

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
(Criminal Appellate Jurisdiction)

**Criminal Appeal (DB) No. 222 of 2019**

Sanjay Jain, s/o Padam Kumar Jain, presently r/o Flat No.308, 3<sup>rd</sup>  
Floor, Shivalay Apartment, Chandni Chowk, Kanke Road, PO-Jawahar  
Nagar, PS-Gonda, District-Ranchi .....Appellant

*Versus*

The Union of India, through the Superintendent of Police, NIA, PO, PS &  
District- Ranchi ... Respondent

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(Heard in the Court on 30<sup>th</sup> November 2021 and through V.C on 01<sup>st</sup> December 2021.)

**CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR**  
**HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Appellant : Mr. Shubham Gupta, Advocate  
For the NIA : Mr. Amit Kumar Das, Spl. P.P.  
Mr. Saurav Kumar, Advocate  
Mr. Prem Prakash, P.P.

Order through V.C on 01<sup>st</sup> December 2021

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*Per. S. Chandrashekhara, J.*

This criminal appeal has been assigned to DB-III by an order dated 31<sup>st</sup> July 2021 of Hon'ble the Chief Justice of Jharkhand High Court passed on the administrative side.

2. The accused has preferred this criminal appeal under section 21 of the National Investigation Agency Act, 2008 against the order dated 07<sup>th</sup> February 2019 passed in Special (NIA) Case No.03/2018 corresponding to RC-06/2018/NIA/DLI.

3. By the order dated 07<sup>th</sup> February 2019, the application for bail moved by the accused vide Misc. Cr. Application No.1255/2018 was dismissed observing that in view of the oral and documentary evidence collected by NIA in course of the investigation it would not be just and fair to enlarge the accused on bail at this stage.

4. The appellant is in custody since 13<sup>th</sup> December 2018.

5. Tandwa PS Case No. 02/2016 was registered on 11<sup>th</sup> January 2016 against 12 persons. Ramdhari Singh, a Sub-Inspector of Police at Simariya PS, gave a written report to the officer-in-charge of Tandwa PS

stating that on a secret information that an extortion racket is being run by Vinod Kumar Ganjhu, Munesh Ganjhu, Pradeep Ram, Birbal Ganjhu, Gopal Singh Bhokta @ Brajesh Ganjhu, Mukesh Ganjhu, Kohram Jee, Akraman Jee @ Ravindra Ganjhu, Anischay Ganjhu, Deepu Singh @ Bhikhan, Bindu Ganjhu and Bhikhan Ganjhu and the accused are collecting money from the contractors, transporters, DO holders and coal traders for *Tritiya Prastuti Committee* (for short, TPC), a raid was conducted in the intervening night of 10<sup>th</sup>/11<sup>th</sup> January 2016 at the house of Vinod Kumar Ganjhu. In course of search, several incriminating articles including Rs. 91,75,890/- in cash were recovered from an almirah in the house of Vinod Kumar Ganjhu. He suffered a disclosure statement that he was collecting extortion money for TPC supremo Gopal Singh Bhokta @ Brajesh Ganjhu and other persons. At the time of search, Birbal Ganjhu and Munesh Ganjhu were in the house of Vinod Kumar Ganjhu and they made a confession about their proximity with TPC. On personal search of Birbal Ganjhu and Munesh Ganjhu pistols and live cartridges were recovered. Pursuant to disclosures made by Vinod Kumar Ganjhu a search was conducted at the house of Pradeep Ram and several incriminating materials including Rs. 57,57,710/- in cash were recovered. The informant has further stated that the accused failed to offer a reasonable explanation for possession of such huge money in cash and other incriminating articles.

6. Accordingly, a First Information Report was lodged against the above-named accused under sections 414, 384, 386, 387 and 120-B of the Indian Penal Code; sections 25(1-b) (a), 26 and 35 of the Arms Act, and; section 17(1)(2) of the CLA Act.

7. In course of the investigation, Birbal Ganjhu and Pradeep Ram were also arrested and a charge-sheet was submitted vide charge-sheet no. 17/2016 dated 10<sup>th</sup> March 2016 for the offences under sections 414, 384, 386, 387 and 120-B of the Indian Penal Code; sections 25(1-b) (a), 26 and 35 of the Arms Act, and; section 17(1)(2) of the CLA Act – the offences under sections 16, 17, 20 and 23 of UA(P) Act, 1967 were added in the Report on 12<sup>th</sup> April 2017. Subsequently, by

an order dated 13<sup>th</sup> February 2018 of the Ministry of Home Affairs, Government of India, the Central Government directed NIA to take up investigation of this case. After taking charge of the case by NIA, the First Information Report lodged by the local police was re-registered as RC-06/2018/NIA/DLI. After about 10 months of investigation, NIA recommended prosecution of 16 persons vide its letter dated 10<sup>th</sup> December 2018 and the Ministry of Home Affairs, Government of India, issued order dated 19<sup>th</sup> December 2018 for prosecution of the accused persons. On 21<sup>st</sup> December 2018, 1<sup>st</sup> supplementary charge-sheet no. 32/2018 was submitted by NIA against 16 persons including Vinod Kumar Ganjhu, Munesh Ganjhu, Birbal Ganjhu, Pradeep Ram @ Pradeep Verma, Bindeshwar Ganjhu @ Bindu Ganjhu who were already sent up for trial by the local police – Sanjay Jain, the present appellant, is one among 16 accused who figured in 1<sup>st</sup> supplementary charge-sheet.

