

GAHC010120782020



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./186/2020

AKHIL GOGOI
S/O LATE BOLURAM GOGOI, R/O HOUSE NO. 40, NIJORAPAR, P.S.
CHANDMARI, GUWAHATI 3, DIST. KAMRUP (M)

VERSUS

THE NATIONAL INVESTIGATION AGENCY, NIA
THROUGH THE SUPERINTENDENT OF POLICE, NIA, MINISTRY OF HOME
AFFAIRS, GOVT. OF INDIA, BRANCH OFFICE, GUWAHATI, NAZIRAKHAT,
SONAPUR, KAMRUP (M), ASSAM.

:: BEFORE ::

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MR. JUSTICE AJIT BORTHAKUR

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Advocates for the petitioner: Mr. H.A. Ahmedi, Sr. Advocate,
Mr. S. Borthakur.

Advocates for the respondent: Mr. S.B. Raju, Addl. SGI.
Mr. R.K.D. Choudhury,
Mr. Sathya Narayana, SC, NIA.

Date of hearing: 20.10.2020, 06.11.2020, 19.11.2020,
08.12.2020, 10.12.2020, 17.12.2020

Date of judgment: 07.01.2021.

JUDGMENT & ORDER (CAV)

(K.R. Surana, J)

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Heard Mr. Hafuza A. Ahmedi, learned senior counsel, assisted by Mr. S. Borthakur, learned counsel for the appellant. Also heard Mr. S.B. Raju, learned Addl. Solicitor General of India, assisted by Mr. R.K.D. Choudhury and Mr. Sathya Narayana, learned standing counsel for National Investigating Agency (NIA for short).

2) The appellant herein is the accused in Spl. NIA Case No. 2/2020 arising out of NIA Case No. RC-13/2019/NIA-GUW. This appeal under section 21(4) of the National Investigating Agency Act, 2008 is directed against the order dated 13.07.2020, passed by the learned Special Judge (NIA), Assam, Guwahati (hereinafter referred to as the "Special Judge" for brevity) in Misc. Case No. 18/2020 arising out of Spl. NIA Case No. 2/2020, thereby rejecting the prayer for grant of bail.

3) The learned counsel for the appellant has filed 3 (three) bound paper- books containing 1278 pages of materials purportedly supplied to the appellant along with the charge-sheet. Moreover, the learned counsel for the appellant has also filed a written synopsis of argument consisting of 43 pages, supported by 3 (three) volumes of convenience compilation No. I and II consisting of 957 pages as well as convenience compilation-III consisting of 122 pages. The respondent's side has filed their notes of submission consisting of 6 pages, against which the appellant's side has filed written notes of submissions in rejoinder consisting of 43 pages. Apart from hearing oral argument, the Court has also perused the memo of appeal consisting of 144 pages and affidavit- in- opposition filed by the respondent consisting of 123 pages. It is mentioned at the outset that although the Court has considered all the materials in its entirety, but in this order, the Court has recorded only the truncated submissions of the learned senior counsel for both sides to avoid burdening the order with voluminous reference materials submitted.

4) The charge-sheet reveals that an FIR, being Chandmari P.S. Case No. 1688/2019 dated 13.12.2019 was registered under sections 120B, 124A, 153B of the Indian Penal Code ('IPC' for short) and sections 18 and 39 of the Unlawful Activities (Prevention) Act, 1967 ['UA(P) Act' for short]. Subsequently, in compliance of order no. 11011/62/2019/ NIA dated 14.12.2019 by the Ministry of Home Affairs, Govt. of India, RC-13/ 2019/NIA-GUW dated 14.12.2019 [KMSS- CPI (Maoist) link case] was re-registered at the NIA Guwahati Branch Office under the same sections as earlier. It was indicated therein that the purpose was to investigate Krishak Mukti Sangram Samiti ('KMSS' for short) – CPI (Maoist) links, and conspiracy to create enmity between different groups of people on grounds of religion, race, place of birth, residence, language and did acts prejudicial to maintenance of harmony, using passage of Citizenship Amendment Bill in Parliament as an opportunity, using visible representations and spoken words and thus endangering the security and sovereignty of the State which is prejudicial to the national integration. During investigation, accused person nos. 1 to 4 were respectively arrested on 17.12.2019, 07.01.2020, 23.01.2020 and 07.01.2020, and that they are presently lodged at Central Jail, Guwahati.

