IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NOs. 136 & 137 OF 2017.

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CRIMINAL APPEAL NO. 136 OF 2017.

1. Mahesh Kariman Tirki,
Age about 22 years,
Occupation – Agriculturist,
R/o Murewada, Taluqa-Etapalli,
District – Gadchiroli.

2. Pandu Pora Narote,
Age about 27 years,
Occupation – Agriculturist,
R/o Murewada, Taluqa-Etapalli,
District – Gadchiroli.

3. Hem Keshavdatta Mishra,
Age about 32 years,
Occupation – Education,
R/o Kunjbargal, Post – Nagarkhan,
District – Almoda (Uttarakhand).

4) Prashant Rahi Narayan Sanglikar,
Age about 54 years,
Occupation – Journalist,
R/o 87, Chandrashekhar Nagar,
Krushikesh, Deharadun, Uttarakhand.

5) Vijay Nan Tirki,
Age about 30 years,
Occupation – Labour,

R/o Beloda, Post – P.V. 92, Dharampur,
Taluqa – Pakhanjoor, District – Kanker
(C.G.). .... APPELLANTS.

VERSUS

State of Maharashtra,
through PSO Aheri, Gadchiroli,
Maharashtra. .... RESPONDENT.

WITH

CRIMINAL APPEAL NO. 137 OF 2017.

G.N. Saibaba,
Aged about 47 years,
Occupation – Service (suspended),
R/o 100, B-Block, Hill View Apartments,
Vasant Vihar, Near PVR Cinema,
New Delhi. .... APPELLANT.

VERSUS

State of Maharashtra,
through PSO Aheri, Gadchiroli,
Maharashtra. .... RESPONDENT

Mr. Pradeep Mandhyan with Mr. Barunkumar and Mr. H.P. Lingayat, Advocates for appellant Nos. 1 to 3 (Appeal No. 136/2017).
Mr. Trideep Pais, Sr. Advocate with Mr. Barunkumar & Mr. H.P. Lingayat, Advocates for appellant Nos. 4 & 5 (Appeal No. 136/2017).
Mr. S.P. Dharmadhikari, Sr. Advocate with Mr. N.B.Rathod, Advocate for appellant (Criminal Appeal No.137/2017).

Mr. Aabad Ponda, Sr. Advocate Mr. H.S. Chitale and Mr. Jugal Kanani, Advocates for State, Mr. P.K. Sathinathan Special Counsel for State.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES JJ.

JUDGMENT RESERVED ON : 07.09.2023
JUDGMENT PRONOUNCED ON : 05.03.2024

JUDGMENT : (PER VINAY JOSHI, J.)

Heard.

2. Common judgment and order of conviction dated 07.03.2017 in Sessions Case Nos.13/2014 and 130/2015 under the provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'the UAPA' for short) and Section 120-B of the Indian Penal Code (hereinafter referred to as 'the IPC' for short) led convicted accused to challenge the judgment and order by filing two separate appeals.

3. On 22.08.2013, Crime No.3017/2013 was initially registered with the Police Station Aheri, District Gadchiroli against the appellant Mahesh Tirki (accused No.1), Pandu Narote (accused

No.2), and Hem Mishra (accused No.3). During the course of investigation, the role of Prashant Sanglikar (accused No.4), Vijay Tirki (accused No.5) and G.N. Saibaba (accused No.6) was revealed. On completion of investigation, charge-sheet came to be filed and numbered as Sessions Case No. 13/2014. It was followed by filing of supplementary charge-sheet on 31.10.2015 numbered as Sessions Case No. 130/2015.

4. After ensuring compliance in terms of Section 208 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short), the Trial Court framed charges on 21.02.2015 against all six accused for the offence punishable under Sections 10, 13, 20, 38, 39 read with Section 18 of the UAPA and under Section 120-B of the IPC. On the accused pleading to be tried, the prosecution has examined as many as 25 witnesses to establish the guilt of accused. The prosecution was also banking upon certain documents to establish the guilt with requisite standard of proof. On completion of evidence, statements of accused were recorded in terms of Section 313 of the Code to seek their explanation on incriminating material. The defence of the accused is of total denial and false implication. The accused have denied seizure of incriminating material from their

possession claiming it to be planted and fabricated. The accused did not examine any witnesses in defence. On the assessment of oral and documentary evidence, the Trial Court has recorded a finding of guilt against all the accused vide impugned common judgment. The Trial Court has convicted all accused for different offences and imposed punishment alongwith fine. For the sake of convenience, we deem it appropriate to set out the details of conviction and sentence of each of them in following table:-