8. As noticed above, the learned Judicial Commissioner-cum-Special Judge, NIA at Ranchi has declined the prayer for grant of bail to Sanjay Jain.

9. This criminal appeal was filed on 06<sup>th</sup> March 2019, registered on 11<sup>th</sup> March 2019 and put up before officers of the Registry on 27<sup>th</sup> March 2019, 02<sup>nd</sup> April 2019 and 09<sup>th</sup> May 2019, for removing the defects pointed out by the Registry. This criminal appeal was listed for hearing before a Division Bench of this Court on 16<sup>th</sup> May 2019 and till 19<sup>th</sup> May 2020 the matter came on Board on nine different dates, but, at the instance of one or the other party, hearing of this criminal appeal was deferred. Before us, this criminal appeal was listed on 01<sup>st</sup> November 2021 after assignment of the matter by Hon'ble the Chief Justice to DB-III.

10. Voluminous compilation of documents, though called convenience compilation, has been filed by both the parties – compilation prepared by the learned counsel for the appellant runs into 509 pages.

11. The prosecution claims that Sanjay Jain while working as General Manager under M/s Adhunik Power and Natural Resources Ltd., Kandra, Saraikela-Kharsawan, Jharkhand closely associated himself with

TPC and used to collect extortion money on the direction of A-14, who is Zonal Commander of TPC and known by the name of Akraman Jee @ Neta jee @ Ravinder Ganjhu @ Ram Vinayak Bhokta. He was collecting Rs.200/- per MT from the transporters and DO holders for payment to TPC operatives including A-5, A-17 and A-14.

12. The prosecution relies on PW16, PW22, PW42, PW43, PW44, PW65, PW66, PW103 and PW104, whose statements recorded under section 161 of the Code of Criminal Procedure have been brought on record. The statements of PW16 who is protected witness 'D' and PW44 who is protected witness 'B' recorded under section 164 of the Code of Criminal Procedure, copies of which were supplied to the accused, are also on record of this criminal appeal.

13. Protected witness 'D' was a coal transporter for Hindalco, GVK, Inland Power, M/s Adhunik Power and Natural Resources Ltd. etc. His statement recorded under section 161 of the Code of Criminal Procedure is that Amrapali Coal Mines which was closed for some time could be started in the year 2014 with intervention of TPC members who were given huge money by Raghuram Reddy, the contractor, to pressurize the villagers not to oppose the project. This witness has stated that he came to know about all this from the 'baazar' (which would vaguely mean rumors or local people). This witness stated that there was a bomb blast at IRB police picket situated at Amrapali Mines and Akraman Ganjhu, Bindu Ganjhu, Arjun Ganjhu, Munesh Ganjhu, Kailash Ganjhu, and Chhotu Ganjhu resorted to firing in the night to create an impression as if CPI(Maoist) was involved in the occurrence. He gave description of another incident at Dhangadda Ghati in which one Tipper Truck was set on fire by Kohram Jee and his associates. About association of the appellant with TPC, this witness claims that the appellant attended the meetings called by Akraman Jee.

14. PW16 states as under:

*"I state that on behalf of Adhunik Power Limited, at Gamhariya near Tata, Jamshedpur, Sanjay Jain (mob-7091192812) used to attend meetings conducted by Akraman who work on behalf of Brijesh Ganjhu."*

15. PW16 further stated that a meeting was called by Akraman Jee in a school near Lawalong area in connection to a call for indefinite strike by truckers' association demanding raise in fare for transportation. This meeting was attended by Sanjay Jain, Raja Patni and Ajay Singh who were representing M/s Adhunik Power and Natural Resources Ltd.

16. PW22 was working as Safety Officer at Magadh Open Cast Project. He made a statement before the Investigating Officer that between the period 20<sup>th</sup> August 2016 and 08<sup>th</sup> August 2017 he was working as Dispatch Officer at Amrapali OCP, and that Vishnu Agrawal gave him Rs. 8,00,000/- and Rs. 7,00,000/- on two occasions. His further statement is that:

*“On being asked I state that money was given directly to A.K. Thakur, GM, K.K. Sinha, Project Officer and Manoj Kumar. They get the money directly from the DO holder and lifters like Manager Sudesh Kedia from JVK Co. Sanjay Jain and Ajay Singh from Adhunik Power Limited, Bipin Mishra from Jindal Co., Vishnu Agarwal from Hindalco Coal Trading Co., Sudesh Kedia from Godavari.”*

17. PW44 is another protected witness identified as 'B'. He was a DO holder who was engaged in purchase of coal from Amrapali Coal Mines for the purpose of selling coal in open market. He said that he was selling coal to M/s Adhunik Power and Natural Resources Ltd., Kandra, Saraikela-Kharsawan, Jharkhand. He approached Mahesh Agrawal for help in connection to his financial difficulties because about 20-25 Crores of his money was stuck in the market, and that Mahesh Agrawal asked him to approach Sanjay Jain who was working as General Manager with the company. According to this witness, he was given work of coal transportation for seven months and during this period he transported about One Lakh tonnes coal for the company. This witness has stated thus:

