

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 3006 OF 2018

Arun s/o. Thomas Ferreira,]
Aged about 45 years, having address]
at 401, Sharon C.H.S., Annaji Sundar]
Marg, Charai, Thane 400 601.] ..Applicant

Versus

State Of Maharashtra]
(through ACP Swargate, Pune City)] ...Respondent

....

Mr. Sudeep Pasbola, a/w. Suresh Rajeshwar a/w. Susan Abraham
a/w. Nilesh Ukey a/w. Karl Rustamkhan a/w. Deepak Enakphale
i/b. Rahul Arote, Advocate for the Applicant.

Ms. Aruna S. Pai, Special Public Prosecutor for the Respondent-
State.

Dr. Shivaji Pawar, ACP, Crime Branch, Pune City – Investigating
Officer.

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CORAM : SARANG V. KOTWAL, J.

RESERVED ON : 07.10.2019

PRONOUNCED ON : 15.10.2019

ORDER :

1. The applicant is seeking his release on bail pending trial in connection with C.R. No.4/2018 registered at Vishrambaug Police Station, Pune. The charge-sheet is already filed. The charge-

sheet is filed against the applicant for commission of offences punishable under Sections 121, 121A, 124A, 153A, 505(1)(b), 117, 120B read with 34 of the Indian Penal Code, 1872 (hereinafter referred to as 'I.P.C.')

and under Sections 13, 16, 17, 18, 18B, 20, 38, 39, 40 of the Unlawful Activities (Prevention) Act, 1967, as amended in 2008 and 2012 (hereinafter referred to as 'UAPA').

2. The applicant was arrested on 28.8.2018. Initially he was kept under house-arrest. As of today, the applicant is in judicial custody. The charge-sheet is already filed against him.

3. The State of Maharashtra has opposed this application. On behalf of the State, the Assistant Commissioner of Police, Yerwada Division, Pune, Dr.Shivaji Panditrao Pawar has filed his affidavit dated 6.3.2019. For the sake of convenience, this affidavit is hereinafter referred to as the "State's affidavit".

BRIEF HISTORY AND CASE OF THE INVESTIGATING AGENCY :

4. The FIR was lodged on 8.1.2018 at Vishrambaug Police Station by one Tushar Ramesh Damgude. The FIR was registered

for commission of offences punishable under Sections 153A, 505(1)(b) and 117 read with 34 of IPC. According to the first informant, he was in the business of construction. Through a social networking site, he came to know that there was a programme at Shaniwar Wada, Pune on 31.12.2017 organized by Elgar Parishad. He attended that programme at around 2:00 p.m. on 31.12.2017. He further stated in the FIR that there were a 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. He has further stated that some of the performers enacted short plays, performed dances and sung songs. According to him, the performances were provocative in nature and had effect of creating communal disharmony. At that time, some provocative speeches were delivered. A few objectionable and provocative books were kept for sale at the venue. It was his contention in the FIR that a banned organization-Communist Party of India (Maoist) (hereinafter referred to as the 'CPI(Maoist)') was inciting violence by creating communal disharmony. According to him, the members of Kabir Kala Manch spread hatred through

their songs, plays and speeches causing enmity between different communities. As a result, there were incidents of violence, arson and stone pelting near Bhima-Koregaon. Accordingly, the FIR was lodged naming six members of Kabir Kala Manch. The investigation progressed and based on the material gathered during investigation, Section 120B of IPC was added on 6.3.2018.

5. On 17.4.2018, the investigating agency conducted searches at the residences of eight persons, namely, (1) Rona Wilson, R/o. Delhi, (2) Surendra Gadling, R/o. Nagpur, (3) Sudhir Dhawale, R/o. Mumbai, (4) Harshali Potdar, R/o. Mumbai, (5) Sagar Gorakhe, R/o. Pune, (6) Deepak Dhengale, R/o. Pune, (7) Ramesh Gaychor, R/o. Pune, and (8) Jyoti Jagtap, R/o. Pune. The residences of Shoma Sen and Mahesh Raut were searched on 6.6.2018.

6. It is the case of investigating agency that during the searches; documents were recovered from various computers / laptops/ pen drives / memory cards. The seized articles were sent to Forensic Science Laboratory (for short, 'FSL) for analysis. The cloned copies were received. On the analysis of those cloned copies, aforementioned Sections of UAPA were applied on

17.5.2018.

7. It is the case of investigating agency, as set out in the State's affidavit that, based upon the seized and recovered incriminating material, it was revealed that a few more persons were part of the criminal conspiracy and their role was not merely peripheral but was very vital. Therefore, searches were conducted at the residences or workplaces of other accused including the applicant. Those other accused were (1) Varavara Rao, R/o. Hyderabad, (2) Vernon Gonsalves, R/o. Mumbai, (3) Sudha Bharadwaj, R/o. Faridabad, (4) Gautam Navlakha, R/o. Delhi, besides the applicant who was resident of Thane. They were arrested and were initially put under house-arrest on 28.8.2018. The recovered devices were sent to FSL for analysis. The final analysis reports are still awaited. It is mentioned in the State's affidavit that in the document titled "Strategy and Tactics of The Indian Revolution", the motive of the banned terrorist organization i.e. CPI(Maoist) is mentioned thus : "the central task of the Indian Revolution is the seizure of political power. To accomplish this central task, the Indian people will have to be organized into a

people's army and will have to wipe out the armed forces of the Indian State through war and establish in its place the people's democratic State and will have to establish their own political authority. The very act of establishment of the State machinery of the people by destroying, through war, the present autocratic State machinery – the State's army, police and the bureaucracy of the reactionary ruling classes is the central task of the People's Democratic Revolution of India.”

According to the investigating agency, in view of achieving the central task, the CPI(Maoist) Party is waging not a conventional war, but, a people's war by mobilizing people on a massive scale both militarily and politically. It is the case of the investigating agency that the banned organization is trying to create disharmony between different castes with the objective to overthrow the democratically elected Government and to seize the political power through armed revolution.