5) Materials collected including statement of witnesses recorded during investigation reveal that the appellant herein was instrumental in sending around 15 (fifteen) members of KMSS in batches of 5 (five) each for training to camps run by CPI (Maoist), where they were trained, amongst others, in their ideology, to handle arms, explosives, etc., and in tactics of mass mobilisation to carry out seditious activities in the garb of protest activities. In the charge-sheet, reference has been made to the statements of witnesses, video footages as well as the transcription of public speeches and intercepted phone calls in order to project that all the accused persons had conspired with each other and that they had coordinated with each other in furtherance to their common intention of committing seditious activities behind the garb of protests, to strike terror in a section of people in India by using inflammable substances to disrupt supplies essential for life of community in the Country by paralyzing the Govt. machinery, causing economic blockade, causing enmity between groups, disruption of public peace and widespread disharmony and dissatisfaction towards the Govt., assertions prejudicial for national integration and promoting enmity between different groups on grounds of religion, race, place of birth, residence and language. The charge-sheet also

contains a description of disruptive activities involving the appellant, amongst others, which were registered as (i) Chabua P.S. case no. 290/19 dated 10.12.2019 regarding damage to CRPF vehicle, assault and grievous injury to the driver of the vehicle on Govt. duty; (ii) Jorhat PS case no. 3498/19 dated 12.12.2019 regarding criminal conspiracy and unlawful assembly resulting in riotous type situation at various places in Jorhat. Violation of section 144 Cr.P.C. obstruction of public ways including National Highway, State Highway and internal roads of Jorhat Town. Causing damage to public utilities by burning large number of tyres; (iii) Pulibar PS case no. 604/19 dated 12.12.2019 regarding disturbing harmony and promoting enmity between groups and communal tension. Obstruction of public ways including National Highway by burning tyres. Violation of section 144 Cr.P.C.; (iv) Teok PS case no. 694/19 dated 11.12.2019 regarding obstruction of public ways including National Highway by burning tyres. Violation of section 144 Cr.P.C. sloganeering prejudicial to national integration. Provocative speeches promoting enmity between groups. Disrupting supplies and services essential to life. Provoking unlawful assembly resulting in riotous type situation at various places in violation of section 144 Cr.P.C.; (v) Sivasagar PS case no. 1344/19 dated 12.12.2019 regarding provocative speeches, unlawful assembly, acts breaching public peace and order, and promoting enmity between groups. Obstruction of public ways including National Highway, State Highway and internal roads, and causing damage to public utilities by burning tyres, trees, etc.; (vi) Gaurisagar PS case no. 154/19 dated 12.12.2019 regarding criminal conspiracy and unlawful assembly resulting in riotous type situation at various places in Sivasagar. Violation of section 144 Cr.P.C. Obstruction of public ways including National Highway, State Highway and internal roads. Causing damage to public utilities; (vii) Basistha P.S. case no. 2126/19 dated 15.12.2019 regarding blocking of Highway at Koinadhara and attack on traffic staff by violent agitators with stones, bricks and lathi. Injury to traffic staff along with innocent people and damage to Govt. property using fire; (viii) Basistha PS case no. 2129/19 dated 15.12.2019 regarding blocking of Highway at Khanapara Gol Park and attack on traffic staff by violent agitators with stones, bricks and lathi. Injury to traffic staff along with innocent people and damage to Government property using fire; (ix) Basistha PS case no. 2130/19 dated 15.12.2019 regarding blocking of road at Beltola Tiniali and attack on traffic police staff by violent agitators with stones, bricks and lathi. (x) Reference is also made to a list of 64 FIRs against the appellant as obtained from Assam Police, which according to

the prosecution establishes the perverse antecedents of the appellant.

