IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 428 OF 2019

Sudha Bharadwaj,]
Aged about 57 years,]
Currently at Mahila Vibhag,]
Yerwada Central Prison,]
Yerwada, Pune.]
Otherwise R/o F4/216,]
South End Apartments,]
Eros Garden Colony,]
Surajkund, Faridabad.] ...Applicant

Versus

State Of Maharashtra]
Through Vishrambaug P.S.]
(FIR No.4 of 2018).] ...Respondent

....

Dr. Yug Mohit Chaudhary a/w. Ms. Ragini Ahuja, 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.

....

CORAM : SARANG V. KOTWAL, J.

RESERVED ON : 07.10.2019
PRONOUNCED ON : 15.10.2019

ORDER:

1. The applicant is seeking her 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 she was kept under house-arrest. As of today, the applicant is in judicial custody. The charge-sheet is already filed against her.

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 25.2.2019. For the sake of convenience, this affidavit is hereinafter referred to as “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 '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) Arun Ferreira, R/o. Thane, (4) Gautam Navlakha, R/o. Delhi, besides the applicant who was resident of Faridabad. 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, Arun Ferreira 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.3994/2018. The learned Judge decided the applicant's bail application along with bail applications of Vernon Gonsalves and Arun Ferreira, 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 Arun Ferreira 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 Dr. Yug Chaudhary for the applicant, made his submissions.

16. Dr. Chaudhary submitted that the entire evidence against the applicant consists of letters and documents recovered from some other accused. Nothing objectionable was recovered from her possession. No objectionable document was recovered from her devices. He submitted that there are no statements of any witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.) against her. He submitted that the only witness against the present applicant, in the possible trial against her, is the Investigating Officer. He further submitted that none of these documents, which the prosecution is seeking to rely upon; is admissible in law. He emphasized that his only submission was that none of these documents, sought to be used against the applicant, was admissible in law. According to him, these documents were recovered from the devices of other accused. These documents were found stored in those devices. They were not created in the computers or other devices from

where they were recovered. These documents were not the original documents. Therefore they could not be produced during trial as primary evidence. They could not be produced even as secondary evidence because none of the requirements under the Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act') permitting such production of secondary evidence, was fulfilled. He submitted that the admissibility or otherwise of these documents will have to be considered even at the stage of consideration of grant or refusal of bail. The prospect of possible conviction is an important factor, which the Court will have to take into consideration while deciding this bail application. Dr. Chaudhary relied on various provisions of the Evidence Act and the Information Technology Act, 2000 (hereinafter referred to as 'I.T. Act'). He invited my attention to six documents from the charge-sheet which the investigating agency was using against the applicant. The details of the contents of such documents would be referred to in the following discussion.

17. For the sake of convenience, these documents are hereinafter referred to as 'document Nos.1 to 6'. 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 the applicant and addressed to Comrade Prakash.
Document No.2	The minutes of Special Women Meeting held on January 02, 2018.
Document No.3	A letter written by Prakash. The name of the person to whom it is addressed is not mentioned.
Document No.4	A letter written by Comrade Prakash to Comrade Surendra.
Document No.5	A letter written by Comrade Prakash to Comrade Rona.
Document No.6	A letter written by one 'S/S' to 'Comrade R'

18. Dr. Chaudhary pointed out that none of these documents is hand written. They are all typed. None of them bears the signature of any of the accused or persons who had supposedly written or sent them. These letters do not bear any

date. The authorship of these documents cannot be established. Dr.Chaudhary submitted that those documents cannot even be marked as Exhibits. They are as unreliable pieces of evidence as confessions made to the police. In short, they cannot be taken into consideration at all even at this stage. He relied on Sections 32 to 34 and 61 to 65 of the Evidence Act to support his submission that these documents cannot be treated as admissible pieces of evidence at all. According to him, these documents can neither be treated as primary evidence nor as secondary evidence. He submitted that these documents cannot even be termed as an electronic record as envisaged under Section 65-B of the Evidence Act or under Section 2(d) of the I.T. Act. According to him, authorship of the documents cannot be proved and, therefore, even the contents of those documents cannot be proved.

