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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 24th May, 2022

Decided on: 3rd June, 2022

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CRL.A. 115/2022

VAIBHAV SAMPAT MORE Appellant

Represented by: Mr.Somesh Tiwari, Ms.Kartika
Sharma, Mr.Chirag Madan and
Mr.Kaveesh Nair, Advocates.

versus

NATIONAL INVESTIGATION AGENCY THROUGH
ITS CHIEF INVESTIGATION OFFICER Respondent

Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak
Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

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CRL.A. 185/2021

RAVIKIRAN BALASO GAIKWAD Appellant

Represented by: Mr.Saurabh Kirpal, Sr.Advocate with
Mr.Rahul Raheja, Mr.Gaurav
Prakash, Mr.Rohit Raheja and
Ms.Supriya Shekhar, Advocates.

versus

NATIONAL INVESTIGATION AGENCY Respondent

Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak
Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

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CRL.A. 186/2021

SADDAM RAMJAN PATEL Appellant
Represented by: Mr.Saurabh Kirpal, Sr.Advocate with
Mr.Rahul Raheja, Mr.Gaurav
Prakash, Mr.Rohit Raheja and
Ms.Supriya Shekhar, Advocates.

versus

NATIONAL INVESTIGATION AGENCY Respondent
Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak
Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

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CRL.A. 187/2021

DILEEP LAXMAN PATIL Appellant
Represented by: Mr.Mohit Mathur, Sr.Advocate with
Mr.Rahul Raheja, Mr.Tarun Khanna,
Mr.Vinayan Chithale, Mr.Gaurav
Prakash, Mr.Rohit Raheja and
Ms.Supriya Shekhar, Advocates.

versus

NATIONAL INVESTIGATION AGENCY Respondent
Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak
Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

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CRL.A. 188/2021

PAWAN KUMAR MOHAN GAIKWAD Appellant
Represented by: Mr.Saurabh Kirpal, Sr.Advocate with
Mr.Rahul Raheja, Mr.Gaurav
Prakash, Mr.Rohit Raheja and

Ms.Supriya Shekhar, Advocates.

versus

NATIONAL INVESTIGATION AGENCY Respondent
Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak
Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

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CRL.A. 189/2021

AVADHUT ARUN VIBHUTE Appellant
Represented by: Mr.Saurabh Kirpal, Sr.Advocate with
Mr.Rahul Raheja, Mr.Gaurav
Prakash, Mr.Rohit Raheja and
Ms.Supriya Shekhar, Advocates.

versus

NATIONAL INVESTIGATION AGENCY Respondent
Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak
Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

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CRL.A. 190/2021

SACHIN APPASO HASBE Appellant
Represented by: Mr.Saurabh Kirpal, Sr.Advocate with
Mr.Rahul Raheja, Mr.Gaurav
Prakash, Mr.Rohit Raheja and
Ms.Supriya Shekhar, Advocates.

versus

NATIONAL INVESTIGATION AGENCY Respondent
Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak

Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

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CRL.A. 191/2021

ABHIJEET NAND KUMAR BABAR Appellant
Represented by: Mr.Saurabh Kirpal, Sr.Advocate with
Mr.Rahul Raheja, Mr.Gaurav
Prakash, Mr.Rohit Raheja and
Ms.Supriya Shekhar, Advocates.

versus

NATIONAL INVESTIGATION AGENCY Respondent
Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak
Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

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CRL.A. 192/2021

YOGESH HANMANT RUPNAR Appellant
Represented by: Mr.Saurabh Kirpal, Sr.Advocate with
Mr.Rahul Raheja, Mr.Gaurav
Prakash, Mr.Rohit Raheja and
Ms.Supriya Shekhar, Advocates.

versus

NATIONAL INVESTIGATION AGENCY Respondent
Represented by: Mr.S.V. Raju, Additional Solicitor
General with Mr.Rahul Tyagi, Spl.P.P
with Mr.Aashish Chojar, Ms.Deepak
Malik, Mr.Anshuman Singh,
Mr.Ankit Bhatia and Mr.Harsh Paul
Singh, Advocates.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

HON'BLE MS. JUSTICE MINI PUSHKARNA

MUKTA GUPTA, J.