6) The prosecution has also collected data in form of 1 (one) video file of speech with date stamp of 10.12.2019 found in one Samsung Tab of the appellant, which according to the prosecution reveals conspiracy of terrorist act as defined in section 15(1)(a) (iii) of the UA(P) Act. Reference has also been made to several photo and video files of violent crowd shouting slogans, blocking traffic by burning of tyres, obstructing policemen on duty, confrontation with police and security personnel. It also contains videos and photographs of such disruptive activities, videos of speeches which the prosecution has termed as provocative, thereby inciting people to stop transportation of economic and natural resources. In para-18.16 of the charge-sheet, specific allegations are made in respect of the role of the appellant before us.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

7) The learned senior counsel for the appellant has submitted that in the FIR, it has been alleged that the KMSS has merged with CPI (Maoist) and that the appellant has taken over the responsibility of CPI (Maoist) from one person named therein. However, the charge-sheet was in a different direction. It is submitted that the Chandmari PS case was registered on 13.12.2019 and the NIA case was registered on 14.12.2019 and that the hastily lodged case was sufficient for the Court to draw an inference of mala fide. It is submitted that while rejecting the prayer for bail, the learned trial Court relied on some stray statements allegedly made by the appellant without reading the entire statement as a whole. By extensively reading out the statement of the witnesses examined by the prosecution, it is submitted that far from inciting violence, the appellant has in fact called upon the public to protest in peaceful, non-violent and democratic manner. It is further submitted that instead of reproducing the entire speech of the appellant delivered at Chabua, the prosecution has relied only on certain excerpts, which is not permissible. Similarly, the statements of all prosecution witnesses were read and it was submitted that those statements do not implicate the appellant of having committed any terrorist act within the meaning of section 15 of the UA(P) Act. It is also submitted that the protests and strike calls were made by North East

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Students' Organization ('NESO' for short) and All Assam Students Union ('AASU' for short) and not by KMSS and that the speeches by the appellant to observe strike calls was in exercise of democratic right of protest. Moreover, it is submitted that even if the entire speeches of the appellant is examined thoroughly, such statements would fall within the freedom of speech and expression guaranteed under Article 19(1)(g) of the Constitution of India as there was no incitement to violence. It is submitted that no adverse inference can be drawn merely because some books and literature on Marxism were recovered from the residence of the appellant because the said literature was not banned and were freely available in the market. It is submitted that while the CPI (Maoist) was declared as a banned organisation in the month of June, 2009, none of the witnesses including PW-1 (protected witness 'A') and PW-2 (protected witness 'B') have stated that they had visited CPI (Maoist) camps after the date it was banned, as such, no inference can be drawn that the appellant had links with a banned and/or proscribed organisation.

8) It is submitted that the statements of the two protected prosecution witnesses and other witnesses, even if read at its face value, are confessional in nature and are *ex facie* inculpatory. It was submitted that the statement of the witnesses did not implicate the appellant of commission of any terrorist act or for imparting any training and that those statements do not throw any light on the nature of training imparted in the camps, and that it does not establish that any KMSS cadre was trained in any violent activity. It is submitted that other organizations like AASU and NESO had called *bundh*, strikes and blockade, and therefore, the appellant ought not to have been charged on account of causing economic blockade. It is also submitted that the transcriptions of call records reveal that the appellant was only a passive listener in most of the conversations. It has been submitted that although there was rail blockade, there is evidence to the effect that the railway administration had themselves suspended the rail traffic. It is submitted that rail and traffic blockade was carried out in the Country in all known agitations and protest activities and, as such, the dominant purpose of agitation was to oppose Citizenship Amendment Act (hereinafter referred to as 'CAA' for short) and not to disrupt supplies or services essential for life of the community in India.

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9) It is submitted that even if the entire allegations against the appellant are presumed to be true, yet as there is no evidence regarding any overt act on part of the appellant, he cannot be said to have committed a terrorist act as defined under section 15 of the UA(P) Act and, as such, there is remote chance that the appellant can be punished for an offence under section 18 of the said UA(P) Act. It is further submitted that if "terrorist act" is absent in perpetration of any crime, though some offence may have been made out under ordinary laws, but it would not make out an offence punishable under UA(P) Act.

