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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 676 OF 2021

Dr. Anand Teltumbde

Occupation – Senior Professor,

Chair, Big Data Analytics,

Goa Institute of Management,

Age : 72 years,

Residing At – Goa Institute of Management,

Sanquelim, Goa – 403 505.

(At present Talaja Central Prison)

.. Appellant

Versus

1. The National Investigation Agency,

Through its Superintendent

Having its office at Cumballa Hill,

Peddar Road, Mumbai – 400 026.

2. The State of Maharashtra.

.. Respondents

Mr. Mihir Desai, Senior Advocate i/by Ms. Devyani Kulkarni for Appellant.

Mr. Sandesh Patil a/w. Mr. Chintan Shah, Mr. Shrikant Sonakawade and Mr. Prithviraj Gole, Advocate for Respondent No.1 – NIA.

Ms. J.S. Lohakare, APP for Respondent No.2 – State.

Mr. Pradip Bhale, Dy. S.P. NIA present.

CORAM

: A.S. GADKARI &

MILIND N. JADHAV, JJ.

RESERVED ON

: 11th November, 2022.

PRONOUNCED ON

: 18th November, 2022.

JUDGMENT

. By this Appeal, filed under Section 21(4) of the National Investigation Agency Act, 2008 (for short “NIA Act”), Appellant has challenged the Order dated 12.07.2021 passed by the Special Judge,

Greater Bombay (for short “**Trial Court**”) below Exh.377 in Special Case No.414 of 2020 alongwith Special Case No.871 of 2020, rejecting the Appellant's application for bail.

2. Appellant is arraigned as accused No.10 in FIR No. RC-01/2020/NIA/MUM registered by National Investigation Agency (for short “**NIA**”) under Sections 120-B, 115, 121, 121-A, 124-A, 153, 201, 505(1)(b) and 34 of the Indian Penal Code, 1860 (for short “**IPC**”) and under Sections 13, 16, 17, 18, 18B, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 (for short “**UAP Act**”).

3. Facts which emerge from record in the present Appeal are as under:

- (i) On 31.12.2017, Bhima Koregaon Shaurya Din Prerana Abhiyan organised an event called ‘Elgaar Parishad’ in Shaniwarwada, Pune (for short “**Elgar Parishad Program**”). It was decided to celebrate 200th anniversary of the historic battle of Bhima Koregaon on 01.01.2018 by more than 200-250 Social organisations under the banner of ‘*Bhima Koregaon Shaurya Din Prerana Abhiyan*’. The program was held from 2:30 p.m. to 10:00 p.m. On 01.01.2018, mobs bearing saffron flags attacked persons travelling to and returning from Shaniwarwada Pune. There was large scale violence and one youth lost his life.

- (ii) A Zero(0) FIR was registered on 02.01.2018 at Pimpri Chinchwad Police Station, Pune by an eye-witness, Ms. Anita Salve under various provisions of IPC, Arms Act,1959, Maharashtra Police Act, 1951 and Scheduled Castes and Scheduled Tribes (Previsions of Atrocities) Act, 1989) (for short “**SC & ST Act**”) alleging involvement of Sambhaji Bhide, Milind Ekbote and their followers for the attack and violence. A State wide bandh was also called by several Dalit, OBC, Maratha and Muslim organisations against the attacks across Maharashtra State thereafter.
- (iii) On 08.01.2018, first informant Mr. Tushar Damgude, registered FIR No. 4 of 2018 under the provisions of Sections 153-A, 505(1)(b), 117 read with 34 of IPC stating that, the Elgar Parishad Program organised at Shaniwarwada, Pune on 31.12.2017 was attended by him at around 2:00 p.m., wherein there were a few speakers, compere, singers and other performers who performed on stage. That the speakers gave provocative speeches, their performances were provocative in nature and had the effect of disrupting columnal harmony. It is stated that banned terrorist organisation Communist Party of India (Maoist) (for short “**CPI(M)**”) had an organisational role to play in

arranging the said program. CPI(M) wanted to infiltrate, inculcate and permeate its ideology amongst the masses, mostly impoverished classes and misguide them towards violent unconstitutional activities. According to the complainant Kabir Kala Manch's (for short "KKM") Sudhir Dhawale, other members and activists had performed provocative street plays in different areas of Maharashtra earlier, made malice speeches and spread false history, made disputable statements and objectionable slogans inciting passion and hatred to disrupt communal harmony, sung songs and participated in road dramas. On 31.12.2017, these very activists amongst others performed skit / stage plays at the 'Elgar Parsihad Program'. As a direct result of which, on 01.01.2018 there were incidents of violence, arson, stone pelting and caused death of an innocent person near Bhima Koregaon, Pune.

- (iv) Houses of Rona Wilson (Accused No. 2), Surendra Gadling (Accused No. 3), Sudhir Dhawale (Accused No. 1), Harshali Potdar, Sagar Gorkhe (Accused No. 13), Deepak Dhengale, Ramesh Gaichor (Accused No. 14) and Jyoti Jagtap (Accused No. 15) were searched by the police. Articles and incriminating material seized during search was sent to the

Forensic Science Laboratory, Pune. Analysis of the seized electronic / digital articles confirmed that accused Surendra Gadling, Rona Wilson, Shoma Sen (Accused No. 4), Mahesh Raut (Accused No. 5), Comrade M. @ Milind Teltumbade (WA-1) (now deceased), Comrade Prakash @ Navin @ Rituprn Goswami (WA-2) (absconding), Comrade Manglu (WA-3) (absconding), Comrade Deepu (WA-4) (absconding) are involved in the crime. During investigation, the investigating officer invoked provisions of Sections 13, 16, 17, 18, 18(B), 20, 38, 39, and 40 of the UAP Act.

- (v) Accused Surendra Gadling, Rona Wilson, Smt. Shoma Sen, Mahesh Raut and Sudhir Dhawale were arrested on 06.06.2018. Residences of Smt. Shoma Sen and Mahesh Raut were searched, and Police seized digital devices and other articles. Articles and material seized showed involvement of more accused, viz; Varavara Rao (Accused No. 6), Arun Ferreira (Accused No. 8), Smt. Sudha Bharadwaj (Accused No. 9), Vernon Gonsalves (Accused No. 7), Stan Swamy (Accued No. 16), Gautam Navlakha (Accused No. 11) and Appellant (Accused No.10). Their names were added as accused on 23.08.2018 in present crime.

- (vi) Searches were conducted on 28.08.2018 at the residences/workplaces of Varavara Rao, Smt. Sudha Bharadwaj, Arun Ferreira, Gautam Navlakha, Stan Swamy and Vernon Gonsalves. Police arrested Varavara Rao, Smt. Sudha Bharadwaj, Gautam Navlakha, Arun Ferreira and Vernon Gonsalves and put them under house arrest. On 15.11.2018, Pune Police filed chargesheet under Sections 153-A, 505(1)(b), 117, 120-B, 121, 121-A, 124-A and 34 IPC and Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the UAP Act against Sudhir Dhawale, Surendra Gadling, Shoma Sen, Mahesh Raut, Rona and five absconding accused persons namely Kishan da @ Prashanto Bose (WA-5), Milind Teltumbde, Prakash @ Rituparn Goswami, Deepu and Manglu. Subsequently, on 21.02.2019, Police filed Supplementary Chargesheet under Sections 153-A, 505(1)(b), 117, 120-B, 121, 121-A, 124-A & 34 IPC and Sections 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the UAP Act against Varavara Rao, Arun Ferreira, Vernon Gonsalves and Sudha Bharadwaj and one absconding accused namely Ganapathy @ Mupalla Laxman Rao (WA-6).
- (vii) Appellant filed Writ Petition No.4596 of 2018 on 17.09.2018 in this Court seeking quashing of FIR No.4 of 2018.

