HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE P. SREE SUDHA

CRIMINAL APPEAL Nos.912, 797 AND 969 OF 2023 ALONG WITH CRIMINAL APPEAL Nos.57, 62, 61, 56 AND 80 OF 2024

COMMON JUDGMENT: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. V. Raghunath, learned Senior Counsel representing Mr. T. Rahul, learned counsel for the appellant(s) in Crl.A. Nos.797, 912, 56, 57 & 80 of 2023, Mr. Shaik Mohd. Rizwan Akhtar, learned counsel for the appellant in Crl.A.Nos.969 & 62 of 2023 and Mr. Mohd. Moinuddin, learned counsel for the appellant in Crl.A. No.61 of 2024, and also Mr. B. Narasimha Sharma, learned Additional Solicitor General of India and Mr. P. Vishnuvardhan Reddy, learned Special Public Prosecutor for National Investigation Agency (NIA) appearing on behalf of the respondent.

2. Criminal Appeal Nos.57, 62 & 61 of 2024, 912 of 2023 and 56 & 80 of 2024 are filed by accused Nos.5, 24, 7, 16, 28, 34 and 35 respectively challenging the orders, dated 13.12.2023, 15.12.2023, 19.09.2023, 08.12.2023 and 29.12.2023 in Crl.M.P. Nos.1623, 1663, 1621, 1184, 1451 and 1839 of 2023 in Spl.S.C.No.1 of 2023,

respectively passed by learned IV Additional Metropolitan Sessions Judge - cum - Special Court for NIA Cases, Nampally, Hyderabad (for short (for short 'Special Court') dismissing the bail applications filed by them.

3. Criminal Appeal Nos.797 and 969 of 2023 are filed by accused Nos.32 and 33 respectively challenging the orders dated 14.08.2023 and 13.10.2023 in Crl.M.P.Nos.904 and 1361 of 2023 in Spl.S.C. No.2 of 2023, respectively, passed by the Special Court dismissing the bail applications.

4. The case of the NIA in brief is as follows:

i) The accused persons including the appellants herein, being trained cadres/members of Popular Front of India (PFI), in criminal conspiracy of establishing Islamic Rule in India by 2047, provoked and radicalizing innocent Muslim Youth, recruiting them into PFI, imparting them weapon training in PFT's Terrorist Camps at Heaven Garden Function Hall, Kurnool, to commit violent terrorists activities, such as murdering the targeted persons with knife, sickle, iron rods etc., and the said training was with an intention to strike terror in the minds of people belonging to particular religious community.

ii) During the course of investigation, it was revealed the intention of the accused/PFI cadres to assassinate Hindu Leaders and every person who is against establishment of Islamic rule in India and in the terrorists camps, they told the Youth not to hesitate from eliminating leaders of Hindu Organization, if situation so demands.

iii) The acts of the accused persons were promoting the enmity between different groups in the Country. The investigation revealed that the accused persons organized weapon training camps at the aforesaid Function Hall, where newly recruited PFI Members were radicalized and trained in a coded language for using weapons like Book-1, Book-2 for hitting hard on head, knees, ankle, Book-3 attacked with koduvali/sickle and thus the accused persons are liable for prosecution. Later supplementary charge sheet was filed against accused Nos.32, 33, 34, 35 and 36 and the same was taken on file vide Special S.C. No.02 of 2023.

5. The specific allegations levelled against each of the appellants are as under:

S.N.	Crl.A. No.	Spl.SC. No.	Arraigned as & date of arrest	Offences	Role of accused in commission of offence
01.	57/24	1/23	5 & 24 06.07.22	Secs.120B, 121A, 153A & 141 r/w 34	A-5 is PFI District Secretary for Nizamabad. He in conspiracy with

				IPC & 13(1)(b), 18, 18A & 18B of the UA (P) Act,1967	other accused was involved in brainwashing the impressionable Muslim Youth by provoking them against the Government, BJP/RSS and other Hindu Organizations. After recruitment, he sent them to terror camp for training. A-24 is an active PFI cadre in Nizamabad and provoking Muslim youth in his area to join in PFI and instigating them against the Indian Government.
02.	62/24	"	7 18.09.22	-do-	He is a very active of PFI cadre and provoking Muslim youth to join in PFI and instigating them against the Indian Government. After recruitment, he sent them to terror camp for training under the garb of Yoga classes or physical training.
03.	61/24	"	16 18.09.22	-do-	He is a hardcore PFI cadre and holds a black belt in Karate. He was imparting physical efficiency training to the newly recruited PFI members in the terror camps of PFI wherein he taught them about Book-I, 2 and 3, which are code words for killing a person by attacking his vulnerable body parts with knife, iron rod and sickle.