10) The learned senior counsel for the appellant had relied on the following judgments in support of his contentions:-

i. *State Vs. Nalini, (1999) 5 SCC 253 (paragraphs 42, 45 to 48, 51, 52, and 59)* was relied upon to project that if terrorist act is absent in the perpetration of any crime it may still amount to certain offences under the ordinary law for which there is procedure and penalty already prescribed by law and that the dominant intention of the doer must be to cause four effects as provided under clause (a) of sub-section (1) of section 15 of UA(P) Act. It is also submitted that in the present case the dominant purpose of agitation was to register public protest against CAA and, as such, UA(P) Act was illegally applied.

ii. *Hitendra Vishnu Thakur Vs. State of Maharashtra, (1994) 4 SCC 602 (para 15)* was relied upon to project that even where as the consequence of criminal act of the accused that terror, fear of panic is caused, but the crime was not committed with the intention as envisaged by section 15 of UA(P) Act, criminal charges under UA(P) Act would not be maintainable.

iii. *Zameer Ahmed Vs. State of Maharashtra, (2010) 5 SCC 246 (para-77)* was relied upon to project that the act of the appellant was not to cause any threat to the sovereignty, security, integrity and unity of the Country, as such, no charges ought to have been framed against the appellant under UA(P) Act.

iv. *Peoples Union for Civil Liberties Vs. Union of India, (2004) 9 SCC 580*

(para 5 and 8) was relied upon to explain the characteristics of terrorism.

v. *Redaul Hussain Khan Vs. National Investigation Agency, (2012) SCC OnLine Guw 341 (para-59, 64, 66, and 67* was also relied upon to project that the terrorist act must be done with an intent to threaten the unity, integrity, security and sovereignty of the Country or to strike terror in the people or any section of the people if in order to materialize the intent, a person used bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons of noxious gasses or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature.

vi. In this connection while explaining the meaning of "by any other means of whatsoever nature", the *ejusdem generis* principle of interpretation of statutes was also relied upon and reference was made to the case of (a) *Tillmans And Co. Vs. S.S. Khutsford Ltd., (1908) 2 KB 385*, (b) *Attorney General Vs. Brown, (1920) 1 KB 773*, (c) *Director of Public Prosecution Vs. Jordan, (1976) 3 All ER 775*, (d) *Siddeshwari Cotton Mills Vs. Union of India, 91989) 2 SCC 458*.

vii. (a) *Shreya Singhal Vs. Union of India, 92015) 5 SCC 1 (para 9 to 13)*, (b) *Rangarajan Vs. P. Jagjeevan Ram, (1989) 2 SCC 574*, (c) *Kedarnath Singh Vs. State of Bihar, AIR 1962 SC 955* was relied upon to project that the speeches made by the appellant was well within fundamental right to free speech and expression as enshrined under Article 19(1)(g) of the Constitution of India.

viii. (a) *Kashmira Singh Vs. State of M.P., AIR 1952 SC 159 (para-10)*; (b) *Prithipal Singh Vs. State of Punjab, (2012) 1 SCC 10 (para-39)*; (c) *Suresh Budharmal Kalani Vs. State of Maharashtra, (1998) 7 SCC 337 (para-7)* were cited to project that if the only evidence appearing against the appellant is that of an accomplice and is inculpatory, such evidence cannot be relied upon even to frame charges.

ix. (a) *Prasad Shrikant Purohit Vs. State of Maharashtra, (2008) 11 SCC 458 (para- 28 to 31)*, (b) *State of Kerala Vs. Raneef, (2011) 1 SCC 784*, (c) *Ranjitsing*

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Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294 (para-32 to 38) were cited to urge that the learned Special Court, NIA was in grave error in having construed section 43D(5) in an extremely restrictive manner for grant of bail.

x. It was submitted that the reliance by the learned Special Court, NIA had wrongly applied the ratio of the case of *National Investigation Agency Vs. Zahoor Ahmed Shah Watali, (2019) 5 SCC 1*.