*“..... we met in our office at 502,Panchmari Plaza, Kacheri Road, Ranchi, we decided on the price of the trucks from the payment was told to return back Rs.200/- as I was in debts, I needed some work very badly, they told me that Rs.200/- is for the village committee in the name of loading and transporting charges, and they asked me to return 200/- rupees from the total transporting amount as they will directly pay to the Village*

*Committee. Further, I started transportation work of coal from Amrapali mines to Adhunik Natural and Power Resources, Kandra, Jamshedpur and, returned 200/- total loading and transporting charges back to the Adhunik, which they will directly pay to the Village Committee.”*

18. Protected witness 'B' has further stated as under:

*“I further state that, in the year 2016, started the work of transportation of coal from my firm M/s Rahul Carbon Commercial pvt. ltd. My transporter at Amrapali was Kallu local resident, he lift the coal from Amrapali OCP and dispatch to Adhunik power and natural resources ltd. at Kandra, Saraikela, Jharkhand. As per the verbal agreement between Sanjay Jain, General Manager of Adhunik power and natural resources ltd. I returned 200/- Rs. from the total transporting amount to Sanjay Jain and sometimes Ajay Singh both representatives of Adhunik Natural and power resources used to collect the 200/- Rs. from my office. The 200/- Rs. cash withdrawn from official account in the name of Axis Bank, Main Branch, Ranchi account No. 916030006097377/914020003977323 and Allahabad Bank, Circular Road, Ranchi account No. 50095630042, State Bank of India, Kutchery Branch, Ranchi account No. 32487727331 from bank statements.”*

19. PW42 and PW43 are seizure witnesses. NIA has claimed that before these witnesses Sanjay Jain gave a statement that he was making payment to TPC operatives, the accounts of which were stored in his desktop/laptop.

20. The relevant portion of the statement of PW42 is extracted below:

*“I further state that, I along with other independent witness Bali Oraon saw that, the bed room of Riya Jain and Ayushi Jain, daughters of Sh. Sanjay Jain was thoroughly searched. Smt. Pinky Jain in the presence of Sh. Sanjay Jain their daughters and, Mahila Hawaldar Eron Tirkey of JHP themselves opened their steel almirahs, wooden almirahs, boxes and displayed the items in a sequential manner which were examined by the search team. All the decency was maintained. Only study books and personal belongings of the two girls were found from the room.*

*I further state that, I along with other independent witness Bali Oraon saw that the third bed room was searched in the presence of Sh. Sanjay Jain and his wife Pinky Jain this room had seemed to be used as study room by Sanjay Jain and prayer room by the Jain family. All respect and decency was maintained while entering inside the room. The books and documents were sequentially searched by search team as Sh. Sanjay Jain himself displayed them by taking them out of the rack. All the almirah and box were searched. In the course of search, six stapled papers and duly filled account opening form of Bank of*

Hyderabad with Memorandum of Association of M/s Rahul Carbon Commercials Pvt. Ltd. Were found to be lying casually over the rack. Six stapled papers were shown to me. The Page no.1 was with the Heading 'Other party Bill & payment details' related to 12 no of transporters & their payment including the entries of Rs.254-15/-Mt to transporters amounting Rs.86143000/-. The Page no.2 was with Heading 'Other party Payment details' amounting Rs.86143000/- with effect from 1-7-16 to 4-7-16. The Page No.3 was with Heading 'A/C COMMITTEE(1) Payment Amrapali amounting Rs.8000000/- with effect from 25/4/16 to 30/6/16. Heading A/C COMMITTEE(2) Payment Amrapali amounting Rs.25000000/- with effect from 25/4/16 to 16/12/16. Heading 'A/C COMMITTEE(3) Payment Amrapali amounting Rs.2500000/- with effect from 6/1/16 to 14/1/16. The Page No.4 was with Heading 'A/C COMMITTEE Payment Ashoka amounting Rs.36129000/- with effect from 16/8/16 to 19/5/17. The Page No.5 was with Heading 'A/C Reconciliation APNRL 6/6/17 Amounting Rs.23208855.76/-. The Page No.6 contains details up to 19/5/17 of the payment made @ Rs.254/-, Rs. 239/-, Rs.200/- from Amrapali amount in 14718829/-, Ashoka amounting Rs.1830800/-, Amrapali A/c 1. A/c-2, A/c-3 amounting 14718829/-, Ashoka amounting 1830800/-. The page also has a pencil writing "Out of this we have cleared all expenses except expense of P.O Saheb". Sanjay Jain told that M/s Rahul Carbon Commercials Pvt. Ltd was one of the transportation company working for M/s Adhunik Powe and Natural Resources Ltd. The said document was given to him by one person namely Sh. Aditya Dhanuka of M/s Rahul Carbon Commercials Pvt. Ltd. Sanjay Jain told, that the part of money paid by his company through banking channels under the head "Loading/unloading" to the transporters @ Rs. 254/-, or Rs. 239/- or Rs.200/- is given by the transporter directly or indirectly through village committees in cash to one of the terrorist namely Akraman of banned terrorist organization Tritiya Prastuti Committee (TPC). During the search some official documents like Form 16, appointment letter and other personally concerned papers of Sanjay Jain were found in those papers one page excel sheet with Heading' "Freight-RCR Costing Form Amrapali" related to calculation and comparison of freight by road and rail including loading charges @ Rs.200/- from coal sites of Amrapali to M/s APNRL plant was found.

