Ex-2	Walky Channels of Enemy Book.pdf	CHIP19/Urban Work
62	Recovered from the mail ID of Hany Babu	10.08.2015 21.02 From – Manipur Maoist To - Hany Babu	
63	Recovered from the mail ID of Hany Babu	14.08.2016 18.07 From – Manipur Maoist To – <u>csgpindia</u> BCC – Hany Babu	
64	Recovered	16.06.2015	

	from the mail ID of Hany Babu	09.25 From – Rona Wilson To – Hany Babu & others	
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22. The index of the second compilation is reproduced below, referred for reference.

Compilation 2

(The documents seized from the co-accused and others)

Sr.No.	Particulars	Contents
1	HDD Laptop Cyp. 168/18 Ex. 17/1 April 2018 convention pamphlet revised Cyp 168/18 Ex. 17/1\Rbackup\67-68	Regarding the programme on UAP Act and political prisoners organised by the Committee for Defence and Release of Sai Baba. Ref: Rona Wilson & Hany Babu (number 9811971166 belongs to Hany Babu)
2	HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_2_P-51117 Cyp 168/18 Ex. 17/1\Rbackup\452	Letter from Surendra Gadling to Prakash- by Prakash to Surendra
3	HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_2_RW Cyp 168/18 Ex.17/1\Rback up\453	Letter written by Prakash to Rona Wilson.
4	HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_2_RW Cyp	Letter written by Prakash to Rona Wilson, which refers to the role and responsibilities of Appellant and Rona

	168/18 Ex. 17/1\ Rback up\453	Wilson.
5	HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_2704 Cyp 168/18 Ex. 17/1\Rback up\ 458-459	Its letter from Surendra to Prakash (@ Ritupan Goswami) dtd 27.04.2017;
6	HDD Laptop Cyp 168/18 Ex. 17/1 1 Latest FC Meeting 3 July 2013.doc Cyp 168/18 Ex. 17/1\ Rbackup\ IMPCorres\one\ 689-691	Document regarding the meeting of Fraction Committee of A3 i.e. RDF (Revolutionary Democratic Front).
7	HDD Cyp 172/18 Ex. 1 Ltr_2704 Cyp 172/18 Ex.1\ Users\Sumit\ Desktop\Pen Drive Backup 29.03.2015\Local Disk\Red Ant Dream\Material 639-640	Letter by Surendra to Prakash about meeting with Central Committee (CC) members at Delhi on 22 April 2017.
8	Statement of KW- 5 (NIA CS Annexure A-page 97-100)	Statement showing association of Appellant.
9	RDF Conference Annexure B-6 page 67 to 78 (G N Saibaba)	RDF (Revolutionary Democratic Front), banned organisation. Attended by co- accused.

10	HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_from.com.m- 022018 Cyp 168/18 Ex.17/1\ Rback up\ 460- 461	Letter written by Com. M to comrade Rona dated 02.01.2018
11	HDD Laptop Cyp 168/18 Ex. 17/1 Basabta, Cyp 168/18 Ex. 17/1\ Rbackup\90-91	Letter written by Com.Basanta PBM, UCPNM to The Central Committee Communist Party of India (Maoist)
12	HDD Laptop Cyp 168/18 Ex. 17/1 Final_Dispatch, Cyp 168/18 Ex.17/1\Rbackup\ 477	Letter written by R (Rona Wilson to comrade Prakash (co-accused)
13	CatLop 478-480	catalogue of Weapons
14	13.1 Vol-3 328	E-mail by Chandrashekhar (Ganapathy, Gen. Scy. of CPI Maoist) to Comrade VV (Varavara Rao)

23. Having considered the rival contentions and the material placed before us by the NIA, we find that there are reasonable grounds for believing that the accusations against the Appellant are *prima facie* true. Our analysis of the material and reasons for this conclusion are elaborated as under. Before proceeding to elaborate on the reasons, however, we clarify that though we are not prefixed the phrase *prima facie* before each of the sentences for the sake of readability, all our observations are only in the context of Section 43-

D (5) of the UAP Act as above.