04.	912/23	"	28 06.07.22	120B & 153A IPC & 13(1)(b), 18, 18A & 18B of the UA (P) Act,1967	He is a hard-core PFI cadre and is looking after the work of PFI's cadre expansion in Nizamabad. He takes 1st, 2nd and 3rd class of radicalization for recruiting local Muslim youth of his area intoPFI by provoking them with inflammatory religious speeches against Hindus etc. After recruitment, he sent them to PFI's terror camps
05.	56/24	"	34 22.09.22	Secs.120B, 121A, 153A & 141 r/w 34 IPC & 13(1)(b), 18, 18A & 18B of the UA (P) Act,1967	Joined PFI in Guntur District in 2014 and had been the President in 2015. He was part of criminal conspiracy to make India an Islamic Nation by 2047. After recruitment, he sent them to PFI's Terrorist camp at Kurnool.
06.	80/24	"	35 22.09.22	-do-	Joined PFI in Guntur District in 2014. He was present at PFI's Terrorist camp at Kurnool and assisted other accused in conducting the weapon training.
07.	797/23	2/23	32 22.09.22	-do-	Joined PFI in 2014 and had been the President of PFI of Guntur District during the year 2016-17. He was present in PFI's weapon training camp held in Kurnool. He took a lecture on Jihad and motivated the trainees for violent unlawful activities.
08.	969/23	"	33 22.09.22	-do-	Joined PFI in 2015 and had been the President of PFI of Guntur District during the year 2017-18.

					He assisted other co-accused in PFI's weapon training camp held in Kurnool.

6. According to the appellants, the Police, Town VI, Nizamabad, initially registered a case in Crime No.141 of 2022 against some of the appellants herein and others for the offences under Sections - 120B, 121A, 153A and 141 read with 34 of IPC and Sections - 13 (1) (b) of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA'). Thereafter, NIA, Hyderabad took over the investigation as per the directions of the Ministry of Home Affairs, re-registered the same as RC No.3 of 20200/NIA/HYD., on 26.08.2022 under Sections - 120B, 121A, 153A and 141 read with 34 of IPC and Sections - 13 (1) (b), 18A and 18B of the UAPA. Subsequently, the investigation was transferred to NIA, Hyderabad and filed charge sheet. In fact, the allegations levelled against them do not satisfy the ingredients of the aforesaid offences.

i) It is contended by learned counsel appearing on behalf of the appellants that NIA has not seized any incriminating material from the custody of the appellants. During investigation, NIA has also recorded the statement of LWs.27 and 28, who are protected witnesses. They made specific statement against the appellants. They

have attended organization membership classes and programme. They were part of PFI, accomplice in the alleged crime. The statement of an approver cannot be recorded. Thus, appellants cannot be punished for the offences which they have not committed. The appellants were falsely implicated in the above case.

ii) As far as accused No.28 is concerned, the Special Court while dealing with the aforesaid bail application observed that *prima facie* material shows that the appellant - accused No.28 was in mutual consent with the other conspirators in provoking the trainees/participants with inflammatory religious speeches against the Hindus, RSS and Indian Government and recruiting them into PFI, which has basis with banned organization, for imparting training in use of knife, iron rods, sickle to attack and kill the members of other religion and statements of the witnesses are corroborating to the same along with the oral and documentary evidence collected and available with the charge sheet. Observing so, the Special Court dismissed the said bail application of accused No.28.

iii) With regard to accused Nos.32 and 33, the Special Court observed that they were present at the time of imparting training at Heaven Garden Function Hall, Kurnool, they motivated the

participants by giving lecture, to participate and learn three books i.e., Book No.1, Book No.2 and Book No.3, as to how to attack on stomach and chest with knife, hit forcibly on head and knees with rods and how to kill a person in a single attack with sickle. The material collected during course of investigation collates with the accusation and they are *prima facie* corroborating with the statements of protected witnesses, who revealed the names of accused Nos.32 and 33 and also the names of other accused as to specific role played by them. Observing so, the Special Court dismissed the bail applications of accused Nos.32 and 33.

iv) With regard to accused Nos.5 & 24, 7, 16, 34 and 35, learned senior counsel appearing on their behalf would submit that no offence has been attracted against them even as per the version of the Investigating Agency. *Prima facie*, there is no case made against them either in the FIR or in the charge sheet. They were falsely implicated in the present case.

