

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL ANTICIPATORY BAIL APPLICATION NO.314 OF 2019**

Anand Teltumbde, Age 68 years,  
Occ.Senior Professor  
Chair, Big Data Analytics,  
Goa Institute of Management,  
R/o.Goa Institute of Management,  
Sanquelim, Goa-403 505.

Applicant

versus

The State of Maharashtra and others

Respondents

**WITH  
INTERIM APPLICATION NO.1 OF 2019**

**IN  
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.314 OF 2019**

The State of Maharashtra  
versus

Applicant

Anand Bapurao Teltumbde

Respondent

Mr.Mihir Desai, Senior Advocate, i/by Devyani Kulkarni for applicant  
in ABA No.2461 of 2019 and for Respondent in I.A. No.1/2019.

Smt.Aruna S. Pai, Special Public Prosecutor for State/Respondent.

Dr.Shivaji Pawar, ACP and Investigating Officer.

**CORAM : PRAKASH D. NAIK, J.**

Date of Reserving the Order : 18<sup>th</sup> December 2019

Date of Pronouncing the Order : 14<sup>th</sup> February 2020

**PC :**

1. This is an application for anticipatory bail under Section 438 of  
Code of Criminal Procedure, 1983 (`Cr.P.C'). The applicant is

apprehending arrest in connection with CR No.4 of 2018 registered with Vishrambagh Police Station, Pune. The first information report (`FIR') was lodged on 8<sup>th</sup> January 2018. The offences were registered under Sections 153-A, 505(1)(b), 117, 34 of Indian Penal Code.

2. The FIR was lodged by one Tushar Ramesh Damugade. It was alleged that there was a programme at Shaniwar Wada, at Pune on 31<sup>st</sup> December 2017 organized by Elgar Parishad. The first informant attended the programme at about 2 pm on 31<sup>st</sup> December 2017. There were few speakers, comperes, singers and other performers present on the stage. The informant was knowing Kabir Kala Manch and its members. He had read about them on social media and in the newspapers. Some of the performers enacted short plays, performed dances and sang songs. According to the first informant, the performances were provocative in nature and had effect of creating communal disharmony. Provocative speeches were delivered. Few objectionable and provocative books were kept for sale at the venue. The banned organization Communist Party of India (Maoist) (for short `CPI (M)') was insighting violence by creating communal disharmony. The members of Kabir Kala Mahch spread hatred through their songs, plays and speeches causing

enmity between different communities. As a result, there were instances of violence, arson and stone pelting near Bhima-Koregaon.

3. The FIR was registered against Sudhir Dhavale, Sagar Gorkhe, Harshali Potdar, Dipak Dhengale, Jyoti Jagtap, Ramesh Gaychor and others. The investigation proceeded. Section 120-B of IPC was added on 6<sup>th</sup> March 2018. The investigation was transferred to Crime Branch, Pune.

4. According to prosecution, during the course of investigation, search was conducted on 17<sup>th</sup> April 2018 at the residential premises and work places of Rona Wilson (R/o.Delhi), Surendra Gadling (R/o.Nagpur), Sudhir Dhavale (R/o.Mumbai), Harshali Potdar (R/o.Mumbai), Sagar Gorkhe (R/o.Pune), Dipak Dhengale (R/o.Pune), Ramesh Gaychor (R/o.Pune), Jyoti Jagtap (R/o.Pune). It is alleged that during the search documents were recovered from their respective computers/laptops/pen drives/memory cards etc.. Different documents were found to have been created or kept in the respective computers/laptops/pen drives/memory cards/devices on different dates. The seized articles were sent to Forensic Science Laboratory for analysis. The cloned copies were received by the investigating agency. According to prosecution, from the seized and

recovered material, it was revealed that other persons are also part of criminal conspiracy. Based on investigation the provisions of Sections 13, 16, 17, 18, 18-B, 20, 38 39 and 40 of Unlawful Activities (Prevention ) Act, 1967 ( `UAPA Act' for short) were applied on 17<sup>th</sup> May 2018 against Surendra Gadling, Rona Wilson, Shoma Sen, Mahesh Raut, Comrade M @ Milind Teltumbde, Comrade Prakash @ Navin @ Ritupan Goswami, Comrade Mangalu and Comrade Dipu. Search was conducted at the residence of Shoma Sen and Mahesh Raut on 6<sup>th</sup> June 2018. Search was carried out at the place of residence or work place of applicant, P.Varavara Rao (R/o. Hyderabad), Arun Ferreira (R/o.Thane), Sudha Bharadwaj (R/o.Faridabad), Vernon Gonsalves (R/o.Mumbai).

5. The accused Surendra Gadling, Rona Wilson and Sudhir Dhavale were arrested on 6<sup>th</sup> June 2018. According to the prosecution, based on incriminating material, other persons were added as accused, viz.P.Varavara Rao, Arun Ferreira, Vernon Gonsalves, Sudha Bharadwaj, applicant, Anand Teltumbade and Stan Swamy. Charge sheet was filed against arrested accused under Sections 121, 121-A, 124-A, 153-A, 505(1)(b), 117, 120-B r/w 34 of Indian Penal Code and under Sections 13, 16, 17, 18, 18-B, 20, 38, 39 and 40 of UAPA Act.

6. The applicant's involvement was disclosed and he was arraigned as accused on 22<sup>nd</sup> August 2018.

7. On 29<sup>th</sup> August 2018 Writ Petition No.260 of 2018 (**Romila Thapar and others Vs. Union of India and others - (2018)10-SCC-753**) was preferred before the Hon'ble Supreme Court by five eminent historians and academics challenging the action of Maharashtra Police in raiding homes and arresting human rights activists, journalists, advocates and political workers. The grievance of the petitioners was that the activists namely Gautam Navlakha, Sudha Bharadwaj, Varavara Rao, Arun Ferreira and Vernon Gonsalves were arrested on 28<sup>th</sup> August 2018 from their homes at New Delhi, Faridabad, Mumbai, Thane and Hyderabad without any credible material and evidence in connection with FIR No.4 of 2018 registered with Vishrambagh Police Station, Pune. The prosecution-respondent opposed the petition by filing reply. During the course of hearing of the said petition, formal applications were filed on behalf of Sudha Bharadwaj, Arun Ferreira and Vernon Gonsalves, who were under house arrest, stating that they may be permitted to pursue the writ petition filed by them. The Hon'ble Supreme Court had extended protection of house arrest granted to the applicant and others. The petitioners had prayed that the investigation be

monitored through SIT. The Hon'ble Supreme Court vide judgment and order dated 28<sup>th</sup> September 2018 by majority of 2:1 declined to order a Court monitored SIT. The accused were permitted to seek other remedies including quashing/bail etc. The interim protection was extended for a further four weeks to enable the accused to pursue appropriate remedies.

8. The applicant preferred Criminal Writ Petition No.4596 of 2018 before this Court by invoking writ jurisdiction of this Court under Article 226 of Constitution of India seeking quashing of CR No.4 of 2018. The said petition was dismissed vide judgment and order dated 21<sup>st</sup> December 2018. The operation of the order was, however, stayed on the request of applicant for a period of three weeks. The applicant preferred petition for Special Leave to Appeal (Cri.) No.59 of 2019 before Hon'ble Supreme Court challenging the judgment and order dated 21<sup>st</sup> December 2018 passed by Division Bench of this Court. The Special Leave Petition was disposed of by order dated 14<sup>th</sup> January 2019. The order reads as follows :

*“Upon hearing the counsel the Court made the following*

**ORDER**

*Heard the learned counsel for the petitioner and perused the relevant material.*

*Exemption from filing certified copy of the impugned order and O.T. is granted.*

*Permission to file additional documents is granted.*

*We are not inclined to interfere at this stage.*

*Shri Kapil Sibal, learned Senior Counsel appearing for the petitioner submits that interim protection against arrest granted by the High Court on 15<sup>th</sup> October, 2018 to the petitioner remained in force until Friday i.e. 18<sup>th</sup> January, 2019.*

*We extend the said interim protection for a period of four weeks from today within which the petitioner may seek regular/pre-arrest bail from the Competent Authority, if so advised.*

*The Special Leave Petition is disposed of in the above terms.”*

9. The applicant preferred application for anticipatory bail before Sessions Court, at Pune. The said application was rejected by order dated 1<sup>st</sup> February 2019. The applicant was arrested on 2<sup>nd</sup> February 2019 and produced before the Special Judge, Pune. The applicant preferred application vide Exhibit-50 contending that the Supreme Court while disposing of the Special Leave Petition, extended the interim protection for a period of four weeks, which is in force till 11<sup>th</sup> April 2019. However, the applicant was arrested by police during the operation of protection. Learned Sessions Judge by order dated 2<sup>nd</sup> February 2019 observed that the arrest of applicant was against the order passed by Hon'ble Supreme Court. The applicant

was directed to be released forthwith. The applicant was released. The applicant then preferred present application for anticipatory bail before this Court. The applicant was granted interim protection by order dated 11<sup>th</sup> February 2019. Subsequently the co-accused Gautam Navlakha preferred Criminal Anticipatory Bail Application No.2461 of 2019 before this Court. By order dated 15<sup>th</sup> November 2019 both the applications were fixed for hearing as common issues were involved.