8. Thus, the scope of investigation was not restricted to find out the object and effect of the programme organized on

31.12.2017 by Elgar Parishad or to carry out investigation into the violence that followed the said event; but, the investigation was expanded to unearth a much larger conspiracy of seizing the political power through armed revolution by mobilizing masses.

9. After arrest of the applicant and others, viz., Varavara Rao, Sudha Bharadwaj and Vernon Gonsalves on 28.8.2018, a petition was filed before the Hon'ble Supreme Court vide Writ Petition (Criminal) No.260/2018, Romila Thaper and others Vs. Union of India and others. It was decided vide judgment dated 28.9.2018. It consisted of majority and minority views. The prayers in that Petition are reproduced in the judgment as follows :

“PRAYERS

It is therefore prayed that this Hon'ble Court be pleased to grant the following prayers:

- i) Issue an appropriate writ, order or direction, directing an independent and comprehensive enquiry into arrest of these human rights activists in June and August 2018 in connection with the Bhima Koregaon violence.
- ii) Issue an appropriate writ, order or direction, calling for an explanation from the State of Maharashtra for this sweeping round of arrests;
- iii) Issue an appropriate writ, order or

direction, directing the immediate release from custody of all activists arrested in connection with the Bhima Koregaon violence and staying any arrests until the matter fully investigated and decided by this court.

iv) Pass any such other order as may be deemed appropriate.”

10. In paragraph-26 of the judgment of the majority view, it is mentioned thus :

“26. 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 organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated.”

11. In dealing with the question of release of the arrested accused from custody, the Hon'ble Supreme Court, in the majority view, expressed that the accused must pursue that relief before the appropriate Court which would be considered by the concerned Court on its own merits in accordance with law. It was further

observed that all questions were required to be considered by the concerned Court in accordance with law and that Their Lordships had refrained from dealing with the factual issues raised by the parties; as any such observation might cause serious prejudice to the parties or their co-accused and even to the prosecution case.

12. Accordingly the applicant had preferred an application for bail before the learned Special Judge, Pune under UAPA vide Criminal Bail Application No.4030/2018. The learned Judge decided the applicant's bail application along with bail applications of Vernon Gonsalves and Sudha Bharadwaj, vide his common order dated 26.10.2018. All the three applications were rejected. After that, the applicant has preferred this application before this Court.

13. The investigating agency filed the charge-sheet on 15.11.2018. While giving the summary of their case, it was mentioned in column No.17 of the charge-sheet as to how the conspiracy was spread wide and deep. The summary of the allegations made in the charge-sheet is as follows :

According to the allegations, Rona Wilson, R/o. Delhi and Surendra Gadling, R/o. Nagpur, were members of CPI(Maoist). They contacted accused Sudhir Dhawale who was working through the medium of Kabir Kala Manch. The accused 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 State, 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 charge-sheet further mentions that 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-Koregaon were only a part of their larger conspiracy. The investigation revealed that funds were provided by the banned organization through their members. It was also alleged that students from eminent educational institutes were taken to forest area occupied by Maoist guerrilla and were given training.

14. Thereafter supplementary charge-sheet was filed, in which, it was mentioned that, the applicant along with the co-accused Vernon Gonsalves and Sudha Bharadwaj had enrolled members for the banned organization CPI(Maoist). It is the case of the prosecuting agency that an organization known as Indian Association of Peoples Lawyers (for short, 'IAPL') was a frontal organization of CPI(Maoist) and the applicant was working through this frontal organization to accomplish the objects of the banned organization CPI(Maoist) i.e. destabilizing the country. The charge-sheet mentions a few more organizations, viz., Anuradha Ghandy Memorial Committee (AGMC), Kabir Kala Manch, Persecuted Prisoners Solidarity Committee (PPSC) as the frontal organizations of CPI(Maoist). It was alleged that the members of CPI(Maoist) were using these organizations to further their purpose.

SUBMISSIONS ON BEHALF OF THE APPLICANT

15. In the background of these allegations, learned Counsel Shri Pasbola for the applicant, made his submissions. He referred to certain documents and statements of witnesses which are part of the charge-sheet.

16. Shri Pasbola submitted that there is no material to show that the applicant was part of the larger conspiracy. He was not present at the Elgar Parishad and there is nothing to show that he was in any manner connected with Elgar Parishad and the programme held on 31.12.2017. He referred to various documents which the prosecution is relying on against the applicant. His argument in respect of those documents will be discussed subsequently. However, in short, he submitted that none of these documents and letters was an admissible piece of evidence. The letters were vague. The identities of the sender, writer and recipient are not established. Even otherwise the contents of the documents are not corroborated. There is nothing to show that the applicant actually recruited members for the banned organization. The name 'Arun' mentioned in these letters does not necessarily mean that reference was made to the applicant. None of the sections of UAPA, invoked in this case, are applicable against the applicant. The applicant has not committed any terrorist act.

17. Mr. Pasbola invited my attention to nine documents from the charge-sheet which the investigating agency were using

against the applicant. The details of the contents of such documents would be referred to in the following discussion. There are statements of two witnesses Sudarshan Ramteke and Kumarsai @ Pahad Singh in the charge-sheet making reference to the applicant.

18. For the sake of convenience, these documents are hereinafter referred to as 'document Nos.1 to 9'. The copies of those documents are produced before me through the compilation tendered by the learned Special Public Prosecutor Mrs. Aruna Pai. These documents are referred to in the State's affidavit. These documents, in short, are as follows :

Document No.1	A letter written by Comrade Surendra to Comrade Prakash dated 5.11.2017
Document No.2	A letter dated 18.4.2017 written by "R" to Comrade Prakash.
Document No.3	A document showing some account for the year 2017 (described as 'Accounts2k17')
Document No.4	A letter written by one Anantwa to Com. Mainibai
Document No.5	A letter written to Surendra. However, name of the author is left blank.