1. Aggrieved by the impugned order dated 10th May, 2021 in all the appeals and the order dated 27th November, 2021 in CrI.Appeal No.115/2022 declining to grant bail to the appellants in RC-32/2020/NIA/DLI dated 16th September, 2020 registered under Sections 16/18/20 of the Unlawful Activities (Prevention) Act, 1967 (in short 'the UAP Act') and under Sections 120B/204/409/471 IPC at NIA Headquarters, New Delhi, appellants prefer the present appeals.

2. Briefly the allegations of the prosecution against the appellants is that on 28th August, 2020 eight accused namely Ravikiran Balaso Gaikwad (A-1), Pawan Kumar Mohan Gaikwad (A-2), Sachin Appaso Hasabe (A-3), Yogesh Hanmant Rupnar (A-4), Abhijeet Nand Kumar Babar (A-5), Avadhut Arun Vibhute (A-6), Saddam Ramjan Patel (A-7) and Dileep Laxman Patil (A-8) i.e. the appellants herein except appellant Vaibhav Sampat More were intercepted by the Delhi Zonal Unit of the Directorate of Revenue Intelligence (DRI) while travelling from Assam, Guwahati to Delhi in Train No.02423 and it is alleged that 504 gold bars weighing 83.621 kilograms, which were smuggled were recovered from them at the New Delhi Railway Station. After the DRI carried out its investigation the above-noted RC was registered by the National Investigation Agency (NIA) for alleged commission of criminal conspiracy, furthering terrorist activities and also threatening the economic security and damaging the monetary stability of India as provided under Section 15(1) (a) (iiia) of UAP Act being a terrorist act punishable under Section 16 of the UAP Act.

3. Learned Senior Counsels appearing on behalf of the appellants

contend that appellants-Ravikiran Balaso Gaikwad (A-1) in Crl.Appeal Nos.185/2021, Pawan Kumar Mohan Gaikwad (A-2) in Crl.Appeal No.188/2021, Sachin Appaso Hasabe (A-3) in Crl.Appeal No.190/2021, Yogesh Hanmant Rupnar (A-4) in Crl.Appeal No.192/2021, Abhijeet Nand Kumar Babar (A-5) in Crl.Appeal No.191/2021, Avadhut Arun Vibhute (A-6) in Crl.Appeal No.189/2021, Saddam Ramjan Patel (A-7) in Crl.Appeal No.186/2021 and Dileep Laxman Patil (A-8) in Crl.Appeal No.187/2021, were arrested on 28th August, 2020 by DRI and though released on bail in the customs case, continue to be in custody because of the above-noted RC. It is stated that the appellant in Crl.Appeal No.187/2021 was released on bail immediately as the alleged recovery from him was gold worth less than ₹50 lakhs, the offence being thus bailable however, was arrested in November, 2020 in the above-noted RC. The other accused were granted default bail by the learned Trial Court on 27th October, 2020 on the failure of the DRI to file the complaint within the stipulated period however, continue to be in custody having been arrested by the officers of the NIA in the above-noted RC. Learned counsels state that the charge-sheet in the above noted RC has been filed on 18th March, 2021 and thus no further investigation, much less, any custodial investigation is required to be carried out qua the appellants.

4. It is further contended on behalf of the appellants that even on merits the respondent has no evidence against the appellants except the purported statements under Section 108 of the Customs Act recorded by the Customs Officer which cannot be considered and are inadmissible in a trial under the UAP Act for which separate procedure for trial has been prescribed. There is no material on record to come to the conclusion that the gold bars allegedly possessed by the appellants were procured from outside the

country. On the *ipse dixit* that there is an erasing of the mark no presumption can be raised that the gold was smuggled. Further even the smuggling of gold will not be attracted as a terrorist act as defined under Section 15(1) (a) (iiia) of the UAP Act firstly, on the count that the Customs Act is not a scheduled offence under the UAP Act and secondly, in the term smuggling or circulation of high-quality counterfeit Indian paper currency, coin or of any other material, the words ‘*of any other material*’ cannot be deployed to include smuggling of gold. Two High Courts, that is, the High Court of Kerala in the decision reported as 2021 SCC OnLine Ker 902 Muhammed Shafi P. vs. National Investigation Agency and the Division Bench of the Rajasthan High Court in Crl.Appeal No.22/2021 Rashid Qureshi vs. National Investigation Agency while granting bail to the accused therein has held that smuggling of gold will not be included in the term ‘*other material*’ as used in Section 15(1) (a) (iiia) of the UAP Act. If smuggling of gold was to be included as a terrorist activity while amending Section 15 of the UAP Act the Legislature in its wisdom would have also amended the Schedule to the UAP Act to include the Customs Act. Assuming and not admitting that the allegations of the respondent are accepted, by mere smuggling gold into the country, it cannot be held that the same was with an intention to destabilize the country.