10. Senior Advocate Mr.Mihir Desai appearing for the applicant submitted that although there is bar u/s 43D of UAPA Act for exercising power u/s 438 of Cr.PC, the application is maintainable in law. It is submitted that the Hon'ble Supreme Court by order dated 14<sup>th</sup> January 2019 granted liberty to the applicant to apply for pre-arrest bail before competent authority. The interim protection was extended for a period of four weeks. It is submitted that the Supreme Court has exercised the powers under Article 142 of Constitution of India to protect applicant's liberty. The Supreme Court has exercised the powers under Article 142 of Constitution of India on several occasions crafting extraordinary remedy. He further argued that it is settled position of law that Hon'ble Supreme Court can exercise powers under Article 142 of Constitution of India and



the statutory bar did not fetter such power. Reliance is placed on the decision of Supreme Court in the case of **Union Carbide Corporation and others Vs. Union of India and others (1991)4-SCC-584**. Learned counsel stressed upon observations in paragraphs 80 and 83 of the said decision. It is submitted that the prosecution can not contend that in view of the bar envisaged under UAPA Act, this application is not maintainable u/s 438 of Cr.PC.. The respondents did not seek any clarification from the Supreme Court with regards to interpretation of the order dated 15<sup>th</sup> October 2019. The order of Supreme Court is binding on all the Courts in accordance with Article 141 of Constitution of India. It is further submitted that the Supreme Court as well as this Court in exercise of powers under Article 226 of Constitution and Section 482 of Cr.PC, had quashed the proceedings in relation to the offences which are non-compoundable, as enumerated under the provisions of Cr.PC.. Thus, although the offences are not compoundable in accordance with Section 320 of Cr.PC, the Courts have exercised power of quashing the proceedings. There are numerous instances of Hon'ble Supreme Court exercising powers unfettered by any statutory bar. Learned counsel relied upon some illustrations in support of his submissions. Learned counsel relied upon decision of Hon'ble Supreme Court of India in **Paramjit Kaur Vs. State of Punjab and others (1999)2-SCC-**

131. Reliance is placed on paragraphs 13, 14 and 15 of the said decision. The Court in exercise of jurisdiction under Article 32 of the Constitution of India entrusted the National Human Rights Commission to deal with certain matters in the manner indicated in the course of its order. All authorities in the country are bound by the directions of this Court and have to act in aid of this Court. The National Human Rights Commission is no exception. The Commission would function pursuant to the directions issued by Supreme Court and not under the Act under which it is constituted. The jurisdiction of National Human Rights Commission is of special nature not covered by enactment or law, and thus acts sui generis. Learned counsel submitted that vide order dated 14<sup>th</sup> January 2019 the Supreme Court has permitted the applicant to seek regular/pre-arrest bail from the competent authority. Thus, although there is statutory bar in view of observations of Supreme Court issued in accordance with Article 142 of Constitution of India, the application for anticipatory bail will have to be entertained by this Court and the said application is maintainable in law.

11. Learned counsel for applicant further submitted that provisions of UAPA Act are not attracted in the present case and therefore application u/s 438 of Cr.P.C is maintainable. It is submitted that

similar bar is provided u/s 18 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act'). Section 18 of the said Act provides that Section 438 of Cr.PC would not apply in relation to any case involving arrest of any person on accusation of having committed an offence under the said Act. It is submitted that in spite of exclusion of Section 438 of Cr.PC, the Hon'ble Supreme Court has held that in the event provisions of Atrocities Act are not applicable, then, the application for anticipatory bail would be maintainable. It is, thus, submitted that since UAPA Act is not attracted to the allegations, the present application for anticipatory bail is maintainable. Learned counsel relied upon observations in paragraphs 9 and 10 of decision of Hon'ble Supreme Court in **Vilas Pandurang Pawar and another Vs. State of Maharashtra (2012)8-SCC-795**.

12. Learned counsel placed for consideration the observations of Hon'ble Supreme Court in Review Petition No.228 of 2018 in Criminal Appeal No.416 of 2018 in the case of Union of India Vs. The State of Maharashtra and others. The said petition was preferred by Union of India for review of judgment and order dated 20<sup>th</sup> March 2018 passed by Supreme Court wherein dealing with the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989 ('Atrocities Act' for short) has issued guidelines in paragraph 83 of the said judgment. It is contended that the Supreme Court had observed that the directions issued in the decision under review encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of down-trodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of Constitution of India. The directions about approval of appointing authority before arrest and conducting preliminary inquiry by concerned DSP were set aside. It is submitted that the view taken by the Supreme Court in the decision under review and the earlier decisions about exercising powers u/s 438 of Cr.PC in spite of bar u/s 18 of Atrocities Act was not disturbed. It is further submitted that pursuant to the decision under review, the amendment was carried out under the Act by introducing Section 18A. However, the Division Bench of this Court in the case of **Lahu Vs. State of Maharashtra and another in Criminal Appeal No.194 of 2019 (2019-SCC OnLine-Bom-557)** has held that in spite of addition of Section 18A to the Atrocities Act wherein it is specified in Clause-2 that the provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or direction of any Court, the powers u/s 438 of CrPC can

be exercised.

13. It is submitted that no case is made out for applying UAPA Act. If the Court comes to the conclusion by applying principles enunciated in the decisions delivered in the cases under Atrocities Act, that prima facie case is not made out for applying provisions of UAPA Act, this Court can exercise powers u/s 438 of CrPC and grant anticipatory bail to the applicant. It is submitted that there is no material to establish the case under the provisions of UAPA Act or under Penal Code provisions and therefore the applicant is entitled for relief u/s 438 of CrPC.



14. It is submitted that the applicant has a brilliant academic record. He holds the qualification of B.E. in Mechanical Engineering from VNIT-Nagpur, MBA from Indian Institute of Management-Ahmedabad, D.Litt from Karnataka State University, Mysore. He was the Executive Director of Bharat Petroleum and Managing Director and CEO of Petronet India Limited up to 2010. He was invited as a Professor of Management by IIT, Kharagpur. He is widely respected. He is invited by number of Universities abroad for giving lectures. He has written extensively in all leading newspapers, magazines, organizational pamphlets and booklets and lectured widely in India.

He has authored several books. He was associated with People's struggle particularly labour class. He is associated with committee for protection of democratic rights. He participated in fact finding teams. He has contributed to the respected social science journal, Economic and Political Weekly and written columns. His recent book is Radical in Ambedkar, Republic of Caste. He has received prestigious awards. Presently he is Senior Professor, Big Data Analytics, Goa Institute of Management, at Goa.

15. It is further contended that advocacy of violence is a necessary prerequisite to attract provisions of UAPA Act. Any activity that borders only on communication or at the most passive membership, is not sufficient to attract charge under UAPA Act without further incitement of violence. It is further submitted that in a recent order passed by this Court in case of **Konnath Muralidhar Vs. State of Maharashtra (Criminal Bail Application No.488 of 2018)**, decided on 25<sup>th</sup> February 2019, this Court had granted bail in UAPA case applying the aforesaid principle. It is also submitted that special leave petition challenging the aforesaid order of bail was dismissed by Supreme Court. Learned counsel heavily relied upon the decision of Supreme Court in case of **Arup Bhuyan Vs. State of Assam (2011)3-SCC-377, Kartarsingh Vs. State of Punjab (1993)5-SCC-569,**

**PUCL Vs. Union of India (2004)9-SCC-580 and State Vs. Nalini (1995)5-SCC-253.** It is submitted that none of the documents adduced by the prosecution would show that the applicant had conspired to commit any violence. Although the prosecution has been investigating the case since last two years, the nature of alleged evidence is only electronic documents.