19. Dr. Chaudhary in support of his contention, relied on various provisions of the Evidence Act. He specifically referred to Sections 61 to 65 of the Evidence Act. These sections provide the manner in which the documents can be proved, either by primary or secondary evidence. He submitted that in all cases the

documents must be proved by primary evidence except the cases mentioned in Section 65 where in certain cases secondary evidence could be given. He submitted that the documents which the investigating agency is using against the applicant cannot be termed as primary evidence because the original documents are not seized by the investigating agency. The documents are not generated in the devices from where they were recovered. The author was either not known or his identity was not clear and, therefore, the contents of the documents cannot be proved even during trial. He further submitted that none of the conditions mentioned under Section 65 of the Evidence Act are applicable in the present case enabling the prosecution to lead secondary evidence in respect of those documents.

20. Dr. Chaudhary submitted that the documents stored in the computers cannot be termed as 'electronic records' as mentioned under Section 65-B of the Evidence Act. He submitted that the documents recovered by the investigating agency are not entries in the books of accounts maintained in an electronic form. He submitted that the term 'electronic record' is defined under

Section 2(t) of the I.T. Act. The 'Statement of Objects and Reasons' of the I.T. Act mentions that necessity to include the 'electronic record' in the Evidence Act was essentially meant to cover the cases involving electronic commerce and electronic governance.

21. Dr. Chaudhary submitted that though the applicant was the Vice President of IAPL, this organization has nothing to do with CPI(Maoist). Eminent Jurists are members of IAPL and they have arranged many programmes which were attended by legal luminaries. Therefore, being the Vice President of IAPL is not incriminating at all. He submitted that the applicant is a highly respected Professor of Law at the National Law University, New Delhi, which is a premier law institute in the country. She had no criminal antecedents. She has been working for poor workers, tribals and marginalized sections of the community on various issues. In 2010, she has founded Janhit in Chattisgarh with the aim to provide legal aid to such marginalized communities including farmers and tribals. In 2015, the applicant's organization Janhit was selected by this Court to receive funds to continue her legal aid work. She was nominated by the Government of

Chattisgarh to serve as a Member on the Chattisgarh State Legal Services Authority from 2015 to 2017. She was on the Committee for Selection of Vice Chancellor for Guru Ghasidas Central University at Bilaspur, Chattisgarh.

22. Dr. Chaudhary pointed out that it is not case of the investigating agency that she was present at the Elgar Parishad held on 31.12.2017. She has roots in the society. She is not likely to abscond. The investigation is already over. Nothing incriminating is found from her possession. There is no question of tampering of evidence by her. She is suffering from health issues. She is in custody for more than a year on the basis of inadmissible vague material against her and, therefore, she deserves to be released on bail. She has developed osteoarthritis and she has started getting growths on the bones of her fingers and she can no longer bend her fingers without great pain. She has lost her father while she was in custody and she is the sole guardian of her young daughter.

23. Dr. Chaudhary relied on a few judgments in support of

his contentions. They are as follows :

[i] **Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another**[1]

Dr. Chaudhary specifically relied upon the observations in paragraph-21 of the said judgment wherein it is observed that the Court must be satisfied that with the materials available, a case was made out for the accused to stand trial. A strong suspicion sufficed. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. Therefore, according to Dr.Chaudhary in the instant case the material against the applicant cannot be translated into evidence as all the documents relied on by the investigating agency against the applicant were inadmissible.

[ii] Dr. Chaudhary then referred to the case of **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and another**[2]. He relied on paragraph-38 of the said judgment wherein it is observed

1 Decided on 24.4.2019 in Criminal Appeal No.714/2019 (Hon'ble Supreme Court).
2 (2005) 5 SCC 294

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.