- (viii) On 15.11.2018, chargesheet was filed against the first five accused in the above case under various provisions of IPC and UAP Act.
- (ix) On 21.12.2018, this Court dismissed Writ Petition No.4596 of 2018, however extending protection of three weeks to the Appellant to approach the Supreme Court.
- (x) On 14.01.2019, Supreme Court dismissed SLP (Cri.) No.59 of 2019 filed by the Appellant but extended his protection from arrest for a period of four weeks to enable him to apply for regular pre-arrest bail before the Trial Court.
- (xi) Appellant filed Anticipatory Bail Application (ABA) before the Special Court, Pune which was dismissed on 01.12.2019. He approached this Court and filed ABA No.314 of 2019 in which he was granted protection from arrest from time to time.
- (xii) On 21.02.2019 a further supplementary Chargesheet was filed against four more accused persons in the above case (but not against Appellant).
- (xiii) On 24.01.2020, the Under Secretary to the Government, Ministry of Home Affairs, New Delhi, directed the Respondent No. 1 - NIA to take up the investigation of FIR

No. 4/2018 of Vishrambaug Police Station. NIA re-registered FIR RC-01/2020/NIA/Mum u/s. Sections 153-A, 505(1)(b), 117, 34 IPC and Sections 13, 16, 18, 18B, 20 and 39 of UAP Act on 24.01.2020.

(xiv) On 14.02.2020, Appellant's ABA was dismissed by this Court against which he approached the Hon'ble Supreme Court. SLP (Cri.) No.1916 of 2020 against rejection of his ABA was dismissed by the Supreme Court on 08.04.2020.

(xv) Appellant surrendered himself on 14.04.2020 pursuant to the directions passed by the Supreme Court in its Order dated 08.04.2020.

(xvi) On 09.10.2020, NIA filed Chargesheet against Appellant. Appellant filed Regular Bail Application under Section 439 of the Cr.P.C. below exhibit 377 in the Special Court – NIA, Greater Bombay. By Order dated 12.07.2021, the learned Special Judge rejected Appellant's Bail Application. Hence, Appellant is before us in Appeal against the Order dated 12.07.2021.

3.1. Respondent No.1 - NIA has filed Affidavit-in-Reply dated 15.11.2021. Appellant has tendered a separate compilation of 21 Judgments on 25.03.2022, some of which have been referred to by the Appellant during the course of arguments. Appellant has also tendered

a separate convenience compilation of 169 pages sought to be relied upon by him in support of his case at the time of hearing.

NIA has submitted a separate convenience compilation (without index) of 341 pages at the time of hearing of the present case. NIA has also submitted a compilation of 4 judgments. The aforementioned compilations are taken on record. Most of the documents and judgments sought to be relied upon by both parties are common.

4. We have heard Mr. Mihir Desai, Senior Advocate for the Appellant, Mr. Sandesh Patil, Special Public Prosecutor for NIA and Ms. J.S. Lohakare, APP for the State of Maharashtra and with their able assistance perused the entire record of the case produced before us.

5. We have perused the Chargesheet. Charge against the Appellant is contained in paragraph No.17 of the same. Paragraph No.17.1 discloses that Appellant alongwith other co-accused is a member of the CPI(M) and deeply involved in furtherance its agenda through different means. Paragraph Nos.17.2 to 17.7 refer to CPI(M) and its organisational network in great detail. Paragraph No.17.8 lists 10 organisations as frontal organisations of CPI(M) which are used by members of CPI(M) to further its agenda. Specific charge against Appellant, a gist of which is reproduced hereunder for the sake of

brevity:

- (i) In paragraph No.17.24 it is charged that Appellant had attended a meet organised by RDF at Hyderabad in 2012 and vehemently espoused the cause of reinvention of Dalit Militancy as well revolutionary resurgence under the flag of CPI(M). That RDF is a banned organisation in the State of Andhra Pradesh for its work in furtherance of the CPI(M) agenda;
- (ii) paragraph No.17.25 states that the Appellant, working in Goa Institute of Management took active participation in Elgar Parishad Program;
- (iii) paragraph No.17.29 states that the Appellant was the General Secretary of CPDR and member of Anuradha Ghandy Memorial Committee, both front organisations of CPI(M);
- (iv) paragraph No.17.30 states that Appellant was one of the convenors of Elgar Parishad Program and was present at the venue;
- (v) paragraph No.17.31 states that Appellant attended International Conferences under the guise of its academic visits at Canada, Pakistan, USA, France etc. That he used to

exchange literature on ideology, training and work strategy of CPI(M) with International Communist Organisations. That he is the real elder brother of wanted accused Milind Teltumbde, CCM and Secretary of Maharashtra – Madhya Pradesh – Chhattisgarh (MMC) Zone of CPI(M). That he met his brother during his urban area visits and shared literature of Maoist ideology collected by him during International Conferences;

- (vi) paragraph No.17.32 states that he took efforts to release one Murugan, a CPI(M) cadre from jail as well as for release of G.N. Saibaba, another convicted accused in a CPI(M) related case. That he appreciated the work of Shoma Sen (co-accused) in connection with activities of CPDR at Nagpur;
- (vii) paragraph No.17.33 states that Appellant's role was appreciated by the Central Committee of CPI(M) in connection with Elgar Parishad Program.
- (viii) paragraph No.17.35 states that Appellant delivered a speech in a program organised in the memory of Comrade Naveen Babu, a Senior leader of CPI(M) under the banner of 'Comrade Naveen Babu Memorial Lecture';
- (ix) paragraph No.17.37 states that Milind Teltumbde was expanding the Naxal movement of Maoist in urban areas

with the help of Appellant and took guidance from him.

That he inspired Milind Teltumbde to join CPI(M) movement;

- (x) paragraph No.17.38 states that he visited Universities and Institutions in India and abroad to deliver speeches related to the left movement.

6. Mr. Desai would submit that Appellant is a highly educated academician, author and social scientist who has received many accolades for his works. He has served in the Corporate world and pursuant to his retirement is engaged in academic work with various Institutions. He submitted that Appellant's principal activity is exhibited through his writings on 'Dalits' and the 'Social Structure' of the Society at large.

6.1. That Appellant is 73 years old today. He holds a degree of Bachelor of Engineering in Mechanical Engineering from VNIT, Nagpur; MBA from Indian Institute of Management, Ahmedabad; Doctorate in Management from the University of Mumbai in Cybernetic Modelling for Public Systems and Doctorate of Literature (Honorary) conferred by Karnataka State University, Mysore. He has worked as Executive Director of Bharat Petroleum and Managing Director and CEO of Petronet India Limited until 2010. Thereafter he joined Indian Institute of Technology, Kharagpur as Professor of

Management until 2016. He has authored 26 books published nationally and internationally and pioneered a theoretical critique on Neoliberal Globalization vis-a-vis Dalits and other oppressed masses. He has widely travelled across India and the world and was invited by Universities in the USA, Canada and Europe for delivering lectures on Contemporary Social, Economic and Political issues in academics. He has contributed his writings extensively to leading news papers, magazines and booklets. He has participated in numerous fact findings teams over the last three decades which have produced widely acclaimed reports and issues such as Tsunami Rehabilitation efforts, Caste Atrocities, Communal Conflagration etc. He has worked on the editorial boards of *Samaj Prabodhan Patrika*, *Vidrohi* and many such other progressive publications and contributes widely to other progressive journals like Economic and Political Weekly, Mainstream, Frontier and Seminar. He is recipient of several prestigious awards and recognition from reputed Public Institutions / Foundations across the country. He was the President of the last Vichar Vedh Sammelan, a prestigious Forum for Progressive Intellectuals in Maharashtra in 2007. At the time of his arrest he was working in the Goa Institute of Management, Goa as a Senior Professor. He suffers from a number of chronic ailments and age infirmities and was under treatment for Chronic Bronchial Asthma, Cervical Spondylitis, Supraspinatus Tendinosis and Prostatomegaly at the time of arrest and is under

regular medication for control of hypertension or depression. The medical record of Appellant being part of the second supplementary chargesheet are not in dispute.