11) Accordingly, it is submitted that no *prima facie* case was made out for commission of any of the offences under the Indian Penal Code and there was no evidence that the appellant had supported any terrorist act or any terrorist organisation, as such, the appellant was entitled to bail, moreso, when three other co-accused of the case have been granted bail by the learned Special Judge.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

12) Per contra, the learned Addl. SGI had submitted that the role of the appellant was clearly revealed in the charge-sheet. The appellant had sent KMSS cadres for training in CPI (Maoist) camps and that they were trained to handle firearms and explosives. It is submitted that the charge-sheet contains sufficient materials to show that violent activities had been perpetrated in various parts of the State, which had paralyzed the Govt. machinery and had also disrupted supply of essential goods in the State, causing economic blockade. It was submitted that the appellant was seeking parity in grant of bail as other three accused were released on bail, but in the case in hand, the respondents have produced materials from which it can be demonstrated that the appellant was the mastermind and that the other three accused persons who were released on bail were only the associates of the appellant. It has been submitted that the acts of violence, disruption of essential services, and injury caused to security personnel and incidents of arson were mentioned in the charge-sheet, which were morefully available in 64 FIRs lodged throughout the State. It is further submitted that there was no attempt to demonstrate how the impugned order under appeal was faulty.

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13) It is also submitted that at this stage this Court is exercising appellate jurisdiction in respect of the impugned order by which the learned Special Judge had refused to grant bail to the appellant, as such, it may not be appropriate for this Court to examine whether the alleged incidents had taken place before or after the CPI (Maoist) was banned on 22.06.2009, which would be a matter to be decided in trial. Accordingly, it is submitted that once section 43D(5) of the UA(P) Act is complied with and the learned Special Judge is satisfied that there were sufficient grounds to believe that a *prima facie* case is made out against the appellant, no bail can be granted to the appellant as there was no infirmity in the order impugned herein.

REASONING:

14) From a perusal of the charge-sheet, the offences alleged against the appellant are under sections 120B, 124A, 153B IPC and sections 18 and 39 of the UA(P) Act.

15) The main thrust of argument of the learned senior counsel for the appellant was to demonstrate that the materials collected against the appellant during investigation was not incriminating at all. It was aimed to project that the allegations were vague, bereft of material particulars, contained inadmissible material and that there was nothing to show that the appellant was either a member of any proscribed organisation or that he had participated in any activity which fell within the meaning of 'terrorist act' as provided for under section 15 of the UA(P) Act. It was argued that even assuming, without admitting, that the materials appended to the charge-sheet were admissible, even then the *prima facie* involvement of the appellant was not established. It was submitted that although PW-1 (protected witness no.1) had made an allegation about visitation to CPI (Maoist) camps in the year 2009, but there was no statement regarding the date when he had allegedly visited any such camp and, as such, it cannot be presumed that the appellant had met any member of the proscribed organisation after 22.06.2009, the date when notification was issued to ban CPI (Maoist).

16) Much stress has been laid on the provisions of section 43D(5) of the UA(P) Act. The Court finds that there are other statutes which put restrictions on the power of Court to grant bail in relation to offences committed under those Acts. One of such statute is the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act). However, the difference between the language used in section 43 of UA(P) Act and MCOC Act has been explained by the Supreme Court of India in the case of *Zahoor Ahmad Shah Watali (supra)* and that the said judgment also lays down as to what should be the approach of the Court in deciding bail applications involving offences under Chapter IV and VI of the UA(P) Act. Pursuant to the guiding principles as contained in para 23 to 29 and 32 of the said case, the Court is deciding this appeal. In the present case in hand, section 18 of UA(P) Act falls within Chapter IV of the UA(P) Act and section 39 of the UA(P) Act falls within Chapter VI of the said Act. In the case of *Zahoor Ahmad Shah Watali (supra)*, the accused- respondent was charged for offences punishable under sections 120B, 121, 121A IPC and sections 13, 16, 17, 18, 20, 38, 39 and 40 of the UA(P) Act.