This judgment dealt with Section 21 (4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'MCOCA'). Dr. Chaudhary relied on this judgment to contend that if the Court is satisfied that in all probability the applicant will not be convicted because of the inadmissibility of the evidence, even at this stage the Court can grant her bail.

[iii] Dr. Chaudhary then relied on the case of **Vasanthi Vs. State of A.P.**[3]**.** Even in this case it was observed that applying the probability test if it is difficult to reach a tentative conclusion that the accused in all probability would be convicted of the offences and if the probability of conviction was not bright then bail can be granted to such accused.

[iv] Dr. Chaudhary further relied on the case of **State of**

3 (2005) 5 SCC 132

Madras Vs. Govindarajulu Naidu[4]. In this case, the Hon'ble Supreme Court had discussed the admissibility of a document which did not bear any date and it was not signed by anybody and the Hon'ble Supreme Court had left out such document from consideration.

[v] Dr. Chaudhary then referred to an order passed by a Single Judge of this Court in **Veena N. Kandhari Vs. Pradip Hiranand Bhatia**[5]**,** wherein the Court had refused to exhibit the Minutes of Annual General Meeting because it was an unsigned typed copy. Dr.Chaudhary relied on this order particularly in reference to document No.2, referred hereinabove, which pertains to an unsigned typed copy of Minutes of a Meeting purportedly attended by the applicant.

[vi] For the same proposition that when the authorship could not be established, the document was inadmissible, Dr. Chaudhary relied on the judgment of Karnataka High Court in the case of **Thirumala Prakash Vs. State**[6]**.**

4 AIR 1966 SC 969
5 2016 SCC OnLine Bom 6714
6 Decided on 17.9.2014 in Criminal Appeal No.1434/2005 (Karnataka High Court).

[vii] For the same proposition, he relied on the judgment of the Hon'ble Supreme Court in the case of **Collector of Customs, Bombay Vs. East Punjab Traders and others**[7].

[viii] Dr. Chaudhary then relied on the judgment of the High Court of Allahabad in the case of **S.H. Jhabwala and others Vs. Emperor**[8], wherein it was held thus :

> "….. But the document, of which the writer is not known, found in the possession of a conspirator, would not by itself be admissible for the purpose of proving the truth of its contents as against the other accused. The fact of possession would be evidence to show that the conspirator, in whose possession it is found, had received and preserved it. ……"

[ix] Dr. Chaudhary then relied on the judgment of the Hon'ble Supreme Court in the case of **Ramji Dayawala & Sons (P) Ltd. vs. Invest Import**[9]**,** wherein it was held that mere proof of the handwriting of a document would not tantamount to proof of all contents or the facts stated in the document. If the truth of the facts stated in a document is in issue, mere proof of the handwriting and

7 (1998) 9 SCC 115
8 AIR 1933 ALL 690
9 AIR 1981 SC 2085

execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue.

[x] For similar proposition, he relied on the judgment of this Court in the case of **Madhulal Sindhu Vs. Asian Assurance Co. Ltd. and others**[10]**.**

24. Dr. Chaudhary, while concluding, referred to Section 43D of the UAPA. According to him, the word "*prima facie*" referred to in that section meant that there is much higher onus on the prosecution even at this stage to show that *prima facie* case exists against the accused. According to him, this provision is in contrast with the provisions under Section 21(4) of the MCOCA where higher onus is put on the accused to show that he has not committed any offence under the MCOCA. He submitted that the onus on the accused for the offence under the UAPA is much lighter and if the prosecution fails to show that there is *prima facie*

10 AIR 1954 Bom 305

evidence against the applicant, the order of bail must follow.

SUBMISSIONS ON BEHALF OF THE STATE/INVESTIGATING AGENCY:

25. Mrs. Pai opposed this bail application. Mrs. Pai submitted that the applicant was an active member of the banned organization. She was the Vice President of IAPL which was a frontal organization of the banned organization. She was on the Committee of PPSC i.e. Persecuted Prisoners Solidarity Committee. She was instrumental in arranging meetings, recruiting cadres, raising funds etc.