6.2. He has made the following submissions with a direct reference to the present case:

- (i) Considering his credentials, Appellant received a phone call from Justice P.B. Sawant (Retd) through his Secretary, however since he was busy Justice Kolse-Patil (Retd) spoke to him and invited him to attend the Conference which they were planning to celebrate on the occasion of 200th year of the Bhima – Koregaon battle in Maharashtra. Since Appellant was busy with a newly started Program at the Goa Institute of Management, he excused himself for attending the meeting. However, he was convinced to be a part of the Convenor Committee to which he agreed considering the above request. Sometime in November – December 2017 Appellant received through whats-app a copy of the pamphlet of the Program. Appellant disagreed with the agenda of Elgar Parishad Program printed in the pamphlet and wrote a critical article for *The Wire* (a digital news portal) titled “*The Myth of Bhima Koregaon Reinforces the Identities It Seeks to Transcend*”. This article received critical

condemnation as it angered Dalits across the country.

Mr. Desai submitted that, this instance which is a prelude to the Elgar Parishad Program in the case of Appellant establishes his intellectual independence and thinking as opposed to the Elgar Parishad Program.

- (ii) That Appellant has been indicted in the second Supplementary Chargesheet filed by NIA stating that Appellant is one of the Convenor of the Elgar Parishad Program since his name appears in the pamphlet / invitation card.
- (iii) That Appellant visited Pune on 30.12.2017 and 31.12.2017 to attend the marriage of son of his close friend, Mr. Joshi. He travelled from Goa to Pune on 30.12.2017 alongwith his wife and two drivers in his personal car. He reached Pune at 7:30 p.m. on 30.12.2017. He and his wife were put up by his friend in Shreyas Hotel. On the following day, he and his wife attended the wedding reception of his friend's son and checked out of Shreyas Hotel at 10:00 a.m. On their way back to Goa they decided to pay a brief visit to Shaniwarwada to meet their relatives which was at a distance of 3 kms. from Shreyas Hotel. They spent some time between 10:00 a.m. and 12:30 p.m. at Shaniwarwada

and thereafter left in their car towards Goa. They reached Goa at 11:00 p.m. with a brief halt at Satara where they changed all 4 tyres of their car due to puncture.

Mr. Desai would submit that according to NIA presence of Appellant in Pune on the date of Elgar Parishad Program and his brief visit to Shaniwarwada was indicative of the fact that Appellant being one of the *Nimantrak* (inviter) had come to oversee the preparation of the program venue and was connected with the Elgar Parishad Program.

- (iv) That Appellant did not deliver any speech at the Elgar Parishad Program which commenced from 02:30 p.m. and went until until 10:00 - 10:30 p.m. in the night; That according to NIA and the Supplementary Chargesheet namely paragraph Nos.17.2 to 17.51, incriminating material like books, articles, documents and lengthy quotes, *inter alia*, pertaining to CPI(M) were seized from accused No. 2 - Rona Wilson which refer to the organisation's policy, formulations of ideological, political and organisational issues and Appellant was instrumental in bringing the aforesaid material in pen-drive and data base while attending International Conferences abroad and disseminating the information to the cadre of CPI(M) and thus

was an active member of CPI(M).

For record it needs to be stated here that CPI(M) is a banned terrorist organisation at Serial No.34 under the First Schedule to the UAP Act.

Mr. Desai would submit that as against this allegation the alleged material referred to and relied upon by NIA is readily available on the internet on several security and political websites like security portal www.bannedthought.net and in several books published by reputed publishers and hence without specifying the material and disclosing the same it would be preposterous to charge the Appellant. He submitted that NIA has failed to disclose and put forth the alleged material not only before the Trial Court but even before this Court.

- (v) That according to the prosecution several documents have been recovered and seized from the computer of accused No.2 Rona Wilson, and four letters refer to the name 'Anand', 'Comrade Anand' and 'brother Anand' which are indicative of the fact that Appellant is an active member of CPI(M). Appellant is the elder brother of Milind Teltumbde (wanted accused No.1) who was leader of the Central Committee (CC) of CPI(M) overlooking its urban area

operations and Appellant was in constant and regular touch with him in supplying the aforementioned incriminating material to the CPI(M) for dis-semination. That Appellant was the think tank of the banned activities of CPI(M) and intellectually and ideology connected with CPI(M). That therefore Appellant was an active member of CPI(M) and actively coordinated and worked with the various co-accused in the present case in furthering its agenda. He submitted that Milind Teltumbde incidentally has been eliminated in an encounter with the security forces some time last year and is no more alive. Mr. Desai would submit that in so far as this allegation of NIA is concerned, it is far from remote to consider even such a case without any material proof against Appellant. That Appellant being member of the Committee for Protection of Democratic Rights (for short “CPDR”) and having attended its meetings since 2002 or having attended International Conferences does not automatically translate into the Appellant being an active member of CPI(M). He submitted that Appellant has produced all details of his visits abroad for attending International Conferences etc. which have either been sponsored by his employers or he has paid for such visits from his own pocket. According to him the allegation that CPI(M) has sponsored his foreign visits is a

preposterous allegation as there is no material evidence brought before the Court and on the contrary Appellant has in fact placed every detail of the Conferences / purposes and places visited by him abroad.

(vi) That prosecution has relied upon statements of two key witnesses which have referred to the Appellant as having being in touch with Milind Teltumbde (his younger brother) for strategizing training and influencing the ideology of CPI(M) to its cadres. To this Mr. Desai would submit that Appellant has never met Milind Teltumbde for the last 30 years since Milind went underground and the evidence of the key witnesses is purely hearsay which needs to be tested by this Court *prima facie*.

(vii) That NIA has heavily relied on a chit of Accounts for 2017 and one specific entry therein which reads as, “Anand T. (===R === 90 T from Surendra (through Milind)”. According to NIA this chit is indicative of Appellant having received funds from the CC of CPI(M) from Surendra (Accused No.3 - Surendra Gadling) and through Milind (wanted accused No.1) being brother of Appellant. That these funds were received for carrying out and furthering the anti national agenda of CPI(M).

(viii) Mr. Desai would further submit that there has been no recovery of any incriminating material from Appellant. That his antecedents are spot clean without any blemish and that there is no recovery of any cash or receipt of any monies in his bank account. That he did not play any active role in the Elgar Parishad Program nor does he have any nexus with the CPI(M). That there is no proof or any material brought on record even *prima facie* to show that Appellant's international visits were sponsored by CPI(M) and he had brought incriminating material from abroad and thus no *prima facie* case has made out to incarcerate him in the present case.

7. Mr. Desai in support of his submissions on behalf of Appellant has referred to the judgments relied upon by NIA and additionally relied upon the following decisions:-

1. *Arup Bhuyan Vs. State of Assam*¹;
2. *Indra Das Vs. State of Assam*²;
3. *Union of India Vs. K.A. Najeeb*³;
4. *Kamlesh & Anr. Vs. State of Rajasthan & Anr*⁴;
5. *Vikram Vinay Bhave Vs. State of Maharashtra*⁵;
6. *Dhan Singh Vs. Union of India*⁶;

1 (2011) 3 SCC 377

2 (2011) 3 SCC 380

3 (2021) 3 SCC 713

4 2019 SCC Online SC 1822

5 2021 (2) Bom CR (Cri.) 564

6 2019 SCC Online Bom 5721

7. *Thwaha Fasal Vs. Union of India* ⁷;
8. *Sudesh Kedia Vs. Union of India* ⁸;
9. *Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri & Anr.* ⁹;
10. *State of Bihar Vs. Radha Krishna Singh & Ors.* ¹⁰;
11. *H. Siddiqui Vs. A. Ramalingam* ¹¹;
12. *Ramji Dayawala & Sons (P) Ltd. Vs. Invest Import* ¹²;
13. *Ashim Vs. National Investigation Agency* ¹³;
14. *Konnath Muralidharan Vs. State of Maharashtra* ¹⁴;
15. *Saidulu Narsimha Singapanga Vs. State of Maharashtra* ¹⁵;
16. *Common Cause & Ors. Vs. Union of India & Ors.* ¹⁶;
17. *Gautam Navlakha Vs. National Investigation Agency* ¹⁷;
18. *Devendar Gupta & Ors. Vs. National Investigation Agency* ¹⁸;
19. *M. Londhoni Devi Vs. National Investigation Agency* ¹⁹;
20. *Union of India Vs. Shiv Shanker Kesari* ²⁰;
21. *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors.* ²¹