17) In para 18.18 of the charge- sheet, the role of the appellant (referred to as A-1 in the charge-sheet) has been enumerated as under:-

- i. A-1 has association with proscribed organization CPI (Maoist), and had sent cadres of KMSS to train in Maoist camps. Accused A-1 has an ideology of the spectrum of the CPI (Maoist) ideology.
- ii. A-1 has conspired, advocate, abetted, advised, the commission of terrorist act (as defined in sec. 15(1)(a)(iii) of UA(P) Act).
- iii. A-1 by giving provoking speeches promoted enmity between different classes of people on grounds of religion, race, place of birth, residence, language which is pre judicial to maintenance of harmony.
- iv. A-1 made assertions prejudicial to harmony to the national integration.
- v. A-1 by his speeches caused disruption of public peace and causing widespread disharmony and disaffection towards the Government established by the law.

vi. A-1 conspired and orchestrated the widespread blockade in the state of Assam, thereby paralyzing the government machinery, causing economic blockade. He provoked the mobs to cause damage to public property and grievous injury to officials on government duty.

vii. The oral evidence, documents, material objects and technical evidence collected during the course of investigation, are establishing the prima-facie case against the accused to prosecute.

18) As per the said charge-sheet, the remaining three co-accused are stated to be closely associated with the appellant.

19) On a perusal of the statements of PW-1 and PW-2, it is observed that the appellant had sent male and female cadres/ members of KMSS to CPI (Maoist) camps to get them trained in ways of Maoists. PW-2 also refers to some payment made by the so called member of CPI (Maoist), which was handed over to the appellant. The PW-2 has made a categorical statement that party had been providing regular funds to the appellant for party [CPI (Maoist)] activities. On a perusal of the statements of PW-3, PW-4, PW-5, PW-7, PW-8, and PW-14, it is seen that the appellant has not only informed PW-3 that they had closed National Highway and all the shops in the market and that the said witness had been called upon by the appellant to block everywhere and close everything in the State including Guwahati. The PW-4 was informed by the appellant to stop essential supplies and to shut down the Sivasagar Town as everything was shut down in Dibrugarh. PW-6 has referred to rail blockade as a part of economic blockade and about damage caused to a Gypsy vehicle on duty under ITBP and over-turning of white Bolero vehicle on duty under CRPF. The PW-6 had also stated about attacking police personal with stones, which caused injuries upon his person resulting in loss of tooth and requiring him to be treated in a private nursing home. Similarly, PW-7 had also stated about plan of the appellant to block highways and he had further stated that by delivering speech, the appellant had provoked the public and violent activities started in Chabua area resulting in damage to Govt. property and grievous injury to the O.C., Chabua P.S. and also regarding blockage of roads due to violent activity. PW-8 was

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also asked by the appellant to cause complete shut-down of the State and also economic blockade. PW-10 and PW-11 had stated that they took instructions from the appellant for protest and other party work. PW-14 had also received instructions from the appellant and National Highways and train movement was blocked. PW-16 was asked by the appellant to go to Janata Bhawan. PW-17 was informed by the appellant that he was having a plan to be at Chabua as they were planning a big programme at Chabua. Transcription of calls stated to be legally intercepted discloses detailed discussions by the appellant on plans to make protests when the Japanese Prime Minister and Prime Minister of the Country arrive at Guwahati and also for the purpose of getting media attention. The appellant's conversation also discloses that the appellant was calling upon those persons for a complete shut-down of the State. In this regard, the learned senior counsel for the appellant could not show before the Court that there was any instruction from the appellant to exempt movement of essential supplies. In this regard, it may be reiterated that the learned senior counsel for the appellant had submitted that the call for *bundh* and/or blockade was by AASU and NESO, but no attempt has been made to explain that when the appellant or his organization, namely, KMSS had not called the blockade, why the appellant was calling up his associates to ensure that everything is brought to a stand-still in the State.

20) The learned senior counsel for the appellant had attributed motives merely because the prosecuting agency had deemed it fit to register a case on 14.12.2019, i.e. just one day after Chandmari P.S. Case was registered on 13.12.2019. In this regard, the Court is of the considered opinion that inference of mala fide cannot be drawn without any evidence to that effect on record, merely because the prosecution had moved in a fast pace. Submissions were also made in connection with speeches of the appellant and the books and printed Marxist literature seized by the Investigating Agency and in this regard, the Court refrains from drawing inference from the tone and tenor of the speeches made by the appellant or from seizure of books and literature with Marxist leanings. However, from the excerpts of the herein before referred statements made by the prosecution witnesses, it is certain that the appellant has called upon the public to protest. We have already indicated herein before that as per the charge-sheet, the cadres of KMSS were well trained in the