I further witnessed that Sh. Ajay Kumar, on reaching the residence of Sanjay Jain along with his Dell Laptop, which he claimed to be the official property of M/s APNRL, containing the data of the coal procurements and other related activities, voluntarily handed over the same to his senior Sh. Sanjay Jain. Ajay Kumar also told that he is using Sim No.s provided to him by M/s APNRL in his two personal mobile sets, which he further handed over to Sh. Sanjay Jain. As per Sh. Sanjay Jain the Dell laptop of Sr. No.-J Y6Y4BS Model-Vostro1320 also contained the details related to purchase and procurement of coal by his company, so he handed over the said laptop with Charger to search team. Sh. Sanjay Jain also handed over the Mi Redmi

*Note-4, it's Sims and Samsung mobile set and it's Sims to the search team. Ajay Kumar told that the sims are given to him by his company.”*

21. PW43 has also made a similar statement before the Investigating Officer. He has stated thus:

*“I further state that, I along with other independent witness Himanshu Kr Sinku saw that the third bed room was searched in the presence of Sh. Sanjay Jain and his wife Pinky Jain. This room had seemed to be used as study room by Sanjay Jain and prayer room by the Jain family. All respect and decency was maintained while entering inside the room. The books and documents were sequentially searched by search team as Sh. Sanjay Jain himself displayed them by taking them out of the rack. All the almirah and box were searched. In the course of search, six stapled papers and duly filled account opening form of Bank of Hyderabad with Memorandum of Association of M/s Rahul Carbon Commercials Pvt. Ltd. were found to be lying casually over the rack. The six stapled papers were shown to me. The Page no. 1 was with the Heading 'Other party Bill & Payment details' related to 12 no of transporters & their payment including the entries of Rs. 254-15/-MT to transporters amounting Rs. 86143000/-. The Page no. 2 was with Heading 'Other party Payment details amounting Rs.86143000/- with effect from 1-7-16 to 4-7-16. The Page No. 3 was with Heading A/C COMMITTEE(1) Payment Amrapali amounting Rs. 8000000/- with effect from 25/04/16 to 30/6/16. Heading A/C COMMITTEE(2) Payment Amrapali amounting Rs. 25000000/- with effect from 25/4/16 to 16/12/16. Heading' A/C COMMITTEE(3) Payment Amrapali amounting Rs. 25000000/- with effect from 6/1/16 to 14/1/16. The Page No. 4 was with Heading' A/C COMMITTEE Payment Ashoka amounting Rs. 36129000/- with effect from 16/8/16 to 19/5/17. The Page No. 5 was with Heading A/C Reconciliation APNRL 6/6/17 Amounting Rs. 23208855.76/-. The Page No. 6 contains details up to 19/5/17 of the payment made @ Rs. 254/-, Rs. 239/-, Rs.200/- from Amrapali amount in 14718829/-, Ashoka amounting Rs 1830800/-. The page also has a pencil writing “Out of this we have cleared all expenses except expense of P.O Saheb”. Sanjay Jain told that M/s Rahul Carbon Commercials Pvt. Ltd. was one of the transportation company working for M/s Adhunik Power & Natural Resources Ltd. The said document was given to him by one person namely Sh. Aditya Dhanuka of M/s Rahul Carbon Commercials Pvt. Ltd. Sanjay Jain told, that the part of money paid by his company through banking channels under the head "Loading/ unloading" to the transporters @ Rs. 254/- or Rs. 239/- or Rs.200/- is given by the transporter directly or indirectly through village committees in cash to one of the terrorist namely Akraman of banned terrorist organization Tiritiya Prastuti Committee (TPC). During the search some official documents like Form 16, appointment letter and other personally concerned papers of Sanjay Jain were found in those papers one page excel sheet with Heading "Freight- RCR*



*Costing From Amrapali" related to calculation and comparison of freight by road and rail including loading charges @ Rs. 200/- from coal sites of Amrapali to M/s APNRL plant was found."*

22. PW65 was a Rojgar Sevak who later on was engaged in the business of coal transportation. He has said that *Shanti Sah Sanchalan Samiti* was established in 2014 to ensure smooth operations at Amrapali Coal Mines. He worked as an accountant for the Committee from 2014 to December 2016. He says that the accounts of money received by the Committee were maintained by him and others, such as, Pradeep Ram, Amlash Narayan Das, Santosh Yadav and Umesh Prasad Yadav. According to this witness, he was keeping money for distribution among the villagers, collected @ Rs. 110/- at Amrapali coal loading point. He further says that he had accompanied Sanjay Jain and Ajay Singh who were working with Adhunik Power and Natural Resources Ltd. along with several other core members of *Shanti Sah Sanchalan Samiti* for a meeting with Akraman Jee in connection to payment of levy. He has also said that the company would make payment to Akraman Ganjhu directly @ Rs. 40/- per tonne of coal after deducting the said amount from the payments made to the contractors (coal transporter). According to him, for about 3-4 months levy amount was given to Akraman Jee directly by the company. Later on, it was being paid through the President of *Shanti Sah Sanchalan Samiti*. This witness has given details of payment made to TPC operatives including Akraman Ganjhu and made a specific statement that Ajay Singh received Rs.2 Lacs from him for payment to CCL officers. But against Sanjay Jain, he has simply said that Sanjay Jain would collect money for payment to Akraman Jee.