24. Since the material refers to the Appellant and the other accused by code names, a reference will have to be made to *File Code Jan-Dec 2010.pdt*, which reveals the following code names for the prominent members of the party which appear in the material. The Appellant- Hany Babu, is referred to as *H.B./Venkat*. Others are-

(a) Gautam Navlakha -*Darbar /G/ G.N*, (b) Amit Bhattacharya - *Ankush / Kanahi*, (c) Arun -*Rupesh/ A*, (d) Surendra- *Vijay/ S/S.G*, (e) Varavara Rao-*V.V./ Chief/ Manyam Pituri*, (f) Sudha-*Kaveri/s* (g) Rona- *Kuppu/ R/RW*, (h) Shoma- *Ajita/S/ Shoma* (i) Vernon- *Shoom/ Ashok /V*; (j) Malem- *Sunit*; (k) Saibaba -*S*; (l) Degree Prasad – *Sushil and* (m) Ritupan Goswami (wanted accused) *Prakash*

25. We will deal now with the documents from the First Compilation those seized from the Appellant. Though all the material is put against the Appellant, we will refer to the ones highlighted by the NIA before us. First, we will deal with the ones broader in the ambit.

26. File *MO on UW 1. doc* seized from the Appellant is a memorandum. It deals with mass mobilisation and party building. This document states that the broadest sections of people in struggle need to be mobilised. Reference is made to the State as an enemy,

and because of its repressive nature and dominant strength, it is vital that the party must work in utmost secrecy. The document then deals with different forms of struggle, including open self-defence teams. It then deals with the mobilisation of the urban masses, particularly the working class. Another document seized from the Appellant is *Mumbai Perspective*, which analyses the objective situation. Apart from *Mumbai Perspective*, *Surat Perspective* is also a part of the material, which carries a similar study where analysis is done about the population of minorities. Reference is made to the traders and national bourgeoisie, and comprador. This analysis is to build up on the working-class movement and the development of large numbers of new cadres. Reference is made to slums and students' work, and the purpose of the analysis is not academic research but for the 'anti-fascist movement' and 'anti-imperialist' work. It refers to the 'Hindu fascists' having an organised structure in Mumbai city, and to oppose them and to develop a mass movement in opposition to them will be a lengthy task. To organise it on a broad level, it is necessary for the party on a joint front, special efforts should be made to unite with the religious minorities, and the areas where Dalits and Muslims are residing in large numbers need to be chosen to win confidence by working with them in these movements.

27. The further document recovered from the Appellant is a *Secrecy HandBook*, which elaborates on how to set up a secret network; the rules of secrecy; how to overcome surveillance;

technical methods of secret writing; hiding places and how to behave under interrogation while questioned by the enemy. It refers to the network being given code names. The Handbook states that whenever a comrade is arrested, those whose identities he or she will reveal must immediately go into hiding, and incriminating material must be destroyed. The Handbook also states that everything must be done to help the arrested comrade by providing legal representation, publicity, food and reading material, solidarity with the family, and organising protest. It is pertinent to note this part of the handbook as the Appellant contends that all that is alleged against the Appellant is that he mobilised rallies and legal defence in favour of G.N. Saibaba. According to him, both being of part of the same University, he helped a colleague and even otherwise, organising a legal defence for co-accused is not a crime. According to the NIA, it is in the furtherance of this objective stated in the Handbook and the party's mandate that the Appellant organised rallies and legal defence in favour of Saibaba. We have noted that the Handbook and the literature refer explicitly to what is to be done if one of the comrades is arrested, and it mandates that the comrades must do everything to help the arrested comrade by providing legal representation, publicity and organising protest.

28. The literature issued by the Central Communist Party (Maoist) in the file *Urban Booklet* seized from the Appellant refers to a revolution and that in this revolution, the work of the party in urban

areas is essential. This document refers to different layers and is necessary for the effective work of the party. People from lower to higher strata (layers) need to be involved. It refers to underground networks, discipline within the party, functioning of the party, involvement of the workers and trade unions. It states that in urban areas, it would be necessary to consolidate the revolution, and it would be necessary to combat the enemy with arms. It then refers to the underground squads, and that network in the urban areas would assist the struggle in the rural areas.