tactics of mass mobilisation to carry out seditious activities in garb of protest activities, which as per the submissions made by the learned senior counsel for the appellant was a call made by AASU and NESO. The PW-1 has admitted to have participated in training in various types of firearms and explosives and in this regard the learned senior counsel for the appellant could not show any materials from which this Court can draw an inference that training undertaken in handling firearms and explosives has any peaceful use for a non-combat person. On the other hand, materials available in the charge-sheet indicate that there was widespread burning of inflammable tyres to stop movement of vehicles and all modes of rail and road transport by the associates of the appellant and that the appellant was in constant contact with his associates to monitor total economic blockade in the State. While we appreciate the persuasive argument advanced by the learned senior counsel for the appellant when he had referred to the statement made by the appellant after being told about observation made by PW-1 in Maoist camps to the effect that this is not the appropriate time to indulge in such activities in Assam, but no effort has been made to explain why would the appellant send about 15 (fifteen) cadre/ members of KMSS in groups of 5 (five) each to remote camps in the State of Odisha to get trained in use of firearms and explosives from purported Maoist groups only to be told not to use such acquired skill. Similarly, no effort has been made to explain the peaceful and non-violent purpose for which the appellant had called upon the persons trained in use of firearms and explosives to use their acquired skills to make the people of Assam ready.

21) It was submitted by the learned senior counsel for the appellant that in the past, rail and Highway blockade was made by others. In this regard, the Court is of the considered opinion that merely because at any given point of time when road or rail blockade programme had been called, the concerned Govt. had not taken action similar to the present case in hand, cannot be a ground for the Court to draw an inference that as the dominant purpose of protest being to voice dissent against CAA, no offence was made out although there was disruption to supplies and services by road and rail in various parts of the State.

22) In the further considered opinion of the Court, as we have ourselves relied

upon the case of *Zahoor Ahmad Shah Watali (supra)*, the Court is unable to find fault with the learned trial Court in placing reliance on the said cited case.

23) Moreover, having regard to the facts of the present case in hand, the Court is of the further considered opinion that as the dominant feature of the conspiracy by the appellant was aimed to disrupt the economy of the State by inciting violent protests and using success of total shut-down of one Town to shut down of other Towns and Cities in the entire State. In the present case in hand, the charge-sheet clearly refers to burning of tyres (i.e. use of inflammable substances) by the protestors to cause rail, highway and internal road blockade on being provoked by the appellant, the Court is constrained to hold that the four factors of clause (a) of subsection (1) of section 15 of UA(P) Act is found to be *prima facie* attracted in this case in hand.

24) Based on the materials available on record, the Court is unable to hold that the violent protests throughout the State did not and/or could not have had any terrorizing effect on the harmony of the innocent public at large, rather, the Court is of the considered opinion that on being provoked by the appellant, as the violent protests by burning of tyres had caused rail, highway and internal road blockade, the same is sufficient to give rise to a critical law and order situation that as a whole had threatened the security of the State. The acts of violent protests were aimed to strike terror in all sections of people in India irrespective of caste creed and religion. Moreover, by burning inflammable substance, the supplies essential for life of community in the Country was disrupted. By use of violence the appellant led mob had brushed aside the noble concept of non- violent protest, which is popularly known as *satyagraha* and that such conduct of paralyzing the Govt. machinery, causing economic blockade, causing enmity between groups, disruption of public peace an widespread disharmony and dissatisfaction towards the Govt., are acts which are prejudicial for national integration and such acts squarely falls within the definition of "terrorist act" as defined in section 15 of the UA(P) Act. The Court is also unable to accept the submissions made by the learned senior counsel for the appellant that strike calls and speeches made by the appellant falls within freedom of speech and expression as guaranteed by Part-III of the

Constitution of India because of the fact that the call transcripts, which are accompanying the charge-sheet, clearly indicate that the appellant wanted to protest in such a manner which would disrupt all modes of rail and road transport and to paralyze Government machinery not only on other dates, but specifically on the date when the Japan's Prime Minister was slated to visit the State. It was submitted that although there was rail blockade, but there are evidence to the effect that the railway administration had themselves suspended the rail traffic, but the Court cannot find fault with the said action of the railways because by such action, they had secured the lives of a large number of rail user and saved the trains and other railway property from being damaged by the violent protestors, who had reportedly burnt down Chabua Railway Station.