26. 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 organizations 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 recruiting cadres, procuring weapons

etc..

27. Mrs. Pai heavily relied on the judgment of the Hon'ble Supreme Court in the case of **National Investigation Agency Vs. Zahoor Ahmad Shah Watali**[11]. She strongly contended, based on this judgment, that the admissibility of the material and the documents in this case would be a matter for trial. At this stage of consideration for grant of bail, the admissibility or inadmissibility of the document cannot be determined. The documents will have to read as they are.

28. In rejoinder to Mrs. Pai's submissions, Dr. Chaudhary fairly submitted that in view of the observations in **Zahoor Watali's** case (supra), he was not pressing his submissions in respect of inadmissibility of the documents. However, he submitted that based on the same judgment, the Court will have to consider if these documents are contradicted or rebutted by other material. He submitted that these documents are contradicted by other available material. His submissions in respect of those individual documents will be considered in the following discussion.

11 (2019) 5 SCC 1

REASONING

29. 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 for the offence of raising fund for a terrorist organisation.
- Sections 38, 39 and 40 fall within Chapter VI of the UAPA.

30. It is necessary 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.

31. 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."

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.**
>
> xxxxx
>
> xxxxx
>
> xxxxx
>
> 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:
>
> 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."

39. 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:-**
>
> xxxx
>
> xxxx
>
> xxxx
>
> **(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."

40. 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 **Zahoor Watali's** case (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.

41. 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.

42. 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.

43. 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.

44. 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."

45. 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.

46. 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'.

47. 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.

48. 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.

49. Document No.1 is a letter written by the applicant and addressed to Comrade Prakash. The State's affidavit in paragraph-14(a) mentions that this letter is derived from the electronic device of accused Surendra Gadling and is dated 16.4.2017 as per the FSL report. The letter mentions that the applicant had gone to Nagpur on 19.3.2017 for a meeting of IAPL. The opening paragraph of said letter mentions that Com. Surendra and Com. Shoma Sen had helped the applicant and had held positive discussion with her and others. It is further mentioned that Com. Surendra gave information about the operations being conducted in the interiors of Maharashtra and Chattisgarh. It is mentioned that they were carrying out good work against the 'enemies'. The letter thereafter

lists eight points mentioning the decisions taken in that meeting. The 1st point is regarding fixing a package to be given to urban and interior members on the lines of the packages given to the separatists and the locals used for stone pelting by the terrorist organizations in Kashmir. The 2nd point mentions that some Advocates were willing to take risk to act as couriers. The 3rd point mentions that Jagdalpur Chattisgarh Legal Aid as well as Bastar Solidatory Network were conducting effective work and the applicant herself was looking after supplying funds to them. The 4th point mentions that Com. Ankit and Com. Gautam Navlakha were in touch with the separatists in Kashmir. It further mentioned that it was necessary to publish the human rights violations committed by the 'enemies'. The 5th point mentions about the meeting of IAPL which was to be held on 24.6.2017. The 6th point mentions that on 23.4.2017 a Seminar was to be organized in Delhi against UAPA. It was expected that Com. Arun Ferreira and Com. Gautam Navlakha would participate in that event and they would meet other members from different parts of the country which would have the effect of making the operation more intense. The 7th point speaks about the applicant's intention to conduct various meetings in the

country to protest against Professor Com. SaiBaba's conviction. In the 8th point, the applicant was asking for some financial help. Though this letter does not bear any signature, it does bear the typed name of the applicant.

Mrs. Pai submitted that Sr. No.6 in this document mentions a programme which was to be held in Delhi on 23.4.2017. She submitted that the investigation shows that the reply by Indian Social Institute to the requisition made by the investigating officer indicates that such programme was actually held on 23.4.2017. This document also refers to a programme of IAPL which was to be held on 24.6.2017. According to the investigating agency this meeting was held on that date at Hyderabad and the CDR of the applicant shows that she was in Hyderabad on that day. Mrs. Pai, therefore, submitted that this document is sufficiently corroborated in material particulars and it is not a vague document.