v) Learned counsel for the appellants would submit that the Special Court failed to make distinction between the 'unlawful activities' and 'terrorist activities' and consequently failed to appreciate that embargo incorporated in Section - 43-D (5) has no

application in the present case. The allegations leveled against the appellants are on the basis of statements of members of the alleged organization recorded under Section - 161 of Cr.P.C. who are none other than accomplice and partner in the alleged allegation.

vi) Mr. V. Raghunath, learned senior counsel, would contend that as on the date of conducting ride on accused No.1 and as on the date of alleged participation of the appellants in the alleged weapon training held at Heaven Garden Function Hall, Kurnool during January/February, 2021, PFI was not banned. Its activities were also not banned. For all practical purposes, it is a legal organization. It has been conducting several activities including total empowerment of the marginalized and backward sections of the society.

vii) He would further submit that mere participation in the meeting is not a ‘terrorist act’ and the appellants have not committed any offence. They were arrested on different dates i.e., 06.07.2022, 19.09.2022 and 22.09.2022 respectively, and since then they are languishing in the jail. Entire investigation has been completed and the subject S.C. Nos.1 and 2 of 2023 are pending for trial. It may take considerable time to complete the trial. Without considering the said

aspects, the Special Court dismissed the bail applications filed by the appellants.

viii) He would further submit that this Court has to consider the role played by each of the accused and the accusations made against each of them separately. The details of protected witnesses are not known to anybody. Accused No.28 is a Welder; accused Nos.32 and 34 are doing pickle business; accused No.33 is a vegetable vendor; accused Nos.5 is doing a petty business, while accused No.24 is running a chicken shop and accused No.7 is running a Photostat shop; accused No.16 is a painter, while accused No.35 is an electrician. After imposition of ban in PFI, the appellants never participated in any of the activities of PFI. In fact, there is no action from any of the members of PFI from the date of its ban. Marriage of the daughter of accused No.32 is scheduled on 01.02.2023. However, vide orders dated 25.01.2024 in I.A. No.1 of 2024, this Court granted *interim* bail to him ordering to release on 29.01.2024 by 11.00 A.M., with a direction to surrender before the Superintendent, Central Prison, Chanchalguda, Hyderabad on 09.02.2024 by 11.00 A.M.

ix) PFI was formed in the year 2010 and it conducted legal activities on 27.09.2022. The appellants were members of the PFI and

they are holding positions in Guntur District Unit. PFI has been conducting welfare activities which are useful to the downtrodden people including distribution of ration kits, food during Ramzan, organizing blood donation camps, school *chalo* campaign for giving school uniforms, books and scholarships for the poor Muslim students. It is also conducting Yoga classes. Without considering the same, the Special Court dismissed the bail applications.

x) He would further submit that if the contention of NIA that there is every possibility of the accused threatening the witnesses and interfere with the fair trial, they are at liberty to file application seeking cancellation of bail. The contents of the charge sheet do not satisfy the ingredients of the offences alleged against the appellants. Since the investigation was already completed and charge sheet was laid against the appellants, the Special Court ought to have granted bail to them.

xi) Learned senior counsel also relied on the decisions in **Union of India v. K.A.Najeeb**[1]; **Vernon v. State of Maharashtra**[2]**; State of Andhra Pradesh through Inspector General, National**

[1]. (2021) 3 SCC 713
[2]. 2023 SCC OnLine SC 885

Investigation Agency v. Mohd. Hussain Alias Saleem[3]; Barakathulla v. Union of India[4]; **National Investigation Agency v. Zahoor Ahmad Shah Watali[5]; Peerzada Shah Fahad v. UT of J&K[6]; Asif Iqbal Tanha v. State of NCT of Delhi[7]**; and **Thwaha Fasal v. Union of India[8].**

7. Mr. B. Narasimha Sharma, learned Additional Solicitor General of India, would submit that the offences committed by the accused are serious and grave in nature. They have conducted preparatory meeting and they have administered oath to the youth taking advantage of their financial status. The Investigating Officer has recorded statements of the protected witnesses i.e., E, I, J, K. The said statements are corroborated by Section - 161 of Cr.P.C. statements of six (06) other witnesses. There is every possibility of the appellants threatening the protected witnesses and interfering with fair trial, in which event, the Special Court may not be in a position to conduct fair trial. There are specific allegations and overt acts against the appellants.