16. Search was conducted at the residence of applicant in Goa. Panchanama was drawn. Nothing incriminating was recovered. The applicant was not summoned by police. He was available for inspection. Press conference was held by Additional DGP, Pune, in which he relied on certain letters alleging involvement of applicant as a member of banned Maoist organization. The contents of letters were false.

17. In the writ petition filed by the applicant the prosecution has relied upon five letters/documents to implicate the applicant. It was alleged that the applicant is involved in the event of Elgar Parishad held at Pune. The case of prosecution is rested upon material in the form of letters and documents that have been recovered during the investigation from the accused named in the FIR. The documents form part of charge sheet filed against arrested accused. The same documents are relied upon by the prosecution in the reply filed to

this application as well as reply filed opposing the writ petition preferred by the applicant before this Court. The prosecution is relying upon letter from Pakash to Anand. There is reference of funds sent for Paris meeting, Com.Anupana Rao and Com.Shailja Paik. There is reference of Prof.Balibar. It is alleged that the said persons are linked to Maoist organization. The applicant has attended several conferences all over the world. He is a noted scholar. He has delivered several lectures. He is a human rights activist. The names mentioned in the letter are published in University in USA that organized the lecture and it was for public information. The applicant relied upon letter dated 11<sup>th</sup> December 2017 in support of his submission which has been annexed to this application as Exhibit-L. The applicant attended the conference and expenses were borne by the organizers. Thus, the said letter does not take the prosecution case further. Besides, the letter was allegedly addressed to the applicant by one Prakash. The prosecution is drawing analysis that one Saibaba is in jail since 2017 and the said Saibaba is Prakash. The next letter referred to by the prosecution is dated 8<sup>th</sup> June 2017 from Com.M to Com.Surendra. It is not even alleged that this is addressed to the applicant. This refers to Anuradha Ghandy Memorial Trust. This trust is registered. The applicant is member of the trust. Other members includes



journalists. No adverse inference can be drawn against applicant on the basis of said letter. The third letter was allegedly written by Surendra Gadling to Sudarshan. The letter talks about Com.Arun's role in mobilizing youths. It further suggests that Com.Anand is overseeing all the matters relating to Ambedkar Periyar Study Circle, which is a students organization. It is submitted that the applicant is an academician having published several books, some of which have won awards. The applicant does not mobilize youths. He is not concerned with APSC. The other letter relied upon by the prosecution is dated 23<sup>rd</sup> December 2017 sent by R to Prakash. The said letter mentions that the applicant has taken the responsibility of fact finding committee in Gadchiroli. The applicant has not participated or organized any fact finding committee at Gadchiroli. He is in Goa since 2016 and prior to that he was at Kharagpur. Thus, Com.Anand referred to in the said letter is someone else and not the applicant. In any event, organizing fact finding responsibility is not an offence. The last document referred to some accounts indicating money having been paid to Anand who is allegedly applicant. This document has no date and signature and is likely a diary entry, which cannot be relied on for any purpose. The applicant has never taken money from any banned organization and he is not connected with any banned organization. Person who is referred as Anand cannot be

applicant. The evidence relied upon by prosecution is vague in nature. The letters are found and seized from the custody of other persons.

18. To invoke provisions of Section 2(O), 10 and 13 of UAPA Act, the element of violence is required. The applicant did not know what transpired in the meeting held on 2<sup>nd</sup> October 2017 at Pune. The applicant learnt latter that a conference named Elgar Parishad was to be held on 31<sup>st</sup> December 2017, the day before the anniversary on 1<sup>st</sup> January 2018. The applicant had attended the wedding of his friend's son on 31<sup>st</sup> December 2017. He was accommodated in a room reserved by his friend which was nearby the place of marriage ceremony. The applicant and his wife had met nephew of his wife at Shaniwarwada where the Elgar Parishad was conducted. They left the said place within a short span of time. The FIR in question was registered on 8<sup>th</sup> January 2018. The applicant's name has been mentioned as a suspect for the first time on 22<sup>nd</sup> January 2018 in the remand application filed by police concerning arrested accused. The applicant has been falsely roped in the case. He was not called for questioning. He is dragged because of his writing. He often writes about caste structures of people of India and violation of democratic rights of marginalized citizens of India.

The police have exercised the powers mala fide. The applicant is highly educated person. He did not attend Elgar Parishad. The prosecution is in possession of all the documents. The custodial interrogation of applicant is not necessary. The applicant has filed additional affidavit dated 22<sup>nd</sup> February 2019. In the said affidavit it is stated that as per the directions of this Court, the applicant has attended Swarget Police Station, Pune on 14<sup>th</sup> February 2019. He has co-operated with the investigating agency on 14<sup>th</sup> February 2019. He was also directed to attend police station on 18<sup>th</sup> February 2019. He was asked to appear on 19<sup>th</sup> February 2019. The applicant had attended the police station and co-operated with the interrogation. He also provided certain documents sought by the prosecution. Custodial interrogation of the applicant is not necessary. Learned counsel for applicant tendered compilation of documents viz statement of Sudarshan Ramteke dated 29<sup>th</sup> September 2019, statement of Kumarsai dated 14<sup>th</sup> November 2018 and 2<sup>nd</sup> November 2018, copy of article in Wire “The Myth of Bhima-Koregaon reinforces the identity it seeks to transant and Elgar Parishad invitation pamphlet. Learned counsel relied upon decision of Patna High Court in case of **Bikash Kumar Vs. The State of Bihar (MANU/BH/1415/2015)** wherein anticipatory bail was granted for the offences under UAPA Act. Learned counsel relied upon the

decision of Hon'ble Supreme Court in case of **Shreya Singhal Vs. Union of India (2015)5-SCC-1**. In the said decision it was observed that there are three concepts which are fundamental in understanding the reach of freedom of speech and expression, the most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause, however, unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relation with foreign States etc..

19. Learned counsel for applicant also pointed out statement of Kumarsai @Ashok @ Ram Mohammad Singh dated 2<sup>nd</sup> November 2018 and his supplementary statement dated 23<sup>rd</sup> December 2018. In the supplementary statement it is stated that the applicant is working for joining dalit movement to Maoist party. The first statement is silent. There is nothing incriminating against the applicant in the said statements. Learned counsel for applicant pointed out statement of Ramteke, Article in Wire "Myth of Bhima-

Koregaon reinforces the identity if seeks to transant, Elgar Parishad pamphlet, and submitted that there is nothing incriminating against applicant. The name of applicant is not appearing in list of Central Committee of CPI(Maoist). The documents submitted by the respondents, at the most, show acquaintance, association or even membership de-hors violence. There is no material to show the connection of applicant with the larger conspiracy. Thus, provisions of UAPA Act are not attracted against applicant. It is not alleged that the applicant is a flight risk or will tamper with evidence or witnesses. The main evidence in this case is in electronic form which has already been seized and his house has been searched. It is submitted that triple test has to be considered for granting bail, as observed in the recent decision of Supreme Court in case of **PChidambaram Vs. Directorate of Enforcement (Criminal Appeal No.1831 of 2019 arising out of SLP (Criminal) No.10493 of 2019) decided on 4<sup>th</sup> December 2019**. Learned counsel for applicant submitted that Hon'ble Supreme Court in the decision of Romila Thapar in the dissenting opinion has observed that the allegations made by the respondents were taking liberty with the truth. The said observation was made on perusal of the case diary. The Sessions Court's order is based on no material. Undisputedly the applicant was not at Bhima-Koregaon and was not present at the time of

programme conducted by Elgar Parishad. He, therefore, submitted that the applicant be granted relief u/s 438 of Cr.PC..