Mrs. Pai submitted that this document is supported by an email of Shoma. This email shows that the applicant had gone

to Nagpur on 19.3.2017 and the arrangements made for the applicant's visit were reflected in that email. Mrs. Pai submitted that this email was on the CD recovered during investigation. This email is included in the compilation tendered by Mrs. Pai in this application. A copy is also given to the learned Counsel for the applicant.

This email starts with Arun Ferreira's message to the applicant regarding her stay on 19.3.2017. The applicant had informed that her train would arrive very early in the morning and she had asked for Shoma's address. Shoma Sen had, through her reply, guided the applicant how to reach Bharat Nagar. The subject of these emails was 'Meeting on 19th March'.

50. Dr. Chaudhary tendered rejoinder dated 4.10.2019 specifically in respect of the stand taken by Mrs. Pai in respect of the meeting held on 19.3.2017 at Nagpur. Annexure 'A' of that rejoinder was an email sent by Arun Ferreira to others on 20.3.2017. Through this rejoinder, the investigating agency was called upon to admit or deny the fact that this email was sent by

Arun Ferreira on 20.3.2017 and/or that it was received by Surendra Gadling and the applicant.

51. According to this rejoinder, these emails, regarding applicant's stay in Nagpur on 19.3.2017, relied on by the investigating agency did not form part of the charge-sheet. Dr. Chaudhary however relied heavily on the email sent by Arun Ferreira on 20.3.2017 to demonstrate that the contents of document No.1 could not be true. Email sent by Arun Ferreira, as referred to by Dr. Chaudhary, has a title 'Some IAPL members met on 19th March in Nagpur'. The opening paragraph of this email reads thus :

> "A few of us (Surendra, SP Tekade, Anand Gajbiye, Jagdish Meshram, Suresh Kumar, Dasharath & myself) met yesterday at Nagpur, to implement the decisions of the Bombay meeting especially regarding the all India Conference. Sudha could not make it. All felt that the All India Conference date should be finalised and held without further delay."

52. Dr. Chaudhary emphasized on the sentence that the applicant could not make it. He, therefore, submitted that this

email shows that the applicant did not attend the meeting which is the subject matter of document No.1 and, therefore, this email sent by Arun Ferreira contradicts and destroys document No.1.

Mrs. Pai, in response, submitted that the title of this email itself shows that some IAPL members met on 19th March, 2017 in Nagpur. This email, therefore, need not necessarily be referring to the IAPL meeting, which was one of the subject matters mentioned in document No.1. The email of Arun Ferreira does not refer to IAPL meeting as such, but, specifically mentions that some IAPL members met on 19th March in Nagpur when the applicant could not make it. She, therefore, submitted document No.1 and this email are referring to completely different subject matters.

I find that there is considerable force in the submissions of Mrs. Pai because Arun Ferreira's email relied on by Dr. Chaudhary does not refer to IAPL meeting specifically but refers to a discussion among a few of them named in the email. However, in any case, as per **Zahoor Watali's** case (supra), it is not possible to analyze these two documents in detail and it is not possible to hold

at this stage that the email of Arun Ferreira completely contradicts document No.1.

53. Dr. Chaudhary thereafter referred to an email sent by one Sukhwinder Grewal to Varavara Rao on 13.4.2017. This email is at page-179 of the compilation tendered by Mrs. Pai. This email specifically mentions that the protest conference and march about the punishment to Professor Saibaba and comrades, maruti workers was held on 12.4.2017 at Moga.

According to Dr. Chaudhary the date '12.3.2017' was mentioned in point No.7 of document No.1 for this meeting He submitted that the email produced in the charge-sheet itself contradicts document No.1 in respect of point No.7. The protest conference was not held on 12.3.2017, as mentioned in document No.1, but was held on 12.4.2017.