29. The next document seized from the Appellant is *urban militia.txt* regarding how and why the people should be armed. A paper called *Our work in urban areas* seized from the Appellant gives a detailed outline of the urban work's primary objective, which involves mass mobilisation and party building. It speaks of secret revolutionary mass organisations, open revolutionary mass organisations, legal mass organisations not directly linked to the party, and fractional work. Then it deals with the party building, united front and military tasks such as open self-defence teams, secret self-defence squads, urban militia and local intelligence. Then it deals with propaganda and personal communications. The document deals with the immediate task, which refers to infiltration into enemy organisations. Mobilisation of urban masses, primarily the working class. It refers to conducting propaganda and infiltrating organisations. The other documents seized from the Appellant are on

similar lines, such as guidelines for work within the working class which again refers to military tasks.

30. Next document seized from the Appellant is a file *2 inch by Ramananna-H.pdt*. It is about integrated weapon training. It refers to 50.8 M.M. Mortar and how the same is being handled. It will have to be dealt with by two persons, and one jawan cannot do it. There is a detailed analysis of the functioning of these weapons, such as progressive weapon training. There is a statement of ammunition. It also refers to identifying the use of high explosives, how to identify the bombs, the procedure of misfire, para illuminating bombs, and how to deal with 2-inch mortar, smoke, illuminating and signal bombs.

31. Another document recovered from the Appellant is *A.C-G-B.pdt*, a guidebook for the Area Committee Members. It deals with the area committees' consolidation of the party network. It deals with the flag protocol and important dates of the revolution. It says that 26 January and 15 August days are to be treated as Black days. One of the documents seized from the Appellant is regarding *internet security and how to secure communications. AJ SS-1- Indian Army-English.pdt* is issued by the Central Committee (Provisional) CPI (Maoist) Party under the Awam-E-Jung Study Series -1, a review and study of the Indian Army. *BJ-SAC- RE.pdt* is about Bihar-Jharkhand Special Area Committee and its functioning and work.

32. File *br2406.doc* seized from the Appellant is a letter issued by Arun (Arun Ferreira) (Accused No.8), International Department Central Committee, CPI (Maoist) to the Central Committee, Communist Party of Brazil- Red Faction. It refers to building a new international organisational unity, and that document is to be opened by an e-mail id included in the earlier letter using a public key, which was issued separately. A digital key secures this document. *CC Jail Letter- 13 September 2017- Final-Hin.pdf* is a letter issued by the Central Committee of CPI (Maoist). It refers to stepping up the struggle in respect of the rights of the arrested.

33. File *CC4th-Meet Resolution-2013.pdf* found in Appellant's possession refers to the fact that several comrades have laid down their lives in the course of advancing the New Democratic Revolution, and they would serve as a model to fight till the end for the fulfillment of their aims and to pay revolutionary homage to them. This document refers to an assessment of the present condition of the countrywide movement. It refers to the revolutionary movement strengthening internationally, gaining the support of the Maoist parties. It has led to the anti-displacement struggle of the people, and the party and the 'PLG' conducted higher-level attacks in 'DK', 'BJ'. Odisha, Bengal and 'AOB' placed them as a model for guerilla warfare before the Indian people while the 'enemy' was given a shocking blow. The document also speaks of

damage caused by the 'enemy' (State) to primary weapon manufacturing and supply departments. It then refers to several setbacks stated to be received by the party and the need to improve the strategic strengths of the revolutionary camp. It speaks of mobilising non-present masses and building up urban movement. The document states that the party should carry out guerrilla warfare in all areas to the best of its capacity. It states that guerrilla warfare should be conducted to fight the 'enemy' onslaught in strategic areas. The people's militia should be armed with the weapons available. The party should seize the 'enemy's' arms, ammunition, and other war material. It also refers to the fact that the 'enemy' is worried as the revolutionary situation is developing and the party's counter-attacks on the enemy are continuing. It refers to intensifying agitational propaganda for the release of senior party leaders.

34. Next document seized from the Appellant is about the functioning of *military commissions and commands*, a circular issued by the Central Military Commission, CPI (M-L), (People's War). The literature issued by the CPI (Maoist) title company drill in Hindi deals with various methods of warfare. The next document recovered from the Appellant is *digital security for activists issued by the Rise Up Collective*.

