

Spl. (NIA) Case No. 03/2020

(arising out of RC-01/2020/NIA/GUW)

22.06.2021

- 1) The instant case - *Spl. (NIA) Case No. 03/2020*, has arisen out of NIA investigated case no. RC-01/2020/NIA/GUW which after completion of investigation was charge-sheeted vide charge-sheet dated 26.06.2020 against 4 (four) accused persons, namely, Sri Akhil Gogoi **(A-1)**, Sri Jagjit Gohain @ Jagajit Gohain **(A-2)**, Sri Bhaskarjit Phukan @ Swagaditya Phukan @ Swargaditya Phukan **(A-3)** and Sri Bhupen Gogoi **(A-4)**, *u/s 120(B)/143/147/148/149/326/307/333/353/427 IPC r/w Section 16 of the UA(P) Act, 1967.* Presently, except Sri Akhil Gogoi (A-1) and Jagjit Gohain (A-2) who have got bail, the other 2 accused persons are in judicial custody.

- 2) The backgrounds facts in a nutshell. The case initially arose out of an ejahar dated 10.12.2019 lodged by one Sri *Tulumoni Duwarah*, SI of police of Chabua PS, Dibrugarh District, stating inter alia that on 09.12.2019, while he was doing law and order duty at Chabua town, a crowd of about 6000 persons, led by A-1 caused economic blockade and pelting of stones, one of which hit his face and injured him grievously. It was also alleged that the mob led by A-1 tried to murder the police personnel on duty. On the basis of the said ejahar, *Chabua P.S. Case No. 289/2019* was registered u/s 120(B)/147/148/149/336/307/353/326 IPC and investigation started. Subsequently, on the prayer of the I.O., Sections 153A/153B IPC r/w Sections 15(1)(a)/16 of the UA(P) Act were added. Further, vide

order dated 04.04.2020 passed by the Ministry of Home Affairs, Government of India, the National Investigation Agency (NIA), took over the investigation on 09.04.2020, whereupon the case was re-registered as RC-01/2020/NIA/GUW, which resulted in a charge-sheet dated 26.06.2020 against the 4 accused persons as mentioned above. The case is present at the stage of consideration of charge.

3) Heard *Sri Satyanarayana*, the learned Senior Public Prosecutor, NIA who has taken the Court through the statements of witnesses, the documents and other relevant materials. The prosecution has taken the Court through the contents of the charge sheet and findings against the accused persons. The learned Senior P.P. submits that the materials on record contains sufficient implications against the accused persons for being responsible for provoking the crowd to commit violence which led to serious injuries on one police official, apart from destruction of property and vehicles. The learned Senior P.P. submits that the ingredients of the charge sheeted sections are available with regard to the accused persons and submits that charges should be framed against them under the said section, including Section 16 of the UA (P) Act.

4) In support of his contentions, the learned Senior PP, NIA cites the following decisions: -

- (i) *Sajjan Kumar v. CBI, (2010) 9 SCC 368.*
- (ii) *Asim Shariff v. NIA, (2019) 7 SCC 148*
- (iii) *State v. S Selvi & Ors., (2018) 13 SCC 455*
- (iv) *State of Bihar v. Ramesh Singh, (1977) 4 SCC 39*

- (v) *Bhawna Bai v. Ghanshyam & Ors.*, (2020) 2 SCC 217
- (vi) *Yogesh v. State of Maharashtra*, (2008) 10 SCC 394
- (vii) *P Vijayan v. State of Kerala & Ors.*, (2010) 2 SCC 398
- (viii) *Soma Chakravarty v. CBI*, (2007) 5 SCC 403
- (ix) *Nallapareddy Sridhar Reddy v. State of Andhra Pradesh & Ors.*, (2019) 7 SCC 148

5) Heard, *Sri S Barthakur*, learned defence counsel assisted by *Sri K Gogoi* and *Sri R Sensowa*, learned counsels, appearing for the accused persons, who referring to various judgments and the materials before this Court submits that there are no elements of conspiracy between the persons; that, the incidents referred to in documents D-39 and D-43 are not related to 09.12.2019; that, the transcripts of the conversations do not reveal any conspiracy; that, the statements of charge sheet are at variance with the materials on record; that, there is a marked difference between the statements before police and that before NIA; that, the materials do not make out that A-1 has instigated violence; that, the materials on record do not make out any terrorist offence. The defence counsel submits that the materials are not sufficient to frame charges against the accused persons.

6) In support of his contentions, the learned defence counsel cites the following decisions: -

- (i) *Sajjan Kumar v. CBI*, (2010) 9 SCC 368.
- (ii) *Asim Shariff v. NIA*, (2019) 7 SCC 148
- (iii) *Vikram Johar v. State of U.P.*, (2019) 14 SCC 207
- (iv) *State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39
- (v) *Bhawna Bai v. Ghanshyam & Ors.*, (2020) 2 SCC 217

(vi) *Yogesh v. State of Maharashtra, (2008) 10 SCC 394*

(vii) *Asif Iqbal Tanha v. State of Delhi, (Crl. Appeal No. 39/2021)*
(Delhi High Court)

7) I have perused the ejahar, the FIR, the charge-sheet, the materials collected available in the case diary such as statements of witnesses, documents and other relevant materials. I have considered the submissions of the learned counsels of both the sides. I have perused the relevant portions of the judgments cited at the Bar.

Penal provisions of the charge-sheet against the accused persons

8) As stated at the outset, the accused persons have been charge-sheeted *u/s 120(B)/143/147/148/149/326/307/333/353/427 IPC r/w Section 16 of the UA(P) Act, 1967.* The subject areas of these penal provisions are as follows:

(i) Section 120(b) IPC - Punishment for conspiracy - (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

(ii) Section 143 IPC –Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

- (iii) Section 147 IPC - Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- (iv) Section 148 IPC - Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
- (v) Section 149 IPC - If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.
- (vi) Section 326 IPC – Punishment for voluntarily causing grievous hurt by dangerous weapons or means.
- (vii) Section 307 IPC – Punishment for attempt to commit murder.
- (viii) Section 333 IPC - *Voluntarily causing grievous hurt to deter public servant from his duty.*—Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- (ix) Section 353 IPC – Punishment for assault or criminal force to deter public servant from discharge of his duty.
- (x) Section 427 IPC - *Mischief causing damage to the amount of fifty rupees.*—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with

imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- (xi) Section 16 UA(P) Act - Punishment for terrorist act. The punishment prescribed is death or life imprisonment and also fine, if the terrorist act has resulted in death of any person; however, in other cases, where such terrorist act has not caused death, punishment is imprisonment not less than 5 years, but which may extend to life imprisonment and also fine.

**Definition and interpretation of Terrorist Act under the UA
(P) Act, 1967**

- 9) It may be mentioned herein that Section 2 (k) of the UA(P) Act pertaining to definitions, states that *terrorist act* has the meaning assigned to it in section 15, and the expressions *terrorism* and *terrorist* shall be construed accordingly.
- 10) In this context, Section 15 of the UA(P) Act is as under:

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 do or abstain from doing any act;]

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.]

- 11) Section 16 of the UA (P) Act which prescribes punishment for terrorist act, states that *if such act caused death of a person, the offence would be punishable with death or life imprisonment and fine; and in other cases, the offence would be punishable with imprisonment not less than 5 years and upto life imprisonment and also be liable to fine.*

12) As narrated earlier, *Section 15 of the UA (P) Act* provides a detailed definition of a terrorist act under the UA (P) Act. Upon analyzing the said definition, I find that some of the ingredients, which might be relevant to the instant case may be enumerated as follows:

(i) if a person overawes by means of criminal force or show of criminal force or attempts to do so or causes the death of any public functionary or attempts to cause the death of any public functionary *with an intention to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or with an intention to strike terror in the people or any section of the people*, the said person would be committing the terrorist act within the meaning of Section of 15 of UA(P) Act.

(ii) Further, if a person causes death or injuries to persons or causes damage and destruction of properties or causes disruption of supplies or services essential to the life of the community and *such acts are done using bombs, explosives substances inflammable substances or any other means of whatever nature* and further, such acts are done with the *intention to threaten the unity, integrity, security, economic security or sovereignty of India or with an intention to strike terror in the people or any section of the people*, the said person would be committing a terrorist act within the meaning of Section 15 of the UA (P) Act.

13) Thus, from the analysis of this definition of terrorist acts I find that to constitute a terrorist act within the meaning of Section 15, the prescribed illegal activities have to be done with any or more of the stipulated intention(s) – such as threatening the unity, integrity,

security, economic security of India or threatening the sovereignty of India or striking terror in the people or a section of the people.

14) Recently, in the case of ***Asif Iqbal Tanha v. State of NCT of Delhi (Crl.A. 39/2021)***, the Hon'ble Delhi High Court, delved in detail on the subject of anti-terrorism law in India and after referring to several decisions of the Hon'ble Supreme Court in this regard, noticed and laid down, inter alia, the following principles:

(i) Although section 15 of the UAPA defines 'terrorist act' and section 18 provides for 'punishment for conspiracy for committing a terrorist act, including an attempt to commit or advocating, abetting, advising or inciting the commission of a terrorist act, as also of any act preparatory to the commission of a terrorist act', the word 'terrorism' or 'terror' has nowhere been defined in the UAPA. For completeness it may be noticed that section 2(1)(k) of the UAPA says that the phrase 'terrorist act' shall have the meaning as assigned to it in section 15 and that the expressions 'terrorism' and 'terrorist' shall be construed accordingly (para 28).