Document No.6	A letter dated 25.9.2017 written by Comrade Prakash to Comrade Surendra.
Document No.7	A letter written by Comrade Prakash to Comrade Surendra.
Document No.8	A letter written by Comrade Sudha to Comrade Prakash in respect of the meeting dated 19.3.2017 held in Nagpur.
Document No.9	A letter written by Comrade Darasu to Comrade Surendra.

19. In reference to the statements of Sudarshan Ramteke and Kumarsai @ Pahad Singh; Shri Pasbola submitted that these statements are unreliable. They are not independently corroborated by any other evidence. There is nothing to show that a War like situation is created and that the applicant was in any manner connected with such activities. Both these witnesses were not reliable witnesses. There is nothing to show that the applicant had either instigated or inspired others to join the banned organization. In respect of the literature found in his possession; Shri Pasbola submitted that possession of such literature cannot be an offence by any stretch of imagination. None of the documents

or literature is banned. He submitted that a person may have academic interest in that particular field but that will not make him an active member of a banned organization. Some of the literature relied on by the prosecution is not even in the handwriting of the applicant and other material is not authored by him. His association with other members will not mean that he is an active member of the banned organization. The applicant is an advocate by profession and helps the needy by giving them legal assistance. He was implicated falsely in this case because he was giving legal assistance to an accused Surendra Gadling in this case.

20. Shri Pasbola then adopted all the legal submissions advanced by Shri Desai and Dr. Chaudhary in the companion matters i.e. B.A. Nos.3007/2018 and 428/2019. He submitted that these documents are inadmissible and cannot be used against the applicant at any stage.

21. While concluding, Shri Pasbola referred to the judgment passed by the Hon'ble Supreme Court in the case of **National Investigation Agency Vs. Zahoor Ahmad Shah Watali**¹. He

1 (2019) 5 SCC 1

submitted that this judgment refers to Section 43-D(5) of the UAPA. He submitted that considering all these factors, the applicant deserves to be released on bail.

SUBMISSIONS ON BEHALF OF THE STATE/INVESTIGATING AGENCY:

22. Mrs. Pai opposed this bail application. Mrs. Pai invited my attention to the notification dated 22.6.2009 whereby in exercise of the powers conferred by sub-section 1 of Section 35 of the UAPA, the Central Government made an order to add the Communist Party of India (Maoist) and all its formations and front organizations as terrorist organization in the Schedule to the UAPA by making corresponding amendment. According to the case of the investigating agency, the banned organization was operating through its members in different fields. Some of the operations were for recruiting cadres, for procuring weapons etc.. She made submissions in respect of the documents and statements which are considered in the following discussion.

REASONING

23. The charge-sheet mentions following offences under different Acts against the accused. These offences are as follows:

The offences alleged against the accused under IPC:

- Section **121** is about waging or attempting to wage war, or abetting waging of war, against the Government of India.
- Section **121A** is conspiracy to commit offences punishable by Section 121 of I.P.C.
- Section **124A** is the offence of sedition.
- Section **153A** speaks of the offence of promoting enmity between different groups and doing acts prejudicial to maintenance of harmony.
- Section **505(1)(b)** provides punishment for offences making statements conducing to public mischief.
- Section **117** provides punishment for abetting commission of offence by more than ten persons.
- Section **120B** provides punishment for criminal conspiracy.

The offences alleged against the accused under the UAPA:

- Section **13** provides punishment for unlawful activities.
- Section **16** provides punishment for terrorist act.
- Section **17** provides punishment for raising funds for terrorist act.
- Section **18** provides punishment for conspiracy, etc.
- Section **18B** provides punishment for recruiting of any person

or persons for terrorist act.

- Section **20** provides punishment for being member of terrorist gang or organisation.
- Sections 16, 17, 18, 18B and 20 fall within Chapter IV of the UAPA.
- Section **38** provides punishment for the offence relating to membership of a terrorist organisation.
- Section **39** provides punishment for the offence relating to support given to a terrorist organisation.
- Section **40** provides punishment for the offence of raising fund for a terrorist organisation.
- Sections 38, 39 and 40 fall within Chapter VI of the UAPA.

24. The main thrust of argument of Shri Pasbola was to show that the material collected against the applicant during investigation was not incriminating at all. It was vague and inadmissible material and that there was nothing to show that the applicant was in any manner connected with the banned organization. His argument was that, even assuming, without admitting, those documents were admissible, even then the applicant's involvement is not established even *prima facie*.

25. Shri Pasbola did not make any submissions regarding the notification dated 22.6.2009 by which CPI(Maoist) was included in the Schedule of the UAPA as the banned organization. Therefore, the investigating agency needed to show material that the acts attributed to the applicant were in any manner furthering the objectives of the banned organization. It is necessary, therefore, to refer to, in brief, to the objectives of this banned organization. For this purpose Mrs. Pai referred to a document titled “Strategy and Tactics of the Indian Revolution”. This document was recovered from the pen-drive of one of the co-accused Varavara Rao. This document is dated 27.1.2007 and the foreword shows that it was issued by the Central Committee of Communist Party of India (Maoist). This document is divided into different Parts and Chapters. The first Part refers to ‘Strategy’. There is a discussion about the Political Strategy and Military Strategy. The discussion on Military Strategy mentions that the military strategy had to be formulated basing on the specific characteristics of the revolutionary war in India. It was mentioned that the revolutionary based areas in the countryside where the enemy was relatively weak should be targeted first and then gradually the cities should

be encircled and captured because they were the bastions of the enemy forces.

26. Chapter-6 speaks about seizure of political power through protracted people's war. The relevant discussion on the topic reads thus:

“The Central task of the Indian revolution also is the seizure of political power. To accomplish this Central task, the Indian people will have to be organized in the people's army and will have to wipe out the armed forces of the counter-revolutionary Indian state through war and will have to establish, in its place, their own state – the People's Democratic State and will have to establish their own political authority. The very act of establishment of the state machinery of the people by destroying, through war, the present autocratic state machinery – the army, the police, and the bureaucracy of the reactionary ruling classes – is the Central task of the People's Democratic Revolution of India.”