35. Turning now to the more specific documents seized from the Appellant in the First compilation.

36. These documents refer to the Appellant's role in setting up Appointments and coordinating with foreign contacts and the involvement of the Appellant in the furtherance of the party agenda. A communication issued by A (Arun Ferreira) (Accused No.8) for foreign delegates is regarding where to check the hotel and contact numbers. File *1210315IT.txt* seized from the Appellant is a communication issued by the Appellant to a foreign contact, which refers to a contact person that though he has come out on bail, his travel is restricted. It then refers to differences in the delegation, and the Appellant mentions that 'we' are not in a position to give any opinion and that all 'we' can mention is that 'we' must take care that the trip does not cause differences to the functioning of the support committee. The reference to 'we' in this communication is pertinent as the Appellant appears to be speaking for the party. The Appellant then refers to the Nepal matter and the issue of their position on the RIM Special Meet. He also refers to sending a new PM issue (People's March Magazine). The Appellant mentions the digital inscriptions of the e-mail and public key. This document will have to be read with *File it2506.txt*, written by A (Arun Ferreira-Accused No.8) that he is enclosing a new issue of People's March, which will be posted from the Maoist group and also refers to the letter received from the Brazil comrades.

37. File *Lr2 Hyd 27 January pdf* recovered from the Appellant is a letter issued by Arun (Arun Ferreira) (Accused No.8) to comrades. It refers to GS issuing specific instructions regarding maintaining the security of the communication channels and sending the public key. It refers to a critical problem surfacing in the last year that there has been leakage of several secret letters meant only for senior leaders, and it is unclear how many have been exposed from Delhi. It also refers that the arrests of several comrades from Maharashtra and Delhi have crippled the legal defence. It states that on the international front, the absence of comrades R (Roma Wilson) (Accused) and S (Saibaba) (Accused) has caused significant disruption in communicating with international Maoist parties. This communication states that keeping all these necessities in view, the Central Committee has directed comrades SAR.G and HB (Appellant) to assume the responsibilities of international coordination of solidarity programs and to make arrangements for bilateral delegations.

38. File *Lr2 SIC-Oct-2016.pdf* seized from the Appellant is a communication issued by Varavara (Accused) to comrades wherein it states the information given in confidentiality about the topics raised by comrade Rona (Rona Wilson) (Accused No.2), comrade Sudhir (Accused) and comrade Varavar (Accused) in a meeting held on 26 September in New Delhi and states that in that context that the information was being given. It refers to political parties, fascist

movements and attacks on the party. It is necessary to restore the comrades' confidence and remove fear psychosis that a significant event targeting prominent personalities has been felt necessary. It refers to elections in Uttar Pradesh and Punjab where political figures keep coming. It also refers to arms struggle in the forest areas to improve the comrades' confidence. Then it refers to meetings held by senior political leaders such as Shri Narendra Modi, Shri Amit Shah and Shri Rajnath Singh and laying a booby trap in respect of the same. It also refers to coverage by international media which would increase the comrades' confidence.

39. File, *Lr to com.P-Aug 17.pdt*, recovered from the Appellant, is a letter issued by Venkat (Appellant) to comrade Prakash (Ritupan Goswami) (WA-2), makes the involvement of the Appellant even more clear. In this communication, the Appellant has stated that he is coordinating with Revolutionary Dramatic Front (RDF), a banned organisation, to release comrade S (Saibaba) and other senior political prisoners. He is also working on translating the party magazines and can send the same to the international comrades. The Appellant has stated that while working with comrade S (Saibaba), the Appellant has gained sufficient experience in setting up APTs (appointments) and requisite code structure for cadre identification with thorough sanitisation procedures for safe travel and exchange. He has also stated that if the party leadership feels he should take this responsibility, he would appreciate and accept it with utmost

sincerity. He has also stated that he has created a new code structure for future appointment exchanges and interacted with many IAPL members. In his previous letter, Prakash (Ritupan Goswami) (WA-2) had asked the Appellant to ensure that the political prisoners and families are provided sufficient legal support and be looked after. He has also stated that he had several rounds of discussion with CRPP senior leaders. He also refers to the allocation of party funds for legal costs and family support for comrade Murgan. This communication has to be read with the File *Code Jan-Dec 2010.pdf* from the Appellant where the code structure has been created. Therefore again, it is upon the specific party instruction issued by the wanted accused that the Appellant is coordinating legal defences and holding rallies for the arrested comrades.