5. In respect of appellant Vaibhav Sampat More in Crl.Appeal No.115/2022 it is claimed that the said appellant was not arrested at the spot. There is no evidence against him except the disclosure statement of the co-accused. Admittedly, the appellant Vaibhav Sampat More is a jeweler and even as per the inadmissible statement recorded under Section 108 Customs Act there is no material on record to show that the gold was delivered to

him. The best case of the respondent in the supplementary charge-sheet against the appellant Vaibhav Sampat More was that he was involved in collecting the gold consignment from Dileep Laxman Patil (A-8) and has facilitated in his travel for the same. Admittedly, even as per the respondent Dileep Laxman Patil was carrying only three gold bars weighing 497 grams, valued at ₹25.5 lakhs.

6. Countering the arguments of learned counsels for the appellants, learned Additional Solicitor General claims that after the arrest of the appellants by the DRI, their statements were recorded under Section 108 of the Customs Act which statements not being before the Police Officer are admissible in evidence. Reliance is placed on the decision of the Hon'ble Supreme Court reported as 1997 (3) SCC 721 K.I. Pavunny Vs. Assistant Collector to contend that a statement recorded under Section 108 of the Customs Act can be used for trial in other statutes as well. Even the Hon'ble Supreme Court in the decision reported as 2013 (16) SCC 31 Tofan Singh vs. State of Tamil Nadu while dealing with a statement recorded under Section 67 of the NDPS Act held that there was no parallel between a statement recorded under Section 108 of the Customs Act and other recorded under Section 67 of the NDPS Act. There is sufficient material on record to show that the eight accused had brought smuggled gold to Delhi and the gold markings were erased except in one gold bar. In view of the recoveries from the eight accused presumption is required to be drawn against the accused persons.

7. Further the fact that all the eight accused acted in conspiracy is evident from the fact that they were all travelling together and their travel tickets were booked by a common travel agency namely Maya Tour &

Travels. It is further stated that the eight accused travelled in a train under dummy names thereby demonstrating their culpable *mens-rea*. The mobile phones of the accused recovered showed photos of fake Aadhar cards, train tickets and gold bars. Besides the statement recorded under Section 108 of the Customs Act the further evidence by the prosecution against the appellants is that the eight accused travelled on fake names and image of fake Aadhar card was found in the data extracted from the mobile phones besides the images of Indian rupee notes which are used as token for purposes of hawala transactions. Images of the accused persons, images of smuggled gold etc. were also found in the mobile phone.

8. Learned Additional Solicitor General also relies on the Statement of Objects and Reasons of bringing the amendment to Section 15 of the UAP Act by introducing Section 15(1)(a)(iiia). Further this amendment was brought due to the recommendations of the Financial Action Task Force (FATF). Even in the said report it is clearly stated that gold is a universally accepted currency. Further gold can be traded anonymously and such transactions would be difficult to trace and track and would cause serious damage to the economic security of the country. It is thus claimed that a larger conspiracy to commit a terrorist act was committed by the appellants by disturbing the economic stability of this country and in view of the seriousness of the offence no bail be granted to the appellants.

9. The main contention of learned counsel for the appellant is that even taking the allegations of the respondent as stated in the charge-sheet, the case of the respondent is that the appellants except appellant Vaibhav Sampat More were allegedly involved in smuggling of gold; the said offence at best can be an offence under the Customs Act which is not a scheduled

offence under the UAP Act and cannot be a terrorist activity even as defined under Section 15(1)(a)(iiia). The said provision relates to smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material. It is contended that the word ‘or of any other material’ has to be read *ejusdem generis* to the paper currency and coin. Further if the Legislature intended to include ‘gold’ as ‘any other material’ it could have specifically stated in Section 15(1) (a) (iiia) and the respondent cannot add words to the said provision by including ‘gold’ therein.