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3. (2014) 1 SCC 258
4. Crl.A. No.98 of 2023 & batch, decided on 19.10.2023 by Division Bench of Madras High Court
5. (2019) 5 SCC 1
6. CrlA(D) No.42 of 2022, decided on 17.11.2023 by D.B. of High Court of J & K & Ladakh
7. 2021 LawSuit (Del.) 1094
8. 2021 LawSuit (SC) 679

i) He would further submit that the Investigating Officer has recorded the statements of 42 witnesses, and some of them are protected witnesses. The accused are holding important positions in PFI. There is every possibility of accused continuing the said activities and interfering with the trial, in which event, it is not possible for the Special Court to conduct fair trial. Burden lies on the accused to prove that they have not committed any offence. In all, there are 36 accused of 14 are in jail and others were not arrested.

ii) He also placed reliance on the decision in **Gurwinder Singh v. State of Punjab**[9].

8. In view of the aforesaid rival submissions, it is relevant to extract Sections - 2(k), 2 (o), 2(p), 3, 15, 18, 18-A, 18-B and 43-D (5) of the UAPA and the same are as follows:

> "**2(k) "terrorist act"** has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly."
>
> **2(o) "unlawful activity"**, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

[9]. 2024 LiveLaw (SC) 100

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

(p) "unlawful association" means any association,—

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153A (45 of 1860) or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;

3. Declaration of an association as unlawful.—(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:—

(a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or

(b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association; or

(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(d) in such other manner as may be prescribed.

13. Punishment for unlawful activities.—(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of,

any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

15. Terrorist act.—(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

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

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

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

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

commits a terrorist act.

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

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

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

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

18. Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly

facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall 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.

18A. Punishment for organising of terrorist camps.—Whoever organises or causes to be organised any camp or camps for imparting training in terrorism shall 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.

18B. Punishment for recruiting of any person or persons for terrorist act.—Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall 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.

43D. Modified application of certain provisions of the Code.—

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) xxxxx

> (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:
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> 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) xxxxx
>
> (7) xxxxx"

9. There is no dispute that PFI was banned on 27.09.2022 by way of issuing Notification. A raid was conducted on accused No.1's house. The police found certain literature, which is banned and against the internal security of India etc. Investigation was entrusted to the NIA on by the Government of India, Ministry of Home Affairs, CTCR Division, North Block, New Delhi vide order No.F.No.11011/ 73/2022/NIA, dated 25.08.2022. Pursuant to the said order, the NIA took over the investigation of the case in Crime No.141 of 2022 on 26.08.2022 and re-registered the case as RCB-03/2022/NIA/HYD. of

NIA Police Station, Hyderabad. The NIA has produced statements of protected witnesses recorded under Section - 164 of Cr.P.C. in a sealed cover and the same are perused by us.

10. Section - 43-D (5) of the UAPA stipulates the following two (02) conditions:

(i) providing an opportunity to the Public Prosecutor of being heard on the application for release;

(ii) Court has to give a finding that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

In the present case, an opportunity was given to the Public Prosecutor. NIA had filed counter in the bail petitions before the Special Court and this Court. Now, this Court has to peruse the report filed under Section - 173 of the Cr.P.C. and material, including statements of protected witnesses and come to a conclusion as to whether there are reasonable grounds for believing that the accusation against the appellants is *prima facie* true.

11. The Apex Court held that it is a fundamental premise of open justice, to which our judicial system is committed, that factors

which have weighed in the mind of the judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of the Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interest of criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty bound to explain the basis on which they have arrived at a conclusion.

12. In **Mahipal v. Rajesh Kumar @ Polia**[10], the Apex Court, discussed with regard to the power of granting bail under Section 439 of Cr.P.C. and held that the power to grant bail under Section 439 of Cr.P.C. is of a wide amplitude. Though the grant of bail involves the exercise of discretionary power of the Court, it has to be exercised in a judicious manner and not as a matter of course. In the said case, the guiding factors for exercise of power to grant bail as held in ***Ram***

[10]. (2020) 2 SCC 118

Govind Upadhyay v. Sudarshan Singh[11], were referred, which are as follows:

> "3. Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case...The nature of the offence is one of the basic considerations for the grant of bail - more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.
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> 4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:
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> (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
>
> (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there

[11]. (2002) 3 SCC 598

> being a threat for the complainant should also weigh with the court in the matter of grant of bail.
>
> (c) While it is not expected to have the entire evidence establishing the guilt of the Accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
>
> (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be (2002) 3 SCC 598 considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the Accused is entitled to an order of bail."

i) It was further held in the very same judgment that the determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the Accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the Accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the Accused had committed

the offence and on a balance of the considerations involved, the continued custody of the Accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. In **Devendar Gupta v. National Investigation Agency**[12], a Division Bench of combined High Court of Andhra Pradesh at Hyderabad had considered the relevant provisions of UAPA, the expression used in Section - 43-D (5) of UAPA i.e., '*prima facie*' 'reasonable grounds' etc. and laid down certain instances or circumstances which would provide adequate guidance for the Court to form an opinion, as to whether the accusation in such cases is '*prima facie* true'.