40. File *meeting confi.docx* found from the Appellant's possession is a communication received from Italy referring to comrades of Nepal proposing a bilateral. Another document is a communication from Paikhomba Meitei, Secretary of Information & Publicity, Military Affairs, KCP (MC), a banned organisation. An e-mail from Rona (Rona Wilson) (Accused No.2) addressed to various persons, including the Appellant, is a forwarded e-mail from Pallath Govindankutty for financial support. These are the documents NIA has seized from the Appellant.

41. The next set, the second compilation, is of the documents and material recovered from the co-accused in respect of the role of the Appellant.

42. *HDD Laptop Cyp. 168/18 Ex. 17/1 April 2018 convention pamphlet revised Cyp 168/18 Ex. 17/1\Rbackup\67-68* is a convention pamphlet regarding the program on the UAP Act and political prisoners organised by the Committee for Defence and Release of Sai Baba. It refers to Rona Wilson (Accused No.2) and the Appellant. The phone number referred therein is alleged to belong to the Appellant. *HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_2_P-51117 Cyp 168/18 Ex. 17/1\Rbackup\452* is a communication addressed by comrade Surendra (Accused) to comrade Prakash (Ritupan Goswami) (WA-2) stating about the discussion with Saibaba that he should be transferred to a jail in Andhra Pradesh and that after comrade Soma receives the APT files, the data should be deleted.

43. *HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_2_RW Cyp 168/18 Ex.17/1\Rback up\453* is a letter issued by Prakash (Ritupan Goswami) (WA-2) to Rona Wilson (Accused No.2) which states that the comrade HB (Appellant) be made aware of the decision effective immediately. The comrade HB (Appellant) will directly handle all present and future tasks of the Revolutionary Dramatic Front (RDF)-banned organisation. He will also manage FF(fact-finding)

teams in parts of Eastern and Central India as there were aware of several requests from foreign journalists to visit revolutionary areas. It refers to comrade Siraj (Accused) and comrade Sudha (Accused No.9).

44. *HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_2_RW Cyp 168/18 Ex. 17/1\Rback up\453* is communication between R (Rona Wilson) (Accused No.2) and comrade Prakash (Ritupan Goswami) (WA-2), which refers to a letter of Prakash (Ritupan Goswami) (WA-2), and it says that Arun (Arun Ferreira) (Accused No.8) and Vernon (Vernon Gonsalves) (Accused-7) and others are concerned with the struggle that is taking shape on the urban front. It refers to issues raised by comrade Saibaba. Then it refers to HB (Appellant) being given all the responsibilities to coordinate programmes and protests to raise public opinion and organise a programme under the banner committee for the defence and release of G.N. Saibaba. Rona Wilson (Accused No.2) has mentioned in this letter that she has spoken that by now, Prakash (Ritupan Goswami) (WA-2) has received details of the meeting and requirement of 8 Crores for annual supply of M4 with 400000 rounds. The learned ASG informs that M4 is a weapon. It is also stated therein that defeating *Hindu fascism* is a core agenda and a major concern for the party. It refers that comrades and other senior Comrades have proposed to take concrete steps to end the "*Modi -Raj*". It is stated that "we" are thinking along

the lines of another "*Rajiv Gandhi-type incident*", and targeting "his" road shows could be an effective strategy.

45. *HDD Laptop Cyp 168/18 Ex. 17/1 1 Latest FC Meeting 3 July 2013.doc Cyp 168/18 Ex. 17/1\Rbackup\IMPCorres\one\689-691* is an agenda of the meeting of the Fraction Committee of A3, i.e. RDF (Revolutionary Democratic Front). The learned ASG submits that A3 is a code name for RDF (Revolutionary Dramatic Front), with which the Appellant is associated as per File No. Code-Jan 2017 /December 2021. According to the agenda, it is stated that A3 should also be formed in TN (Tamilnadu), KN (Karnataka), UP (Uttar Pradesh), Or (Orissa) and Chhat (Chattisgarh). Those released from prison can be given an option to join A3 so that their experience can be utilised for revolutionary MOs. It then refers to the President and Vice President of A3. Vilas @ Rona, Prashant Rahi, and the Appellant and their responsibilities are referred.