(ii) Since the theme of section 15 is evidently the intent or likelihood of an act threatening (i) the security of the State, described variously in the section as unity, integrity, security, economic security, sovereignty and (ii) of striking terror, it is necessary to understand the concept and distinction between "law and order", "public order" and "security of the State", as eloquently explained by Hidayatullah, J. (as the learned Chief Justice then was) of the Hon'ble Supreme Court in Ram Manohar Lohia (Dr) vs. State of Bihar: AIR 1966 SC 740 –

- *One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State.*

- *It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State....*

(para 33)

(iii) Another sacrosanct principle of interpretation of penal provisions is that they must be construed strictly and narrowly, to ensure that a person who was not within the legislative intendment does not get roped into a penal provision. Also, the more stringent a penal provision, the more strictly it must be construed (para 40).

(iv) Though, as seen above, the phrase 'terrorist act' has been defined in a very wide and detailed manner within section 15 itself, in our opinion, the court must be careful in employing the definitional words and phrases used in section 15 in their absolute literal sense or use them lightly in a manner that would trivialize the extremely heinous offence of 'terrorist act', without understanding how terrorism is different even from conventional, heinous crime (para 48).

(v) As observed by the Hon'ble Supreme Court in Hitendra Vishnu Thakur v. State of Maharashtra : (1994) 4 SCC 602, the extent and reach of terrorist activity must travel beyond the effect of an ordinary crime and must not arise merely by causing disturbance of law and order or even public order; and must be such that it travels beyond the capacity of the ordinary law enforcement agencies to deal with it under the ordinary penal law (para 49).

(vi) In our view therefore, notwithstanding the fact that the definition of 'terrorist act' in section 15 UAPA is wide and even somewhat vague, the phrase must partake of the essential character of terrorism and the phrase 'terrorist act' cannot be permitted to be casually applied to criminal acts or omissions that fall squarely within the definition of conventional offences as defined inter alia under the IPC. We remind ourselves of the principle laid down by the Constitution Bench of the Hon'ble Supreme Court in A.K. Roy v. Union of India & Ors : (1982) 1 SCC 271, where it said that the requirement that crimes must be defined

*with an appropriate definitiveness is a fundamental concept of criminal law and must be regarded as a pervading theme of our Constitution since the decision in Maneka Gandhi vs. Union of India: (1978) 1 SCC 248; and that the underlying principle is that every person is entitled to be informed as to what the State commands or permits and the life and liberty of the person cannot be put on peril of an ambiguity **(para 54)**.*

*(vii) It is therefore clearly the position in our jurisprudence that where a provision of law engrafting serious penal consequences is vague, such provision must be construed narrowly in order to bring it within the constitutional framework; and must be applied in a just and fair way, lest it unjustly ropes within its ambit persons whom the Legislature never intended to punish **(para 56)**.*

*(viii) In our opinion, the intent and purport of the Parliament in enacting the UAPA, and more specifically in amending it in 2004 and 2008 to bring terrorist activity within its scope, was, and could only have had been, to deal with matters of profound impact on the 'Defence of India', nothing more and nothing less. It was neither the intent nor purport of enacting UAPA that other offences of the usual and ordinary kind, however grave, egregious or heinous in their nature and extent, should also be covered by UAPA, since such conventional matters would have fallen within Entry 1 of List-II (State List) and/or Entry 1 of List-III (Concurrent List) of the Seventh Schedule to our Constitution **(para 57)**.*

- 15) Before proceeding further, some important principles of law laid down by the Hon'ble Supreme Court on the subject of charge framing or discharge may be noticed hereunder.

Important case law principles on the subject of consideration of charge

- 16) In ***Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368 (para 21)***, the Hon'ble Supreme Court after

referring to various earlier cases on the subject of framing charge, has summarized the principles which are to be kept in mind by the criminal court at the stage of consideration of a case for discharge or framing of charge under Sections 227 and 228 of Cr. P.C. :-

On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

- (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
- (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
- (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
- (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
- (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material*

placed on record and must be satisfied that the commission of offence by the accused was possible.

- (vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
- (vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.*

17) Further, in para 19 of *Sajjan Kumar (supra)*, it was also held that –

- (i) *It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.*
- (ii) *If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*

18) In ***Asim Shariff v. NIA, (2019) 7 SCC 148 (para 8)***, the Hon'ble Supreme Court has enumerated the following principles:

- (i) It is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to

Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

- (ii) where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge;
- (iii) by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him.
- (iv) It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not.
- (v) It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record.

19) In ***State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 1568 (para 9)***, the Hon'ble Supreme Court has held that - *Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements.*

20) In ***Nallapareddy Sridhar Reddy v. State of A.P., (2020) 12 SCC 467 (para 25)***, it was held that - *Appreciation of evidence on merit is to be done by the court only after the charges have been framed and the trial has commenced. However, for the purpose of framing of charge the court needs to prima facie determine that there exists sufficient material for the commencement of trial.*

21) In ***Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC***

561 (para 11), it was held that - *It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.*

22) In ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 (para***

19), it has been held that - *at the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.*

23) In ***State v. S. Selvi, (2018) 13 SCC 455 (para 9)***, it has been held that –

(i) It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the Judge has got power to sift and weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge.

The test to determine a prima facie case would naturally depend upon the facts of each case.

(ii) By and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused.

(iii) The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on.

(iv) This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

24) In ***Soma Chakravarty v. State, (2007) 5 SCC 403 (para 19)***, it has been held that - *charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exist some materials therefor. Suspicion cannot alone, without anything more, it is trite, form the basis therefor or held to be sufficient for framing charge.*

25) In ***State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 (para 30)***, it has been held that - *a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.*

26) In ***P. Vijayan v. State of Kerala, (2010) 2 SCC 398 (para 25)***, it has been held that - *Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of*

the records and documents, he finds that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and documents at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure.

27) In ***State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 (para 4)***, it has been held that –

- (i) If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*
- (ii) An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.*

28) Upon perusing the aforesaid case laws enunciated by the Hon'ble Supreme Court in various decisions, **the following principles emerge on the subject of charge / discharge:**

- (i) At the stage of considering the discharge/charge the Court has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie against the accused has been made out.
- (ii) What constitute a prima-facie case would depend upon the facts of each case. But if there is a ground for presuming that the accused has committed the offence, a prima-facie case can be said to exist against him.
- (iii) If the evidence proposed to be adduced by the prosecution even if fully accepted, before being challenged by the defence, does not show that the accused committed the offence, there will be no sufficient ground for proceeding with the trial.
- (iv) Full appreciation of evidence like that a trial is not permissible at the stage of consideration of charge, though broad probabilities indicated by the materials has to be seen for the purpose of determining by the Court whether it would be justified in commencing trial against the accused.
- (v) If the Court finds on the basis of materials that there are no sufficient grounds for proceeding against the accused, then the Court would be justified to discharge the accused.
- (vi) If the materials indicate two views, with one of them creating suspicion only as distinguished from grave suspicion, the Court will be empowered or justified to discharge the accused.
- (vii) Suspicion cannot alone without anything more from the materials, cannot be held sufficient for framing charge.
- (viii) Where the materials fall short of *prima-facie* case for framing charge against the accused, the interests of justice requires the court to discharge the accused.

Standard of test under UA (P) Act, 1967 for charge framing vis-à-vis bail

29) In the case of *NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1*, the Hon'ble Supreme Court has held in para 23 that - 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, for the purpose of adjudicating bail 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. Thus, for framing of charge, a higher degree of prima facie satisfaction is necessary than one required for the purpose of deciding the question of bail under the *UA (P) Act, 1967*.

Materials submitted against the accused persons

30) Having noticed the principles of law governing the subject matter at hand, now, the materials on record available at this stage have to be scrutinized and analyzed to determine the question of framing charge or otherwise, against the accused persons.

31) As stated earlier, the case diary has been placed before me and I have perused the relevant portions of the case diary. I have also gone through the charge-sheet dated 26.06.2020.

Materials in the charge-sheet

32) Paragraph 16.14(A) of the charge-sheet dated 26.06.2020, states about the findings against the accused Sri Akhil Gogoi (A-1) pursuant to the investigation. It is stated therein that:

- (i) A-1 delivered provocative speeches at the spot in Chabua which has caused disruption of peace and damage/destruction of public and private

properties and disruption of essential services for life community in India and created fear in a section of people in India, which is a terrorist act as per section 15 (1)(a)(ii)(iii)(b).

(ii) A-1 led a mob in violation of section 144 of the Cr.P.C. imposed at Chabua on 09.12.2019. A-1 led the mob to cause damage to public/private properties with intent to strike fear in a section of people of India.

(iii) A-1 led the mob armed with deadly weapons and attempted to cause death of public functionary by show of criminal force and thus, caused grievous injury to the government servant on duty.

(iv) The mob led by A-1 was planning to set fire on the houses of Bengali dominated area of *Amravati* colony. This establishes the fact that A-1 led a mob with intent to strike terror in a section of people of India. The statement of witnesses reveal that the terrorist act of A-1 in pursuance of the conspiracy has led to fear in a section of people in the area.