Mrs. Pai, in response, submitted that this document No.1 itself was dated 16.4.2017 and, therefore, this document is written after the protest meeting was held in respect of conviction of Comrade Saibaba and maruti workers i.e. after 12.4.2017.

Therefore, that document cannot be rejected totally because of this discrepancy in respect of the date '12.3.2017' mentioned in point No.7 of document No.1. She submitted that the other contents of the letter are sufficiently corroborated and, therefore, because of some error committed by the writer of this document No.1, i.e. the applicant, this discrepancy does not go to the root of the matter destroying the evidentiary value of the entire document.

Considering both these submissions, I am of the opinion that this document is *prima facie* corroborated by other material on record. There is one discrepancy in point No.7 of that document, but, at this stage it is not possible to hold that because of that discrepancy, the entire document has to be rejected.

Considering all these aspects, this document No.1 shows that the applicant was an important active member of the banned organization. She was a party to the suggestion made to other higher members of the banned organization that a package should be given to the members of the banned organization similar to the packages given to the separatists by the terrorist

organizations in Kashmir. This suggestion is quite serious and establishes *prima facie* case in respect of the accusations made against the applicant. The State and armed forces are described as 'enemies' in this document. The last paragraph mentions that she had to send students from reputed institutions in interiors as per the directions of the Party, for which she needed finances.

54. Document No.2 refers to the Special Women's Meeting held on January 02, 2018. This document records the minutes of that meeting. It mentions the names of various members who were present at the meeting. Apart from others, Harshali Potdar, Shoma Sen and the applicant's names were mentioned. One of the important decisions was item No.3 which mentioned, "one of the solutions to fight for patriotism in the party." It reads thus :

> "3. Intensify tactical training for women PLGA members including booby traps/directional mines."

The State's affidavit shows that this document was recovered from the laptop of Rona Wilson. The document starts with the line "For PMs and SC only". According to the State's

affidavit, 'PMs' means 'Party Members" and 'SC' means 'State Committee Members'.

Dr.Chaudhary submitted that the CDR of the applicant's mobile phone shows that the applicant was in Haryana and Delhi on 2.1.2018 and around that date. He submitted that, according to this document, both Shoma Sen and the applicant were present for the meeting together. However, the CDR of Shoma Sen on that day shows that she was in Mumbai. Therefore, this document is not a genuine document. According to him, even this document was inadmissible. It was an unsigned document. It was not recovered from the applicant's device.

Mrs. Pai submitted that PLGA stood for 'People's Liberation Guerrilla Army' and that the applicant was shown as a IAPL leading member and in charge of JAGLAG.

In respect of this document, the submissions of Dr.Chaudhary have some force because though this document shows that there was some meeting held on January 02, 2018 and though the applicant and Shoma Sen are mentioned in the minutes, both of them, were at different places on that day. The prosecution

is also not sure about the place where this meeting was held. Therefore, this document will have to be left out from consideration. It cannot be treated as an incriminating piece of evidence against the applicant at this stage.

55. Document No.3 is a letter written by Prakash. The name of the person to whom it is addressed is not mentioned. The first paragraph laments about the failure to win Comrade Sai's case. The last paragraph of this letter mentions that the addressee had great connect among the students of DUSU/JNUSU and, therefore, he was entrusted with the responsibilities of DUSU/JNUSU. It further mentions that the resources of one Mohd. Siraj in Jammu & Kashmir could help them a lot and in that 'Sudha ji' would guide him further. According to the prosecution 'Sudha ji' means the applicant. The letter ends with the sentence that future People's War would be fought on the shoulders of young revolutionaries.

Dr. Chaudhary submitted that this letter hardly shows that it is an incriminating piece of evidence against the applicant. Dr. Chaudhary submitted that this document is innocuous as far as the applicant is concerned. Though there is a reference that the

applicant would guide one Mohd. Siraj, the C.D.R. of the applicant does not show that there was any contact between the applicant and Mohd. Siraj. Mrs. Pai, on the other hand, submitted that this document shows that the applicant was entrusted with the responsibility to guide the new recruits.