46. A communication in Hindi from comrade Surendra (Surendra Gadling) (Accused No.3) to Prakash (Ritupan Goswami) (WA-2) is *HDD Cyp 172/18 Ex. 1 Ltr-2704 Cyp 172/18 Ex.1\Users\Sumit\Desktop\Pen Drive Backup 29.03.2015\Local Disk\Red Ant Dream\Material 639-640*. It states that the enemy (State) has killed 10 to 20 party members, and a fact-finding committee is necessary to be organised, which will publicise that those killed are innocent tribals. Media coverage needs to be created so that a negative image is

created in the eyes of the general public. He then refers to the propaganda in favour of Saibaba at Delhi, and for that purpose, he is in contact with comrade Rona (Rona Wilson) (Accused No.2) and HB (Appellant), and comrade Prakash (Ritupan Goswami) (WA-2) should give them instructions. He then congratulated comrade Prakash (Ritupan Goswami) (WA-2) that the party comrades that the party had killed 25 persons of the enemy. The learned ASG informs that these 25 persons were police personnel. The letter also refers to gathering information on police and CRPF camps deployment, which would suit ambush planning.

47. The statement of KW-5 recorded under section 161 of the Cr.PC is placed on record by the National Investigation Agency, which refers to Rona Wilson (Accused No.2), Hany Babu (Appellant), International People's Association for People's Lawyers, Surendra Gadhlring, Arun (Arun Ferreira) (Accused No.8), Sudha (Sudha Bhardwaj) (Accused No. 9). The statement also refers to R (Rona Wilson) (Accused No.2) and Hany Babu (Appellant) inculcating Maoist sympathies amongst the students in Delhi, more specifically, Dalits and the students coming from other oppressed backgrounds. The files *Final Secretary report* and amended *secretary's report of the Revolutionary Democratic Front (RDF)* list various activities carried out by the Revolutionary Democratic Front (RDF). This also refers to the Appellant's insistence on defending Political prisoners and legal aid to CPI (Maoist) Naxalism-related

cases. *RDF Conference Annexure B-6* shows that the co-accused had attended the conference of RDF (Revolutionary Democratic Front), a banned organisation.

48. *Final-Dispatch Cyp 168/18 Ex.17/1\Rbackup\47* is communication by R (Rona Wilson) (Accused No.2) to comrade Prakash (Ritupan Goswami) (WA-2) where there is a reference to supply through designated contact in Nepal. It also refers to sending a catalogue of available equipment with a final package dispatch, and most of the equipment can be transported via two separate routes from Nepal, which will be dissembled and merged inside heavy electronics appliances before it reaches designated dumps. This communication has an attachment - *CatLop 478-480* about the Russian-made 94 grenade launcher and the Chinese-made QLZ87 automatic grenade launcher.

49. The role of the Appellant cannot be seen separately as sought to be put forth by the learned Counsel for the Appellant. It will have to be seen in the light of the charge of conspiracy as to the entire case of the National Investigation Agency in this regard. The documents highlighted above and the others on record and the facts unearthed during the investigation, based on which we must proceed at this stage, show that the Appellant is an active and prominent member of the CPI (Maoist) Party. The CPI (Maoist) Party is designated as a terrorist organisation. The CPI (Maoist) is working

to establish a people's government through violent means in an armed struggle. It wants to undermine and seize power from the State. The Appellant, along with other accused, are working for different mass organisations to further the activities of the CPI (Maoist) Party. The CPI (Maoist) Party has chalked out a detailed strategy for the furtherance of its role to overthrow the lawful Government, and the same strategy and tactics are adopted by the accused and the Appellant. The material placed on record by NIA shows that the platform of the Elgar Parishad Programme was used by having established underground contact with the banned organisation CPI (Maoist) Party through its activists working in Delhi, including Appellant. This led to unrest and the death of one person. The Appellant was fully entrenched in the activities of the CPI (Maoist) Party, a banned organisation, and the Revolutionary Democratic Front (RDF), also a banned organisation. The chart showing e-mail communications and contacts between the accused is part of the record.

50. The Appellant contends that the NIA has placed nothing on record that there has been any terrorist act as per section 15. It was contended that a terrorist act defined under section 2 (a) refers to section 15; as per section 15, there must be an act, and it is not enough to have only intention. It was submitted by the Appellant that since there is no act committed as falls under section 15, application of sections 17 and 18 will not arise. The learned ASG has

argued that the argument is absurd as there is enough material on record, and the argument is contrary to the plain language of the sections.