(v) The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing the prima facie case against the accused for prosecution of the offences.

33) Paragraph 16.14(B) of the charge-sheet dated 26.06.2020, states about the findings against the accused Sri Jagjit Gohain (A-2) pursuant to the investigation. It is stated therein that:

(i) A-2 in association with A-1 caused and coordinated to be caused the economic blockage by causing NH-37 and railway lines blockage at Chabua on 09.12.2019. A-2 thus in association with A-1 led the blocking of supplies essential services for life community in India, which is a terrorist act as per section 15 (1)(a)(iii).

(ii) A-2 in association with A-1 and other accused led a mob in violation of Section 144 of Cr.P.C. imposed at Chabua on 09.12.2019. A-2 in association with A-1 led the mob to cause damage to public/private properties with intent to strike fear in a section of people of India.

(iii) A-2 in association with A-1 led the mob armed with weapons and attempt to cause death of public functionary by show of criminal force and thus, caused grievous injury to the government servant on duty, with intent to strike fear in a section of people.

(iv) The mob led by A-1 in association with A-2 was planning to set fire on the houses of Bengali dominated area of *Amravati* colony. This establishes the fact that A-2 in association with A-1 led a mob with intent to strike terror in a section of people of India. The statement of witnesses reveal that the terrorist act of A-2 in pursuance of the conspiracy has led to fear in a section of people.

(v) The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing the prima facie case against the accused for prosecution of the offences.

34) Paragraph 16.14(C) of the charge-sheet dated 26.06.2020, states about the findings against the accused Sri Bhaskarjit Phukan (A-3) pursuant to the investigation. It is stated therein that:

(i) A-3 in association with A-1 caused and coordinated to be cause the economic blockage by causing NH-37 and railway lines blockage at Chabua on 09.12.2019. A-3 thus in association with A-1 led the blocking of supplies essential services for life of community in India, which is a terrorist act as per section 15 (1)(a)(iii).

(ii) A-3 in association with A-1 and other accused led a mob in violation of Section 144 of Cr.P.C. imposed at Chabua on 09.12.2019. A-3 in association with A-1 led the mob to cause damage to public/private properties with intent to strike fear in a section of people of India.

(iii) A-3 in association with A-1 led the mob armed with weapons and attempt to cause death of public functionary by show of criminal force and thus, caused grievous injury to the government servant on duty, with intent to strike fear in a section of people.

(iv) The mob which A-3 was part of and which was led by A-1 was planning to set fire on the houses of Bengali dominated area of *Amravati* colony with intent to strike terror in a section of people. The statement of witnesses reveal that the terrorist act of A-3 in pursuance of the conspiracy has led to fear in a section of people.

(v) The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing the prima facie case against the accused for prosecution of the offences.

35) Paragraph 16.14(D) of the charge-sheet dated 26.06.2020, states about the findings against the accused Sri Bhupen Gogoi (A-4) pursuant to the investigation. It is stated therein that:

(i) A-4 in association with A-1 caused and coordinated to be caused the economic blockage by causing NH-37 and railway lines blockage at Chabua on 09.12.2019. A-4 thus in association with A-1 led the blocking of supplies essential services for life community in India, which is a terrorist act as per section 15 (1)(a)(iii).

(ii) A-4 in association with A-1 and other accused led a mob in violation of Section 144 of Cr.P.C. imposed at Chabua on 09.12.2019. A-4 in

association with A-1 led the mob to cause damage to public/private properties with intent to strike fear in a section of people of India.

(iii)A-4 in association with A-1 led the mob armed with weapons and attempt to cause death of public functionary by show of criminal force and thus, caused grievous injury to the government servant on duty, with intent to strike fear in a section of people.

(iv)The mob which A-4 was part of and which was led by A-1 was planning to set fire on the houses of Bengali dominated area of *Amravati* colony with intent to strike terror in a section of people. The statement of witnesses reveal that the terrorist act of A-4 in pursuance of the conspiracy has led to fear in a section of people.

(v) The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing the prima facie case against the accused for prosecution of the offences.

Statements of witnesses

36) Upon perusing the statements of the witnesses, recorded during the investigation, I find as follows with regard to **A-1** Sri Akhil Gogoi:

(i) P.W. A in his statement before NIA stated that on 09.12.2019, A-1 called him and asked him to do something fiery. That, at around 6:00 P.M. on the same day he along with A-1 reached Chabua where there was a large gathering in a noisy atmosphere. That, A-1 addressing the meeting, provoked the people and asked them to oppose the government using any means. That, due to the provocation of A-1 some people from the crowd started pelting stones on the security officials and one stone hit the mouth of Chabua O/C Sri *Tulumoni Duarah* grievously wounding him with profuse bleeding. That, even then the crowd did not stop and overturned and damaged a Bolero vehicle on government duty.

That, even after the crowd turn violence A-1 did not denounce the same or did anything to stop them.

(ii) Witness no. 2 Sri *Tulumoni Duarah* in his statement before NIA stated that at the relevant time he was working as O/C Chabua P.S and that on 09.12.2019 he was performing law and order duty at Chabua Town along with his staff and Addl. Superintendent of Police. That, there was a gathering of 6000 people headed and addressed by A-1 and that they had blocked the railway track as part of economic blockade and that the crowd had also damaged the gypsy vehicle belonging to security personnel. That, during the meeting he got information from one *Devarikhi Chetia* that protesters were planning to burn down houses of Bengali dominated Amravati Colony whereupon he immediately informed Circle Inspector and request him to deploy security forces in the area. It is further stated by this witness that he along with security staff tried to remove the blockade unsuccessfully as they were provoked by A-1 and that A-1 the leader of the crowd and his associates criminally conspired against police and government officials and threw stones, one of which hit the mouth of the witness Sri *Duarah* causing grievous injuries by way of broken teeth and injury of lips. That, another stone hit his head but he was wearing helmet. That, he was immediately removed to Aditya Nursing Home in Dibrugarh where he was given treatment involving stitches and removal of affected teeth. It is further stated that at the time of the incident the associates of A-1 also damaged the Bolero vehicle on CRPF duty and that A-1 and his associates obstructed police and government officials from performing their duties as well. It is further stated that at the time of the incident when the witness got injured and was being shifted away from the site, A-1 was still addressing the gathering of people.

(iii) Witness no. 3 Sri Khagen Laskar, S.I. of Police of Chabua P.S. also stated that on 09.12.2019 a protest meeting held near Chabua Railway Station

and addressed by A-1 turned violent and pelted stones as a result of which O/C Chabua P.S. sustained grievous injuries leading to lodging of FIR and registration of Chabua P.S. Case No. 289/19, which was endorsed to this witness for investigation, during which he seized one stone, duty register and pen drive.

(iv) Witness no. 4 Sri Kulapradip Bhattacharjee in his statement stated that while working as Dy. Superintendent of Police at Namrup, he took over the investigation of Chabua P.S. Case No. 289/19 from the earlier I/O Sri *Khagen Laskar*.

(v) Witness no. 5 Siranjib Chetia, witness no. 6 Sourav Jyoti Baruah and witness no. 7 Pallab Baruah are constables working in the Chabua police station and they have stated on similar lines that on 09.12.2019, there was a large protest meeting in Chabua during which people tried to block the roads and rail and the police party from Chabua police station were trying to clear the blockage and in the presence of Akhil Gogoi, the crowd started pelting stones on the police party also, leading to injuries on the OC. These witnesses have also stated that they do not know the attacking persons but will be able to recognise them, if they see them. Witness no. 5 has also stated that the crowd led by A-1 started pelting stones but the version of witness no. 6 and 7 is slightly different. Witness no. 8 Nabajyoti Chetia, a driver in the Chabua police station has also stated on similar lines and that while they were trying to clear the blockage, some people in the crowd under the leadership of Akhil Gogoi started pelting stones on the police party. This witness has also stated that though he does not know the attacking persons but will be able to recognise them, if he sees them.

(vi) Witness No.9, Rafiq Shah; witness no.10, Birendra Sarmah and witness no.11, Biju Choudhury are associated with the V.D.P. under Chabua P.S. and all 3 (three) of them have stated that on 09.12.2019, there was

protest meeting in Chabua area, whereby, the protestors were trying to block the highway and the police party of Chabua P.S. were trying to obstruct the same, whereupon, some of the protestors started pelting stones on the police party. All these three witnesses have, however, stated that they do not know the said protestors.

(vii) Witness no.12, Subhas Kachari, witness no.13, Lakhinath Basumatary and witness no.14, Dipen Gogoi are associated with the office of Circle Inspector of Chabua and they have also stated about the protest meeting and attempts at blockade. They have mentioned about the aggressive speech given by Akhil Gogoi against the Government and subsequent pelting of stones by some of the protesters, due to which, the O/C of Chabua P.S. sustained injuries. Witness no.14 has stated that due to the crowd and darkness, he could not recognize the attacking persons.

(viii) Witness no.15, Nabin Gogoi is the driver of the Circle Office of Chabua Revenue Circle and witness no.16, Sri Anuj Bharati is a driver of Chabua P.S. and both the two witnesses have stated about the aggressive speech of Akhil Gogoi and the stone pelting by protestors leading to injuries on the O/C of Chabua P.S. Witness no.16 has stated that he could not recognize the persons attacking the police at that time.