27. Chapter-10 of that document is about building the People's Army. This Chapter refers to PLGA, which according to the prosecution, means People's Liberation Guerrilla Army. The Central Committee provides politico-military leadership to the PLGA. The

Central Committee decides the general plans while the lower level commands draw the corresponding operational plans. It is mentioned in the discussion that the People's Guerrilla Army was weak on that point and was confronting strong enemy forces and, therefore, there was need to protect the leadership, forces, people's support and arms & ammunition in view of the Party's final objective of defeating the enemy forces.

28. It was further discussed that enemy's armed forces should be destroyed bit by bit through guerrilla methods of warfare. When sufficient arms were acquired the PLGA should be expanded by going into new formations through development of platoons and companies, improving the training, and qualitatively developing these into battalions and divisions.

29. Another document was recovered from the pen-drive of Shri Varavara Rao, which deals with the work in urban areas. This is also a literature of the banned organization. The first chapter mentions that the urban movement was one of the main sources which provided cadres and leadership having various types of

capabilities essential for the people's war and for the establishment of liberated areas. It is mentioned that the Party must have a comprehensive line of revolutionary struggle, including armed struggle, for the urban areas also in conformity with the line of protracted people's war, i.e., the line of liberating the countryside and encircling urban areas from the countryside first, and then capturing the urban areas.

30. In Chapter-3 there is a discussion about the Party building and the discussion mentions that the best elements that emerged through the struggles should go through a process of politicization in struggle, ideological and political education in activist groups, study circles and political schools, and consolidation into party cells.

31. Chapter-4 refers to Military Tasks and sub-chapter 4.4 thereof speaks about sending cadre to the rural areas and the PLGA. A steady supply of urban cadre was felt necessary to fulfill the needs of the rural movements as they were required for various tasks involving technical skills and the responsibilities were placed

on the Party organization for providing such cadre.

32. Thus, the case of the investigating agency is that the banned organization was operating in different ways to achieve its objects. Different members were entrusted with different activities, which were part of the larger conspiracy. According to the investigating agency, the applicant was mainly involved in recruiting cadre. This was in consonance with the Party's tactics and plans. According to Mrs. Pai the applicant was an active member of the banned organization and, therefore, he was charged with all the offences mentioned hereinabove.

33. For deciding this bail application, Section 43D sub-section (5) of the UAPA is very important, which reads thus:

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

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(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.”

34. The language of Section 43D(5) of the UAPA needs special attention. There are other Statutes which put restrictions on grant of bail in relation to the offences committed under those Acts. For example, Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short, ‘MCOCA’) provides thus :

“21. Modified application of certain provisions of the Code:-

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(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall if in custody, be released on bail or on his own bond, unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

35. However, there is a vital difference between the language of Section 21(4) of MCOCA and Section 43D(5) of the UAPA. This difference is explained by the Hon’ble Supreme Court in the case of **Zahoor Watali** (supra). This judgment lays down as to what should be the approach of the Court in deciding bail applications involving offences under Chapters IV and VI of the UAPA. Pursuant to those guidelines, I am deciding this application in the light of the observations made in this judgment.

36. The Hon’ble Supreme Court, in this case, was considering the question of grant of bail to an accused who was charged with various Sections, mainly under Chapters IV and VI of the UAPA as well as Sections 120B, 121 and 121A of I.P.C. The accused in that case was accused of raising funds in conspiracy with other accused.

37. In paragraph-21, the Hon'ble Supreme Court stated the settled position about the matters to be considered for deciding an application for bail. Those principles provided for deciding whether there was any *prima facie* or reasonable ground to believe that the accused had committed the offence; nature and gravity of the charge; severity of the possible punishment in the event of conviction; danger of the accused not being available for trial; character, behaviour, means, position and standing of the accused; likelihood of repetition of the offence; possibility of tampering with the evidence; and possibility of justice being thwarted by grant of bail.

38. Paragraph-22 of the judgment reproduced Section 43-D of the UAPA. It is observed that, when it came to offences punishable under special enactments, something more was required to be kept in mind in view of Section 43-D of the UAPA.

39. Paragraphs-23 to 27 discussed the guiding principles in deciding bail applications for the offences under Chapter IV and VI of the UAPA. Since I am basing my order on these observations, it

would be appropriate if these paragraphs are reproduced in this order. They are 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, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "*prima facie*" true. By its very nature, the expression "*prima facie true*" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or

contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "*prima facie* true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act. Nevertheless, we may take guidance from the exposition in *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294*, wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paras 36 to 38, the Court observed thus:

- “36. Does this statute require that before a person is released on bail, the court, albeit *prima facie*, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?
37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.
38. We are furthermore of the opinion that the restrictions on the power of the court to

grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. ... What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*.”

And again in paras 44 to 48, the Court observed:

“44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section

21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.
46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a

finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528, this Court observed:

‘18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in the case *Puran v. Rambilas*, (2001) 6 SCC 338:

8. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. ... That did not mean that whilst granting bail some reasons for *prima facie* concluding why bail was being granted did not have to

be indicated.

We respectfully agree with the above dictum of this Court. We also feel that such expression of *prima facie* reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned Counsel for the accused that the High Court was not expected even to indicate a *prima facie* finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a *prima facie* finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court

while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.'

48. In *Jayendra Saraswathi Swamigal v. State of T.N.*, (2005) 2 SCC 13 this Court observed:

'16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State v. Jagjit Singh*, (1962) 3 SCR 622 and *Gurcharan Singh v. State (UT of Delhi)*, (1978) 1 SCC 118 and basically they are – the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and

circumstances of the case.’