Though, there is no CDR showing contact between the applicant and Mohd.Siraj, that by itself does not rule out their meeting in person. From this document, one thing is definitely clear that the Party had entrusted the applicant with the work of guiding the new recruits.

56. Document No.4 is a letter written by Comrade Prakash to Comrade Surendra. The letter mentions that the senior members of the Party wanted Surendra to go to Chennai on 3.8.2017. Comrade Arun was to reach there on 2.8.2017. Comrade Surendra was asked to pacify Advocate Murugan lodged at Trichy Jail and Surendra was further instructed to tell Advocate Murugan that since the 'enemies' were constantly applying pressure in the jungle there was some delay in looking after his matter. The letter further mentions that E.C. meeting was arranged in Delhi on 2.9.2017 and the responsibility for that meeting was given to Comrade Sudha.

Surendra was directed to contact her for finalizing the list of invitees. It was further mentioned that two members from the Party would attend that meeting. There is a reference to IAPL meeting held on 24th & 25th June at Hyderabad.

Dr. Chaudhary submitted that this document was innocuous and was not incriminating against the applicant.

Mrs. Pai submitted that this document mentions meeting of 'E.C.' which meant Executive Committee meeting. The responsibility for conducting this meeting was given to the applicant and, therefore, it shows that the applicant was a senior 'active' member of the banned organization. This letter also refers to the meeting of IAPL which was held on 24th and 25th June. The CDR shows that the applicant was present in Hyderabad on 24th and 25th June, 2017. Thus the letter is corroborated by other material.

I am inclined to agree with Mrs. Pai's submission that the document shows that the applicant was a senior active member of the banned organization because she was entrusted with such high responsibility.

57. Document No.5 is a letter written by Comrade Prakash to Comrade Rona. Paragraph-15(d) of the State's affidavit mentions that Comrade Prakash means Navin @ Ritupan Goswami, R/o. Assam, recruited by Professor G.N. Saibaba. Said letter mentions that the senior Party leaders had sent instructions through Comrade Sudha and Comrade Surendra to different members of IAPL working in different States. The letter further mentions that Rs.5 Lakhs were given to Comrade Sudhir and Comrade Surendra and they were told that since Bhima-Koregaon agitation was losing its fire, the other members active in different states should intensify the agitation. The letter further mentions that two members of TISS Institute had safely reached Guerrilla Hills. The last line instructed Comrade Rona to destroy the letter and to see to it that it was not found by the 'enemies'.

Dr. Chaudhary submitted that even this letter makes vague reference to Comrade Sudha and it cannot be an incriminating piece of evidence.

Mrs. Pai on the other hand submitted that this document refers to fund of Rs.5 Lakhs given to Comrade Surendra

and Comrade Sudhir and they were told to intensify the agitation as Bhima-Koregaon agitation was losing its fire. She submitted that this letter corroborates the case of the investigation and, therefore, is not unsubstantiated document. This letter refers to the applicant and mentions how she was expected to work through IAPL.

Document No.5 also shows that the applicant was entrusted with important responsibility. Senior party members had sent instructions to others through the applicant.

58. Document No.6 is a letter written by one 'S/S' to 'Comrade R'. It was mentioned that after the arrest of Comrade Prashant, the movement was in dormant mode. Comrade Stan and Sudha tried their best, but, there was a need for consolidating and focusing on the question of release of political prisoners along with senior party leaders by any means whatsoever. Comrade Sudha's name was proposed for being added as a member of separate F.C. for PPSC/FF/JAP.

Again Dr. Chaudhary submitted that this is also a vague document and does not further the prosecution case against the applicant.