> "The following instances or circumstances, in our view, would provide adequate guidance for the Court to form an opinion, as to whether the accusation in such cases is "prima facie true":
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> 1) Whether the accused is/are associated with any organization, which is prohibited through an order passed under the provisions of the Act;

[12]. 2014 (2) ALD (Cri) 251

2) Whether the accused was convicted of the offences involving such crimes, or terrorist activities, or though acquitted on technical grounds; was held to be associated with terrorist activities;

3) Whether any explosive material, of the category used in the commission of the crime, which gave rise to the prosecution; was recovered from, or at the instance of the accused;

4) Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the accused, at or around the scene of occurrence; and

5) Whether the accused was/were arrested, soon after the occurrence, on the basis of the information, or clues available with the enforcement or investigating agencies."

14. In **M. Londhoni Devi v. National Investigation Agency**[13], a Division Bench of Gauhati High Court held that accused is an active member of a terrorist organization, even then the nature of active involvement would depend on the evidence led by the prosecution. On a given set of facts, even an active member may be sentenced to imprisonment only for a short while, every active member need not be sentenced to imprisonment for life. Therefore, merely because an allegation has been made, the appellant is an active member of a

[13]. 2012 (110) AIC 384

terrorist organization, such as UNLF would not *ipso facto* attract the severest penalty under the Statute.

15. In **Dhan Singh v. Union of India**[14], a Division Bench of the Bombay High Court held that the word "*prima facie"* is coupled with the word "true", it implies that the Court has to undertake an exercise of crosschecking the truthfulness of the allegations made in the complaint, on the basis of the materials on record. If the Court finds, on such analysis, that the accusations are inherently improbable or wholly unbelievable, it may be difficult to say that a case, which is "*prima facie* true", has been made out. In doing this exercise, the Court has no liberty to come to a conclusion, which may virtually amount to an acquittal of the accused. Mere formation of opinion by the Court, on the basis of the material placed before it, is sufficient. The Court also has to undertake an exercise of cross-checking truthfulness of the allegations made in the complaint, on the basis of the material on record.

16. In **Yedala Subba Rao v. Union of India**[15], the Apex Court referring to Sections - 25, 26 and 27 of the Evidence Act held that the

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[14]. MANU/MH/3894/2019
[15]. (2023) 6 SCC 65

essential ingredient of the Section - 27 is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police would not apply if all the above conditions are fulfilled.

17. In **Vernon**[2], the Apex Court considering the principle laid down by it in **Zahoor Ahmad Shah Watali**[5] in paragraph No.36 held as under:

> 36. In the case of Zahoor Ahmad Shah Watali (supra), it has been held that the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the charge sheet must prevail, unless overcome or disproved by other evidence, and on the face of it, materials must show complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the accused ought to prevail. In our opinion, however, it would not satisfy the

> prima facie "test" unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth. In the case of the appellants, contents of the letters through which the appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-accused. Moreover, no covert or overt terrorist act has been attributed to the appellants in these letters, or any other material forming part of records of these two appeals. Reference to the activities of the accused are in the nature of ideological propagation and allegations of recruitment. No evidence of any of the persons who are alleged to have been recruited or have joined this "struggle" inspired by the appellants has been brought before us. Thus, we are unable to accept NIA's contention that the appellants have committed the offence relating to support given to a terrorist organisation."

The Apex Court also considered the scope of 'Terrorist Act' defined under Sections - 2 (k) and 15 of UAPA and referring to several judgments rendered by it held that mere holding of certain literatures through which violent acts may be propagated would not *ipso facto* attract the provisions of Section - 15 (1) (b) of the UAPA.

18. In **Anand Tetlumbde v. The National Investigation Agency**[16], a Division Bench of Bombay High Court on consideration of material placed before it and also referring to the provisions of UAPA held that while dealing with bail application, Court has to consider that the material placed by the Investigating Agency has to inspire confidence to bring the accused act as alleged for punishment prescribed under the provisions of the UAPA and also the criminal antecedents.

19. It is relevant to note that in **Gurwinder Singh**[9], the Apex Court considering the scope of Section - 43-D of the UAPA and also the principle laid down by it earlier cases including **Zahoor Ahmad Shah Watali**[5] held as under:

> "19. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on

[16]. 2023 (1) Bom.CR (Cri) 416

record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in Zahoor Ali Watali[2] has noticed this difference, where it said:

"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."

20. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied – that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

21. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test :

1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged ‘accusations’ make out an offence under Chapter IV or VI of the UAP Act

1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;

2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC (‘tripod test’)?

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:

2.1 Whether the accused is a flight risk?

2.2. Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

22. The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the 'tripod test'.

Test for Rejection of Bail: Guidelines as laid down by Supreme Court in Watali's Case

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

• **Meaning of 'Prima facie true'** [para 23]: On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to

establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

• **Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post Charges – Compared** [para 23]: Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

• **Reasoning, necessary but no detailed evaluation of evidence** [para 24]: The exercise to be undertaken by the Court at this stage--of giving reasons for grant or nongrant of bail--is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.

• **Record a finding on broad probabilities, not based on proof beyond doubt** [para 24]: "The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

• **Duration of the limitation under Section 43D(5)** [para 26]: The special provision, Section

43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

• **Material on record must be analysed as a 'whole'; no piecemeal analysis [para 27]: 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.**

• **Contents of documents to be presumed as true** [para 27]: The Court must look at the contents of the document and take such document into account as it is.

• **Admissibility of documents relied upon by Prosecution cannot be questioned** [para 27]: The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report **must prevail until contradicted and overcome or disproved by other evidence…….** In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.

24. It will also be apposite at this juncture to refer to the directions issued in ***Devender Gupta v. National Investigating Agency [(2014 (2) ALD Cri.251]*** wherein a Division Bench of the High Court of Andhra Pradesh strove to strike a balance between the mandate under Section 43D on one hand and the rights of the accused on the other. It was held as follows:

"The following instances or circumstances, in our view, would provide adequate guidance for the

*Court to form an opinion, as to whether the accusation in such cases is "***prima facie true***":*

1) Whether the accused is/are associated with any organization, which is prohibited through an order passed under the provisions of the act;

2) Whether the accused was convicted of the offenses involving such crimes, or terrorist activities, or though acquitted on technical grounds; was held to be associated with terrorist activities;

3) Whether any explosive material, of the category used in the commission of the crime, which gave rise to the prosecution; was recovered from, or at the instance of the accused;

4) ***Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the accused, at or around the scene of occurrence***; and

5) Whether the accused was/were arrested, soon after the occurrence, on the basis of the information, or clues available with the enforcement or investigating agencies."

25. In the case of ***Kekhriesatuo Tep and Ors. v. National Investigation Agency [(2023) 6 SCC 58]*** the Two-Judge Bench (Justice B.R. Gavai & Justice Sanjay Karol) while dealing with the bail application for the offence of supporting and raising funds for terrorist organization under section 39 and 40 of the UAP Act relied upon ***NIA v. Zahoor Ahmad Shah Watali*** [(2019) 5 SCC 1] and observed that:

"while dealing with the bail petition filed by the accused against whom offences under chapter IV and VI of UAPA have been made, the court has to

consider as to whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. The bench also observed that distinction between the words "not guilty" as used in TADA, MCOCA and NDPS Act as against the words "prima facie" in the UAPA as held in Watali's Case (supra) to state that a degree of satisfaction required in the case of "not guilty" is much stronger than the satisfaction required in a case where the words used are "prima facie"

26. In the case of **Sudesh Kedia v. Union of India [(2021) 4 SCC 704]** the Bench of Justice Nageswara Rao and Justice S. Ravindra Bhat while dealing with a bail application for the offence u/s. 17, 18 and 21 of the UAP Act relied upon the principle propounded in Watali's case (supra) and observed that:

"the expression "prima facie" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows that 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." "

20. In the light of the aforesaid discussion, it is relevant to note that the allegations leveled against the appellants - accused are that they are active members of PFI, some of them are holding positions in

District Units, they have provoked Muslim Youth to join in the said Organization and to act against the Government, BJP/RSS and other Hindu Organizations; recruiting the Youth, sending them for terror camps, training them for killing persons by attacking on vulnerable body parts and imparting weapon training etc. Accused Nos.32, 33, 34 and 35 had participated in the terror camps held at Heaven Garden Function Hall, Kurnool during January/February, 2021. They have administered oath to Muslim Youth taking advantage of their financial position to resort antisocial activities which are detrimental to the internal security of the State.