24. A *priori*, the exercise to be undertaken by the Court at this stage – of giving reasons for grant or non-grant 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. 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.
25. From the analysis of the impugned judgment - Zahoor Ahmad Shah Watali V. NIA, 2018 SCC OnLine Del 11185, it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 Cr.PC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is *prima facie* true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in

reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.

26. Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, 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.
27. For 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 for trial. The Court must look at the contents of the document and take such document into account as it is.”

40. In paragraph-52, the Hon'ble Supreme Court has observed that the issue of admissibility and credibility of the material and evidence presented by the investigating officer would be a matter for trial.

41. These guiding principles direct the Courts to consider the totality of the material gathered by the investigating agency and the Court was not expected to analyze individual piece of evidence or circumstance. Importantly, it was clearly observed that the question of discarding a document at the stage of bail on the ground of that document being inadmissible in evidence was not permissible. The issue of admissibility of the document or evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as

it is. The degree of satisfaction is lighter when the Court has to opine that the accusation is '*prima facie* true'.

42. Therefore, I am considering the totality of the material gathered by the investigating agency against the applicant, keeping in mind above principles. My observations are made only for deciding this bail application. The trial Court shall decide the trial in accordance with law on the basis of evidence led before it.

43. The State's affidavit mentions that the investigating agency was relying on a few documents recovered during the investigation to support their case against the applicant. These documents are as follows.

44. Document No.1 is a letter written by Comrade Surendra to Comrade Prakash dated 5.11.2017. This letter mentions that Surendra had discussed with Comrade Arun about establishing IAPL in Kerala with Comrade Pervez. Comrade Arun had agreed with the suggestions given by the Party and had given assurance of implementing them in Kerala. Arun was to go to Kerala on the International Human Rights Day and was to meet

Comrades mentioned in APT. The letter further mentions that Comrade Soma was sent instructions of the Party and she had destroyed APT files, other letters and all letters of the Party showing objective of the Party. Some important letters were personally delivered by Comrade Soma to Comrade Surendra.

. According to the prosecution, the name 'Arun' meant the applicant. According to Shri Pasbola there was another 'Arun' mentioned in some of the statements and, therefore, it will not necessarily mean that the person named as 'Arun' in this letter was none other than the present applicant. He submitted that just because some members of the banned organization are also members of IAPL that does not, by itself, mean that IAPL is a frontal organization of the banned organization.

Mrs. Pai submitted that this letter mentions that 'Arun' was to go to Kerala on 'International Human Rights Day'. The applicant's CDR shows that on 10.12.2017 he was in Kerala corroborating this fact. She submitted that the applicant was in touch with important members of the banned organization and was helping in establishing IAPL in Kerala and other places.

This document, thus, shows that the applicant was implementing directions given by the Party. At this stage, as rightly pointed out by Mrs. Pai, there is material to show that it is not a vague or unsubstantiated document. There is sufficient material to show that the name 'Arun' refers to the applicant alone.

45. Document No.2 is a letter dated 18.4.2017 written by "R" to Comrade Prakash. The letter begins thus : "Regarding the current situation here Arun, Vernon and others are equally concerned about the two-lines struggle that is slowly taking shape on the urban front. Followed by the very unfortunate demise of Bijoy da. He was a strong leader with great vision and selfless devotion to the party and the Red revolution!". In the same paragraph, it was mentioned thus :

"I hope by now you have received details of the meeting and requirement of 8 Cr for annual supply of M4's with 400000 rounds. Please convey your decision."

Shri Pasbola again submitted that there is just a vague reference to name 'Arun' in that letter. There was nothing in the charge-sheet to explain what was the 'two-line struggle'.

Mrs. Pai submitted that the letter mentions ‘concern’ about the ‘two-line struggle’ expressed by the applicant and Vernon. This ‘two-line struggle’ was in reference to the dispute between Delhi and West Bengal units of the banned organization.

In any case, this reference does mean that the applicant and co-accused Vernon were concerned about internal disturbance within the Party and their concern was known to the higher members of the Party. This *prima facie* shows applicant’s active participation in the affairs of the Party. The reference to supply of weapons is in consonance with the objectives of the banned organization.

46. Document No.3 shows that it is some account for the year 2017 (described as ‘Accounts 2k17’). The title mentions as “Party fund received in last year from C.C.”. This list mentions ‘Surendra’, ‘Shoma & Sudhir’, ‘Amit B’, ‘Anand T’, ‘Arun’ and ‘VV’ having received various amounts.

Shri Pasbola submitted that this is a vague document and there is no corroboration to such accounts.

Mrs. Pai submitted that this document shows that the applicant has received Rs.2 Lakhs from Comrade Darasu who was an important member of the banned organization. The investigation papers contain a letter written by Comrade Darasu to Comrade Surendra. (Document No.9 in this discussion mentioned hereinafter).

This document shows that the banned organization was providing finances to the applicant.

47. Document No.4 is a letter written by one Anantwa to Com. Mainibai. The letter opens with congratulations offered to Comrade Wilson, Comrade Sudhir, Comrade Mohan, Comrade Varvar Rao, Comrade Arun and Comrade Raghuram for arranging the programme known as 'War on People' on the occasion of 50th anniversary of Naxalbari Armed Agitation. This message was conveyed to Comrade Wilson by Anantwa on the instructions of the Party.

Shri Pasbola submitted that besides making vague reference to Comrade Arun, there is no evidence to show that such a programme was actually held and in any case it would not be an

illegal activity.

This letter shows that the Party was appreciating applicant's efforts.

48. Document No.5 is a letter written to Surendra. However, name of the author is left blank. By this letter, Surendra was instructed to ask Arun to manage expenses for the cases involving Comrade Murugan and members of FF in Jharkhand. It was suggested that Arun could meet Comrade Saket to get the required funds. It was further mentioned that 'radical student union initiative' by Arun and Vernon appeared to be going in the right direction. It was further mentioned thus, "Mahesh and Nandu have reached to us safely on 3rd Jan. Both are extremely inspired by Arun and Vernon's struggle, and have shown utmost dedication through Bolshevik training. Sometime in May-June we are expecting 2-3 PR's from TISS and other institutions where the students are inclined to follow the path of revolutionary politics and Bolshevism. Their responsibilities would be to create and translate propaganda material in Hindi."