25) In light of the herein before referred materials available on record, and having regard to the requirement of section 43D(5) of the UA(P) Act, the Court is unable to record its satisfaction that the materials brought on record, in all probability, may not lead to conviction. The materials on record *prima facie* disclose culpability of the appellant and his involvement in the commission of alleged offences as morefully mentioned in the charge-sheet. It may be mentioned that the Court is conscious of the fact that the duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Having regard to the requirement of section 41D(5), the Court has made a deep probe into the matter so as to enable it to *prima facie* arrive at a finding that the materials collected against the appellant during investigation may be sufficient to lead to conviction. However, we hasten to add that this observation for the purpose of granting or refusing bail is undoubtedly tentative in nature, which would have no bearing at the time of trial, as such, it is provided that the learned trial Court would not be influenced by any observations made herein and the trial decided without being prejudiced by this order. In this regard, we may refer with profit to the ratio laid down by the Supreme Court of India in the case of *Puran Vs. Rambilas*, (2001) 6 SCC 338, and *Ranjitsing Brahmajeetsing Sharma (supra)*. Therefore, we further make it clear that the issue of admissibility and credibility of the material and evidence presented by the Investigating Officer would be a matter for trial.

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26) It may pertinently be stated that Article 51-A of the Constitution of India makes it a fundamental duty for every person to safeguard public property and to avoid any kind of violence during the protests keeping in mind that resorting to violence during public protest results in breach of key fundamental duty of citizens. Therefore, this fundamental duty to protest peacefully must be exercised harmoniously with the right to freedom of speech and expression as guaranteed under Article 19(1)(b) of the Constitution of India and within the restrictions imposed by Article 19(2) in the interest of the State and its citizens. The act of blocking of the public road, disrupting free flow/movement of essential goods to the public in the State, setting fire to public offices and vehicles in the garb of public protest certainly cannot be termed as peaceful democratic protests in law. In that view of the constitutional provisions, the Court is of the considered view that in the backdrop of facts and circumstances that emerged from the documents on record, it cannot conclusively be said at the present stage of trial of the case that the appellant has been unreasonably deprived of the right of Article 21 of the Constitution of India.

27) In view of discussions above, the materials relied upon by the prosecution *prima facie* shows that cadre/ members of KMSS were trained in the use of firearms and explosives and that the appellant had not only led the protests, but had provoked people to join him and that upon directions issued by the appellant, the supplies essential to life of the community of the Country was disrupted in the State. The appellant's call was instrumental in violent protests, and damage or destruction to vehicles of military and para-military forces, which were to be used for defence of the Country. Fire caused by burning of inflammable tyres is projected to have caused damage or destruction of public property. Therefore, the Court is of the considered opinion that the cases cited by the learned senior counsel for the appellant do not appear to help the appellant in any manner and, as such, this judgment is not burdened with discussions on the cited cases.

CONCLUSION:

28) As a result of the discussions above, this appeal fails. No interference is called for in respect of the impugned order dated 13.07.2020, passed by the learned Special Judge

(NIA), Assam, Guwahati in Misc. Case No. 18/2020 arising out of Spl. NIA Case No. 2/2020, thereby rejecting the prayer for grant of bail. This Court affirms the said order as there are sufficient material in the charge-sheet against the appellant, as such, the Court does not find any infirmity in the finding returned by the learned Special Judge (NIA) that there are reasonable grounds for believing that the accusation of commission of offences punishable under Chapter IV and VI of UA(P) Act against the appellant is *prima facie* true. Considering the express bar imposed by section 43D(5) of the UA(P) Act, the appellant cannot be released on bail. Accordingly, the Court passes the following–

O R D E R

29) For the above stated reasons, the instant appeal being devoid of any merit, the same is dismissed.

30) Be it mentioned that no *prima facie* view or opinion expressed in course of this judgment shall have any bearing on trial of the case.

JUDGE

JUDGE

Comparing Assistant