7.1. Thrust of Mr. Desai's submissions while referring to the ratios of the aforesaid judgments is to persuade us to consider the settled legal position about points / criteria to be considered for deciding application for bail on the basis of following parameters:-

(i) whether there is any prima facie or reasonable ground to

7 2021 SCC Online SC 1000

8 (2021) 4 SCC 704

9 (2011) 2 SCC 532

10 (1983) 3 SCC 118

11 (2011) 4 SCC 240

12 (1982) 1 SCC 80

13 (2022) 1 SCC 695

14 Cri.BA.No.488/2018

15 Cri.BA.No.3456/2019

16 (2017) 11 SCC 731

17 2021 SCC Online SC 382

18 (2014) 2 ALD (Cri) 251

19 (2007) 4 Gau LR 120 (Gau)

20 (2007) 7 SCC 798

21 (2020) 7 SCC 1

believe that accused committed the offence;

- (ii) nature and gravity of charge;
- (iii) severity of punishment in the event of conviction;
- (iv) danger of accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with;
- (viii) danger, of course, of justice being thwarted by grant of bail;
- (ix) when it comes to offences punishable under special enactments, such as the UAP Act, something more is required to be kept in mind in view of the special provisions contained in Section 43-D of the UAP Act, inserted by Act 35 of 2008 w.e.f. 31.12.2008;
- (x) that the doctrine of “*guilt by association*” does not apply in the present case and mere membership of the banned organisation assuming at the highest will not make a person criminal unless he resorts or incites people to violence or creates public disorder by violence or incitement to violence under the UAP Act; and
- (xi) that merely because the Appellant has been arraigned as co-accused in the Supplementary Chargesheet would not lead to the presumption that he is involved in any of the terrorist activities or terrorist act of the banned organisation CPI(M) unless it is *prima facie* proved to the contrary with cogent material on record.

7.2. He has therefore submitted that the Appellant deserves to be enlarged on bail in the present case.

8. *PER-CONTRA*, Mr. Patil, learned Special Public Prosecutor appearing for NIA has laboriously and vehemently opposed the Appellant's case for enlargement on bail. He has painstakingly taken us through the gamut of NIA's case against the Appellant which is reflected in the second Supplementary Chargesheet filed by NIA. He has made the following submissions to oppose grant of bail to the Appellant.

(i) That Appellant is an active and senior member of CPI(M) working in the urban areas and he was in contact with the other arrested co-accused namely Sudhir Dhawale, Rona Wilson, Surendra Gadling, Mahesh Raut, Shoma Sen, Varavara Rao, Gautam Navlakha, Smt. Sudha Bharadwaj, Arun Ferriera, Vernon Gonsalves, Stan Swamy & Hany Babu and Harshali Potdar who are members of CPI(M) and has been actively involved in furthering the larger conspiracy and commission of various crimes on behalf of the terrorist organisation.

(ii) That Appellant was the General Secretary of CPDR and a member of Anuradha Ghandy Memorial Committee (for short "**AGMC**") which are frontal organisations of the CPI(M)

and which work on the direction of CPI(M).

- (iii) Appellant was one of the Convenor of the Elgar Parishad Program and specifically marked his presence at the venue in Shaniwarwada, Pune on 31.12.2017.
- (iv) That Appellant in his capacity as General Secretary of CPDR took efforts for the release of a CPI(M) cadre named Murugan and G.N. Saibaba (another convict) accused in a CPI(M) related case.
- (v) That Appellant had appreciated the works and efforts of one of the co-accused namely Shoma Sen in connection with the activity of CPDR at Nagpur.
- (vi) That Appellant was instrumental in organising fact finding missions on the direction of CPI(M).
- (vii) That Appellant's role in connection with the crime which followed after the Elgar Parishad Program was appreciated by the Central Committee of CPI(M) by giving directions to Appellant and other co-accused to continue with the nefarious activities of CPI(M).
- (viii) That CPI(M) has sponsored and allocated Rs.10,00,000/- to the Appellant to pay for his international campaigns and visits for furtherance of CPI(M)'s agenda.

(viii) That the material recovered and seized from one of the co-accused (Rona Wilson) establishes that after the Bhima Koregaon incident on 01.01.2018 wherein one person lost his life, Milind Teltumbde, younger brother and wanted accused of Appellant appreciated the agitation as being very effective and directed Rona Wilson to exploit the death of the youth and to prepare future agitations and propaganda. That while doing so, Appellant's name figured in the letter as "brother Anand".

(ix) That CPI(M) used the platform of Elgar Parishad Program to further its agenda and ideology with the help of members of its frontal organisation like Kabir Kala Manch (KKM) and other underground urban cadres. That Milind Teltumbde (wanted co-accused) was deeply inspired by the Appellant for joining the CPI(M) movement and he regularly met Appellant for taking his guidance to further the movement of CPI(M).

(x) That the Appellant during his international campaigns and visits abroad visited Philippines, Peru, Turkey and other countries and brought literature and videos related to Maoist ideology, Maoist tactics, Weapons used by them, Planning of sudden attacks inspite of routine Tactical Counter Offensive

Campaign (TCOC) during Naxal weeks, expansion and extension of zones and recruitment of cadres for CPI(M), all of which was used for training and strategic development of party members of CPI(M) after approval in CC meetings in the Abujmaad area.

- (xi) That Appellant has delivered speeches on the Left movement in India and abroad and has tried to align “Dalit movement” with the “armed revolutionary movement” as a well thought-out strategy of CPI(M).
- (xii) That the incriminating documents seized from the other co-accused in the present case refer to the Appellant and his role in furthering Maoist ideology in overthrowing the democratically elected government in our country.
- (xiii) That Appellant attended a conference of the banned organisation called Revolutionary Democratic Front (RDF) in April 2012 just a few months before it came to be banned. That Appellant and some of the co-accused in the present case are office bearers of the Anuradha Ghandy Memorial Trust and conspired to organize events to celebrate 50th anniversary of Naxalbari movement and involve students in the same to further the ideology and terrorist activities of CPI(M).

8.1. He has referred to and relied upon a compilation of four judgments viz; (i) *National Investigation Agency Vs. Zahoor Ahmad Saha Watali* ²², (ii) *Hany Babu Vs. National Investigation Agency* ²³, (iii) *Jyoti Jagtap Vs. National Investigation Agency* ²⁴ and (iv) *Anand Teltumbde Vs. State of Maharashtra* ²⁵ and submitted that the role of the Appellant in the present crime has to be considered on a higher footing as he being the think tank and a senior and active member of the CPI(M) than the role played by Hany Babu (Accused No.12) or for that matter even Jyoti Jagtap (Accused No.15) who have been denied bail by this Court in the same case. He submitted that Appellant's role needs to be distinguished critically. He therefore submitted that, the present Appeal be dismissed.

9. It is to be noted that the UAP Act was brought into existence to meet extraordinary situations and in particular, to deal with the orchestrated crimes through organisations, aimed at destabilisation or causing damage to the country. The UAP Act enables the Government to impose prohibition on the organisations after following the prescribed procedure. Once an organisation is prohibited under the UAP Act, any person associated with it, becomes amenable for trial, for the offences punishable under the various provisions of the Act, apart from other penal enactments. The provisions of the Act also get

22 (2019) 5 SCC 1

23 Cri. Appeal. 351 of 2022

24 Cri. Appeal. 289 of 2022

25 Cri. W.P. 4596 of 2018

attracted, if an individual, though not associated with any prohibited organisation, indulges in disruptive and terrorist activities, in association with other individuals.