Shri Pasbola submitted that the author of this letter was

unknown. Therefore, it is a vague letter and there is nothing to show that this information was passed on to the applicant. Again identity of Arun was disputed by Shri Pasbola.

Mrs. Pai submitted that this letter shows that the applicant was managing financial expenses of Murugan and other member's cases. He was directly connected and was concerned with meeting Murugan. This meeting is confirmed by his visits to said jail as is evident from the letter sent by the Superintendent of Central Prison at Trichy, which mentions 'Arun Perara' as one of the visitors. The letter also mentions that Arun and Vernon had taken initiative which was described as radical student union initiative and that Mahesh and Nandu were 'inspired' by the applicant and Vernon's struggle.

This letter and the applicant's visit to Trichy Jail sufficiently establish his identity with the name 'Arun' in these letters.

The applicant's and co-accused Vernon's close association and efforts to recruit cadres is also sufficiently underlined.

49. Document No.6 is a letter dated 25.9.2017 written by Comrade Prakash to Comrade Surendra. Some important passages from this letter are as follows :

“Enemy forces are overwhelming in most regions especially around MH/CHH border. PLGA strength is insufficient to protect all SC leaders. We are in the process to regroup and deploy more guards for the most senior leaders to ensure their survival. We are also working relentlessly to strengthen WG special zone through military and Bolshevik training on daily basis. There is an urgent need to increase our strength here because we have suffered major setbacks in the adjoining regions. Many revolutionary lives lost in encounters along the Sukma-Dantewada strip. Keeping all these factors in view the party leadership has concluded to entrust you with even higher and critical responsibilities for recruitment of young cadre as well as directly communicating with the SC leaders to fix APT and send the developed cadre across to the struggle areas where they are required the most. In the last meeting (9-10) at Hyderabad hopefully you have received two pgp files with more elaborate observations of the senior leaders including com.G and action plan for the next few years. I will mention couple of points that require immediate attention. Firstly, we are awaiting input from you and our local activists to gauge the strength of enemy forces/ROP around Kandulnar/Basaguda before we launch further attacks. If possible try to

arrange logistics (wires, nails, nitrate powder). You may get some help from mining contractors in Bijapur. With regards to the arrest of com. Tushar B. please coordinate with shomasen and ensure that all pgp files are securely wiped from all computers. General reading material/books may be left as is. Secondly, com. G has specifically instructed to arrange APT to meet with com.Vernon before the end of this year. Com. M has expressed satisfaction with regards to Arun's efforts to motivate research scholars and get them involved in the revolutionary movement. He has been asked to continue the work across Mumbai, Pune, Aurangabad and Konkan region too. Senior CC leaders have also appreciated his selfless contribution in strengthening the party across the Western zone."

The letter further mentions that the funds of Rs.2 Lakhs which were provided to Surendra at the 9th AGM lecture should be spent for organizing protests and programmes led by student activists.

Shri Pasbola submitted that there is no corroboration from any scholar or student to suggest that they were inspired by the lectures given by the applicant.

Mrs. Pai submitted that there is a reference that the applicant's efforts motivated the research scholars and got them

involved in the revolutionary movement.

This letter appreciates applicant's efforts to motivate Research Scholars and to get them involved in the 'revolutionary movement'. The Party had asked him to continue the work across Mumbai and other places. These activities and efforts on the part of the applicant are exactly in accordance with the agenda of the banned organization.

50. Document No.7 is a letter written by Comrade Prakash to Comrade Surendra. Surendra was directed to go to Chennai on 3.8.2017 and he was told that Comrade Arun would meet him there. They were directed to meet Comrade Adv. Murugan who was detained in Trichy Jail in Chennai and were instructed to tell him that because of the constant pressure applied by 'enemy' in the jungle there was some delay in looking after his matter. The letter also mentions that the senior members of the Party had praised the efforts put in by Surendra and Comrade Arun in respect of meeting of IAPL held in Hyderabad on 24th and 25th June. The letter also mentions that Adv. Parvez had good contacts with the separatists in Kashmir and he had suggested that some young people from

Maharashtra, Delhi, Punjab and Kashmir were ready to become PR.

Shri Pasbola submitted that there was no corroboration to the instructions given in the letter. There is nothing to show the instructions were passed on to 'Arun' or that he had executed them. Identity of 'Arun' was also seriously disputed.

Mrs. Pai submitted that the reference to the IAPL meeting on 24th and 25th June at Hyderabad is supported by CDR of the applicant showing his location in Hyderabad on those dates. There is a reference in that letter that Surendra and Arun had gone to Tamil Nadu. The CDR shows that on 2nd and 3rd August, 2017, the applicant was in Tamil Nadu.

The visitor's list of 3.8.2017 of Central Prison, Trichy shows that the applicant had met one Murugan in that prison. This communication from the Superintendent of Central Prison at Trichy is at page-75 of the compilation submitted by Mrs. Pai in this case. Here the name of the applicant is mentioned as 'Arun Perara'. Therefore, there was no doubt that the name 'Arun' referred to in all these letters was in reference to the applicant himself and not to

any other 'Arun'.

Thus, this document further establishes applicant's identity with the name 'Arun'. It is sufficiently corroborated by other circumstances. The State's Armed forces were referred to as 'enemies'. This letter also shows that the applicant was carrying out tasks assigned to him and hence was an 'active' member of the banned organization.