(ix) Witness no. 17 Sri Dhruba Bora Addl SP, in his statement recorded during investigation stated that on 09.12.19 he along with O/C Chabua P.S. and staff were going on law and order duty at Chabua where a protest programme of railway blockade was being carried out under the leadership of A-1, who in his speech instigated the people, leading to pelting of stones, one of which hit the face of O/C Chabua P.S. leading to grievous injuries by way of broken teeth and cut lips. That, after the instigational speech of A-1 miscreants also vandalized vehicle and public properties. That, A-1 as leader of KMSS was responsible for the

miscreants activities that took place in Chabua during the bandh called given by them. That, it was revealed that it was a plan of miscreants as well as Maoist / terrorist design activity in the name of protest against CAA in Chabua.

(x) Witness no. 18 Sri Biswajit Phukan a local correspondent of *Pratidin Time* stated in his statement that he was in Chabua and on 9th December, 2019 during bandh call given by KMSS and other organizations there was a huge gathering at Chabua Town in the evening comprising about 6000 people. That, A-1 and his associates arrived at the meeting at 6:00 P.M. where after A-1 asked the people to sit on the railway track to block the trains. That, A-1 gave a provocative lecture as chief guest whereupon the people got furious and started pelting stones on the security people and subsequently, he saw O/C Chabua P.S. Sri *Tulumoni Duarah* with injuries on his face and bleeding. That, Sri Duara told the witness that he was hit because of pelting of stones by the supporters of A-1, whereupon witness took video footage of the injured O/C and the meeting environment. That, one Bolero vehicle was also damaged there due to the instigational speech of A-1; that organizer had made the public gathered there and that after the vandalism, A-1 and others remained there for an hour; that the witness did not see A-1 requesting the crowd not to vandalize; that as leader of KMSS A-1 is fully responsible for the miscreants activities that took place in Chabua during the bandh call given by KMSS and that it was also revealed that it was a planned miscreants as well as Maoist/ terrorist design activities in the name of protest against CAA in Chabua.

(xi) Witness no. 19 Dr. C.R. Joshi- Dental Surgeon of Dibrugarh who had treated Sri T. Duarah for the injuries in the incident has stated in his statement about the treatment given by him involving dental surgery procedure under anesthesia.

- (xii) Witness no. 20 Ms Manashi Bora of the cyber cell of Dibrugarh police in her statement stated that on 29.05.2020 under requisition of NIA team she extracted 8 nos. of video footages of violent activities by KMSS/SMSS and their associates from 9th December, 2019 onwards under Chabua P.S. The said witness has also stated about another video of such violent activities extracted from the cyber cell computer system of S.P. Dibrugarh and from two pen drives produced by Inspector NIA.
- (xiii) Witness no. 21 Sri Ridip Sonowal is the seizure witness pertaining to aforesaid extraction. Witness no. 22 Sri Nilu Kumar Kohar is also a similar seizure witness pertaining to the 8 videos mentioned by witness Manashi Bora.
- (xiv) Witness no. 23 Sri Bikey Kondapan in his statement before NIA has stated that he was the driver of Mahendra Bolero vehicle No. AS06 V2392 given by his owner on hire to CRPF and that on 09.12.2019 he was around Chabua area; that, on that day at around 6:45 P.M. he was on the high way going towards Tinsukia and then he saw one gypsy vehicle being attacked by protectors whereupon he tried to move out but crowd came out from both sides of the road and blocked his vehicle and started pelting stones and attacking him as well, whereupon he somehow came out of the vehicle and hid himself; that after sometime he came out and saw that the vehicle had been damaged by protesters; that, on calling O/C Chabua P.S. he came to know that O/C himself had suffered from serious face injury caused by violent protesters; that due to darkness and huge crowd he could not identify any of the protesters clearly.
- (xv) Witness no. 24 Sri Trilochan Behera - an Assistant Commandant of CRPF in his statement before NIA stated that on 09.12.19 he was on security duty in Chabua where a protest was going on and that around 6:00 P.M. A-1 and his associates came to Chabua near the railway station

and started addressing the crowd during which he delivered a provocative speech and told the people to oppose CAA using any means; that, on his provocation some people from the crowd started pelting stones, one of which hit the mouth of O/C Chabua P.S. leading to injuries; that even then the crowd did not stop and damaged his vehicle. Witness no. 25 Sri D.K. Medhi of Government Railway Police stated about the rail block programme conducted near Chabua railway station on 09.12.2019. He also stated about some complaints lodged by railway officers regarding damage of railway properties. Similarly witness no. 26 Sri T. Shanti Kr. Singha of RPF also stated about such rail block protest on 09.12.2019. Witness no. 28 Sri Parimal Mali – railway officer in his statement before NIA stated that during the CAB protest from 09.12.2019 to 12.12.2019 different violent activities were reported in Chabua and other railway stations committed by violent protesters, causing loss and damage of railway properties; that, after the situation improved a little, he along with his senior officers visited the affected stations including Chabua and prepared loss assessment report.

(xvi) Witness no. 29 Sri Satish Baruah has also stated about witnessing such protest on 09.12.2019 near Chabua railway station being a railway officer on duty at that time and that also saw leaders of different organization deliver speeches, but could not personally identify any of them; that on 13.12.2019 when he saw the station he found that it was partially burnt down and there was also other destruction of railway properties there.

(xvii) Witness no. 32 is Constable Sri S. Dangaria who in his statement before NIA stated about being a seizure witness to the seizures made by NIA team on 28.05.2020 from Chabua P.S., which included documents, one piece of stone, medical report of T. Duarah etc. Witness no. 33 is Constable Sri Reshob Das who also stated about being witness to such seizure.

(xviii) Witness no. 34 Sri Kaushik Haldar also stated about protest at near Chabua Railway Station on 09.12.2019 and that, on 11.11.2019 when he went there, he found station to be partially burnt and also saw other losses of railway properties. Witness no. 35 Sri B.P. Rao - a railway employee has stated about being witness to seizure of some materials such as mobile phone, photographs etc. by NIA team from Chabua Railway Station on 21.06.2020. Witness no. 36 - Sri Tanu Gogoi another railway employee also stated about such seizure on 21.06.2020.

(xix) Witness no. 37 - Sri Matin Choudhury @ Matin Ali in his statement has stated that he personally knows A-1 and his mobile no. 9435054524 and had talked with A-1 many times on this number. Witness no. 38 - member of KMSS has stated about personally knowing A-1 and having talked with him many times on his mobile nos. 9435054524 and 6001416124. Witness no. 39 Sri Dipjyoti Handique and witness no. 40 Sri Abhijit Gohain has stated about talking with accused Bhupen Gogoi, Jagjit Gohain and Bhaskarjit Phukan on their mobile nos. 7099492813, 84863719449 and 9101117593 respectively.

(xx) Witness no. 30 Sri Devarikhi Chetia in his statement before NIA stated that he is the P.W.D. contractor and office bearer of *Motok Juba Chatra Sammelon* and that under umbrella of several organizations, his organization had also taken part in the anti CAA movement in Assam in 2019. That, on 9.12.2019 people started gathering for protest near Chabua Railway Station and around 5:40 to 6:00 P.M. leaders of different organizations started delivering speeches; that, KMSS leader Sri Akhil Gogoi (A-1) also delivered an aggressive and provocative speech. That, during this time one administrative officer informed him about some protesters were trying to create violence by disruptive law and order situation and that at 6:45 P.M. he heard about damage of one CRPF vehicle. That, at that time Sri Tulumoni Duarah, O/C of Chabua

P.S. along with his staff were doing duty near him and subsequently O/C Chabua along with his staff went forward and these witnesses also followed him; that, when they reached the place where CRPF vehicle was damaged O/C Duarah was attacked by protesters causing serious injury on his face due to stone pelting. That, A-1 along with A-2, A-3 and A-4 were leading the mobs. That, though other leaders were also there, he saw presence of A-1 and other KMSS leaders from beginning of the programme. This witness further stated that during this time, he also got information that some protesters were planning to set fire on the houses of Amaravati colony - Bengali dominated area, whereupon he immediately informed the O/C who in turn deployed security there.

(xxi) Witness no. 31 Sri Dhruba Gohain in his statement before NIA stated that he is a businessman and also associated with CPI (M) and under an umbrella organizations, also took part in anti CAA protest; that, on 09.12.2019 people gathered for protest near Chabua Railway Station and around 5:30 to 6:00 P.M., A-1 delivered an aggressive and provocative speech. That, during the programme he also heard about damaging of one CRPF vehicle and that O/C Chabua P.S. was attacked by some miscreants causing serious injury. However, the witness stated that he has not seen this incident personally.

37) Upon perusing the statements of the witnesses, recorded during the investigation, I find as follows with regard to **A-2 Sri Jagjit Gohain:**

(i) Out of the statement of witnesses available on record at this stage only Sri Devarikhi Chetia and Sri Tulumoni Duara have mentioned the name of A-2 Sri Jagjit Gohain and made some implications therein. The witness Sri Dipjyoti Handique and Sri Abhijit Gohain have only stated that they know A-2. The protected witness A has also not mentioned the name of A-2.