10. Having regard to the gravity of the offences that become triable under the provisions of the Act, the Parliament introduced Section 43-D of the UAP Act, making it some what difficult for a person accused of such offence, to get bail. We have referred to the provisions of Section 43-D(5) and (6) in the present case.

11. From a perusal of the said provisions, especially the proviso to sub-section (5) of Section 43-D, it becomes clear that the Court dealing with the case shall not grant bail to any person, if, on a perusal of the case diary, or the charge-sheet, it is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true. This is an extraordinary phenomenon and a deviation from the ordinary Criminal Law. Naturally, therefore the approach to such a case is required to be cautious and careful. By its very nature, the exercise to be undertaken by a Court in relation to this provision is therefore somewhat typical and delicate.

12. The expression of opinion in this behalf must be in such a way that, it does not have any bearing upon the trial. The purpose for which the Parliament employed the expression “reasonable grounds for believing” and "*prima facie* true" must be clearly borne in mind on

the basis of the material placed before the Court. However, the formation of opinion must be, for the limited purpose of considering the application for bail only.

13. In this context, we may usefully refer to the guidelines laid down by the Division Bench of the High Court of Andhra Pradesh in the decision of *Devendra Gupta & Ors.* (22nd supra) which would provide adequate guidance for the Court to form an opinion in respect of accusation in such cases, as to whether the accusation in such cases is “*prima facie* true”. The Court has set down the following parameters:-

- (i) Whether the accused is/are associated with any organization, which is prohibited through an order passed under the provisions of the Act;
- (ii) Whether the accused was convicted of the offences involving such crimes, or terrorist activities, or though acquitted on technical grounds; was held to be associated with terrorist activities;
- (iii) Whether any explosive material, of the category used in the commission of the crime, which gave rise to the prosecution; was recovered from, or at the instance of the accused;
- (iv) Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the accused, at or around the scene of occurrence; and
- (v) Whether the accused was/were arrested, soon after the

occurrence, on the basis of the information, or clues available with the enforcement or investigating agencies.

14. It is seen that if the material available with the prosecution, be it the form of case diary, or the chargesheet, reveals existence of any of the factors, referred to above, the Court can form an opinion that there exist reasonable grounds to show that the accusation is "*prima facie* true". In the absence of such, or other similar factors, formation of opinion may be to the detriment of the Appellant and would make a serious dent into the realm of his personal liberty. In a way, it can be said that the exercise akin to this one is provided for under the Preventive Detention law. What becomes common to both situations is that, the persons are deprived of liberty, without trial. It is too well-known that when a preventive detention is ordered, the Court or authority is placed under obligation to scrutinize the adequacy of the material, apart from compliance with the procedural requirements.

15. In view of the above settled legal position, we will have to *prima facie* refer to the material placed before us with caution.

16. Before we advert to the material, it will be apposite to refer to 3 Supreme Court decisions which are relied upon by both sides specifically in respect of the power of this Court to decide such an application.

17. Both parties have referred to the case of *National Investigation Agency Vs. Zahoor Ahmad Shah Watali (1st supra)* in support of their respective submissions while considering the prayer for bail in relation to offences under UAP Act and Special enactments. It is submitted that Court is required to record its opinion that there are reasonable grounds for believing that the allegations and accusations against such person are “*prima facie* true” and such recording of satisfaction would mean that the material/evidence recovered, seized and collated by the Investigating Agency in reference to the accusation against accused in the FIR must prevail until contradicted and/or disproved by other evidence and that such material on the face of it shows complicity of accused in the commission of the stated offence. Our attention has been drawn to paragraph Nos.23 and 24 of the decision which is the settled law and it is urged to record a finding on the basis of broad probabilities regarding involvement of Appellant in the crime which according to the Appellant is far from remote. Paragraph No.24 of the said judgment is relevant and read thus:-

“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.”

17.1. In the case of *Dhan Singh (10th Supra)* decided by a Co-ordinate Bench of this Court, the interpretation of the words “*prima facie*” coupled with the word “true” and the exercise which the Court needs to undertake in this context on the basis of material on record, as also interpretation of the words “reasonable ground” as appearing in Section 43-D(5) of UPA Act is explained and highlighted. We find it useful to reproduce paragraph No.17 and 18 for reference which read thus:

“17. When the word "prima facie" is coupled with the word "true", it implies that the court has to undertake an exercise of cross- checking the truthfulness of the allegations made in the complaint, on the basis of the materials on record. If the court finds, on such analysis, that the accusations are inherently improbable or wholly unbelievable, it may be difficult to say that a case, which is "prima facie true", has been made out. In doing this exercise, the court has no liberty to come to a conclusion, which may virtually amount to an acquittal of the accused. Mere formation of opinion by the court, on the basis of the material placed before it, is sufficient. In the matter of Jayanta Kumar Ghosh (supra) the Hon'ble Division Bench of Gauhati High Court interpreted provisions of Section 41D(5) of the NIA Act and exhaustively dealt with meaning of words "prima facie, true, and reasonable ground". Paragraphs 69, 74, 78 and 82 of the said judgment can be quoted with advantage.

“69 From the meaning, attributed to the word "prima facie", by various dictionaries, as indicated above, and the observations, made by the Supreme Court, in its decisions, in The Management of the Bangalore Woollen Cotton and Silk Mills, (supra) what clearly follows is that prima facie is a Latin word, which means, At first sight or glance or on its face and in common law it is referred to as "the first piece of evidence of fact" i.e., considered true unless revoked or contradicted.”

“74 The term "true" would mean a proposition that the accusation brought against the accused person, on the face of the materials collected during investigation, is not false. The terms false again would mean a proposition, the existence of

which cannot be a reality. While arriving at a finding whether there are reasonable grounds for believing that the accusation against the accused is prima facie true or false, the court can only look into the materials collected during investigation, and on its bare perusal should come to a finding that the accusation is inherently improbable, however, while so arriving at a finding the court does not have the liberty to come to a conclusion which may virtually amount to acquittal of the accused."

"78 The expression, "reasonable ground", means something more than prima facie ground, which contemplates a substantially probable case for believing that the accused is guilty of the offence(s) alleged. Under Section 437 Cr.P.C. an accused is not to be released on bail if there appear reasonable grounds for believing that he has been guilty of an offence, which is punishable with death or imprisonment for life. Under Section 437 Cr.P.C., the burden is on the prosecution to show existence of reasonable ground for believing that the accused is guilty. Hence, the presumption of innocence, which always runs in favour of the accused, is displaced only on the prosecution showing existence of reasonable ground to believe that the accused is guilty. [See Union of India v. Tharmssharasi, (1995) 4 SCC 190 and Union of India v. Shiv Shankar Kesari, (2007) 7 SCC 798.]"

"82 In short, thus, while the Special Court, constituted under the NIA Act, does not suffer from the limitations, which the TADA courts had by virtue of the provisions of Section 20(8), read with Section 20(9) thereof, the fact remains that the Special Court, not being a court of Sessions or of the High Court, cannot exercise the powers of the Court of Sessions or High Court under Section 439 Cr.P.C. Hence, while dealing with the scheduled offences, covered by the proviso to sub-Section (5) of Section 43-D, Special Court, constituted under the NIA Act, would suffer not only from the limitations imposed by clauses (i) and (ii) of sub-Section (1) of Section 437, but also by the proviso to sub-Section (5) of Section 43D of the UA(P) Act, 1967, wherever the provisions, contained in the proviso to Section 43D(5), would be applicable."

18. *In the matter of Bharat Mohan Rateshwar (supra) and Ashringdaw Warisa @ Partha Warisa (supra) while reiterating the similar position of the law in this regard, it is reiterated that in a case, investigated by the agency, if the Special Court forms*

an opinion that there are reasonable grounds for believing that the accused has committed an offence punishable with death or imprisonment for life, the Special Court would have no jurisdiction to grant bail.”

17.2. The next decision is of the Supreme Court in the case of *Thwaha Fasal (11th supra)*. Paragraph No.23 is relevant and reads thus:-

“23. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the Court while examining the issue of prima facie case as required by sub-section (5) of Section 43D is not expected to hold a mini trial. The Court is not supposed to examine the merits and demerits of the evidence. If a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is.”