21. It is relevant to note that PFI was banned on 22.09.2022 and the aforesaid camp was held at Heaven Garden Function Hall, Kurnool during January/February, 2021. By that time, there was no ban on PFI. The object of PFI was conducting welfare activities which are useful to the downtrodden people including distribution of ration kits, food during Ramzan, organizing blood donation camps, school *chalo* campaign for giving school uniforms, books and scholarships for the poor Muslim students. It is also conducting Yoga classes. At the same time, the appellants herein, under the guise of the aforesaid activities cannot resort to illegal activities. As stated

above, there are serious allegations against them. They have used Code words, like Book-1, Book-2 and Book-3 etc.

22. PFI was formed in the year 2010. Raid was conducted in the house of accused No.1 at Nizamabad on 27.09.2022, by which date, PFI was banned. Even as per NIA, the appellants herein did not participate in any activity after imposition of ban on PFI. The counter and material filed by the NIA would reveal that no material was seized from the appellants. The only apprehension of the NIA is that they have recorded the statements of protected witnesses, there is every possibility of the appellants threatening them and interfering with trial, in which event, the Special Court will not be in a position to conduct fair trial.

23. It is apt to note that if the appellants threaten any witness including protected witnesses or interfere with fair trial, NIA can as well file an application seeking cancellation of bail. But, it cannot be a ground to oppose bail or deny bail by this Court. The appellants are in jail since last 18 months i.e., from 06.07.2022, 19.09.2022 and 22.09.2022 respectively. It is also apt to note that there is no loss of

property and loss of life of any person. At the same time, the appellants cannot resort to illegal activities.

24. It is also apt to note that Section - 2 (k) of UAPA defines ‘terrorist act’; Section - 2 (o) defines ‘unlawful activity’; Section - 2 (p) defines ‘unlawful association’; and Section - 15 deals with ‘terrorist act’. In the said provisions, there is no mention that provoking, recruitment, administering oath, sending to training camps etc., which are the allegations leveled against the appellants, amount to ‘terrorist act’. Section - 18 of the UAPA deals with punishment for conspiracy etc. Section - 18A deals with ‘punishment for organizing of terrorist camps’, Section - 18B deals with punishment for recruiting of any person or persons for terrorist act’ which says that whoever recruits or causes to be recruited any person or persons for commission of a terrorist act etc. are liable for punishment. It is only a penal provision. Ultimately it has to be proved by NIA by producing evidence.

25. Admittedly, in the present case, the Investigating Officer has already completed investigation and laid charge sheet. There are 329 witnesses and many documents were filed by the NIA. It is at the

stage of 207 Cr.P.C. Definitely, trial will take certain time. As discussed above, the appellants are in jail since last 18 months i.e., 06.07.2022, 19.09.2022 and 22.09.2022 respectively. Accused No.28 is a Welder; accused Nos.32 and 34 are doing pickle business; accused No.33 is a vegetable vendor; accused Nos.5 is doing a petty business, while accused No.24 is running a chicken shop and accused No.7 is running a Photostat shop; accused No.16 is a painter, while accused No.35 is an electrician. Right guaranteed to them under Article - 21 of the Constitution of India is also to be considered.

26. As discussed above, the only apprehension of the NIA is that the appellants may threaten the witnesses including protected witnesses and may interfere with the trial in which event the Special Court may not be in a position to conduct fair trial. In such an event, NIA is at liberty to file an application seeking cancellation of bail.

27. It is apt to note that the Apex Court referred to the factors to be borne in mind while considering an application for bail in ***Prasanta Kumar Sarkar v Ashis Chatterjee***[17]**,** and the said factors are as follows:

> "(i) whether there is any prima facie or reasonable ground to believe that the Accused had committed the offence;

[17]. (2010) 14 SCC 496

(ii) nature and gravity of the accusation;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the Accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the Accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail."

28. The Apex Court in **S.S. Mhetre v. State of Maharashtra**[18], held that society has a vital interest in grant or refusal of bail because every criminal offence is an offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of society.

29. In **Gudikanti Narasimhulu v. State**[19], the Apex Court held that the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of 'procedure established by law'. The last four words of Article – 21 are the life of that human right.