51. Document No.8 is a letter written by Comrade Sudha to Comrade Prakash in respect of the meeting dated 19.3.2017 held in Nagpur. It was suggested that the Party could consider giving packages on the lines of packages given by the terrorist organizations in Kashmir to the stone-pelters. There is a reference to the applicant by name 'Com.Arun Ferreira' in paragraph-6 in reference to arranging a seminar in Delhi on 23.4.2017 against the UAPA. It was observed that such meeting would give an opportunity to meet other comrades coming from different parts of the country and it would help in intensifying the operation conducted by the organization.

Shri Pasbola submitted that there is no corroboration to

this and there is nothing to suggest that such seminar was held in Delhi on 23.4.2017.

Mrs. Pai submitted that the material shows that such Seminar was held in Delhi on 23.4.2017.

In any case this document shows that the applicant was an important member of the Party.

52. Document No.9 is a letter written by Comrade Darasu to Comrade Surendra, which refers to a meeting which was to be held on 2nd and 3rd September at Hyderabad. Comrade Surendra and 'Arun' were informed about such meeting through a member of the Party Comrade Rajnish. Some young members were to be introduced there. Surendra was instructed to select suitable members to act as full time members and messengers of the Party.

Shri Pasbola submitted that again this letter does not necessarily refer to the applicant and there was no corroboration that such a meeting was held at Hyderabad.

Mrs. Pai relied on this document to show the applicant's involvement. This letter shows that the applicant was regularly

informed about the Party's decisions.

53. The reference to the applicant's name in all these documents cannot be read in isolation. These documents will have to be read in their entirety. These documents reflect the objectives of the banned organization, various steps taken by different members and what was expected of different members in achieving those objectives.

54. The above discussion shows that the investigating agency has sufficient material to show that the name 'Arun' referred to in the above documents means the present applicant himself.

55. Besides these documents, there was a search panchnama conducted at the house of the applicant on 28.8.2018 during which various articles including different literature were seized.

56. Besides the documents referred hereinabove, there are statements of two witnesses which are relevant. The first witness is Kumarsai @ Ashok @ Ram Mohammed Sing Topo @ Pahad Singh valda Jangaleshwar Singh Katlam. His first statement is recorded

on 2.11.2018. In that statement, he has stated that he is a resident of Chattisgarh. He is from a poor Adivasi Gond family and has completed education upto 12th standard. In the year 1999, he had gone to Khedepar village in Chattisgarh. There he came in contact with Devchand @ Chandu @ Naresh. He was a Naxalite Commandant. This witness was influenced by Devchand and agreed to work for Naxalites. He was included in their *Dalam* in the year 2000. He worked with them till 8.8.2018 and then he left their Party and surrendered before the police. He has stated that in the year 2008 he met Milind Teltumbde @ Deepak @ Jiva, who was Member of Central Committee of their Party – CPI(Maoist). He was the Secretary of Maharashtra State Committee. According to this witness, Milind Teltumbde issues Press-Notes by the name ‘Sahyadri’. The statement further mentions that Surendra Gadling was given about Rs.2.5 Crores (in old notes) during demonetization. He has further stated that he was knowing the applicant since the year 2003. This witness has described the applicant as a Maoist Worker. This witness had attended North Gadchiroli–Gondia Division Conference in the year 2006. At that time, the applicant was entrusted with the responsibility of

continuing with agitation of Khairlanji. According to this witness, the applicant was arrested in the year 2007. After his release, the Party had asked him to continue his work by remaining underground. However, the applicant had informed that he would work for the Party from his house. This witness has further stated that since then the applicant was continuing with his work in the cities. The witness ended his statement by stating that CPI(Maoist) Party was creating a situation described as 'People's War'. They were infiltrating cities and various strata of the society, were creating unrest against the Government and were creating a war like situation. They are residing in jungle, but, they are known in the cities by different names.

57. The same witness i.e. Kumarsai @ Pahad Singh has given his supplementary statement on 23.12.2018. He has given further details regarding the operation of the Party. He has stated that the Maoist leaders were forming different associations under different names in different classes in the society. These leaders were continuously changing their names and were carrying out their operations by remaining underground. The second group was

residing in jungle and the members were creating their own armed forces. In this connection the applicant was described as a Maoist leader who was infiltrating student's organizations, preparing cadre and was sending them to jungle. This witness had not actually seen accused Vernon Gonsalves, but, this witness had heard that he was working towards involving intellectuals in the party work. This witness has taken names of other accused as well in the same context. He was shown a photograph and he has stated that said person was from Assam. In the year 2011, he had come to Gadchiroli by using name 'Aakash'. He was sending instructions to the Senior Cadre of the Party from cities according to the directions of 'C.C.' in the name of 'Prakash' and that he was in contact with C.C.M. Deepak.

58. Apart from this witness, the investigating agency has recorded statement of one Sudarshan Satyadev Ramteke @ Maqbool @ Harsha @ Atul on 21.1.2019. He has stated that one Anil Nagapure who was working for CPI(Maoist) introduced him to the applicant and told this witness to go underground. After a few days, he met Milind Teltumbade and the applicant. They told him

to work for Deshbhakti Yuva Manch at Chandrapur. There he met various other persons including one Arun Bhelke. In 2008, this witness was arrested in Nagpur and he was in jail till 2011. After his release, Surendra Gadling told him to work for the Maoist Party. In July 2012, this witness was taken to a jungle on the border of Chattisgarh and Maharashtra. There he met Milind Teltumbde, Vikas @ Anil Nagapure, Vivek Bhoir, Pahadsingh, Rajan @ Arun Bhelke, Bhumi @ Kanchan Nannaware, Painter @ Vishwa, Umesh Ranu, Ramdas, Sushila, Sheela, Sagar Gokhale, Ramesh Gaichor, Priya Jagtap etc.. He worked for CPI(Maoist) till January, 2016. He was given weapons and the Party was giving him work continuously. However, he wanted to leave the Party and finally in February, 2016 he surrendered before the police. He identified the photographs of Ganpati, Kosa, Anand, Sudhakar, Chandanna, Sonu, Milind Teltumbde etc.. Navin used to be with the Secretary Ganpati of CPI(Maoist). He was given work regarding the Central Committee's computer operations.