17.3. As seen, the Supreme Court in the case of *Watali (1st supra)* has held that at this stage, as is the Appellant’s case, it is not the duty of the Court to weigh the evidence meticulously but to arrive at a finding based on broad probabilities. Therefore we have carefully perused the material available on record relied upon by NIA against the Appellant in the context of the provisions of Section 43-D(5) of the UAP Act.

18. The material relied by the NIA against the Appellant for his alleged role in the present crime is as under:-

18.1. 1st document:- Letter at page No.1 of NIA's compilation is addressed by one Prakash to Comrade Anand. This letter states that the Central Committee (CC) is pleased with the progress that (Comrade Anand) has made on the Dalit campaign and it calls upon to explore more opportunities to propagate the issue on the international front. It states that the CC has agreed to allocate additional funds (10L yearly) to organise International Seminars and lectures on Dalit issues. That CC has sent funds for (Comrade Anand's) upcoming (9-10 April) Human Rights convention in Paris. It calls upon for co-ordination with friends in America and France and reiterates to keep the fire ablaze. This letter is recovered by NIA from the seized computer of Rona Wilson. According to NIA contents of this letter *prima facie* proved that Appellant addressed as 'dear Comrade Anand' is an active member of CPI(M); the reference 'CC' in the letter to the Central Committee of CPI(M) and Appellant has been congratulated and called upon to organize international seminars and lectures for which funds have been sanctioned by CPI(M).

18.1.1. According to NIA, Appellant therefore is an active member of CPI(M), a banned terrorist organisation under the UAP Act. NIA has contended that the Director of Goa Institute of Management where

Appellant is employed has issued letter dated 10.08.2020 and annexed details of all his travel itinerary and expenses which are reimbursed by the Institute in the case of Appellant. This letter is at page 330 of the compilation of NIA. It is contended by NIA that in so far as Appellant's visit to Paris and Budapest on 09.04.2018 is concerned, he was on leave and expenses were not incurred by the Institute and hence it is to be deduced that the expenses were borne by CPI(M). We have perused the seized letter at page No.1 of the compilation and the letter dated 10.08.2020 issued by the Goa Institute of Management. *Prima facie* reading of both the letters reveal that Appellant has travelled extensively from 11.07.2016 to 05.03.2020 while on leave and being out of office on his own expenses on at least 64 occasions. All such details of the 64 trips have been given in annexure 2 appended to the letter dated 10.08.2020. It is to be noted that Appellant is employed with the Goa Institute of Management as a Senior Professor. That apart, between 24.08.2016 and 31.03.2020 Appellant has travelled for official work of the Institute with all travel expenses paid by the Institute on at least 26 occasions. It is pertinent to note that when the Appellant has travelled at his own expenses outside Goa he has travelled for delivery of addresses, lectures, speeches, as a resource person etc. to renowned Institutions like the London School of Economics, Harvard University, MIT, Michigan University, Paris, Budapest and various universities and reputed institutes in India like

IIT Madras, IIT Hyderabad, IIM Ahmedabad. Letter at page No.1 is not recovered and seized from the custody of Appellant.

18.1.2. Submission of NIA that contents of 1st document *prima facie* invoke provisions of Section 15 of the UAP Act is not acceptable and palatable to us when we read the letter as it is. It is seen that Appellant is a man of intellectual prominence in the field of Dalit ideology / movement and merely because he is the elder brother of wanted accused Milind Teltumbde who had gone underground 30 years ago to espouse the cause of CPI(M) cannot be a sole ground to indict the Appellant and link him to the activities of CPI(M). On reading the letter as it is we cannot presume that Appellant is an active member of CPI(M) without there been any other material to corroborate and support such a theory.

18.2. 2nd document:- Letter dated 08.06.2017 at page No.2 of NIA's compilation is addressed by Comrade M to Comrade Surendra. Paragraph No.2 of this letter refers to 'Comrade Anand'. The relevant portion relied upon by NIA reads thus:

“Secondly, we want to put special focus on the upcoming AGM meet in October. This year being 50th Anniversary of Naxalbari movement at least a day long program should be organised on this theme. Comrade Anand has made a few good suggestion for this programme. The party leadership concurs with it and believes that participation of students in the CPDR must be intensified.”

18.2.1. NIA has contended that reference to 'Comrade Anand' in this

letter is to Appellant and on reading its contents it is deducible that Appellant is actively involved in CPI(M) party work. This letter is also recovered and seized from the computer of Rona Wilson. It is argued that this letter is typed on the letter head of CPI(M), Central Committee and makes a reference to the AGM meet to be held in October and 'Comrade Anand' having made a few good suggestions. Save and except this there is nothing more in this letter which suggests complicity of Appellant, provided taken at the highest that the word 'Comrade Anand' refers to Appellant, which is vehemently denied by Appellant. Certainly on reading this letter it *prima facie* cannot be presumed that Appellant is actively involved in the work of the CIP(M).

18.3. 3rd document:- Letter dated 23.12.2017 at page No. 4 of NIA's compilation addressed by one 'R' to 'Comrade Prakash'. This letters refers to the 'Anand' and it is argued by the NIA that, the name 'Anand' is none other than that of Appellant. The relevant portion of the letter reads thus:

“ In the last few days disturbing reports of encounters have emerged from Gadchiroli. I spoke with Surendra and Arun to constitute a FF team to gauge out the truth above this incident. If possible try to confirm to your side or sent authorized reports / books about these issues. From our side, we are currently in planning stages to finalize the members from Mumbai / Delhi. Shoma will speak to our friend in Nagpur who may join the team. Anand has agreed to coordinate the whole thing. Another prominent issue that we have been trying to raise across the country is political murders of journalists.”

18.3.1. It is submitted by the Respondent that contents of this letter

are serious and Appellant has taken the responsibility of the fact finding team / committee in Gadchiroli. It is pertinent to note that Appellant has been in Goa since 2016 and prior thereto he was employed with IIT, Kharagpur. Appellant has vehemently denied reference to 'Anand' in the said letter to himself. According to NIA the sentence "*Anand has agreed to co-ordinate the whole thing*" relating to fact finding team to gauge the truth about fake encounters in Gadchiroli is an act committed by Appellant which squarely falls within the provisions of Section 15 of the UPA Act. *Prima facie* reading of the letter to our mind does not seem so. There is no other material to show nexus of Appellant to the alleged activity stated in the letter.

18.4. 4th document:- Letter dated 2 Jan 2018 at page No.5 of NIA's compilation addressed by 'Comrade M' to 'Comrade Rona'. This letter is addressed on 02.01.2018 i.e. the day after the Bhima Koregaon incident (01.01.2018) which resulted in the death of one person. This letter exalts the party cadres and calls upon them to organize protests across BJP ruled states. This letter states that 'Comrade Shoma and Com. Surendra are authorized to provide funds for future programmes and Bhima Koregaon Event has been very effective and the unfortunate death of the youth must be exploited to prepare future agitations and propaganda material. It calls upon to explore the possibility of a new fact finding team to further highlight

the incident. It is also stated that friends in the Congress have assured assistance for release of senior political prisoners including Com. Kobad and Com. Sai'. That the name 'Anand' appears in this letter also. The relevant portion reads thus:-

“..... please speak with brother Anand, inform him to send reports through Comrade Manoj.....”

18.4.1. It will not be out of place to take note of the pamphlet/Invite, which is at page No. 59 of NIA's compilation. It is seen that, there are more than 100 names mentioned as 'Nimantrak' i.e. inviter. We find that, NIA has indicted role of Appellant and some others as accused whose names appear in the pamphlet but not all inviters who are facing similar allegations as that of Appellant, on the basis of this document.