20. Learned Special Public Prosecutor Mrs.Aruna Pai submitted that the application itself is not maintainable in law in view of specific bar u/s 43D(4) of UAPA Act. It is submitted that there is sufficient evidence against applicant showing his involvement in the crime. Prima facie case is made out to attract provisions of UAPA Act as well as penal provisions under IPC. It is submitted that the documents were recovered from electronic devices of accused persons. The investigation has revealed the complicity of applicant in commission of crime. It is submitted that this is not the stage to appreciate the evidence or decide the issue relating to admissibility of evidence. The investigation proceeded pursuant to registration of FIR vide CR No.4 of 2018 by Vishrambagh Police Station, Pune. The FIR was registered against accused named therein. Elgar Parishad had conducted programme on 31<sup>st</sup> December 2017 on the eve of Bhima-Koregaon Vijay Stambh Anniversary. There were riots on 1<sup>st</sup> January 2018. The FIR indicate that programme conducted by Kabir Kala Manch was provocative. The speeches were provocative. That was followed by the incident of riot, damage to public property by arson etc.. Some of the accused were named in the FIR. During the

course of investigation, premises of the accused were searched. Incriminating documents were recovered from their electronic devices. Deep investigation revealed that other than the incident of riots at Bhima-Koregaon, there was a deep rooted conspiracy where several other persons were involved. The documents recovered indicate that the accused were acting in connivance with each other. The charge of conspiracy was invoked. The analysis of documents, investigation discloses offences under UAPA Act. Hence, provisions of UAPA Act were invoked. Several accused were arrested. Some of them had preferred application for bail before Special Court and this Court. Those applications were rejected.



21. It is submitted that Romila Thapar and others had filed special leave petition before Supreme Court alleging high handed act of the investigating agency. It was also prayed that special investigation team be appointed to conduct investigation. It was also alleged that even the applicant and others were subjected to arrest without due process of law and credible evidence justifying their arrest. The Court has taken into consideration the material and by majority opinion the relief sought was not granted. It is further submitted that Section 43D(4) of UAPA Act excludes applicability of S.438 of Cr.P.C.. In the absence of provision to exercise power of anticipatory

bail, this Court should not entertain such a application. It is submitted that for applying regular bail, there are fetters u/s 43D(5) of UAPA Act and bail cannot be granted unless public prosecutor has been given opportunity of being heard on the application for such release and the accused shall not be released on bail if the Court on perusal of the case diary or the report u/s 173 of the Cr.PC is of the opinion that there are reasonable grounds for believing that accusations against such person are prima facie true. In the light of embargo u/s 43D(5), Section 438 of Cr.PC is kept away under the Act.

22. It is submitted that material found from the computers/laptops/pen drives/memory cards were shocking and implicating the accused who were not only active members of CPI(Maoist) but clearly reflected ongoing sinister design of having committed and in the process of committing criminal offence having the potential of destabilizing the society. Learned Special Public Prosecutor relied on the affidavit filed by the investigating officer opposing grant of relief in this application. In the affidavit it is stated that the investigation revealed deep rooted conspiracy to create communal disharmony to strike terror in people or any section of people with the intent to threaten the unity and integrity of India.



The accused were active members of banned organization CPI(Maoist) and involved in activities prohibited under the provisions of UAPA Act. Hence, Sections 13, 16, 17, 18, 18(B), 20, 38, 39, 40 of the said Act were added. The material seized from accused in the form of electronic devices revealed active role of applicant with co-accused in the banned terrorist organization. Scope of investigation was widened. It was revealed that applicant along with other accused were working as active members of banned terrorist organization and were not merely representing a dissenting opinion or different ideology.

23. Learned Special Public Prosecutor submitted that the prosecution is relying upon the documents viz (a) letter from Prakash to Anand; (b) letter to Comrade Surendra from Comrade M dated 8<sup>th</sup> June 2017; (c) letter to Sudarshan from Surendra Gadling; (d) letter to Prakash from R dated 23<sup>rd</sup> December 2017; (e) Letter by Comrade Surendra to Comrade Prakash; (f) letter to Comrade Rona Wilson by Comrade M. It is submitted that the letter from Prakash to Anand refers to Anand's visit to Paris for Human Rights Convention to be held on 9<sup>th</sup> and 10<sup>th</sup> April 2018 and lectures on Dalit issue in order to give traction to Domestic Chaos. During this period domestic chaos related to dalit issue was Koregaon-Bhima incident.

The letter ended with exhortations to their intellectual comrades to keep the fire ablaze. Letter to Comrade Surendra from Comrade M dated 8<sup>th</sup> June 2017 makes reference to upcoming AGM meet in October. It is mentioned that Comrade Anand had given good suggestion to involve students for its meet, which was to be conducted on the theme of 50<sup>th</sup> anniversary of Naxalbari Movement. It is submitted that during investigation it was revealed that Anuradha Ghandy was the central committee member of banned organization CPI(Maoist) and the trust is formed in her name. Organizing such programmes directly amounts to promoting and advocating ideology of the banned terrorist organization. The letter to Sudarshan from Surendra Gadling mentions that Surendra had met Kishanda (Prashant Bose), PVM (Polit Bureau Member and Secretary), ERB (Eastern Regional Bureau) on 22<sup>nd</sup> April 2017 at Delhi. Kishanda had appreciated the role of Surendra in providing the information about movement of security forces in Bastar and other areas. The letter further mentions that action taken by party has rattled the security forces and they have decided to intensify their KOBRA operation. To counter this, Kishanda has indicated plans to abduct local officials from North Zone and Comrade Ramchandra has been asked to identify soft targets. Role of Comrade Anand (Anand Teltumbde) is clearly mentioned, who was

personally overseeing all the matters related to study circle involving students. It is submitted that during investigation it was revealed that through the study circle, feeling of hatred was spread. The letter to Prakash from R dated 23<sup>rd</sup> December 2017 is written by Rona Wilson to Prakash (Navin @ Ritupan Goswami). This letter mentions reports of fake encounters near Gadchiroli. Fact finding team was formed in the organization. The letter further mentions that Anand had agreed to co-ordinate the whole thing. It is submitted that during the course of investigation a book was published pertaining to Koregaon-Bhima in which the name of applicant is reflected as Convenor of the book. The party funds were received from C.C (Central Committee of CPI {Maoist}). The document was recovered from the laptop of Rona Wilson, which mentions that Anand T. had received 90 T from Surendra (through Milind). It is revealed during the investigation that Anand (applicant) was recipient of funds from the banned terrorist organization. The letter by Comrade M to Comrade Prakash is to be co-related to letter dated 23<sup>rd</sup> December 2017. It is mentioned that the enemy is spreading news that 12 to 20 members of organization were killed, which would have effect on moral of members. To disprove that, fact finding committee be formed to assert that the persons who were killed were innocent local tribal people. The

media coverage would demoralize the enemy and there will be break upon action of central government. The letter congratulated killing of 25 persons of enemy group. The letter by Comrade M to Comrade Rona Wilson mentions that Comrade Deepu have been coordinating Koregaon programme with Comrade Sudhir. They have gathered support of Dalits. It is further submitted that the applicant is the active member of banned terrorist organization and there is ample evidence against him for which it is necessary to conduct custodial interrogation for further investigation.

24. Learned Special Public Prosecutor relied upon the decision of Hon'ble Supreme Court in case of **National Investigation Agency Vs. Zahoor Ahmad Shah Watali (2019)5-SCC-1**. Reliance is placed on the observations made by Supreme Court in paragraph 52 of the said decision and submitted that it was observed that the issue of admissibility and credibility of the material and evidence presented by investigating officer could be matter of trial.

25. It is further submitted that the affidavit further indicates that there is other material pertaining to the applicant, which cannot be revealed at this stage as the investigation is still in progress and as far as applicant and others are concerned. The said material is

recovered from the devices which were seized from the residence of applicant-accused. Hence, investigating officer is submitting the documents in the sealed envelope for considering the same. Learned Special Public Prosecutor handed over the envelope containing the documents.