10. In *Mohammed Shafi P.* (supra) the Division Bench of the Kerala High Court dealing with a case of smuggling of gold where the accused were apprehended by the officers of the Customs Department with 30 kgs of 24 carat gold at the International Airport Thiruvananthapuram which was brought in a consignment from United Arab Emirates held:

“21. Main thrust of arguments raised by learned ASG is based on Section 15(1)(a)(iiia) of UA(P) Act to establish that the impugned order is legally unsustainable. If we understand Section 15(1) as above, it is easy to understand Clause (a) thereto. Clause (a) to Section 15(1) illustrates some of the means by which the unity, integrity, security, economic security or sovereignty of India could be threatened or terror could be struck in people or any section of the people in India or in any foreign country. It can be seen from Section 15(1)(a) that using bombs, dynamite or any 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, the unity, integrity, etc. of the nation could be threatened or terror could be struck in people or any section of the people in India or in any foreign country. Clause (a) makes it abundantly clear that the illustrations of criminal acts therein are not exhaustive. The effects produced by such acts are dealt with in Sub-clauses (i) to (iv) thereunder. If by using bombs,

dynamites, etc, death or injuries to any person or persons occur, it will be a terrorist act under Sub-clause (i). Likewise, under Sub-clause (ii), by using bombs, dynamites, etc. if loss or damage or destruction of property has happened, then also it will fall within the definition of terrorist act. Similarly, the disruption of any supplies or services essential to the life of the community in India or in any foreign country caused by any of the means referred to above will also be a terrorist act. Most importantly, under Sub-clause (iiia) to Section 15(1)(a) by any means of whatever nature if any damage to the monetary stability of India is caused or likely to be caused by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material, then also it will amount to a terrorist act.

22. *In this context, we shall consider Explanation (b) to the above Section, wherein high quality counterfeit Indian currency is explained. Pertinently, no mention about coin can be seen therein. We quote the explanation-*

“(b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorized or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.”

23. *It will be apposite at this juncture to look into the Third Schedule to UA(P) Act which specifies the security features to define high quality counterfeit Indian currency notes:*

“THE THIRD SCHEDULE

[See clause (b) of Explanation to section 15(1)]

**SECURITY FEATURES TO DEFINE HIGH QUALITY
COUNTERFEIT INDIAN CURRENCY NOTES**

Watermark(s), Security thread and any one of the following features:—

(a) Latent image; (b) See through registration; (c) Print quality sharpness; (d) Raised effect; (e) Fluorescent characteristics; (f) Substrate quality; (g) Paper taggant; (h) Colour shift effect in OVI; (I) Colour shift effect in security thread.”

24. Our attention has been drawn to the Unlawful Activities (Prevention) Amendment Bill, 2011 intended to further amend the UA(P) Act. In the Bill, as per Clause 4, the existing Section 15 of UA(P) Act was proposed to be amended in the following lines:

“Section 15 of the principal Act shall be renumbered as sub-section (1), thereof and in sub-section (1) as so renumbered,-

(i) in the opening portion, after the word “security”, the words “economic security”, shall be inserted;

(ii) in clause (a), after sub-clause (iii), the following sub-clause shall be inserted namely:—

“(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

(iii) in clause (c), for the words “any other person to do or abstain from doing any act”, the words “an international or inter-governmental organization or any other person to do or abstain from doing any act; or” shall be substituted;”;

(iv) after clause (c), the following clause shall be inserted, namely:—

“(d) demands any bomb, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisonous or noxious or other chemicals or any biological, radiological, nuclear material or device with the intention of aiding, abetting or committing terrorism.”;

(v) for the Explanation, the following Explanation shall be substituted, namely:—

‘Explanation.- For the purpose of this 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 currency” means the
counterfeit currency as may be declared after
examination by an authorized or notified forensic
authority that such currency imitates or compromises
with the key security features as specified in the Third
Schedule.’;*

*(v) after sub-section (1), the following sub-section shall
be inserted, namely:—*

*“(2) The terrorist act under sub-section (1) includes an
act which constitutes an offence within the scope of, and
as defined in any of the treaties specified in the Second
Schedule.”.*

*25. The Bill was passed by the Parliament and Act 3 of 2013
came into force. Section 15(1)(a)(iiia) was inserted by the
Amending Act with effect from 01.02.2013. Relevant portion of
the statement of objects and reasons to the Bill reads thus:*