18.4.2. According to NIA this reference to Appellant proves his involvement in the activities of CPI(M). Mr. Patil has emphasized that 'brother Anand' appearing in this letter addressed by 'Comrade M' (Milind Teltumbde, the wanted accused and younger brother of Appellant) clearly drives home the point that it is none other than Appellant. This letter states that they must keep up the presence through simultaneous programmes across many states, as it will undoubtedly help to take down the Modi juggernaut in 2019.

18.4.3. Reading of this letter, *prima facie* we do not understand as to how the Appellant and his role has been indicted in so far as the

present case is concerned. It is NIA's contention that Appellant has being actively involved in the larger conspiracy of CPI(M) which stands proven on reading this letter. However, we do not think so. This letter has not been recovered and seized from Appellant. Assuming at the highest that reference in this letter i.e. 'brother Anand' is to the Appellant himself, prosecution needs to show the nexus and link of Appellant with the present crime or any specific overt act. There is no material save and except calling upon us to presume that the word 'brother Anand' named in the present letter is a reference to Appellant and as such he is directly involved with the activities of CPI(M). It is to be noted here that, this letter refers to names of 17 persons in all, including "brother Anand". Some names are also with their phone numbers. Not all of these 17 persons have been indicted in the present crime. If NIA's argument is to be accepted, then the statement / sentence referring to some of the said names appears to be more serious. We are afraid that on mere *prima facie* reading of this letter we can record such a finding.

18.5. 5th document:- The next document referred to and relied upon by NIA is an "account statement" which is at page No.7 of the compilation. This document is the fulcrum of NIA's case against Appellant. We would therefore reproduce the entire account statement as it is, as both sides have advanced submissions painstakingly on this documents. It reads as under:-

Surendra through Milind, firstly it cannot be linked to the statement in the earlier letter dated 02.01.2018 since this account statement pertains to the year 2016 and or 2017. The document has a heading; viz; Party fund received in last year from C.C. Last year would invariably mean the account of 2016 as the title of this document is “Accounts2K17” which would mean Accounts for 2017”. That apart requiring us to presume that Anand T. is the Appellant would require further corroboration and evidence. *Prima facie* it appears that, the same has not been brought on record. This document is unsigned and has been recovered from the laptop one of the co-accused. Hence, at this *prima facie* stage we cannot presume that Anand T. i.e. the Appellant received Rs.90,000/- from Surendra Gadling as argued by NIA. We are afraid to state that we cannot agree with NIA's contention.

18.6. In regard to the documents in paragraph 19.1 to 19.5, there is one more reason as to why we cannot *prima facie* presume and accept the case of NIA on reading these letters and the alleged account statement. One such seized document at page No.149 of Appellant's compilation is the list of Central Committee Members of CPI(M) group alongwith their details and photographs for the year 2017. This document is part of the record at page No.559 to 561 of Vol. II. Appellant is not member of this C.C. However, at Serial No.4 one

Katkam Sudarshan @ Anand @ Mahesh @ Bhaskar appears as Central Committee and Polit Bureau Member of CPI(M). Hence, reference to the name 'Anand' can also be to this member as argued by Appellant. *Prima facie* such a probability cannot be ruled out, unless there is material shown to the contrary.

18.7. In this regards, we would like to draw reference to paragraph No.27 in the case of *Watali (1st supra)*. It reads thus:-

“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”

18.7.1. Paragraph No.24 of the judgment (reproduced earlier) states that, at this stage Court is merely expected to record a finding on the basis of broad probabilities regarding involvement of accused in the commission of the stated offence or otherwise. Paragraph No.27 states that no document can be discarded as being inadmissible and it would be a matter for trial. However, Court must look into the contents of the document and take such document into account as it is. Both sides have vehemently pressed their respective submissions on the aforesaid two paragraphs. NIA has submitted that the above documents be seen as they are or as they stand whereas Appellant has submitted that the

documents relied upon by NIA need to be seen qua their contents. As stated the aforesaid documents are the fulcrum of NIA's case. NIA has submitted that *prima facie* reading of these documents reveal that Appellant is an active member of CPI(M) and has been involved in activities to further its ideology to overthrow the state. Hence, Appellant has been rightly charged. However, looking at the contents of the documents the aforesaid submission of NIA would fall in realm of presumption according to us which may need further corroboration.

19. That apart, NIA has referred to three statements of witnesses recorded in support of its case.

Statement dated 23.12.2018 is at page 56 of its compilation. This statement is given by Kumar Sai @ Ashok @ Ram Mohammed Singh Toppu @ Pahadsingh resident of District Raj Nandgaon, Chhattisgarh. He has worked in CPI(M) as Division Committee Secretary and has referred to role of various co-accused including that of Appellant. He has stated that Appellant has been instrumental in aligning the Dalit movement with the CPI(M). Save and except this statement there is no other reference to Appellant in the statement. We have perused this statement carefully. On reading this statement at the highest it is seen that assuming for the sake of argument that Appellant is associated with CPI(M) then also it would attract the provisions of Sections 38 and 39 and not Section 15 of the UAP Act.

This witness does not say that he has seen Appellant at any point of time with any CPI(M) member.

20. The second statement is at page 140 of the compilation of NIA. This is by KW3 under Section 164 of Cr.P.C. on 17.08.2020. He has deposed that in 2018 he accompanied Milind Teltumbde to Bhopal and heard him talk that he was supposed to meet his elder brother i.e. Appellant and from his mannerisms he gathered that, in the first instance he was unable to meet Appellant but on the second instance he gathered that he had met the Appellant. He has deposed that on both occasions Milind Teltumbde had left him alone at some acquaintance's place and had gone alone with his sister Nandini Borkar to meet Appellant. *Prima facie*, after bare reading of this statement, it clearly reveals that this witness has not specifically seen the Appellant having meeting his brother Milind. Further he states that he only gathered this information from Milind Teltumbde's mannerisms. That he was not a witness to any meetings of Appellant or had seen him. Hence *prima facie* this statement of witnesses qua the Appellant falls within the realm of hearsay evidence.

21. The next statement referred to and relied upon by NIA is at page No.156 of compilation of KW-4 recorded on 25.08.2020 under Section 164 of Cr.P.C. In this statement KW-4 has stated that Anand Teltumbde has inspired Milind Teltumbde for joining CPI(M). That

Milind Teltumbde used to visit various cities from January to June every year at Nagpur, Pune, Chandrapur, Bhopal, Indore, Katni, Amarkantak, Mandala, Dindori, Shahdol etc. to meet Appellant for taking his guidance in advancing CPI(M)'s movement in jungle and urban areas. That Appellant used to attend International Conferences and under the guise of academic visits he visited Philippines, Peru, Turkey and other countries and brought Maoist literature and videos to be shown to CPI(M) members during their training. This is the reference to the Appellant in the statement. Appellant has vehemently denied having visited Philippines, Peru and Turkey. Appellant has stated that his passport can be verified for that matter. NIA has not raised any grievance on this submission. In fact during the course of submissions, we asked NIA to show us the material brought by Appellant from abroad in the pen-drive and memory card i.e. the literature material and videos relating to Maoist ideology, tactics and weapons used by them, attacks and planning of sudden attacks made by them and expansion and recruitment of members. Mr. Patil on taking instructions submitted that such material is not part of the Chargesheet against Appellant nor do they have any such material with them. He submitted that according to NIA such material was given by Appellant to his brother Milind Teltumbde for onward dissemination to CPI(M) cadres and NIA has not laid its hand on the same until now.

22. There is one more aspect which needs to be highlighted at this *prima facie* stage. Assuming at the highest that NIA's case is accepted, then also *prima facie* analysis of the above material on record by NIA at this stage indicates that Appellant is a member of the banned CPI(M) and can at the most the provisions of Sections 13, 38 and Section 39 of the UAP Act are therefore attracted. It is seen that the maximum punishment prescribed under the aforesaid provisions is imprisonment for a term which may extend to five years (Section 13) and for a term not extending 10 years or with fine or both. However, in juxtaposition with the aforesaid provisions punishment of conspiracy under Section 18 refers to a punishment which may extend to imprisonment for life and is also liable to fine. It is therefore be important for us to refer to the charging Section 18 to understand the nuance of conspiracy as contemplated by the UAP Act. Section 18 of the UAP Act reads thus:-

“18. Punishment for conspiracy, etc.-- Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directs or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”

22.1. It is seen that Section 18 refers to a terrorist act or any act preparatory to the commission of a terrorist act. It is therefore pertinent to note Section 15 which defines “Terrorist Act”. Section 15

reads thus: -

“15. Terrorist Act.