26. It is submitted that in the special leave petition preferred by Romila Thapar and others, there was a prayer for comprehensive inquiry into the arrest of activists. It is submitted that in paragraph 26 of the said decision the Supreme Court in its majority opinion has observed that this is not the case where registration and investigation of the crime is without any basis and the case of complete absence of material. It is further submitted that the applicant had preferred writ petition challenging the FIR before this Court. The said petition was dismissed by order dated 21<sup>st</sup> December 2018. Learned Special Public Prosecutor relied upon observations of this Court in paragraph 23 of the judgment and order dated 21<sup>st</sup> December 2018. It is submitted that the said judgment was challenged before Hon'ble Supreme Court by preferring special leave petition. The Hon'ble Supreme Court did not grant reliefs prayed in the said petition. However, on the request of the petitioner therein, the special leave petition was disposed of by permitting the applicant to seek regular/

pre-arrest bail from the competent authority, if so advised. The applicant preferred an application for anticipatory bail before the Sessions Court, which has been rejected by assigning cogent reasons. Assuming that the principles enunciated in the cases relating to Atrocities Act are to be applied in the present case, for exercising powers u/s 438 of Cr.PC, there is overwhelming evidence against applicant which would not entitle the applicant to seek such relief as the application is not maintainable in law.

27. It is submitted that during the course of investigation house search was conducted by investigating agency on 28<sup>th</sup> August 2018. The applicant was not present in the house. The role of applicant is confirmed with the activities of the banned organization from the material seized and recovered during the house search of other co-accused. It is submitted that the High Court in paragraph 17 of the decision dated 21<sup>st</sup> December 2018 has observed that the material which is already on record in the form of charge sheet and the other material collected during the investigation which is produced before the Court, cannot be ignored.

28. Learned Special Public Prosecutor also preferred an application viz Interim Application No.1 of 2019 in Anticipatory Bail Application No.314 of 2019. In the said application it is prayed that the

applicant be directed to remain present at the time of passing final order by this Court in this application. The application is purportedly filed in accordance with Section 438(1-B) of Cr.PC.

29. In rejoinder, learned counsel for applicant submitted that the submissions of Special Public Prosecutor are devoid of merits. The material relied upon by the prosecution does not make out prima facie case showing involvement of the applicant. The Sessions Court's observations are not supported by any evidence. It is submitted that at least the documents seized from the applicant cannot be kept secret. Learned Special Public Prosecutor, however, submitted that the documents relate to the applicant as well as co-accused. It is submitted that investigation is in progress and the said documents cannot be shown to the applicant. The prosecution is also relying on other material in sealed cover. Learned counsel for applicant, however, countered the submission that the prosecution is frustrating the rights of applicant of fair adjudication by withholding all the documents in sealed cover. The applicant does not know what constitutes sealed cover, whether it forms part of case diary. In the recent decision the Hon'ble Supreme Court expressed displeasure with reviewing documents under sealed cover. Reliance is placed on the decision in the case of P.Chidambaram Vs. DRI (supra). To

uphold the concept of open trial secrecy must be considered an anathema to transparency as it violates the fundamental precepts of the democratic society. Disclosure of all material against accused is imperative to a fair adjudication as serious allegations are levelled against him under draconian law like UAPA Act, which has several consequences on person's liberty and reputation. The prosecution is in possession of the documents since long. The co-accused were falsely implicated in the frivolous cases which had resulted in acquittal. The conduct of the investigating agency is dishonest. The prosecution has relied upon fabricated letters, false statements recorded under Section 161 of Cr.PC in the charge sheet. No reasons are disclosed for withholding the material except stating that the investigation is in progress. Adjudication based on material not furnished to the applicant which he has not been allowed to controvert, violates constitutional rights of applicant. The investigating agency leaked several letters to the media to create fear. This conduct was deprecated in the case of Romila Thapar. It is contended that the effect of rejection of writ petition seeking quashing of FIR would not have any adverse effect on the present application. It is submitted that the standards for quashing and anticipatory bail application are different and the observations from the quashing order cannot be imported. Quashing requires complete



absence of material and bail requires a prima facie test or failure of triple test.

30. It is further submitted that the application preferred by the prosecution seeking presence of applicant at the time of passing the final order, is devoid of merits. The application is preferred at the end of concluding arguments. The application does not make out any case to grant such relief. The applicant has been granted interim protection . The application does not justify what is interest of justice. The applicant has been granted protection since beginning. The applicant has serious apprehension about the purport of making such an application. Reliance is placed on decision of Supreme Court in the case of **Sundeep Kumar Bafna Vs. State of Maharashtra and another (2014)16-SCC-623**. Learned counsel adverted to observations in paragraph 22 of the decision, wherein it is observed that amendment making presence of applicant seeking anticipatory bail has been kept in abeyance. Learned counsel submitted that the statement of Kumarsai was recorded during the course of investigation.

31. Learned counsel for applicant relied upon the decision of Hon'ble Supreme Court in case of **Indra Das Vs. State of Aasam**

(2011)3-SCC-380 and submitted that mere membership of a banned organization will not make a person criminal unless he resorts or incites people to violence or creates public disorder by violence or incitement to violence. He further relied upon the decision of Hon'ble Supreme Court in the case of **Common Cause and others Vs. Union of India and others (2017)11-SCC-731**. Reference was made to paragraphs 282 and 283 of the said decision wherein it was observed that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 of Evidence Act so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, whether it would be safe to even initiate investigation. Learned counsel also relied upon the decision of Hon'ble Supreme Court in the case of **Dr.Subhash Mahajan Vs. State of Maharashtra and another (2018)6-SCC-454** where it was observed that there is no absolute bar against grant of anticipatory bail under the Atrocities Act, if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

32. Learned counsel for applicant submitted that the applicant was not party to the decision in the case of Romila Thapar. He did not participate in Elgar Parishad. The documents relied upon by prosecution cannot be considered as evidence.

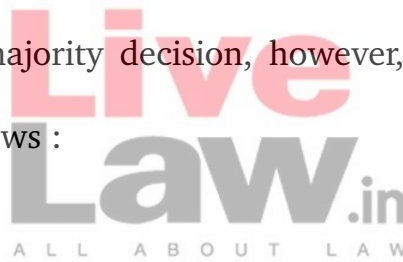
33. The arguments of both the sides were heard extensively. The FIR was registered on 8<sup>th</sup> January 2018 for offence under Sections 153-A, 505(1)(b), 117, 34 of Indian Penal Code. Investigation proceeded. Pursuant to that Section 120-B of IPC was invoked. Search was conducted at the premises of several persons and documents were recovered. The provisions of Sections 13, 16, 17, 18, 18-B, 20, 38, 39 and 40 of UAPA Act were added. Several persons, as stated above, were arrested. On completing investigation charge sheet has been filed against arrested persons.

34. Five illustrious persons in their own field filed Writ Petition No.260 of 2018 on 29<sup>th</sup> August 2018 before Hon'ble Supreme Court alleging high handed action of Maharashtra Police in raiding the homes and arresting five well known human rights activists, journalists, advocates and political worker. The grievance of petitioners was that activists namely Gautam Navlakha, Sudha

Bharadwaj, Vara Vara Rao, Arun Ferreira and Vernon Gonsalves were arrested on 28<sup>th</sup> August 2018 from their homes without credible material. Formal applications were filed on behalf of Sudha Bharadwaj, Vara Vara Rao, Arun Ferreira and Vernon Gonsalves, who were in house arrest, that they may be permitted to pursue the writ petition. The said petition was dismissed by majority decision by Hon'ble Supreme Court. The majority decision had expressed that there is no need to go into the disputed questions of fact or else it would prejudice trial. The accused has no say in choice of investigating agency or manner of investigation. The petitioners have not alleged any specific fact about mala fide exercise of power by the investigating agency. There were communal and caste clashes, instance of stone pelting arising due to provocative speeches, slogans and distribution of objectionable and provocative books and pamphlets in event allegedly organized by the accused. The prayer for seeking appointment of SIT and Court monitored investigation was rejected. The accused have alternative remedy under substantive and procedural criminal law and they have resorted to such remedy and avail such remedies.