(ii) In this regard, I have perused the statements of witnesses - *protected witness A, Sri Tulumoni Duwara, Sri Khagen Laskar, Sri Kulapradip Bhattacharjya, Sri Chiranjit Chetia, Sri Sauravjyoti Baruah, Sri Pallav Baruah, Sri Nabajyoti Chetia, Sri Rafique Shah, Sri Birendra Sarma, Sri Biju Choudhury, Sri Subash Kochari, Sri Lakhinath Basumatary, Sri Nabin Gogoi, Sri Arjun Bharoti, Sri Dhruba Bora, Sri Biswajit Phukan, Dr. C.R. Joshi, Smt Manashi Bora, Sri Ridip Sonowal, Nilu Kumari Kohar, Sri Bikey Kondapan, Sri Trilochan Behera, Sri D.K. Medhi, T. Shanti Kumari Singha, Sri Pranjal Barthakur, Sri Parimal Mali, Sri Satish Baruah, Sri Deborikhi Chetia, Sri Dhruba Gohain, Sri Santanu Dangaria, Sri Reshob Das, Sri Kaushik Haldar, Sri B. Policy Rao, Sri Tarun Gogoi, Sri Matin Choudhury, Sri Mukul Deka, Sri Dipjyoti Handique, Sri Abhijit Gohain, Sri Rounak Shah, Sri Jaushad Ali.*

(iii) Police official Sri Tulumoni Duara, who is also the informant of this case has been indicated as witness No.2 in the charge sheet. In his statement he has stated that on 09.12.2019 he was performing law and order duty at Chabua where there was a gathering of about 6000 people addressed by A-1 Sri Akhil Gogoi and that there was also blockade of railway track. He further stated that he and his team tried to remove the blockade but could not do so and that A-1 Sri Akhil Gogoi and his associates criminally conspired against police and government officials and threw stones, one of which hit his mouth breaking two teeth and causing grievous injuries on his upper jaw and upper lip for which he undertook treatment in Aditya Hospital, Dibrugarh. He stated that it was an attempt to murder as part of their conspiracy against police. This witness further stated that the associates of A-1 damaged the white Bolero vehicle on duty under CRPF and turned the vehicle on its side. He further stated that A-1 and his associates obstructed the police and government officials for performing their duties as well. This witness stated the names of some of the persons who were present in the gathering which also included

the names of A-2 Sri Jagjit Gohain, A-3 Bhaskarjit Phukan and A-4 Sri Bhupen Gogoi.

(iv) Witness No. 30 Sri Devarikhi Chetia in his statement stated that on 09.12.2019 in the evening around 5-40/6:00 P.M. local people started gathering near Chabua Railway Station and leaders from various associations including KMSS began to deliver lectures against CAB and that A-1 Sri Akhil Gogoi and others delivered aggressive provocative speeches. That, in that programme large number of people came out voluntarily in the meeting place due to which the road traffic was disrupted. He further stated that around 6-45 P.M., O/C Chabua P.S. Sri Tulumoni Duara along with his staff were near him on duty and that they went towards a place where a CRPF vehicle was stated to have been damaged. The witness stated that he also followed the police party and when he reached the place, he saw that police official Sri Duara was attacked by the protesters causing injury to his face due to stone pelting. This witness stated that at that time he saw A-2 Sri Jagjit Gohain, A-3 Sri Bhaskarjit Phukan and A-4 Sri Bhupen Gogoi along with other protesters near damaged vehicle and that when the witness tried to remove one burning tyre from the road A-2 Sri Bhaskarjit Phukan hit the tyre with a sword he was carrying. This witness further stated that A-1, A-2, A-3 and A-4 were leading the mobs.

38) Upon perusing the statements of the witnesses, recorded during the investigation, I find as follows with regard to **A-3 Sri Bhaskarjit Phukan.**

(i) I have perused the statements of witnesses - *protected witness A, Sri Tulumoni Duwara, Sri Khagen Laskar, Sri Kulapradip Bhattacharjya, Sri Chiranjit Chetia, Sri Sauravjyoti Baruah, Sri Pallav Baruah, Sri Nabajyoti Chetia, Sri Rafique Shah, Sri Birendra Sarma, Sri Biju Choudhury, Sri Subash Kochari, Sri Lakhinath Basumatary, Sri Nabin Gogoi, Sri Arjun*

Bharoti, Sri Dhruba Bora, Sri Biswajit Phukan, Dr. C.R. Joshi, Smt Manashi Bora, Sri Ridip Sonowal, Nilu Kumari Kohar, Sri Bikey Kondapan, Sri Trilochan Behera, Sri D.K. Medhi, T. Shanti Kumari Singha, Sri Pranjal Barthakur, Sri Parimal Mali, Sri Satish Baruah, Sri Deborikhi Chetia, Sri Dhruba Gohain, Sri Santanu Dangaria, Sri Reshob Das, Sri Kaushik Haldar, Sri B. Policy Rao, Sri Tarun Gogoi, Sri Matin Choudhury, Sri Mukul Deka, Sri Dipjyoti Handique, Sri Abhijit Gohain, Sri Rounak Shah, Sri Jaushad Ali.

- (ii) Police official Sri Tulumoni Duara, who is also the informant of this case has been indicated as witness No.2 in the charge sheet. In his statement he has stated that on 09.12.2019 he was performing law and order duty at Chabua where there was a gathering of about 6000 people addressed by A-1 Sri Akhil Gogoi and that there was also blockade of railway track. He further stated that he and his team tried to remove the blockade but could not do so and that A-1 Sri Akhil Gogoi and his associates criminally conspired against police and government officials and threw stones, one of which hit his mouth breaking two teeth and causing grievous injuries on his upper jaw and upper lip for which he undertook treatment in Aditya Hospital, Dibrugarh. He stated that it was an attempt of murder as part of their conspiracy against police. This witness further stated that the associates of A-1 damaged the white Bolero vehicle on duty under CRPF and turned the vehicle on its side. He further stated that A-1 and his associates obstructed the police and government officials for performing their duties as well. This witness stated the names of some of the persons who were present in the gathering which also included the names of A-2 Sri Jagjit Gohain, A-3 Bhaskarjit Phukan and A-4 Sri Bhupen Gogoi.

- (iii) Witness No. 30 Sri Devarikhi Chetia in his statement stated that on 09.12.2019 in the evening around 5-40/6:00 P.M. local people started gathering near Chabua Railway Station and leaders from various

associations including KMSS began to deliver lectures against CAB and that A-1 Sri Akhil Gogoi and others delivered aggressive provocative speeches. That, in that programme large number of people came out voluntarily in the meeting place due to which the road traffic was disrupted. He further stated that around 6-45 P.M., O/C Chabua P.S. Sri Tulumoni Duara along with his staff were near him on duty and that they went towards a place where a CRPF vehicle was stated to have been damaged. The witness stated that he also followed the police party and when he reached the place, he saw that police official Sri Duara was attacked by the protesters causing injury to his face due to stone pelting. This witness stated that at that time he saw A-3 Sri Bhaskarjit Phukan along with A-2, A-4 and other protesters near damaged vehicle and that when the witness tried to remove one burning tyre from the road A-2 Sri Bhaskarjit Phukan hit the tyre with a sword he was carrying. This witness further stated that A-1, A-2, A-3 and A-4 were leading the mobs.

39) Upon perusing the statements of the witnesses, recorded during the investigation, I find as follows with regard to **A-4 Sri Bhupen Gogoi:**

- (i) I have perused the statements of witnesses - *protected witness A, Sri Tulumoni Duwara, Sri Khagen Laskar, Sri Kulapradip Bhattacharjya, Sri Chiranjit Chetia, Sri Sauravjyoti Baruah, Sri Pallav Baruah, Sri Nabajyoti Chetia, Sri Rafique Shah, Sri Birendra Sarma, Sri Biju Choudhury, Sri Subash Kochari, Sri Lakhinath Basumatary, Sri Nabin Gogoi, Sri Arjun Bharoti, Sri Dhruba Bora, Sri Biswajit Phukan, Dr. C.R. Joshi, Smt Manashi Bora, Sri Ridip Sonowal, Nilu Kumari Kohar, Sri Bikey Kondapan, Sri Trilochan Behera, Sri D.K. Medhi, T. Shanti Kumari Singha, Sri Pranjal Barthakur, Sri Parimal Mali, Sri Satish Baruah, Sri Deborikhi Chetia, Sri Dhruba Gohain, Sri Santanu Dangaria, Sri Reshob Das, Sri Kaushik Haldar, Sri B. Policy Rao, Sri Tarun Gogoi, Sri Matin Choudhury, Sri Mukul*

Deka, Sri Dipjyoti Handique, Sri Abhijit Gohain, Sri Rounak Shah, Sri Jaushad Ali.

(ii) Out of the statement of witnesses available on record at this stage only Sri Devarikhi Chetia and Sri Tulumoni Duara have mentioned the name of A-4 Sri Bhupen Gogoi and made some implications therein. The witness Sri Dipjyoti Handique and Sri Abhijit Gohain have only stated that they know A-4. The protected witness A is silent about A-4.