[1] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,

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

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

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

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

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

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

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

22.2. Section 20 of the UPA Act in this regards pertains to punishment for the terrorist Act and is relevant: Section 20 of the UAP

Act reads thus:-

“20. Punishment for being member of terrorist gang or organisation.-

Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.”

22.2.1. Section 20 cannot be interpreted to mean that merely been a member of a terrorist gang would entail such a member for the above punishment. What is important is the terrorist act and what is required for the Court to see is the material before the Court to show that such a person has been involved in or has indulged in a terrorist act. Terrorist act is very widely defined under Section 15. In the present case, seizure of the incriminating material as alluded to hereinabove does not in any manner *prima facie* leads to draw an inference that, Appellant has committed or indulged in a ‘terrorist act’ as contemplated under Section 15 of the UAP Act.

22.3. Punishment for committing terrorist act is prescribed under Section 16 which is punishable with death or imprisonment for life in the event of death of any person due to such act or upto imprisonment for life in any other case. In the present case the offence and crime related to the Bhima Koregaon incident resulted in the death of one person. On reading the draft charges and the chargesheet qua the Appellant, we *prima facie* find that NIA has not investigated or made any investigation in respect of this aspect. However, it is their case that the banned terrorist organization CPI(M) used the Elgar Parishad

Program as a platform to further its larger conspiracy and Appellant being an active member of CPI(M) and being associated with its activities has participated in the larger conspiracy of CPI(M) and therefore does not deserve to be enlarged on bail. However, on *prima facie* reading of the above documents and statements referred to and relied upon by NIA qua the Appellant, we are afraid to state that to we do not agree with the contention of NIA. On *prima facie* appreciating the material on record as well as the statements of three key witness against Appellant, we do not think that provisions of Sections 16 and 18 can be invoked at this stage against Appellant for want of better proof and evidence. On reading the chargesheet and the material placed before us, *prima facie* it cannot be inferred that Appellant has involved himself in a 'terrorist act'.

23. It is submitted by NIA that the yardstick and parameters made applicable in the case of *Hany Babu (2nd supra)* and *Jyoti Jagtap (3rd supra)* while rejecting bail for these co-accused be applied in the case of the Appellant. Mr. Patil has taken us through both the aforesaid judgments at length. He has emphasized on paragraph Nos.49, 52, 53 and 54 of the judgment in the case of Hany Babu and contended that, the role of Appellant cannot be viewed differently than the role of Hany Babu. In fact he contended that since Appellant is a person with intellectual ideology, his case stands on a much higher

footing than Hany Babu's case and therefore he cannot be enlarged on bail. We respectfully disagree with this proposition in view of the fact that what weighed with the Court in indictment of Hany Babu and rejection of his Bail Application is the material produced in paragraph Nos.21 and 22 of the said judgment. On reading Hany Babu's judgment, it is seen that 64 documents were seized from the custody of Hany Babu which explained his links with CPI(M), his precise role and network. Further 14 documents were seized from other co-accused which also referred to his role. Such is not the case herein. As alluded to herein above, there are 5 documents (letters) and 3 key witness statements which have been pressed against the Appellant by NIA. We have *prima facie* analysed the said material and recorded our *prima facie* findings on the basis of broad probabilities.

Next Mr. Patil has submitted that in view of the findings returned by this Court i.e. by this Bench in the case of *Jyoti Jagtap (3rd supra)* it is imperative that the role of Appellant be also viewed in the same manner as being an active member of CPI(M). We are once again afraid to state that the considerations which weighed with us while delivering the judgment in the case of *Jyoti Jagtap (3rd supra)* were entirely different. For the sake of brevity, we do not wish to repeat and reiterate those considerations. Our judgment speaks for itself. We do not agree with the submissions of NIA that Appellant's case is identical to the case of *Jyoti Jagtap (3rd supra)* and the present

Appeal deserves to be dismissed.

24. This position of law is reiterated by the Supreme Court in the case of *Arup Bhuyan (5th supra)* and in an unreported Order of the learned Single Judge of this Court in Criminal Bail Application No.488 of 2018 passed on 25.02.2019 (*18th supra*) and another unreported Order passed in Criminal Bail Application No.3456 of 2019 passed on 05.05.2021 by another learned Single Judge of this Court (*19th supra*).

25. In view of the above discussion and findings, we are of the *prima facie* opinion that on the basis of material placed before us by NIA which has been looked into by us, it cannot be concluded that Appellant has indulged into a terrorist act. The material placed on record *prima facie* does not inspire confidence to bring the Appellant's act as alleged for the punishment prescribed under Sections 16, 18 and 20 of the UAP Act as they read.

26. In view of the above discussion and findings and considering the fact that Appellant has no criminal antecedents and he having being behind bars for more than two and half years, in our opinion, a case for grant of bail has been made out.

27. Hence, the following Order:-

ORDER

(i) The impugned Order dated 12.07.2021 passed by the

Special Judge, Greater Bombay below Exh.377 in Special Case No.414 of 2020 alongwith Special Case No.871 of 2020 is quashed and set aside;

- (ii) Appellant be released on bail in Special Case No.414 alongwith Special Case No.871 of 2020 arising out of RC-01/2020/NIA/MUM under Sections 120B, 115, 121, 121A, 124A, 153, 201, 505(1)(B) read with 34 of IPC and Sections 13, 16, 17, 18, 18B, 20, 38 and 39 of the UAP Act on his executing PR bond of Rs.1,00,000/- with one or more solvent local sureties in the like amount;
- (iii) Appellant shall not tamper with the evidence of prosecution nor influence the prosecution witnesses;
- (iv) Before his actual release from jail Appellant shall furnish his contact numbers, both-mobile and landline and permanent residential address to the Investigating Officer and the learned Special Court before which the case of Appellant is pending;
- (v) Appellant shall attend the concerned police station where he resides, initially for a period of one year, once in a fortnight i.e. on every 1st and 16th of each English Calendar month and thereafter on every first Monday

of the month between 10:00 a.m. to 12:00 noon till conclusion of trial;

(vi) Appellant shall not leave the jurisdiction of State of Goa and if he desires to travel within India he shall seek prior leave and permission of the Trial Court;

(vii) Appellant shall deposit his passport held by him before his actual release from jail, with the designated Special Court.

28. Criminal Appeal is accordingly allowed in the aforesaid terms.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

29. At this stage, Mr. Desai, learned senior Advocate appearing for the Appellant submitted that, though in the cause title of the present Petition, address of the Appellant has been mentioned as residing at Goa Institute of Management, Sanquelim, Goa – 403 505, due to efflux of time, the contract of the Appellant with the said Institute has come to an end and as of today, the residential address of Appellant is at 129, 'Rajgruha', Hindu Colony, Khareghat Road, Dadar, Mumbai-400 014.

30. In view thereof, the condition stipulated in paragraph No.

27(vi) above is modified and Appellant is directed not to leave the jurisdiction of this Court without prior permission from the Special Designated Court/ Trial Court, if he desires to travel within India.

31. Appellant is permitted to furnish cash bail for a period of 8 weeks from today and during the said period, Appellant shall comply with the condition of furnishing solvent local sureties as stipulated in paragraph No. 27(ii).

32. After pronouncement of the present Judgment, Mr. Patil, learned Special PP appearing for the NIA requested this Court for stay of its operation and implementation to enable NIA to challenge it before the Hon'ble Supreme Court. Though opposed by the learned Senior Advocate for Appellant, considering the fact that Appellant is in jail for more than two and half years, effect of present Judgment and Order granting bail to the Appellant will remain stayed for a period of one week from today.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]