51. Section 15 reads thus:

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”.

52. In this context, the case of the NIA in the chargesheet is that members of the banned organisation CPI (Maoist) have engaged in a protracted armed struggle based on guerrilla warfare, and they have attacked and killed many government security forces from time to time and looted their weapons and acquired materials required to prepare the explosives. There is a specific assertion of killing the army personnel. Specific documents on record, such as communications in Hindi from Surendra (Surendra Gadling) (Accused No.3) to Prakash (Ritupan Goswami) (WA-2), referred to earlier, congratulate the party comrades that the party had killed 25 persons of the enemy that is police personnel. The letter also refers to gathering information on police and CRPF camps deployment,

which would suit ambush planning. A document seized from the Appellant is about integrated weapon training. Based on this, NIA alleged that the CPI (Maoist) has carried out the killings methodically, engaging in armed conflict. The material shows that by treating the armed forces of the State and the police as enemies by use of firearms and weapons, the members of the police and armed forces have been made targets and killed, and the conspiracy also refers to elimination of constitutional functionaries. There is, therefore, no merit in the contention of the Appellant that no terrorist act is alleged.

53. The Appellant was assigned by the party to do all future tasks of the Revolutionary Democratic Front (RDF). He has also set up APT (Appointments) and code structures. The material shows his deep involvement in the activities of the RDF and the CPI (Maoist), and his role cannot be seen only as an academician trying to help a colleague for release from custody, as is sought to be argued. There is sufficient material against the Appellant at this stage of being involved in the core activities of the terrorist organisation. In the communication written by the Appellant himself, he stated that he has gained expertise in the activities of the terrorist organisation, and the correspondence between the other accused showed that the Appellant is a trustworthy member of the terrorist organisation who can be entrusted with important tasks. The objectives of this terrorist organisation are to overthrow the legitimate establishment of the

Government by the use of weapons and to mobilised armed unrest. As per the material placed by the NIA, the objective is also sought to be achieved through creating an intellectual base, recruiting persons from oppressed strata of the society and indoctrinating the youth with the violent objectives of CPI (Maoist). This objective is also sought to be achieved by the Appellant. The Appellant is not just a passive member but an active member, and the material on record clearly shows his involvement in the larger conspiracy. Pursuant to the larger conspiracy to seize power from the State, the members of the police and armed forces have been made targets and killed, and also the conspiracy refers elimination of constitutional functionaries. The Appellant is not merely a sympathiser with this organisation but is given substantial responsibility, including conducting activities of the RDF, a frontal organisation of the CPI (Maoist). The Appellant was made aware of the decisions and fully interacted with the lead members of the banned terrorist organisations, the CPI (Maoist) Party and RDF. The Appellant has given constant support for the organisation, in fact, active participation. The analysis of the seized articles revealed that the offences are serious and are not limited to the Maharashtra but to all areas affected by Naxal activities. The investigation has revealed that the Appellant was in continuous contact with other persons, including wanted and absconding accused. The communication between co-accused, including the wanted accused, who was congratulated by comrades for killing 25 police personnel, refers Appellant being given all the

responsibilities of RDF and to coordinate programs and protests to raise public opinion and organise programs under the banner committee for the defence and release of G.N. Saibaba. The same communications refer to details of the meetings and the requirement of 8 Crores for the annual supply of weapons. The communication further refers to comrades proposing to take concrete steps to end the '*Modi -Raj*'. It is stated that 'we' are thinking along the lines of another '*Rajiv Gandhi-type incident*', and targeting 'his' road shows could be an effective strategy. Also, the Appellant was involved in raising funds for the CPI (Maoist) objective of release of arrested comrades. He was also in touch with the banned terrorist organisation, Kangleipak Communist Party (KCP) and the Appellant handling responsibility of appointments of foreign journalists and all present and future tasks of Revolutionary Democratic Front, a frontal organisation of the CPI (Maoist) Party. The documents on record show that the Appellant was an expert in setting up appointments and developing code structure which was vital for secret communication. The documents seized from the Appellant show the involvement in crucial aspects such as mass mobilisation, party building and analysis of the cities in the context of a larger objective of the CPI (Maoist) a terrorist organisation. There is no question of supplying missing links with the aid of imagination to infer conspiracy as sought to be argued by the Appellant, as the material itself is clear in that regard. Therefore we find no merit in the contentions of the Appellant.