However, this letter also shows that the applicant tried to bring the movement out of dormant mode and her efforts were noted by the Party. It was also suggested that she should be taken on all important committees. All these facts show that the applicant was an active member having definite say in the decision making process of the Party.

59. Besides these documents, Mrs. Pai referred to a letter written by Surendra to Comrade Prakash, which mentions that PPS was being funded by the organization. In the said letter Surendra had informed Comrade Prakash that Comrade Prashant was complaining that the second installment of Rs.15 Lakhs which was to be received from Varavara Rao was not received by Comrade Prashant. She further submitted that the investigation shows that the applicant was an important member of PPSC i.e. Persecuted Prisoners Solidarity Committee'.

60. Besides these documents, the charge-sheet contains the statement of one Kumarsai @ Pahad Singh which shows that one Prakash, who is mentioned as absconding accused, was communicating with various members of the Party and was

exchanging certain instructions and reports between them. The above documents also referred to the name 'Prakash' either as sender or recipient.

61. The evidentiary value of these documents will have to be tested during trial. The Hon'ble Supreme Court in **Zahoor Watali's** case (supra) has already observed that the credibility of such documents would be a matter for trial.

62. Though Dr. Chaudhary has given up his submissions on inadmissibility of the documents, he had referred to certain provisions of the Evidence Act prescribing the manner in which the documentary evidence can be led. Dr. Chaudhary argued that the document stored on the electronic device but not generated by that device cannot be termed as 'electronic record'. I am unable to agree with this submission because Section 65-B of the Evidence Act mentions that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, if the conditions mentioned in the section are satisfied. Thus, the electronic record which is 'stored' is also

included under that Section.

63. I am unable to agree with the submission of Dr. Chaudhary that the statements of objects and reasons of the Information Technology Act shows that it was essentially meant to cover the cases involving electronic commerce and electronic governance. The 5th clause in the 'Statement of Objects and Reasons' indicates that one of the objects was to make consequential amendments in the I.P.C. and the Evidence Act to provide for necessary changes in the various provisions which deal with offences relating to documents and paper based transactions.

64. Besides the provisions of the Evidence Act referred to by Dr. Chaudhary, other provisions are important in the cases in respect of offences involving conspiracy. Section 5 of the Evidence Act provides that the evidence may be given in respect of the existence or non-existence of every fact in issue and of such other facts as are declared to be relevant under the provisions of the Evidence Act.

65. Section 10 of the Evidence Act is a special provision in respect of the offences involving conspiracy. Section 10 reads thus:

"10. Things said or done by conspirator in reference to common design. – Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Government of India.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it."

The last example given in the illustration shows that the contents of a letter giving an account of the conspiracy is relevant against a co-conspirator to prove his complicity. This is a very wide Section which covers cases like the instant case.

The prosecution is required to be given proper opportunity to lead evidence in respect of the relevant facts in the light of the provisions of Section 10 of the Evidence Act. At this stage, there is sufficient material with the prosecuting agency to enable the Court to form an opinion that the accusations against the applicant are *prima facie* true.

66. 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.

(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 State armed forces were treated as 'enemy forces'.

(vi) One of the important tasks was recruiting cadres and there is material in the charge-sheet to show that *prima facie* the applicant had actively worked towards fulfilling that responsibility.

(vii) The investigating agency has material to show *prima facie* that the applicant is a senior active member of the banned organization and she was on important committees of the Party. She was a party to the suggestion that members be given packages similar to the packages given to Kashmiri separatists by different terrorist organizations.

(viii) Learned Special Judge, Pune under UAPA has rightly considered the material before him while rejecting the

applicant's bail application.

67. 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 her. The applicant's specific act of recruiting members for 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 her. Similarly, Sections 38 and 39 of the UAPA are also attracted against the present applicant.

68. 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 submissions regarding her academic record, achievements, social work, family background, health issues and her continued detention in jail for a long period cannot be taken into consideration. Hence, I pass the following order :

O R D E R

(i) Criminal Bail Application No.428/2019 is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)