23. The statements made by PW66, PW103 and PW104 are also relevant to understand the prosecution case.

*PW66: In the month of December, 2015, Prem Vikash again called me on my mobile 7250253963 and told me that there will be a meeting next day at village Bagra. Next day I along with Prem Vikash from village Kumarang Kala, Santosh Yadav & Vijay Sao from village Kumarang Khurd, Suraj Oraon from Udsu, Pradeep Verma & Mahesh Verma from Binglat and Umesh Prasad & Hullash Yadav from Honhe Village went Bagra there we came to know that place of meeting was changed so we*

went to Herum forest near lawalong. Sanjay Jain & Ajay Singh from Aadhunik Company were already present over there. After some time TPC leader Akraman Ji reached their on Motorcycle in civil dress and hosted the meeting. Sanjay Jain told in this meeting that he could only pay Rs.200 Per ton extra as levy in place of earlier decided rate Rs.254/- because he is not getting much profit after paying so much levy. Akraman Ji & villagers got agreed to this.

**PW103:** On being asked, I further state that our trader company M/s Jai Sarna Enterprises got many contract under M/s Aadhunik Power Ltd & M/s Hindalco Power Ltd. Sanjay Jain looked after all work of M/s Aadhunik Power Ltd. Vishnu Agrawal & Rajendra Saw were look after all work of M/s Hindalco Power Ltd. Both persons worked under Sonu Agrawal, he was main contractor of M/s Hindalco Power Ltd. After cutting of levy amount of TPC, they used to give rest amount to our trader. They gave levy amount directly to Akramanji. I watched many times to Sanjay Jain, Vishnu Agrawal & Rajendra Saw during handing over levy amount to Akramanji. At that time they holding big bags containing currency and handed over to Akramanji.

Mostly commission of CCL collected by Sanjay Prasad, manager of CCL & Sh Matha, employee of CCL Magadh from all traders.

**PW 104:** After formation of committee, on the direction of Akramanji, Binod Ganjhu fixed commission as Rs. 200/- per ton & share distribution of commission was Rs.40/- TPC, Rs. 29/- CCL, Rs.30/- diary, Rs.28/- volunteers, Rs.20/- committee, Rs.15/- management, Rs.20/- loader, Rs.10/- PS, Rs.2/- media, Rs.2/- security, Rs.2/-pollution, Rs.2/-accident, Rs.1/-CID. Committee members deployed at each place of mining area, from which they collected commission money and further handed over to Ramkumar & Sarabjit, who were looking after accounts of the Committee. Thereafter, they distributed commission money. Matha, employee of CCL managed/collected commission of CCL Rs.29/- per ton during deposition of sale order to project office. Commission for TPC was handed over by Binod Ganjhu, commission of police station handed over by Tulsi Ganjhu & me. M/s Hindalco Power Ltd, M/s Aadhunik Power Ltd & M/s JVK Power Ltd were main contractors of the mining sites, small traders worked under them i.e M/s Jai Sarna Enterprises, proprietors names was Bahadur Oraon, Mahendra Ganjhu, Birju Oraon, Ramkumar Oraon, Tulsi Ganjhu, I was also member of this enterprises, total 12 members worked together in this enterprises. We worked for about 70000/- ton under M/s Hindalco, Aadhunik & JVK Power Ltd. M/s Rishabh Enterprises, proprietor Rajendra Saw, M/s Earth Enterprises, proprietor Jabir Ansari, he is son-in-law (Damad) of Subhan Miyan, M/s Bhokta Enterprises, proprietor was Binod Ganjhu. Rakesh & Vishnu Agrawal looked after the work of M/s Hindalco Power Ltd. Ajay Singh & Sanjay Jain for M/s Aadhunik Power Ltd. Sudesh Kedia & Binod Ganjhu for M/s JVK Power Ltd. They were directly handed over levy amount of TPC to

*Akramanji in the forest. Arjun & Binod Ganjhu handed over of TPC commission to Akraman in the forest. Two times I saw Binod Ganjhu during handing over levy amount to Akraman in the forest of Honhe. During absence of Binod, as he was in Jail, Arjun Ganjhu collected commission of TPC from Tulsi Ganjhu & Sarabjit & further he handed over to Akramanji.*

24. There are some documentary evidence, such as, bank statements, disclosure memo, coal transportation bills etc. on which NIA places reliance to establish a *prima facie* case against the appellant.

25. In the background of the aforesaid evidence, Mr. Shubham Gupta, the learned counsel for the appellant, submits that:

(i) The allegations against the appellant do not constitute any offence, atleast under sections 17, 18 and 20 of UA(P) Act. The learned counsel refers to the decision in “*Sudesh Kedia v. Union of India*” (2021) 4 SCC 704 to submit that payment of money to the naxalites and meeting them for the purpose of making payment of levy amount do not constitute the acts of aiding, abetting or funding a terrorist organization.