(iii) Police official Sri Tulumoni Duara, who is also the informant of this case has been indicated as witness No.2 in the charge sheet. In his statement he has stated that on 09.12.2019 he was performing law and order duty at Chabua where there was a gathering of about 6000 people addressed by A-1 Sri Akhil Gogoi and that there was also blockade of railway track. He further stated that he and his team tried to remove the blockade but could not do so and that A-1 Sri Akhil Gogoi and his associates criminally conspired against police and government officials and threw stones, one of which hit his mouth breaking two teeth and causing grievous injuries on his upper jaw and upper lip for which he undertook treatment in Aditya Hospital, Dibrugarh. He stated that it was an attempt to murder as part of their conspiracy against police. This witness further stated that the associates of A-1 damaged the white Bolero vehicle on duty under CRPF and turned the vehicle on its side. He further stated that A-1 and his associates obstructed the police and government officials for performing their duties as well. This witness stated the names of some of the persons who were present in the gathering which also included the names of A-2 Sri Jagjit Gohain, A-3 Bhaskarjit Phukan and A-4 Sri Bhupen Gogoi.

(iv) Witness No. 30 Sri Devarikhi Chetia in his statement stated that on 09.12.2019 in the evening around 5-40/6:00 P.M. local people started gathering near Chabua Railway Station and leaders from various

associations including KMSS began to deliver lectures against CAB and that A-1 Sri Akhil Gogoi and others delivered aggressive provocative speeches. That, in that programme large number of people came out voluntarily in the meeting place due to which the road traffic was disrupted. He further stated that around 6-45 P.M., O/C Chabua P.S. Sri Tulumoni Duara along with his staff were near him on duty and that they went towards a place where a CRPF vehicle was stated to have been damaged. The witness stated that he also followed the police party and when he reached the place, he saw that police official Sri Duara was attacked by the protesters causing injury to his face due to stone pelting. This witness stated that at that time he saw A-4 Sri Bhupen Gogoi along with A-2, A-3 and other protesters near damaged vehicle. This witness further stated that A-1, A-2, A-3 and A-4 were leading the mobs.

Documents

40) Upon perusing the documents, submitted as part of the charge-sheet, I find as following with regard to **A-1 Sri Akhil Gogoi** :-

- (i) D-2 is the original ejahar dated 10.12.2019 lodged by the victim Sri Tulumoni Duwara, O/C of Chabua P.S. mentioning about the incident in which crowd allegedly provoked by A-1 got violent and threw stones on security people one of which hit his face grievously injuring him.
- (ii) D-6/1 is the first information report dated 09.04.2020 prepared by NIA pursuant to order dated 04.04.2020 passed by Union Home Ministry directing the NIA to investigate the case.
- (iii) D-12 is the seizure list (MR No.148/20) dated 11.12.2019 pertaining to seizure of one stone from the place of incident in the presence of witnesses.

(iv) D-15 are transcripts of intercepted telephone conversations of A-1 with various persons at the relevant time. In the conversation of A-1 with Paramanda on 07.12.2019 at 21:50, A-1 tells other persons about his plan to go to Chabua on 9th at night as public programme was being planned thereof. In the conversation of A-1 with one Baishya on 07.12.2019 at 22:18, they talked about the upcoming programme at Chabua. In his conversation with one Sri Dibon on 09.12.2019 at 8:16 A.M. A-1 asked him as to what time he should reach Chabua whereupon the other persons tells him to reach about 7;00 P.M. In his conversation with Sri Dipjyoti on 09.12.2019 at 10:17 A.M. A-1 tells about the evening programme in Chabua. In conversation with Jagjit on 09.12.2019 at 4:20 P.M. the other persons tells A-1 that about 5000 people having gathered in Chabua whereupon A-1 tells him to call him after the programme starts. In the conversation of A-1 with Jagjit on 09.12.2019 at 5:28 P.M., they talk about the gathering of 7000 to 8000 people and A-1 says that he is on his way. In conversation with Chandan Gogoi on 09.12.2019 at 5:29 P.M., A-1 tells him that he is at Chabua and will stay there whole night.

(v) D-19 and D-20 are orders dated 19.10.2019 and 07.11.2019 passed by Addl. Chief Secretary, Home and Political Department, Govt. of Assam granting permission for interception of the telephone numbers of A-1 – *9435000515* and *9435000516*.

(vi) D-29 is the scrutiny report of videos seized vide production-cum-seizure memos dated 29.05.2020. Serial no. 3, 6 and 7 therein are speeches delivered by A-1. Serial no. 8 is stated to be a video of police officer with grievous facial injury and behind the police party is seen crowd shouting slow gun- *Joi Aii Asom*.

- (vii) D-33 is a production-cum seizure memo dated 11.-6.2020 wherein one of the items at serial no. 7 is 6 nos. of photographs showing a Mahendra Bolero vehicle no. AS06 V2392 in capsized condition.
- (viii) D-40/5 pertains to some assessment of loss of railway properties during the CAB protest.
- (ix) D-48 is a photo identification memo dated 13.06.2020 of Chabua P.S. in which six photographs are indicated out of which photograph A and C are of A-1 and photograph E and F are of co-accused Bhupen Gogoi and Bhaskarjit Phukan.
- (x) D-49 is the CDR analysis report of the mobile numbers of the accused persons of this case and others in connection with the alleged incident. It is stated that A-1 connected with co-accused A-2 from his mobile no. 8486371949, using phone no. 9435054524 belonging to A-1. It is stated that the CDR analysis revealed that on 09.12.2019 from 5:29 P.M. to 8:15 P.M., the tower location of A-1 with his mobile no. 9435054524 was found under the tower location covering the area of Chabua under Dibrugarh district. It is stated that the CDR analysis also reveals that on 09.12.2019 A-1 reached Panitola in Tinsukia at 1:00P.M. and that at 5:39 P.M., his tower location was found in the area of Chabua; that there was no CDR activity between 5:39 P.M. to 7:53 P.M. and that, the same indicated that the accused had deliberately switched off his mobile phone during this time and that from 7:53 P.M. to 8:15 P.M., the tower location of the mobile of A-1 was again found in the Chabua area. It is further stated that the CDR analysis revealed that A-1 was at Chabua on 09.12.2019 at the relevant time and that the tower location of co-accused A-2, A-3 and A-4 were also found in Chabua area, during this time, like that of A-1.

41) Upon perusing the documents, submitted as part of the charge-sheet, I find as following with regard to **A-2 Sri Jagjit**

Gohain:-

(i) Document D-15 is transcripts of some phone conversations. It also includes two conversations of A-1 with A-2 and also conversation of another person with A-2.

(ii) In the conversation dated 07.12.2019 between A-1 and A-2 Jagjit Gohain, A-2 asked A-1 as to whether he would come on 9th December, 1019 for the protest of Motok Yuva Satra Parishad. In another conversation dated 09.12.2019 between A-1 and A-2, A-2 talks about 5000 people having gathered in Chabua and asked A-1 as to whether A-2 should call A-1 when the programme starts, to which A-1 replied in the affirmative.

(iii) In one conversation dated 05.12.2019 between A-2 and one Sri Bitu Sonowal, they talked about some protest which does not appear to be with regard to Chabua and not very relevant in the instant case.

42) Upon perusing the documents, submitted as part of the charge-sheet, I find as following with regard to **A-3 Sri Bhaskarjit**

Phukan:-

(i) Document D-15 is transcripts of some conversations. However, the said transcripts do not have any conversations with regard to A-3.

(ii) Document D-48 is a photo identification memo dated 13.06.2020. It is stated therein that photograph F is stated to be identified as that of A-3 Sri Bhaskarjit Phukan holding one sharp weapon in his right hand and holding the scabbard in his left hand.

(iii) Similarly, document D-53 is another photo identification memo dated 26.06.2020. Photograph A is stated to be identified as that of A-3 Sri Bhaskarjit Phukan raising one sword in his right hand and leading one group of violent protesters on 09.12.2019 in Chabua. Photograph C is stated to be identified as that of A-3 Sri Bhaskarjit Phukan holding one weapon (sword) with his both hands and leading one group of violent protesters on 09.12.2019 in Chabua.

(iv) Document D-74 is a scrutiny report dated 26.06.2020 of video seized from cyber cell of S.P. Office, Dibrugarh in connection with the instant case. It is stated therein against serial no.1 that the video mentioned revealed one white Gypsy vehicle of ITBP bearing registration No. As 06N5742 being attacked by violent mob and that when the vehicle tried to speed away some violent protesters ran after it and attacked it with club, pelting stone etc. It is further stated therein that A-3 Sri Bhaskarjit Phukan is seen leading the protesters and carrying one sword in his hand.

43) Upon perusing the documents, submitted as part of the charge-sheet, I find as following with regard to **A-4 Sri Bhupen Gogoi**:-

(i) Document D-15 is transcripts of some phone conversations. However, the said transcripts do not have any conversation with regard to A-4.

(ii) Document D-48 is a photo identification memo dated 13.06.2020. It is stated therein that photograph E is identified as that of A-4 Sri Bhupen Gogoi with both his hands raised and holding his fist on the side of one white colored capsized vehicle.

- 44) Upon analyzing the aforesaid materials, on the touchstone of the principles of law on the point of consideration of charge, as indicated above, I come to the following considered findings.