In a dissenting decision it was held that the case has been made out for constitution of SIT. The conduct of government agency,

police is such that it casts a doubt on credibility of their investigation. There is violation of directions in D.K.Basu Vs. State of West Bengal (1997)1-SCC-416, as well as Section 41(B) of Cr.P.C.. The police have disclosed details of investigation to media and acts of investigating officer casts clouds on the impartiality of investigation process. Hence, SIT must be appointed and Court must monitor the case. Fair and independent investigation is crucial to the preservation of rule of law. It was also observed that the counter affidavit filed by prosecution amounts to taking the liberty with truth. In the majority decision, however, in paragraph 29, it was observed as follows :



“29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. Rather, averment in the petition as filed was to buttress the reliefs initially prayed for (mentioned in para 8 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A-16 to A-20) has been seriously disputed by the investigating agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in this commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the

political ideology of the named accused, but concerning their link with the members of the banned organization and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor is it possible to inquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional Courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case, if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.” (emphasis supplied)

35. The applicant had preferred Writ Petition No.4596 of 2018 before this Court. The said petition was dismissed by judgment and order dated 21<sup>st</sup> December 2018. In paragraph 17 it was observed that the material which is already on record in the form of charge sheet and the other material collected during the investigation, which was produced before the Court, cannot be ignored. In paragraph 20 it was observed that the Court was satisfied that the investigating agency had some material to establish the identity of applicant as Anand or Comrade Anand, as referred to in the documents forming part of charge sheet. The stand that he was in

Goa in last week of December-2017 and first week of January-2018, is belied by the material. The investigation was still in progress. Considering the nature and magnitude of the conspiracy, the investigating agency is required to be given sufficient opportunity to unearth the evidence against accused. At this stage there is sufficient material against the petitioner-applicant with the investigating agency and the allegations against him are not baseless. The Court also observed that the prosecution has produced relevant investigation papers which could not be disclosed to the applicant and the other accused at this stage since investigation is in progress and disclosure of such papers would seriously hamper further investigation. The Court refrained from mentioning such material at this stage. The Court also made reference to the documents relied upon by the prosecution as disclosed in the charge sheet against other accused; such as, letter from Prakash to Anand, letter to Comrade Surendra from Comrade R dated 8<sup>th</sup> June 2017, letter to Sudarshan from Surendra Gadling, letter to Prakash from R dated 23<sup>rd</sup> December 2017, and document relating to party funds received from central committee. These documents were recovered from the electronic devices of other accused. In paragraph 23 of the judgment and order dated 21<sup>st</sup> December 2018, the Division Bench of this Court has observed as follows :

*“23. Thus, considering the rival submissions and the material produced before us, we are of the opinion that this is not a case where there is no incriminating material against the Petitioner. IT is also not possible to record a finding that implicating the Petitioner as one of the accused is a malafide exercise of powers on the part of Investigating Agency. The offence is serious. The conspiracy is deep rooted and has extremely serious repercussions. The Investigating Agency must be allowed to have sufficient opportunity to collect evidence. The investigation is in progress.”*

36. The application for anticipatory bail preferred before the Sessions Court by applicant was rejected by order dated 1<sup>st</sup> February 2019. After analyzing the material/documents, the Sessions Court has observed that on perusal of police case diary, prima facie it reveals that the name of applicant is not mentioned in the FIR dated 8<sup>th</sup> January 2018. Moreover, it reveals that the applicant's name is revealed for the first time on 22<sup>nd</sup> August 2018 along with other co-accused during investigation. It seems that the investigating officer has seized the material during the raid conducted at various premises connected with different accused persons. In one of the letter seized by the investigating officer during investigation, allegedly sent by Prakash to Anand, there is reference in respect of Anand's visit to Parks for Human Rights Conventions held on 9<sup>th</sup> and 10<sup>th</sup> April 2018. In the said communication it is mentioned to keep the fire ablaze. There is correspondence which is seized by the investigating officer



in which there is reference to applicant where he has referred to as Anand, Comrade Anand or Anand T. The learned Judge has also considered the submission of applicant's counsel that reference to the name of Anand mentioned in the document, cannot unerringly mean that such reference was made to the applicant and that there is no authenticity to the document which cannot be connected to the applicant. Learned Judge further observed that the Special Public Prosecutor has produced investigation papers in sealed envelope for perusal of the Court. Prima facie it reveals that the prosecution has material to show the identity of applicant as Anand or Comrade Anand as mentioned in the documents, which are part of charge sheet. Thus, the investigating officer has collected documents from which it can be revealed active role and participation of applicant. The Court also made reference to the observations of High Court in the decision dated 21<sup>st</sup> December 2018.

37. In the statement of witness Kumarsai it is stated that till August-2018 he was member of organization CPI(Maoist). He stated that the accused P.Varavara Rao is a leader of high rank organization. The accused Milind Teltumbde is Secretary of Maharashtra Committee. Accused Arun Ferreira was recruiting students in the organization and sending them for training in general. Accused

Vernon Gonsalves was working in the organization in intellectual class. Accused Sudhir Dhavale, Rona Wilson, Gautam Navlakha, Anand Teltumbde (applicant), Sudha Bharadwaj, Harshali Potdar were said to be active members of the organization and working in the upper class of society. The statement of Kumarsai contains minute details of the role of the accused in the organization.

38. Thus, the writ petition challenging the FIR preferred by the applicant was dismissed by assigning reasons that there is prima facie evidence against him. The application for anticipatory bail was also rejected with reasons by the Sessions Court. The applicant had approached the Hon'ble Supreme Court challenging the judgment and order dated 21<sup>st</sup> December 2018 of the Division Bench of this Court. However, the relief prayed in the special leave petition was not granted. The order of Hon'ble Supreme Court would indicate that the Court was not inclined to interfere at this stage. The Hon'ble Supreme Court extended the interim protection for a period of four weeks within which the applicant may seek regular/pre-arrest bail from the competent authority, if so advised. It is apparent from the order that Hon'ble Supreme Court was not inclined to interfere in the petition preferred by the applicant. The contention of the applicant is that the Hon'ble Supreme Court in exercise of powers under Article

142 of Constitution of India has carved out this case on the factual matrix of the case permitting him to prefer an application for anticipatory bail and that this application u/s 438 of Cr.PC is maintainable in law. The order of Hon'ble Supreme Court is very clear. It is on the motion of applicant, the interim protection was continued with observation that the applicant may seek regular/pre-arrest bail from the competent authority, if so advised within the said period of four weeks. The Hon'ble Supreme Court has not dealt with the issue of maintainability of application u/s 438 of Cr.PC..

39. Learned counsel relied upon decision in the case of Union Carbide Corporation and others Vs. Union of India and others (supra) wherein it was observed that the proposition that the provision in any ordinary law irrespective of the importance of public policy on which it is founded, operates to limit the powers of Apex Court under Article 142(1) is unsound and erroneous. The power under Article 142 of Constitution is at an entirely different level and of a different quality. The Supreme Court was not inclined to entertain the petition preferred by applicant and at the request of said accused, protection was continued for specified period. The interpretation of order as canvassed by learned counsel for applicant is not correct.

40. Section 43D(4) of UAPA Act reads as follows :

**“43. Officers competent to investigate offences under Chapters IV and VI – Notwithstanding anything contained in the Code, no police officer, -**

- (a) ... ..
- (b) ... ..
- (ba) ... ..
- (c) ... ..

43A. Power to arrest, search etc. : ... ..

43B. Procedure of arrest, seizure etc. : ... ..  
...

43C. Application of provisions of Code. : ... ..  
...

**43D. Modified application of certain provisions of the Code.-**

- (1) ... ..
- (2) ... ..
- (3) ... ..
- (4) *Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.”*

Thus, applicability of Section 438 of Cr.PC is excluded by the aforesaid provision. Learned counsel for the applicant by relying on the decision of Supreme Court in case of Vilas Pandurang Pawar Vs. State of Maharashtra (supra) has contended that in view of the principle enunciated in the said decision, in the event offence is not made out against the accused under the provisions of UAPA Act, the application is maintainable u/s 438 of Cr.PC. It was contended that

under Section 18 of the Atrocities Act, there is exclusion of applicability of the provisions of Section 438 of Cr.PC.. Section 18 of Atrocities Act reads as follows :

**“18. Section 438 of the Code not to apply to persons committing an offence under the Act.-** Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

Subsequently, Section 18-A has been added to the said Act by way of amendment, which reads as follows :

**18A. (1) For the purposes of this Act, -**

(a) preliminary inquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, or any person,

against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.”