(ii) Notwithstanding the restrictions under section 43-D, the Constitutional Courts can grant bail to an accused in appropriate cases.

(iii) Examination of witnesses in the trial has started and identity of the protected witnesses has been kept secret and, therefore, there is no possibility of the appellant influencing the witnesses or tampering with other evidence.

(iv) The appellant who has remained in custody for more than three years always cooperated with the investigating agency and there is no possibility of his fleeing away from the course of justice.

26. The learned counsel for the appellant refers to the statement of protected witness 'D' and protected witness 'E' to submit that TPC holds sway over the entire region and the leaders of TPC are now engaged in transportation and other activities at Amrapali Coal Mines. The learned counsel further submits that the statements of co-accused and

the documents seized from residence of the appellant are inadmissible evidence and cannot be relied upon by NIA to say that a *prima facie* case under sections 17, 18 and 20 of UA(P) Act is made out against the appellant.

27. To fortify his contentions, the learned counsel for the appellant refers to the judgments in (i) "*Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence*" (2018) 8 SCC 271; (ii) "*Central Bureau of Investigation v. V.C. Shukla and Others*" (1998) 3 SCC 410; and (iii) "*Dharam Pal v. State of Haryana and Others*" (2016) 4 SCC 160.

28. Per contra, Mr. A.K. Das, the learned counsel for NIA would submit that there is abundance of incriminating materials against the appellant which are collected in course of the investigation. The learned counsel submits that the payment of huge amount of money after collection from the transporters, DO holders etc. by the appellant is well established. The appellant was acting as a conduit between TPC, the coal companies and the transporters and in that way he himself became a part of the terrorist gang.

29. To fortify the stand of NIA that TPC was a terrorist organization, the learned counsel for NIA refers to the order dated 24<sup>th</sup> November 2021 passed in Criminal Appeal (DB) No. 367/2020 wherein a Division Bench of this Court has held that non-declaration of TPC as a terrorist organization under UA(P) Act has no bearing in the matter of competence of NIA to investigate the case as the Schedule to NIA Act, *inter alia*, mentions UA(P) Act, 1967, which includes terrorist gangs for which no separate declaration under UA(P) Act, 1967 is required.

30. We may indicate here that the expression terrorist organization is not defined under section 2(1)(m) of UA(P) Act, rather it says that the organization listed in the Schedule or an organization operating under the same name as an organization so listed shall be treated a terrorist organization.

31. The learned counsel for NIA would further submit that the

decision in “*Sudesh Kedia v. Union of India*” (2021) 4 SCC 704 is distinguishable on facts inasmuch as the acts of the appellant would amount to raising funds for TPC and in fact the appellant became a part of TPC organization. Mr. A.K. Das, the learned counsel for NIA pressed hard to impress upon us that the allegations against the appellant are very serious and his acts are not only anti-national but dangerous to the society in general.

32. The 1<sup>st</sup> supplementary charge-sheet provides sufficient indication how TPC members became active in Amrapali Coal Mines area. TPC is a breakaway faction of CPI(Maoist). It is active in the districts of Latehar, Chatra, Palamau etc. and extortion from development projects and contractors constitute the major source of its income. By Gazette Notification dated 22<sup>nd</sup> May 2009, the Government of Jharkhand declared TPC as unlawful and proscribed organization since the date of its establishment, under section 16 of the Criminal Law Amendment Act, 1908.

33. It appears that to start the work at Amrapali Coal Mines a meeting was held between CCL and the villagers who demanded employment for one person from every family and compensation for land acquisition. But their demands were not acceded to by the authorities which prompted the villagers to raise objections to commencement of work at Amrapali Coal Mines. At this stage, the officers of CCL and the representative of M/s BGR approached the leaders of TPC to resolve the issue and, accordingly, a meeting was called at village Humbi by Akraman Jee, Anishchay Jee and Bhagat Jee. In the said meeting, several prominent persons of five adjoining villages came and at the suggestion of Akraman Jee, *Shanti Sah Sanchalan Samiti* was formed for each village. It was also decided that Rs. 254/- per MT would be collected from each transporter and DO holder for distribution in the following manner:

1. Rs. 45/- Labourer
2. Rs. 30/- Loader
3. Rs. 30/- Volunteers
4. Rs. 28/- villagers who didn't get job in CCL

5. Rs. 40/- TPC
6. Rs. 39/- CCL
7. Rs. 10+8=18/- (local police + Police station In-charge)
8. Rs. 3 Pollution/forest department
9. Rs. 2/- Media/Press
10. Rs. 4/- to the Area charge but this amount was deposited in CCL
11. Rs. 5/- Accidental case
12. Rs. 8/- Owner whose land fell within road transportation
13. Rs. 2/- other expenses.

34. The aforesaid arrangements with different sections of the society were made for smooth operations of the mining activity at Amrapali Coal Mines. The defence of the appellant is that he was acting on behalf of the company and no criminality can be imputed to him if at all he met the operatives of TPC and its supremo and paid money to him.