*“The Unlawful Activities (Prevention) Act, 1967 has been
enacted to provide for the more effective prevention of
certain unlawful activities of individuals and associations
and for matters connected therewith. The scope of the Act
was widened in 2004 and the terrorist activities were
brought within the scope of the said Act.*

*2. An Inter-Ministerial Group was constituted to
evaluate the existing provisions of the Unlawful Activities
(Prevention) Act, 1967 and to recommend necessary
amendments to the said Act. In addition to the above, the
Financial Action Task Force, an Inter-Governmental
organization set-up to devise policies to combat money
laundering and terror financing admitted India as its
34th member. On the basis of commitment made by India
at the time of admission to the said Financial Action Task
Force, various legislative and other legally binding
measures were required to be taken on a medium term
basis, i.e., by 31st March, 2012. These recommendations*

were examined and it is proposed to amend the Unlawful Activities (Prevention) Act, 1967 to make it more effective in prevention of unlawful activities and dealing with terrorist activities.

3. The Unlawful Activities (Prevention) Amendment Bill, 2011, inter alia, provides to -

(a) increase the period of declaration of an association as unlawful from two years to five years as specified under section 6;

(b) amend section 15 of the aforesaid Act (which defines Terrorist act) and include therein -

(i) economic security and 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 as the existing provisions of the aforesaid Act do not include within their scope an act done with an intent to threaten or threaten likely to economic security of India and counterfeiting Indian paper currency or coin;

(ii) any international or inter-governmental organization against which any person indulges in acts described in clause (c) of section 15, since the existing provision does not explicitly mention such international or inter-governmental organization.

(iii) act of demanding any bomb, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisonous or noxious or other chemicals or any biological, radiological, nuclear material or device with the intention of aiding, abetting or committing terrorism;

xxxxxx”

.....

42. Sum and substance of the above discussion is that by applying the above mentioned well known rules of interpretation of statutes, we are unable to hold that smuggling

of gold simplicitor will fall within Section 15(1)(a)(iiia) of UA(P) Act. In other words, gold smuggling clearly covered by the provisions of the Customs Act will not fall within the definition of terrorist act in Section 15 of UA(P) Act unless evidence is brought out to show that it is done with the intent to threaten or it is likely to threaten the economic security or monetary stability of India. In our view, what is made an offence under Section 15(1)(a)(iiia) of UA(P) Act is causing damage to the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or any other material relatable to currency or coin. "Other material" can be any material connected to counterfeit Indian paper currency or counterfeit Indian coin, like machinery or implements or high quality paper or any other material which could be used for producing or circulating fake currency or coin. Illegal acts referred to in the above provision certainly will have a direct impact on the economic security of India. In our opinion, it does not include gold as the words employed in the Sub-clause specifically mention about production or smuggling or circulation of high quality counterfeit Indian paper currency or coin and therefore gold cannot be grouped along with paper currency or coin even though gold is a valuable substance and has a great potential to get converted into cash. Arrangement of words indicating the things mentioned in the provision does not prompt us to think that gold smuggling with a mere illegal profit motive will fall within the aforementioned definition of terrorist act. Besides, we take cognizance of the fact that there can be many other things of enormous value like precious metals and stones that could be smuggled for making an unlawful gain. We do not find any logic to include gold alone along with counterfeit Indian paper currency or coin.

43. One more rule of interpretation of statutes fortifies our view. Casus omissus, meaning a situation omitted from or not provided by statute, cannot be supplied by courts, as to do so will be legislation and not construction. Plethora of case law on this subject need not be mentioned here to buttress this proposition. In our opinion, if the legislature had an intention to

include gold smuggling also as terrorist act, there is no difficulty in expressly providing a limb to Section 15 of UA(P) Act. We can only presume that the legislature must have been aware of the existence of the Customs Act when it amended Section 15. Non-inclusion of the Customs Act in the Schedule to NIA Act also must be regarded as a conscious act by the legislature. These aspects also strengthen our above view.”