41. In the decision of Supreme Court in the case of Vilas Pandurang Pawar Vs State of Maharashtra (supra), the Court has observed that Section 18 of Atrocities Act creates bar for invoking Section 438 of Cr.PC. However, a duty is cast on the Court to verify

the averments in the complaint and to find out whether an offence u/s 3(1) of Atrocities Act has been prima facie made out. If there is a specific averment in the complaint, namely insult or intimidation with intent to humiliate by calling caste name, the accused persons are not entitled to anticipatory bail. It was further observed that while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The Court is not expected to indulge in critical analysis of evidence on record. That a provision has been enacted in the Special Act to protect the persons who belong to Scheduled Castes and Scheduled Tribes and a bar has been imposed in granting bail u/s 438 of Cr.PC.. The provision in the Special Act cannot be easily brushed aside by elaborate discussion on evidence. From these observations it is apparent that the Court is not expected to indulge in critical analysis of the evidence on record. The prosecution has contended that investigation is in progress and there is overwhelming evidence against applicant whose custodial interrogation is necessary. It is also contended that assuming that the principles laid down by the Supreme Court in the aforesaid decision is applicable in the present case, in the light of substantive evidence against the applicant, the application would not be maintainable.

42. Section 43D(4) of UAPA Act categorically mentions that Section 438 of Code shall not apply in relation to any case involving arrest of any person accused of having committed an offence punishable under the Act. The Legislature has omitted the applicability of Section 438 of Cr.PC with some purpose. The purpose has to be read with the object of the Act and the fetters imposed in Section 43D(5) for granting bail to the accused, who is prosecuted under the provisions of UAPA Act. The UAPA Act was enacted to provide for more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith. The preamble of UAPA Act reads as follows :

*“ An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith;*

*[WHEREAS the Security Council of the United Nations in its 4385<sup>th</sup> meeting adopted Resolution 1373 (2001) on 28<sup>th</sup> September 2001, under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism;]*

*AND WHEREAS Resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations require the State to take action against certain terrorists and terrorist organizations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or*

*indirect supply, sale or transfer of arms and ammunitions to the individuals or entities listed in the Schedule;*

*AND WHEREAS the Central Government, in exercise of the powers conferred by section 2 of the United Nations (Security Council) Act, 1947 (43 of 1947), has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007;*

*AND WHEREAS it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.”*

The statements of objects and reasons of UAPA Act have been amended in 2004, 2008 and 2013. It is indicated that Unlawful Activities (Prevention) Act, 1967 has been enacted to provide for more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. The scope of Act was widened in 2004 and terrorist activities were brought within the scope of UAPA Act. Pursuant to acceptance by the Government of a unanimous recommendation of the Committee of National Integration and Regionalisation appointed by National Integration Council, the Constitution (16<sup>th</sup> Amendment) Act, 1963 was enacted empowering to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India on the (i) freedom of speech and expression; (ii) right to assemble peaceably and without arms; and (iii) right to form associations or unions.



43. Section 43(D)(5) reads as follows :

**“43. Officers competent to investigate offences under Chapters IV and VI.-**

43A. ... ..

43B. ... ..

43C. ... ..

**43D. Modified application of certain provisions of the Code.-**

(1) ... ..

(2) ... ..

(3) ... ..

(4) ... ..

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

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

(6) ... ..

(7) ... ..”

44. Thus, there are restrictions for granting bail as enumerated in the aforesaid provisions. The person who is arrested can be released on bail unless the public prosecutor has been given an opportunity of being heard on the application for such release and provided that such accused shall not be released on bail if the Court on a perusal of the case diary or the report made u/s 173 of the Code is of the

opinion that there are reasonable grounds for believing that the accusations against such person is prima facie true. The restrictions on granting bail specified in sub-section (5) of Section 43 are in addition to the restrictions under the Code or any other law for the time being in force on granting bail. Thus, it is apparent that for granting bail there is an embargo after arrest of accused having committed offence under UAPA Act and on account of bar to exercise powers under Section 438 of Cr.PC, anticipatory bail cannot be granted to the accused. It would mean that the person who is in custody will have to overcome restrictions enumerated under above provisions and in spite of specific provision that Section 438 of Cr.PC shall not apply to any case involving the arrest of any person accused of having committed offence under the said Act, the Court would grant pre-arrest bail forming an opinion that the offence is not made out. In view of the restrictions for granting bail to a person who is arrested, grant of pre-arrest bail will be against the object of UAPA Act. It would mean that the person who is arrested can be granted bail on satisfaction of the scrutiny laid down in sub-section (5) of Section 43 of UAPA Act and in absence of any such provision without any restrictions or fetters, pre-arrest bail can be granted to the accused apprehending arrest. It is also pertinent to note that fetters as envisaged under sub-section (5) of Section 43 of UAPA Act are not

appearing under the provisions of Atrocities Act. The counsel for applicant had drawn analogy on the basis of decisions delivered in Atrocities Act. By virtue of proviso to sub-section (5) of Section 43, it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusations against the accused are prima facie true or otherwise. When it comes to offences punishable under special enactments, something more was required to be kept in mind in view of Section 43(D) of UAPA Act. The Hon'ble Supreme Court in the case of National Investigation Agency Vs. Zahoor Ahmad Shah Watali (supra) has laid down as to what should be the approach of the Court in deciding bail applications involving offences under Chapters-IV and VI of UAPA Act. It would be relevant to quote paragraph 23 of the said decision, which reads as follows :

*“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 and 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 collected 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 them 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. ...  
... ..”*

45. Thus, it is crystal clear that there is an object behind introducing Section 43D(4) of UAPA Act creating bar for applicability of Section 438 of Cr.PC and hence the application seeking anticipatory bail in exercise of powers u/s 438 of Cr.PC is not maintainable in law.

46. Learned counsel for applicant had vehemently contended that there is no evidence to apply the provisions of UAPA Act and hence

this application has to be entertained. The submission deserves to be rejected in view of aforesaid observations. The learned counsel had urged before Sessions Court and this Court that provisions of UAPA Act are not applicable. The applicant is prosecuted for offences under IPC and UAPA Act. Even taking into consideration the submission advanced by learned counsel for applicant, on perusal of all the material on record, it can be seen that there is prima facie evidence showing complicity of applicant in the crime. Hence, in light of the material, said submission also deserves to be rejected. The Hon'ble Supreme Court in the case of National Investigation Agency Vs. Zahoor Ahmad Shah Watali (supra) in paragraph 27 has observed that the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter of trial. The Court must look at the contents of the document and take such document into account as it is. In paragraph 52 of the said decision it was observed that the issue of admissibility and credibility of the material and evidence presented by the Investigating Officer would

be a matter of trial.

47. In case of Romila Thapar and others Vs. Union of India and others (supra) it was observed that pleading of petitioners of lack of evidence against the named accused, has been seriously disputed by the investigating agency and have commended the Court to the material already gathered during the ongoing investigation, which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material the Court was of the opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of banned organization and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor is it possible to inquire into whether the same is genuine and/or fabricated.