This witness's statement was recorded under Section 164 of Cr.PC., in which he has reiterated his statement recorded

under Section 161 of Cr.PC.

59. Shri Pasbola submitted that there was no evidence to show that a 'war like situation' was actually created or that the accused mentioned in these statements had actually instigated people. He submitted that there was no evidence to even suggest that the applicant was influencing anybody for doing the Party work. Shri Pasbola submitted that there is a reference to one more 'Arun' in Ramteke's statement and, therefore, the identity of the applicant mentioned in the above documents is seriously in dispute.

60. As laid down by the Hon'ble Supreme Court in **Zahoor Watali's** case (supra), it is not necessary at this stage to analyze every single piece of evidence against the applicant or the admissibility of the documents contained in the charge-sheet against the applicant. However, since the arguments were advanced in respect of the above mentioned documents, I am considering those documents to form a *prima facie* opinion regarding the applicant's involvement in the offences punishable under Chapters IV and VI of the UAPA besides other offences. Overall effect of

these documents can be considered as discussed in the following paragraphs.

61. Document No.1 shows that the applicant was trying to establish IAPL in Kerala. His efforts were either on the instructions of the banned organization or had the approval of the banned organization. This document was corroborated by the fact that the applicant was in Kerala soon after the date of this letter.

62. Document No.2 mentions that the applicant, Vernon and others were concerned about the 'two-line struggle' taking shape on the urban front. Such concern shows that the applicant and others were in touch with the senior members of the Party and they were sharing their concern about some difficulty within the Party. Thus, this shows that the applicant occupied an important position in the banned organization. The same document shows that the banned organization was raising funds and was procuring dangerous weapons.

63. Document No.3 mentions that the applicant had received Rs.2 Lakhs from Comrade Darasu which shows that the banned organization was extending financial help to the applicant

and, therefore, the applicant was not merely a passive member of the Party but was an active member of the banned organization.

64. Document No.5 also shows how the applicant was directed to manage the expenses for the cases involving Comrade Murugan and members of 'FF' in Jharkhand. According to Mrs. Pai, 'FF' means 'fact finding team'. The same letter suggested that the applicant could meet Comrade Saket to get the required funds. This shows the applicant's active participation in managing, raising and disbursing the Party funds of the banned organization. The same letter mentions that the radical student union initiative by the applicant and co-accused Vernon was going in the right direction. This also shows that the applicant was executing the directions of the banned organization to recruit cadres. The new recruits were inspired by the applicant's struggle and the Party was expecting a few more PRs. According to Mrs. Pai 'PR' meant 'Professional Revolutionaries'.

65. Document No.6 shows that the banned organization was planning to procure wires, nails, nitrate powder and was planning to launch further attacks. The same letter appreciates the

applicant's efforts to motivate the research scholars to get them involved in the revolutionary movements.

66. Document No.7 similarly expresses appreciation of the applicant's efforts in respect of a meeting of IAPL held in Hyderabad.

67. Mrs. Pai did not refer to any of the literature recovered in the house search of the present applicant. Therefore, it is not necessary to refer to Shri Pasbola's submissions in that behalf.

68. The above discussion shows that some of these documents are corroborated by the applicant's location based on his C.D.R. in respect of the dates mentioned in these documents. The statement of Kumarsai @ Pahad Singh leaves no doubt at this stage that the name 'Arun' mentioned in all those documents referred to the applicant. The applicant's work towards achieving some of the objectives of the banned organization was not only appreciated by the banned organization, but, he was given specific directions on some occasions. This all shows that the applicant was an active member of the banned organization.

69. With the result, following points emerge from the above discussion:

- (i) The Party CPI(Maoist) is included in the Schedule of the UAPA vide notification dated 22.6.2009.
- (ii) The literature of the banned organization mentions its objectives and possible methods to achieve these objectives. Two of the important methods are recruiting cadres from urban masses through Student Unions and providing military training to such cadres.
- (iii) Important Party members were entrusted with the responsibility of recruiting cadres. The applicant was involved in recruiting cadres.
- (iv) One of the objectives of the banned organization was defeating 'enemy forces' with the use of weapons and by forming people's army.
- (v) The banned organization was using firearms and lethal weapons.
- (vi) The State armed forces were treated as 'enemy forces'.
- (vii) One of the important tasks was to raise, manage and

distribute the funds in the banned organization and there is material in the charge-sheet to show that *prima facie* the applicant had actively worked towards fulfilling that responsibility.

- (viii) The investigating agency has material to show *prima facie* that the applicant is a senior member of the banned organization.
- (ix) Learned Special Judge, Pune under UAPA has rightly considered the material before him while rejecting the applicant's bail application.

70. The main offences under Sections 121, 124A, 153 etc. of IPC as well as under Sections 13, 16 of the UAPA are alleged against the banned organization. The investigating agency has material which *prima facie* shows that the applicant was part of the larger conspiracy and had abetted it attracting Section 121A, 117 and 120B of I.P.C. as well as Section 18 of the UAPA against him. The applicant's specific act of recruiting cadres for the banned organization is punishable under Section 18B of the UAPA. The applicant being an active member of the banned organization

attracts Section 20 of the UAPA against him. Similarly, Sections 38 and 39 of the UAPA are also attracted against the present applicant.

71. As a result of the above discussion, I find that, there is sufficient material in the charge-sheet against the applicant. There are reasonable grounds for believing that the accusation of commission of the offences punishable under Chapters IV and VI of the UAPA against the applicant is *prima facie* true. Considering the express bar imposed by Section 43D(5) of the UAPA, the applicant cannot be released on bail. The other argument regarding his achievements in the field of legal profession and social activities and his continued detention in jail for a long period cannot be taken into consideration. Hence, I pass the following order :

ORDER

- (i) Criminal Bail Application No.3006/2018 is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)