54. The offences alleged against the Appellant for which NIA has placed the material in the record are serious. The maximum punishment under section 13 of the UAP Act is five years; maximum punishment under section 16 of the Act is life imprisonment or the death penalty; maximum punishment under section 17 of the Act is imprisonment for life; maximum punishment under section 18 of the Act also present imprisonment for life; and maximum punishment under section 40 of the Act is imprisonment for a term not exceeding fourteen years. The offences under Sections 121, 124-A, and 153 of the Indian Penal Code and Sections 13 and 16 of the UAP Act are alleged against the CPI (Maoist) and the banned organisation. The material placed before us by the NIA shows that the Appellant was part of a larger conspiracy and had abetted it, attracting Section 121A, 117 and 120B of I.P.C. as well as Section 18 of the UAP Act. The Appellant was in charge of the appointments, coordinating with the foreign collaborators, creating propaganda and raising funds for the release of co-conspirators and members of the banned organisation in furtherance of the party agenda. In the light thereof, Section 20-A of the UAP Act is also attracted against the Appellant.

55. The contention of the Appellant is also that since his fundamental rights are breached, he is in custody since last two years and trial is not likely to commence and there no fetters on the

Constitutional Court to grant bail irrespective of the provisions of UAP Act, this Court should release the Appellant on bail. In the facts of the case at hand there is no merit in the contention. In the case of *K.A.Najeeb*, facts before the Hon'ble Supreme Court were different, as in that case many co-accused were acquitted, those who were convicted were sentenced to not more than eight years, and Najeeb was in custody for more than five years and would receive the same sentence; the Hon'ble Supreme Court did not interfere with the order of the High Court emphasizing the distinction between considering the application for bail and an application for cancellation of bail. The order passed by the Hon'ble Supreme Court in the case of *Vernon (supra)*, who is the co-accused with the Appellant, is placed on record. This was a petition from the rejection of the bail application. The Investigation Agency had urged before the Hon'ble Supreme Court that the Sessions Court had already convicted Vernon, and upon being released on completion of sentence, he had continued his activities. The Investigation Agency submitted before the Hon'ble Supreme Court that the four accused are absconding and appropriate steps for segregating the trial would be taken. A grievance was made by the Investigation Agency that the arrested accused have been preferring some applications or the other, as a result of which the concerned court is unable to take up the matter for effective consideration as to whether the charges need to be framed or not. In these circumstances, the Hon'ble Supreme Court directed that the National Investigation Agency will take

appropriate steps to have the trial segregated and pray for the issuance of appropriate declaration under section 82 of the Code. The Hon'ble Supreme Court also directed the trial Court to consider whether charges are required to be framed. The Hon'ble Supreme Court also noted that some accused had filed discharge applications, and this was directed to be decided within three months. Therefore steps are being taken towards disposal of the cases. Regarding the Appellant's reliance on the order passed in the case of *Dr. P. Varavara Rao*, another co-accused, the Hon'ble Supreme Court has referred to rival contentions and, while granting bail, made it clear that the benefit of bail is extended to Varavara Rao only on his medical condition. The Hon'ble Supreme Court also observed that any observations made in the order are purely from the standpoint of narration of events and are not to be taken as a reflection of the merits of the matter. Appellant is not before us in a writ petition seeking bail on the ground of medical condition.

56. Having considered the totality of the material on record indicating accusations against the Appellant, we find that there are reasonable grounds for believing that the accusations of the NIA against the Appellant having conspired, attempted, advocated and abetted the commission of a terrorist act/s and the act/s of preparatory to the commission of a terrorist act, are *prima facie* true. In view of the seriousness of the conspiracy, the threat that it poses and the role of the Appellant in it, the arguments of the Appellant

based on educational qualifications and his conduct, cannot be considered.

57. The learned Special Judge has referred to the provision of section 43-D (5), the decision of the Hon'ble Apex Court and has referred on record. Considering the material on record, the learned Special Judge rejected the bail application. In view of the above discussion and the language of section 43 D (5), we do not find any error or perversity committed by the learned Special Judge.

58. The Appeal is dismissed.

59. We again clarify that our observations made in this judgment are in the context of consideration of bail, and the trial be conducted on its own merits.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)