35. According to NIA, it has collected materials which would show that: (i) the appellant was meeting Akraman Jee; (ii) the appellant collected Rs.200/- in cash from protected witness 'D'; (iii) the witnesses said that the appellant was collecting money from the transporters and DO holders for making payment to TPC; (iv) the appellant and another employee of M/s Adhunik Power and Natural Resources Ltd. were present in the forest in the company of Akraman Jee when the witnesses went there for a meeting; (v) the appellant took help of TPC when the truckers' association gave a call for indefinite strike; and (vi) the disclosure statement of the appellant.

36. The residence of Sanjay Jain situated at 308, 3<sup>rd</sup> Floor, Shivalay Apartment, Chandni Chowk, Kanke Road, Ranchi was searched by a team of NIA at 06:30 AM on 09<sup>th</sup> October 2018. PW14 is a resident of Anish Apartment situated at Hatia, Ranchi and PW43 is a resident of New Pipartoli, Harmu, Ranchi. Mr. A.K. Das, the learned counsel for the NIA states that on a requisition of NIA these witnesses were directed by the Deputy Commissioner, Ranchi by his letter dated 06<sup>th</sup> October 2018 to report at NIA office early morning on 08<sup>th</sup> October 2018 at 03:00 PM. The statement of PW42 is that Sanjay Jain and his wife opened almirahs, boxes and drawers on their own and during search some gold and silver jewelries, credit and debit cards, four passports of the family members

and Rs.52,000/- in cash were recovered. The evidence of PW43 is that the residence of Sanjay Jain was more like that of a salaried middle class family. We would proceed on a premise that the appellant collected money from the transporters and DO holders for payment to TPC, met TPC supremo and paid money to him. But, at the same time, what we gather from the records is that PW44 who provided his bank statements to show cash withdrawal for payment to the appellant has stated that as per an oral agreement he paid money @ Rs.200/- per MT to the appellant for payment to TPC. This witness does not talk about any pressure or coercion. An offer was made to him which he accepted and acted as per the oral agreement agreed upon by both the parties. Mr. Shubham Gupta, the learned counsel for the appellant, has taken us to the statement of protected witness 'E' to submit that PW103 was himself a member of TPC and this is evidence of PW65 and PW103 that levy money was paid by the companies directly to Akraman Jee.

37. Section 17 provides that whoever provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be liable for punishment with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

38. Section 18 which provides punishment for conspiracy etc. uses the expression advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act. Abetment is defined under section 107 of the Indian Penal Code. It envisages instigation of a person, or, engaging with one or more persons, or, intentionally aiding the doing of any act or illegal omission.

39. In "*Sudesh Kedia*" the Hon'ble Supreme Court has observed

as under:

*“13. While considering the grant of bail under Section 43-D(5), it is the bounden duty of the Court to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not. We have gone through the material on record and are satisfied that the appellant is entitled for bail and that the Special Court and the High Court erred in not granting bail to the appellant for the following reasons:*

*13.1. A close scrutiny of the material placed before the Court would clearly show that the main accusation against the appellant is that he paid levy/extortion amount to the terrorist organisation. Payment of extortion money does not amount to terror funding. It is clear from the supplementary charge-sheet and the other material on record that other accused who are members of the terrorist organisation have been systematically collecting extortion amounts from businessmen in Amrapali and Magadh areas. The appellant is carrying on transport business in the area of operation of the organisation. It is alleged in the second supplementary charge-sheet that the appellant paid money to the members of the TPC for smooth running of his business. Prima facie, it cannot be said that the appellant conspired with the other members of the TPC and raised funds to promote the organisation.*

*13.2. Another factor taken into account by the Special Court and the High Court relates to the allegation of the appellant meeting the members of the terror organisation. It has been held by the High Court that the appellant has been in constant touch with the other accused. The appellant has revealed in his statement recorded under Section 164 CrPC that he was summoned to meet A-14 and the other members of the organisation in connection with the payments made by him. Prima facie, we are not satisfied that a case of conspiracy has been made out at this stage only on the ground that the appellant met the members of the organisation.*

*13.3. An amount of Rs 9,95,000 (Rupees nine lakh and ninety-five thousand only) was seized from the house of the appellant which was accounted for by the appellant who stated that the amount was withdrawn from the bank to pay salaries to his employees and other expenses. We do not agree with the prosecution that the amount is terror fund. At this stage, it cannot be said that the amount seized from the appellant is proceeds from terrorist activity. There is no allegation that the appellant was receiving any money. On the other hand, the appellant is accused of providing money to the members of TPC.*

*14. After a detailed examination of the contentions of the parties and scrutiny of the material on record, we are not satisfied that a prima facie case has been made out against the appellant relating to the offences alleged against him. We make it clear that these findings are restricted only for the purpose of grant of bail to the appellant and the trial court shall not be influenced by these observations during trial.”*



40. From the materials on record, it is difficult to hold that the appellant conspired or advocated or abetted any offence under UA(P) Act. Section 18 is attracted when the act abetted, advocated, incited etc. is a terrorist act or any act preparatory to the commission of a terrorist act. May be TPC is engaged in terrorist activities, the acts of the appellant in making payment of levy amount to TPC and meeting with TPC supremo are not covered under sections 17 and 18 of UA(P) Act.

41. The most serious allegation against the appellant is that by his acts he became a member of the terrorist gang.

42. Section 2(1)(k) of UA(P) Act provides that the expression terrorist act shall have the same meaning as defined under section 15.