Analysis of materials and conclusions on the point of charge with regard to A-1 Sri Akhil Gogoi

- 45) Amongst the witnesses examined by the police during investigation, I find that protected witness-A and witness no. 2, 3, 17, 18 and 30 are some of the eye witnesses to the alleged incident. All these witnesses have stated that on 09.12.2019 in the evening, there was a large gathering at Chabua near Chabua Railway Station, which was also addressed by A-1 and that he gave provocative speeches there and subsequently, the crowd turn violent and started pelting stones, one of which hit the witness no.2 Sri Tulumoni Duarah - informant-cum-victim, grievously injuring his face and teeth. The nature of the injuries sustained by the informant is clear from the medical evidence on record and the statement of witness no. 19 - Dr. C.R. Joshi, a Dental Surgeon of Dibrugarh. The witnesses have not stated that A-1 has directly incited the violence, but they have stated that he delivered provocative speech where after the crowd turn violent. Protected witness A has also stated that after the crowd turned violent A-1 did not denounce it or did anything to stop it. Witness no. 2 – informant-cum-victim has also stated that when after sustaining injuries he was being shifted away from the site, A-1 was still addressing the gathering. In his statement, witness 18 Sri Biswajit Phukan - a T.V. Journalist stated

that after the vandalism, A-1 and others remained at the site for an hour and that, this witness did not see A-1 requesting the crowd not to vandalize.

46) Witnesses like witness no. 5 and 8 have stated that the crowd led by Akhil Gogoi started pelting stones in the police party, but some of the other witnesses have stated that Akhil Gogoi delivered an aggressive or provocative speech and subsequently, some members of the crowd started pelting stones in the police party. Therefore, I find some differences in the nature of the incident, narrated by these two sets witnesses. Further, several of the witnesses have stated that they could not recognize the protesters who had thrown stones on the police party, leading to injuries on the OC Chabua police station.

47) The statement of witness Sri Devarikhi Chetia that the accused persons including A-1 was leading the mobs is not corroborated by similar statements on the part of other witnesses about the accused persons leading the mobs. Further, some of the witnesses attributed vandalism on the part of protesters instead of attributing it to A-1. Some of the witnesses have also stated that they do not know the attacking persons and some other witnesses have stated that they could not recognize the attacking protesters in the dark. Some witnesses have simply stated that some protesters in the crowd pelted stones.

48) In the context of the statements of a few witnesses that A-1 gave a provocative speech to the crowd which turn violent, the

contents of the speeches available in document D-29 is most important to correlate the two. In this regard, upon perusing the speeches of A-1 from D-29, I find that though it contains some sharp political statements and criticism with regard to CAB, there is no incitement to violence. I also do not find incitement / instigation to damage property or obstruct public officials. Considering the content of the speeches available in D-29 and the statement of the witnesses about provocative speech, it appears that the tone and tenor of the speech might have been aggressive on the issue of CAA, rather than the speech directly inciting violence. After noticing the contents of the speech of A-1 from D-29, I find a contradiction with the statement of one or two witnesses about A-1 leading violent mobs throwing stones.

- 49) If the contents of the speech of A-1 Sri Akhil Gogoi do not contain instigation of violence etc., simply the statements by some of the witnesses about A-1 giving provocative speech leading to violence could not be relied on in my considered view to impose criminal liability on A-1 Sri Akhil Gogoi. In the large gatherings, where speeches are delivered on contentious issues, it is possible for the crowd to get excited and some unruly elements therein might take undue advantage of the situation to indulge in unacceptable behavior. The omission on the part of A-1 as revealed by the statements of some witnesses is that after some vandalism started, he did not do anything to stop it. However, in my considered view, that in itself would not impose criminal liabilities on him (A-1), though it might have been his moral responsibility to try and do something about it.

50) As far as the documents with regard to A-1 are concerned, D-15 contains the transcript of telephone conversations of A-1 with various persons. D-49 is the CDR analysis report of the mobile numbers of accused persons including A-1. The telephone conversations and CDR reports no doubt indicate that A-1 was present in Chabua on 09.12.2019 and also about organizing protest against CAB. However, from the telephone conversations I do not find anything incriminating regarding any commission of offences or any conspiracy.

51) I have perused the order dated 18.05.2020 passed by the Hon'ble Gauhati High Court in BA No. 930/2020, relied on by the defence, pertaining to the same accused, with regard to another case. Some of the contents of paragraph 22 and 23 of this order may be enumerated here under:

22. it is also the case of the prosecution that the petitioner in a speech delivered at a meeting at Chabua on 09.12.2019 had warned the people in attendance against the possible infiltration of people from Bangladesh into Assam and asked all to intensify the protest. Because of his such speech, people got provoked and started the acts of vandalization in the aftermath of the meeting.

23. The emphasis of the prosecution is directed towards the offence punishable under "Section 15(1)(a)(i)" of the UA(P) Act, perhaps inadvertently mentioned as "Section 15(a)(i)", UA(P) Act in the application dated 31.03.2020, more particularly, to the phrase "by any other means of whatever nature" appearing in that Section. I have given my due consideration to the definitions ascribed to "terrorist act", "terrorist gang", "terrorist organization", "unlawful activity" and

"unlawful association" in the UA(P) Act along with the materials available in the case diary produced before the Court. The role attributable to the petitioner, from the materials collected during the investigation carried out so far, cannot be considered to be a terrorist act. There is no material wherefrom it can be inferred that the petitioner had instigated the people with his speeches to carry out the programmes against the Citizenship Amendment Bill (CAB) with the use of bombs, dynamite or other explosive substances, etc. to threaten the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror, etc. The phrase "by any other means of whatever nature" appearing in Section 15(1)(a) of the UA(P) Act is to be read, in my considered view, with reference to and in a conjunctive manner with the previous part of the said Section and not in isolation and disjunctively, meaning thereby, this phrase is to be read as ejusdem generis along with the previous part. A bandh called can be declared illegal and the participation of the petitioner in such bandh may also be illegal but such activity cannot ipso facto be considered to bring the activity of the petitioner within the purview of terrorist act and within the ambit of the offences under Sections 153A/153B, IPC.

- 52) In the case of ***Asif Iqbal Tanha (supra)***, the Hon'ble Delhi High Court laying down various principles narrated earlier in this order has also held that such strict *UA (P) Act, 1967* being a stringent penal statute has to be interpreted strictly and such strict interpretation of UA(P) Act is necessary so that it does not rope in persons whom the legislature never intended to punish. The Hon'ble Delhi High Court referred to the case of ***Hitendra Bishnu Thakur (Supra)*** in which the Hon'ble Apex Court held that the extent and reach of terrorist activity must travel beyond the effect of ordinary crime and must not arise merely by causing disturbance of law and

order or even public order. In **para 57** of ***Ashif Iqbal Tanha (Supra)***, the Hon'ble Delhi High Court held that the intention of UA(P) Act of bringing terrorist activity within its cope is to cover matters of profound impact on the defence of India, nothing more or nothing less. *Though the aforesaid decision of the Hon'ble Delhi High Court is not a binding precedent on this court, nevertheless, the principles stated therein, can be studied and analyzed.*

53) In view of the materials on record as discussed above, I am of the considered opinion that the omissions and commissions of A-1 revealed by the materials cannot be *prima-facie* said to be a terrorist act done with the intention of threatening unity, integrity, sovereignty and security of India or a terrorist act done with the intention to strike terror in the people. Therefore, from the aforesaid deduction, I am of the considered view that it cannot be said that there are no sufficient materials *prima-facie* for framing charge against the accused A-1 Sri Akhil Gogoi u/s 16 of the *UA (P) Act, 1967*.

54) While arriving at the aforesaid deduction regarding non-existence of a *prima-facie* materials for framing charge against the accused under the *UA (P) Act, 1967*, the Court has kept in mind the principle laid down in **para 23** of ***Zahoor Ahmed Shah Watali (Supra)*** that the degree of satisfaction with regard to *UA (P) Act* for the purpose of charge framing is higher and that while adjudicating bail.

- 55) Despite of the statement of informant *Tulumoni Duarah* and *Devarikhi Chetia*, in view of the other materials on record, I am of the considered view that it is not possible to come to a prima-facie finding for the purpose of framing charge, that A-1 was part of an unlawful assembly which injured the informant and therefore, it would not be justified to try A-1 for offences of u/s- 326/307 IPC with the aid of Section 149 IPC.
- 56) On the basis of the materials, I also do not find a prima-facie case for the purpose of framing charge, to hold A-1 personally criminally liable for offences of rioting, unlawful assembly causing damage to property, causing hurt to public official on duty.
- 57) Thus, on the basis of the materials on record, I am of the considered view that the same is inadequate to frame charges against the accused A-1 for the offences of IPC narrated in the charge sheet for other IPC offences.
- 58) In this regard, I also refer to the principle laid down by the Hon'ble Supreme Court in ***Sajjan Kumar (Supra)*** that of two views are possible and there is no grave suspicion, a Court would be justified to discharge the accused.
- 59) Consequently, in view of the above discussion, I am of the considered finding that the materials are inadequate to attribute any act of terrorism to A-1 and frame charges against him under the *UA (P) Act, 1967*. I also come to the considered finding that there is no justification to frame charges against A-1 Sri Akhil Gogoi under

the charge sheeted penal provisions of IPC or other penal sections and that he is liable to be discharged.