11. Learned Additional Solicitor General has taken this Court to the statement of objects and reasons for the Amendment Act which shows that the amendment was made to the definition of “terrorist act” by bringing in facets of terrorist acts by disturbing the economic stability of the country. The said amendment has been made pursuant to the recommendations of the Financial Action Task Force (in short FATF). The said report claims that gold is a universally accepted currency, gold can be transferred anonymously and transactions are difficult to trace and verify. It was noted that gold is a form of global currency and also acts as a medium for exchange in criminal transactions. However, it may be noted that despite the fact that the report specifically deals with gold, the word ‘gold’ have not been added while amending Section 15(1)(a)(iiia) UAP Act. Further possession, use, production, transfer of counterfeit currency or coin is per-se illegal and an offence, however, production, possession, use etc. of ‘gold’ is not per-se illegal or an offence. Even import of gold is not prohibited but restricted subject to prescribed quantity on payment of duty. Thus mere smuggling of gold without any connection whatsoever to threatening economic security or monetary stability of India cannot be a terrorist act.

12. As noted above, the main evidence with the prosecution to show that the gold bars recovered were smuggled gold, are the statements of the

accused recorded under Section 108 of the Customs Act by the officers of the Customs. Learned Additional Solicitor General has relied upon the decision reported as (1997) 3 SCC 721 K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin. In the said decision, Hon'ble Supreme Court held that it was clear from the objects of the Customs Act that empowering Customs Officers to record the statement under Section 108 of the Customs Act was for the purpose of collecting information of the contravention of the provisions of the said Act by concealment of the contraband or avoidance of the duty and for initiation of action thereon. It is in this light that the Supreme Court in K.I. Pavunny (supra) held that the statement recorded under Section 108 of the Customs Act will be admissible in evidence on the complaint laid by the Customs Officers for prosecution under Section 135 or other relevant Statutes. However, the term 'other relevant Statutes' will not include an unconnected Statute which does not even in its schedule include Customs Act as a scheduled offence.

13. There is yet another aspect to the matter. Section 16 of the UAP Act provides for punishment for a "terrorist act" as under:

"16. Punishment for terrorist act.—

(1) Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

14. It is thus evident that in the present case as no death has been caused Clause 'b' of Section 16 of UAP Act will be applicable which provides for

sentence of minimum imprisonment for a period of 5 years which may extend to life imprisonment, thereby providing discretion to the Trial Court to pass a sentence of imprisonment from five years to life based on the facts of the case. As noted above, appellants except Vaibhav Sampat More were arrested by the Customs Department on 28th August, 2020, wherein appellant Dileep Laxman Patil was granted bail by the learned CMM on 15th September, 2020 returning a finding that the offence by the said appellant was bailable in view of the quantum of alleged possession and thus he was released on bail. However, on 16th September, 2020 the above-noted RC-32/2020/NIA/DLI was registered and the remaining appellants except Vaibhav Sampat More and Dileep Laxman Patil were arrested by NIA on 21st September, 2020 and thus continued to be in custody in the above-noted RC despite default bail granted to them in customs case on 27th October, 2020. Further Dileep Laxman Patil was arrested by NIA on 20th November, 2020 and Vaibhav Sampat More on 24th March, 2021. It is thus evident that all the appellants except Dileep Laxman Patil and Vaibhav Sampat More are in custody in the above-noted RC since 21st September, 2020 and have spent more than 20 months in custody. The trial is likely to take some time, also for the reason that some of the appellants have filed petitions challenging the order granting sanction claiming that an alleged offence under the Customs Act cannot be brought in the realm of provisions of the UAP Act.

15. Thus, in view of the discussion aforesaid, this Court deems it fit to grant bail to the appellants. Consequently, appellants are directed to be released on bail on the following terms and conditions:

- i. The appellants will furnish a personal bond and a surety bond in the sum of ₹1 lakh each to the satisfaction of the learned Trial Court.
 - ii. Appellants will surrender their passports, if in their possessions, to the learned Trial Court.
 - iii. Appellants will not leave the country without the prior permission of the learned Trial Court.
 - iv. Appellants will report to the jurisdictional Station House Officer of the Police Station where they reside on the first Monday of every month between 10.00 AM to 5.00 PM for marking their presence.
 - v. Appellants will submit their residential address and the mobile phones used by them and in case of change, the same will be intimated to the learned Trial Court by way of an affidavit.
 - vi. Mobile phones used by the appellants will be kept in active mode and the appellants will share the live locations of their mobile phones with the Investigating Officers for the next six months.
16. Appeals are disposed of.
17. Order be uploaded on the website of this Court.

न्यायमेव जयते

**(MUKTA GUPTA)
JUDGE**

**(MINI PUSHKARNA)
JUDGE**

JUNE 03,2022
‘vn’/‘ga’