43. Section 15 of UA(P) Act, 1967 reads 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*

*(iii-a) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or*

*(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or*

*(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or*

*(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain*

*from doing any act; or, commits a terrorist act.*

*Explanation —For the purpose of this sub-section,—*

*(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;*

*(b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates 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.*

44. We are of the opinion that it is not possible to hold that the appellant by his acts, such as, meeting Akraman Jee and making payment to Akraman Jee became a member of TPC.

45. The embargo under sub-section (5) of section 43-D will apply when the prosecution satisfies the Court that there are reasonable grounds for believing that the accusations against the accused are *prima facie* true. In “*NIA v. Zahoor Ahmad Shah Watali*” (2019) 5 SCC 1, the Hon'ble Supreme Court has held that the degree of satisfaction to record a finding that a “*prima facie*” case is made out as compared to the satisfaction as regards “not guilty” is lighter in comparison.

46. In “*Watali*”, the Hon'ble Supreme Court has discussed the parameter for applying sub-section (5) to section 43-D, thus;

*“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and McoCa. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, McoCa and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the*

*accusation against such person is “prima facie” true. By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true”, as compared to the opinion of the accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.”*

47. In our opinion, the appellant has been able to show that the rigors of sub-section (5) would not apply in his case.

48. The next plea urged on behalf of the appellant is that it seems to be a never ending trial and, therefore, he is entitled for bail.

49. In “*Union of India v. K.A. Najeeb*” (2021) 3 SCC 713, the Hon'ble Supreme Court has held that the statutory restrictions like section 43-D of UA(P) Act *per se* do not oust jurisdiction of the Constitutional Courts to grant bail on the ground of violation of Part-III of the Constitution of India.

50. The prosecution intends to examine 185 witnesses and it relies upon 131 documents as well as 66 material exhibits to prove the charge against the accused persons. We are informed that Sudhanshu Ranjan who was a member of Village Committee, Tandwa turned approver for the prosecution and his testimony has been recorded in the Court, but, at the same time, it is stated that this witness did not say anything incriminating against the appellant. Presently, the evidence of the informant is being recorded in the trial.

51. The 1<sup>st</sup> supplementary charge-sheet records in paragraph No. 12 that the investigation against Deepu Singh @ Bhikhan (A-17) and others shall continue under section 173(8) of the Code of Criminal

Procedure. It is a matter of record that 2<sup>nd</sup> supplementary charge-sheet was laid on 20<sup>th</sup> January 2020 in which Mahesh Agrawal, Suresh Kedia and Vineet Agrawal, Sunil Agrawal and Ajay Kumar @ Ajay Singh are sent up for trial and it is recorded there that further investigation against five other persons is still continuing. Mahesh Agrawal, Suresh Kedia, Vineet Agrawal filed Criminal Appeal (DB) Nos. 71/2020, 117/2020 and 119/2020 in which an order of no coercive action against the accused was passed by the Court. We are further informed that final hearing of Cr. Appeal (DB) No. 71/2020 and batch cases was concluded before DB-I on 20<sup>th</sup> July 2020 and after hearing the parties the judgment was reserved. Mr. Shubham Gupta, the learned counsel for the appellant, states that Cr. Appeal (DB) No. 859/2019 filed by the appellant against the order of the Special Court by which the discharge petition of the accused-appellant has been dismissed is pending final consideration. The trial may start afresh after decision in the criminal appeals filed by Mahesh Agrawal and other accused, or when the accused against whom investigation is still in progress are sent up for trial.

52. From statement of the witnesses, particularly, PW42 and PW43, we gather that the appellant cooperated with the investigating agency during search and seizure at his residence and he himself provided all necessary documents and informations to the raiding team. Before he was arrested on 13<sup>th</sup> December 2018, the appellant was called by NIA for questioning on nine occasions and there is no allegation that during the investigation the appellant did not cooperate or obstruct the investigation. It is also a matter of record that in course of search except entries in his laptop no incriminating article, such as, huge cash and jewelries worth an amount disproportionate to his income was recovered, and it is not a case set up by NIA that huge amount was deposited in his bank accounts.

53. The learned Special Judge committed a serious error in law while observing that the appellant may tamper with the evidence because charge was not framed against him. It is also difficult countenance in law that once charge-sheet is submitted against an accused it may not be just and fair to enlarge him on bail. Even going by the observations of the

learned Special Judge, the appellant should be released on bail because now not only charge has been framed against him, the trial has also commenced and identity of the important witnesses has been kept confidential.

54. We are, therefore, inclined to hold that the appellant deserves bail in the present case.

55. The impugned order dated 07<sup>th</sup> February 2019 is set-aside. The appellant shall be released on bail on usual conditions to be decided by the learned Special Judge.

56. Misc. Cr. Application No.1255/2018 shall be listed in the Court concerned on 03<sup>rd</sup> December 2021 for the said purpose.

57. Criminal Appeal (DB) No. 222 of 2019 is allowed in the aforesaid terms.

58. Let a copy of the order be communicated through 'FAX' to the Principal Judicial Commissioner, Ranchi, the Court concerned and the concerned Jail Superintendent.

**(Shree Chandrashekhar, J.)**

**(Ratnaker Bhengra, J.)**