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[18]. AIR 2011 SC 312
[19]. (1978) 1 SCC 240

30. As stated above, vide orders dated 25.01.2024 in I.A. No.1 of 2024, this Court granted *interim* bail to him ordering to release on 29.01.2024 by 11.00 A.M., with a direction to surrender before the Superintendent, Central Prison, Chanchalguda, Hyderabad, on 09.02.2024 by 11.00 A.M. Like-wise, as the elder brother of accused No.34 passed away, he filed an application vide I.A. No.2 of 2024 seeking *interim* bail. This Court vide order dated 11.03.2024 granted *interim* bail for a period of ten (10) days i.e., from 12.03.2024 to 21.03.2024 with a direction to the Superintendent, Central Prison, Chenchalguda, Hyderabad, to release accused No.34 on 12.03.2024 by 11.00 A.M. on his furnishing a personal bond for Rs.25,000/- (Rupees Twenty Five Thousand Only). During the said period of *interim* bail, the petitioner was directed not indulge in any criminal activity. However, he shall report before the Station House Officer, Lalapet Police Station, Guntur City, Andhra Pradesh State on 18.03.2024 between 10.00 A.M. and 5.00 P.M. On completion of the said period, he shall surrender before the Superintendent, Central Prison, Chenchalguda, Hyderabad, on 21.03.2024 by 5.00 P.M. There is no complaint against them that they have violated the conditions imposed by this Court.

31. As stated above, as on the date of participation of the appellants in illegal acts as PFI Members, PFI was not banned as it was banned only on 27.09.2022 by the Central Government. The appellants were arrested and they were taken into police custody and interrogated at length. The entire investigation was completed and laid charge sheet and supplementary charge sheets against them by NIA. In the light of the same, nothing remains to investigate by the NIA except to proceed with trial before the Special Court against the appellants in accordance with procedure laid down under Code of Criminal Procedure, 1973.

32. The appellants were arrested on different dates i.e., 06.07.2022, 19.09.2022 and 22.09.2022 respectively, and since then they are languishing in the jail. Therefore, the appellants are entitled for bail. However, in view of gravity of the offences said to have committed by the appellants and to secure their presence before the Special Court to proceed with trial, some stringent conditions to be imposed while granting bail. The said aspects were not considered by the Special Court while dismissing the bail applications filed by the appellants. Therefore, the impugned orders are liable to be set aside. However, the findings reached by this Court in granting bail are only

prima facie views expressed by this Court in deciding the present appeals and the same will not have any bearing on the Special Court while deciding the main Sessions Cases.

33. All these Criminal Appeals are allowed and the impugned orders, dated 13.12.2023, 15.12.2023, 19.09.2023, 08.12.2023 and 29.12.2023 in Crl.M.P. Nos.1623, 1663, 1621, 1184, 1451 and 1839 of 2023 in Spl.S.C.No.1 of 2023 and the impugned orders dated 14.08.2023 and 13.10.2023 in Crl.M.P.Nos.904 and 1361 of 2023 in Spl.S.C. No.2 of 2023, respectively passed by learned IV Additional Metropolitan Sessions Judge - cum - Special Court for NIA Cases, Nampally, Hyderabad, are hereby set aside. The appellants - accused Nos.5, 24, 7, 16, 28, 32, 33, 34 and 35, are enlarged on bail with the following conditions:

i) The appellants - accused Nos.5, 24, 7, 16, 28, 32, 33, 34 and 35 shall execute a personal bond for Rs.25,000/- (Rupees Twenty Five Thousand Only) each with two (02) sureties each for a like sum each to the satisfaction of IV Additional Metropolitan Sessions Judge - cum - Special Court for NIA Cases, Nampally, Hyderabad;

ii) The appellants - accused Nos.5, 7, 24 and 28 shall report before the Station House Officer, VI Town Police Station, Nizamabad District once in a week i.e., on every Friday between 10.00 A.M. and 5.00 P.M. until further orders;

iii) The appellant - accused No.16 shall report before the Station House Officer, Rural Police Station, Jagtial Town, Jagtial District once in a week i.e., on every Friday between 10.00 A.M. and 5.00 P.M. until further orders;

iv) The appellants - accused Nos.32, 33, 34 and 35 shall report before the Station House Officer, Lalapet Police Station, Guntur City, Andhra Pradesh State once in a week i.e., on every Friday between 10.00 A.M. and 5.00 P.M. until further orders;

v) They shall not commit similar or any other offences during bail period;

vi) They shall not threat, intimidate or influence the prosecution witnesses including protected witnesses;

vii) They shall not interfere with the trial in the said Cases in any manner directly or indirectly;

viii) They shall surrender their Passports, if not surrendered before the Special Court; and

ix) They shall co-operate with the Special Court in disposal of the aforesaid Sessions Cases in accordance with law as expeditiously as possible.

As a sequel, miscellaneous applications, if any, pending in the appeals shall stand closed.

K. LAKSHMAN, J

P. SREE SUDHA, J

20th March, 2024

Note:

The Registrar (Judicial-I) is directed to return C.C. of statement of protected witness recorded under Sec.164 of Cr.P.C. to the NIA, Hyderabad, under due acknowledgment. (B/O.) Mgr