48. The prosecution has relied upon the documents disclosed from the charge sheet filed against arrested accused. The letter from Prakash to Anand mentions Anand's visit to Paris for Human Rights Conventions to be held on 9<sup>th</sup> and 10<sup>th</sup> April 2018. The letter ended with exhortations to the intellectual Comrades to keep the fire

ablaze. The letter to Comrade Surendra from Comrade M makes reference to upcoming AGM meeting in October. According to the investigating officer, it is mentioned in the letter that Comrade Anand had given good suggestions to involve students for this meeting, which was to be conducted on the theme of 50<sup>th</sup> anniversary of Naxalbari movement. According to the prosecution it is revealed during the investigation that Anuradha Ghandy was central committee member of the banned terrorist organization CPI(Maoist) and the trust is formed in her name. Organizing the same programme directly amounts to promoting and advocating the ideology of the banned terrorist organization. The investigating agency has collected the letter sent to Sudarshan from S.G. According to the prosecution, S.G stands for Surendra Gadling who is one of the accused. According to the prosecution as per the said letter Surendra had met Kishanda (Prashant Bose), Polite Bureau Member and Secretary. Kishanda had appreciated the role of Surendra in providing information about movement of security forces in Bastar and other areas. It is further stated that action taken by party has rattled the security forces. It is further stated that to counter this, Kishanda has indicated plans to abduct local officials from North Zone and Comrade Ramchandra has been asked to identify soft target. Role of Comrade Anand is clearly mentioned



who was personally overseeing all the matters relating to study circle involving students. It is revealed from the investigation that through study circle, feeling of hatred was spread. The letter to Prakash from R dated 23<sup>rd</sup> December 2017 is written by one of the accused to Prakash. This letter mentions the report of fake encounter near Gadchiroli. The fact finding team was found in the organization. The letter further mentions that Anand had agreed to co-ordinate in the whole thing. According to prosecution, during the course of investigation, a book was published pertaining to Bhima-Koregaon in which applicant's name was reflected as convener. According to prosecution, funds were received from central committee of CPI(Maoist). The document was recovered from the laptop of Rona Wilson, which mentions that Anand T has received 90 T from Surendra through Milind. It was revealed during the course of investigation that Anand i.e. applicant was recipient of funds from the banned terrorist organization. According to the prosecution, the applicant is active member of the banned organization and there is ample evidence against him for which his custodial interrogation is necessary. In the affidavit filed by the prosecution it is stated that applicant is active member of banned terrorist organization CPI(Maoist). The documents seized from the electronic devices of other accused revealed role of applicant. It is further stated that



applicant and other accused in pursuance of criminal conspiracy committed or caused to be committed and continued unlawful activities of the organization i.e. CPI(Maoist) which is banned organization under UAPA Act.

49. Incriminating documents were seized from the accused. The applicant is yet to be arrested. The charge sheet is filed against arrested accused. Some of the accused namely Vernon Gonsalves, Sudha Bharadwaj had preferred application for regular bail before this Court, which were rejected by order dated 15<sup>th</sup> October 2019. While rejecting the said applications the Court took into consideration the rigors of Section 43D(5) of UAPA Act. Some of the documents referred to hereinabove and relied upon by the prosecution against the applicant, were also under consideration while adjudicating the application for regular bail preferred by the arrested accused. It was observed that there were reasonable grounds for believing that the accusations of commission of offences punishable under Chapters-IV and V of UAPA Act against those accused, were prima facie true and in view of embargo u/s 43D(5) of UAPA Act, the applications were rejected. The investigation is in progress.

50. During the course of arguments learned Special Public Prosecutor has tendered an envelope containing documents, which according to the prosecution is additional material showing involvement of the applicant in the crime. Learned counsel for applicant had objected and contended that such documents of which copies were not given to the applicant, cannot be relied upon. Several contentions as reproduced hereinabove, were advanced in relation to the envelope containing documents. Learned APP has contended that the documents were produced before this Court while hearing the writ petition preferred by the applicant challenging quashing of the FIR and before the Supreme Court when the special leave to petition challenging the order of this Court was preferred by the applicant. The documents were also relied upon before Sessions Court while dealing with application for anticipatory bail. Since the applicant had preferred application for anticipatory bail and on account of the fact that investigation is in progress, the documents cannot be furnished to the applicant. It is pertinent to note that this Court in judgment and order dated 21<sup>st</sup> December 2018 has observed that the material which could not be revealed in the affidavit since the investigation is in progress, was produced in sealed envelope for perusal of Court. The investigating agency has relied heavily on material seized during raid conducted at various premises connected

with different accused. It is also observed that the prosecution produced for Court's perusal relevant investigation papers which could not be disclosed to the petitioner and other accused at this stage since investigation is in progress and disclosure would seriously hamper progress of investigation. The Court refrained from mentioning such material at this stage. In the latest decision of Supreme Court in case of **P.Chidambaram Vs. DRI (supra)**, delivered in Criminal Appeal No.1831 of 2019, the Hon'ble Supreme Court while dealing with an application for bail had observed that the question as to whether the Court could look into the documents while considering an application for bail, had arisen for consideration in same case between parties in Criminal Appeal No.130 of 2009 wherein through judgment dated 5<sup>th</sup> September 2019 while considering the matter relating to the order dated 20<sup>th</sup> August 2019, whereby High Court has rejected the bail, the Court had held that it would be open for the Court to receive material/documents collected during investigation and peruse the same to satisfy its conscience that investigation is proceeding on right lines and for the purpose of consideration of grant of bail/anticipatory bail etc. At the same time the Court has disapproved the manner in which the learned Judge of High Court in the said case has in verbatim quoted the note produced by the

respondents. It is further observed that while the learned Judge was empowered to look at the material produced in a sealed cover to satisfy his judicial conscience, learned Judge ought not to have recorded finding based on the material produced in a sealed cover. It was further observed that though it is held that it would be open for the Court to peruse the documents, it would be against the concept of fair trial if in every case prosecution presents documents in sealed cover and finding on the same are recorded as if the offence is committed and the same is treated of having bearing for grant or denial of bail.

51. The investigating agency filed charge sheet against arrested accused. The FIR was registered with Vishram Baug Police Station, Pune. During investigation search was conducted and provisions of UAPA Act were applied. Charge sheet is filed against arrested accused. While giving summary of their case, in charge sheet it is stated as to how the conspiracy was spread. The summary in the charge sheet is as follows :

*“Accused Rona Wilson, R/o.Delhi and accused Surendra Gadling, R/o.Nagpur, were members of CPI (Maoist). They contacted accused Sudhir Dhavale who was working through the medium of Kabir Kala Manch. Rona Wilson, absconding accused Com.M @ Dipak @ Milind Teltumbade and another absconding accused*

*Prakash @ Navin @ Ritupan Goswami were active members of CPI (Maoist). They had conspired to mobilize masses and to spread hatred against the Government, through provocative speeches, songs, plays etc. They incited feeling of hatred among the communities resulting in wide spread violence from 1.1.2018 onwards. The acts of the accused were not restricted to creating disharmony between the two communities, but, they were actually indulging in activities which were against the Nation. The incidents at Bhima-Kioregaon were only a part of their larger conspiracy. The investigation revealed that funds were provided by the banned organization through their members. Students from eminent educational institutes were taken to forest area occupied by Maoist guerrilla and were given training for terrorist activities.”*

52. As observed above, this Court while dismissing the writ petition vide judgment and order dated 21<sup>st</sup> December 2019 refrained from recording any comments thereupon on the papers in sealed envelope. I have perused the documents. In the light of principles enunciated in the aforesaid decision of Hon'ble Supreme Court in P.Chidambaram Vs. DRI (supra), although I have perused the documents in the sealed envelope, I refrain from commenting on those documents. The other documents form part of the charge sheet filed against co-accused, which are part of this application and submissions were advanced by both parties. Even otherwise, apart from the material produced in sealed envelope, there is sufficient other material to enable the Court to reach prima facie opinion regarding commission of offence under UAPA Act by the applicant.

The decisions relied upon by applicant are not applicable in this case. The investigation is in progress. I am satisfied that prima facie there is material against applicant to show his complicity in the crime. Thus, even on the test of prima facie material involving the applicant in the crime, no case is made out for entertaining the application.

53. While concluding the arguments the prosecution has filed an interim application u/s 438(1)(b) of Cr.PC seeking direction that the applicant be directed to remain present at the time of passing the order. The application was strongly opposed by applicant on several grounds. Since it is held that the application u/s 438 of Cr.PC is not maintainable in law, the question of entertaining the application u/s 438(1)(b) of Cr.PC does not arise. Hence, Interim Application No.1 of 2019 deserves to be rejected.

54. Hence, I pass following order :

**ORDER**

- (i) Criminal Anticipatory Bail Application No.314 of 2019 is rejected;
- (ii) Interim Application No.1 of 2019 is rejected.

**(PRAKASH D. NAIK, J.)**

55. At this stage, learned counsel for applicant submits that the applicant was on interim protection and he intend to approach the higher Court to challenge this order. In view of submission, interim protection granted by this Court is extended by a period of four weeks.

(PRAKASH D. NAIK, J.)

MST