Analysis of materials and conclusions on the point of charge with regard to A-2 Sri Jagjit Gohain

60) The main incriminating materials against A-2 is in the statement of Sri Devarikhi Chetia wherein it is stated that A-2, along with A-1, A-3 and A-4 were leading the mobs. But similar statements has not made by any of the other witnesses including Sri Tulumoni Duara. In fact, informant Sri Tulumoni Duara has only stated that A-2 was present in the gathering along with others. Though Sri Tulumoni Duara has stated about A-1 and his associates criminally conspired against them throwing stones and obstructing police and government officials, he has not mentioned who those associates were. Similarly, he has only stated that the associates of A-1 damaged the Bolero vehicle on duty. In this regard, witness Sri Devarikhi Chetia also stated that A-2 along with other co-accused and protesters were near the damaged vehicle. The telephone conversation with regard to A-2 available in document D-15 do not have any incriminating materials, in my considered view and the said conversation are rather innocuous.

61) On the basis of the aforesaid materials, I am of the considered view that there are no materials whatsoever regarding criminal conspiracy against A-2. The materials also do not make out any *prima-facie* case for framing charge for an offence of terrorism under *UA (P) Act, 1967*, against A-2. While doing so, the Court has

kept in mind the principle laid down in *para 23 of Watali (Supra)*, as mentioned earlier.

62) As stated earlier, the statement of witness Sri Chetia about A-2 leading mobs do not find support elsewhere and the statement of witness Chetia about A-2 being present near a damaged vehicle and the statement of informant Sri Duarah about A-2 being present in the gathering is inadequate, with regard to the other penal sections of IPC. Though the injuries sustained by the police official are extremely unfortunate, but the materials on record are grossly inadequate to frame charge against A-2 for any offence of grievous hurt or attempt to murder, simpliciter or with aid of Section 149 IPC. When aggressive speeches were delivered in the midst of large gathering on a contentious issue, it is not surprising if parts of the crowd got excited and taking undue advantage of the said situation, some miscreants from the crowd indulged in condemnable unruly behaviour. However, in offences involving crowd and vicarious criminal liability, the Court will have to guard against mistaken implication or prosecution, not just in the trial, but even at the stage of framing charge.

63) I also refer to the principles laid down by the Hon'ble Supreme Court in *Sajjan Kumar (Supra)* that when two views are possible and there is no grave suspicion, the Court would be justified to discharge an accused.

64) Thus, on the basis of materials available on record with regard to A-2 Sri Jagjit Gohain, I am of the considered finding that the same

would not justify framing of charge against A-2 under the charge sheeted penal provisions or other penal sections and hence, A-2 is liable to be discharged.

Analysis of materials and conclusions on the point of charge with regard to A-3 Sri Bhaskarjit Phukan

- 65) Witness Devarikhi Chetia in his statement stated that he saw A-3 along with other protesters near a damaged vehicle and that when the witness tried to remove one burning tyre, A-3 hit the tyre with the sword which he has been carried. This has been corroborated by document D-48 and D-53 (photo identification memos) wherein photograph F, A and C indicate A-3 carrying a sword. D-74 (scrutiny of videos) also indicate A-3 running with protesters carrying sword in one hand.
- 66) Despite of the statement of informant Sri Tulumoni Duarah, in view of the other materials on record, I am of the considered view that it is not possible to come to a prima-facie finding for the purpose of framing charge, that A-3 was part of the unlawful assembly which injured the informant and therefore, it would not be justified to try A-3 for offences of u/s- 326/307 IPC with the aid of Section 149 IPC. However, the materials, including the photographs, do make out a prima-facie case about being member of some unlawful assembly in that area and indulging in rioting armed with a deadly weapon (sword).

67) On the basis of the above materials on record with regard to A-3 Sri Bhaskarjit Phukan, I am of the considered finding the materials are prima-facie sufficient to frame charge for an offence of rioting armed with deadly weapon as part of an unlawful assembly punishable under Section 144/147 IPC.

68) As regards the other materials against A-3, they are similar to that with regard to A-2. Therefore, I am of the considered view that these other materials are not sufficient to frame charges against A-3 under other penal sections including that of conspiracy and terrorism.

Analysis of materials and conclusions on the point of charge with regard to A-4 Sri Bhupen Gogoi

69) The main incriminating materials against A-4 is in the statement of Sri Devarikhi Chetia wherein he is stated that A-4, along with A-1, A-2 and A-3 were leading the mobs. But similar statement has not made by any of the other witnesses including Sri Tulumoni Duara. In fact, informant Sri Tulumoni Duara has only stated that A-4 was present in the gathering along with others. Though Sri Tulumoni Duara has stated about A-1 and his associates criminally conspired against them throwing stones and obstructing police and government officials, he has not mentioned who those associates were. Similarly, he has only stated that the associates of A-1 damaged the Bolero vehicle on duty. In this regard, witness Sri Devarikhi Chetia also stated that A-4 along with other co-accused and protesters were near the damaged vehicle. Document D-15 does not have any telephone conversation with regard to A-4.

- 70) Document D-48 contains a photograph stating that A-4 has been identified therein with both hands raised and holding a fist on the side of one capsized vehicle. However, on the basis of same one cannot in my considered view come to the conclusion that A-4 was responsible for damaging the vehicle.
- 71) As stated earlier the statement of witness Sri Chetia about A-4 leading mobs do not find support elsewhere and the statement of witness Chetia about A-4 being present near a damaged vehicle and the statement of informant Sri Duara about A-4 being present in the gathering is inadequate, with regard to the other penal sections of IPC. Despite of the statement of informant Sri Tulumoni Duarah, in view of the other materials on record, I am of the considered view that it is not possible to come to a prima-facie finding for the purpose of framing charge, that A-4 was part of the unlawful assembly which injured the informant. Though the injuries sustained by the police official are extremely unfortunate, but the materials on record are inadequate to frame charge against A-4 for any offence of grievous hurt or attempt to murder, simpliciter or with aid of Section 149 IPC. As mentioned earlier, in offences involving crowd and vicarious criminal liability, the Court will have to guard against mistaken implication or prosecution, not just in the trial, but even at the stage of framing charge.
- 72) I also do not find a prima-facie case for the purpose of framing charge, to hold A-4 personally or vicariously criminally liable for

offences of rioting, unlawful assembly causing damage to property, causing hurt to public official on duty.

73) On the basis of the aforesaid materials, I am of the considered view that there are no materials whatsoever regarding criminal conspiracy against A-4. The materials also do not make out any offence of terrorism against A-4 under the *UA (P) Act, 1967* for the purpose of framing charge, keeping in mind the principle laid down in *para 23 of Watali (Supra)*, as mentioned earlier.

74) I also refer to the principles laid down by the Hon'ble Supreme Court in *Sajjan Kumar (Supra)* that when two views are possible and there is no grave suspicion, the Court would be justified to discharge an accused.

75) Thus, I am of the considered finding that the materials with regard to A-4 Sri Bhupen Gogoi, would not justify framing of charge against A-4 under the charge sheeted penal provisions or other penal sections and hence, A-4 is liable to be discharged.

Final orders on the point of charge

76) Accordingly, in view of the aforesaid findings, three of the accused persons, namely, **A-1 Sri Akhil Gogoi, A-2 Sri Jagjit Gohain and A-4 Sri Bhupen Gogoi are hereby discharged.** The bail bonds and sureties with regard to A-1, A-2 and A-4 stand discharged. The accused UTP A-4 Sri Bhupen Gogoi shall be set at liberty forthwith, if not wanted in any other case. **Inform accordingly.**

- 77) However, **charges are framed against the accused A-3 Sri Bhaskarjit Phukan @ Swagaditya Phukan @ Swargaditya Phukan u/s- 144/148 IPC.** The said charges are read over and explained to the accused A-3 to which he denies and claim to be tried.
- 78) Now, *sections 144/148 IPC* are Magistrate triable and they are also not Scheduled offences under the NIA Act. Therefore, this Court will not have jurisdiction to continue the case against accused A-3 and that the **remaining proceeding with regard to A-3 will have to be continued in the Judicial Magisterial Court in the District of Dibrugarh** as the place of alleged occurrence is Chabua in the district of Dibrugarh.
- 79) Any observations made in this order with regard to A-3 has been done so only for the purpose of consideration of charge and may not be taken to be expressing any opinion, to the prejudice of defence or prosecution, on the merits of the trial against A-3 Sri Bhaskarjit Phukan.
- 80) **The case record shall be transmitted to the Court of the learned C.J.M., Dibrugarh for the needful.** *The accused UTP Sri A-3 Sri Bhaskarjit Phukan, shall be transferred to Dibrugarh Jail for further proceedings with regard to him.*

- 81) The case diary will have to be taken and placed before the learned C.J.M., Dibrugarh for the needful regarding trial of A-3 by the learned Magistrate.
- 82) **Inform the concerned accordingly.**
- 83) Fixed on **06.07.2021** for production of A-3 Sri Bhaskarjit Phukan before the learned CJM, Dibrugarh and necessary orders.

**Special Judge NIA
Assam Guwahati**