Sr. No	Names	Conviction	Sentence
1.	Accused 1–Mahesh Kariman Tirki, Accused 2-Pandu Pora Narote, Accused 3-Hem Keshavdatta Mishra, Accused 4-Prashant Rahi Narayan Sanglikar, Accused 6-Gokalkonda Naga Saibaba	Section 13 of the UAPA read with Section 120-B of the IPC.	Rigorous imprisonment for seven years each and to pay fine of Rs.1000/- and in default Rigorous Imprisonment for six months each.
		Section 18 of the UAPA read with Section 120-B of the IPC.	Imprisonment for Life each and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.
		Section 20 of the UAPA read with	Imprisonment for Life each and to pay a fine of

		Section 120-B of the IPC. Section 38 of the UAPA read with Section 120-B of the IPC. Section 39 of the UAPA read with Section 120-B of the IPC.	Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months each. Rigorous Imprisonment for ten years each and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months each. Rigorous Imprisonment for ten years each and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months each.
2.	Accused 5-Vijay Nan Tirki	Section 13 of the UAPA read with Section 120-B of the IPC. Section 18 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for four years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months. Rigorous Imprisonment for ten years and to pay a fine of Rs.1000/- and in default to suffer

		Section 20 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for Six Months. Rigorous Imprisonment for ten years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.
		Section 38 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for five years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.
		Section 39 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for five years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.

5. Being aggrieved by the aforesaid common judgment and order of conviction, accused Nos 1 to 5 preferred criminal appeal No. 136/2017 whilst accused No.6 preferred criminal appeal

No. 137/2017 before this Court. Both appeals were heard by this Court and vide common judgment and order dated 14.10.2022, this Court principally held that the proceedings of Sessions Case No. 13/2014 and 130/2015 was null and void for want of valid sanction in terms of Section 45(1) of the UAPA and accordingly set aside the order of conviction. During the pendency of the appeal, accused No. 2 Pandu Narote died, however this Court observed that his appeal does not abate. Dealing with the issue of sanction qua accused Nos. 1 to 5 and accused No. 6 G.N. Saibaba separately, this Court was of the view that sanction for prosecution vitiates and concluded as below:-

> *" We record our conclusions thus :*
>
> *(i) In view of the findings recorded by us, we hold that the proceedings in Sessions Trials 30/2014 and 130/2015 are null and void in the absence of valid sanction under Section 45(1) of the UAPA, and the common judgment impugned is liable to be set aside, which we do order.*
>
> *(ii) We are conscious of the demise of accused 2-Pandu Pora Narote during the pendency of the appeal. We are of the considered view, that in view of the decision of the Hon'ble Supreme Court in Ramesan (Dead) through LR. Girija v. State of Kerala, AIR 2020 SC 559 which is rendered on the anvil of the provisions of Section 394 of the Code of 1973, appeal preferred by accused 2-Pandu Pora Narote does not abate.*

(iii) The prosecution did submit that if the appeal is decided, not on merits, but only on the point of sanction, we may grant liberty to the prosecution to obtain proper sanction and try the accused. In view of the well entrenched position of law, that the rule against double jeopardy has no application if the trial is held vitiated due to invalidity or absence of sanction, we see no reason to dilate any further on the said submission.(iv) Accused 5-Vijay Nan Tirki is on bail, his bail bond stands discharged.

(v) Accused 1-Mahesh Kariman Tirki, accused 3-Hem Keshavdatta Mishra, accused 4-Prashant Rahi Nrayan Sanglikar and accused 6-G.N. Saibaba be released from custody forthwith, unless their custody is required in any other case.

(vi) The appellants shall execute bond of Rs.50,000/- (Rupees Fifty Thousand) each with surety of like amount, to the satisfaction of the trial Court, in compliance with the provisions of Section 437-A of the Code of 1973.

(vii) The appeals are disposed of in the aforestated terms."

6. Aggrieved with the judgment and order of this Court dated 14.10.2022, the State preferred criminal appeal Nos. 1184-1185 of 2023 arising out of SLP (Crl.) Nos. 11072-11073/2022 before the Supreme Court. Since this Court had not considered and/or decided the appeals on merit, by consent of the parties, the judgment and order of this Court dated 14.10.2022 was set aside and the matters are remitted to this Court for fresh decision on

merits as also on the question of validity of the sanction. For the sake of convenience, the relevant portion of the order of the Supreme Court dated 19.04.2023 has been extracted below:-

> *"6. In view of the above broad consensus between the respective parties recorded hereinabove and without further entering into the merits of the case and/or expressing anything on merits in favour of either of the parties, with the consent of learned Counsel for the respective parties, we set aside the impugned common judgment(s) and order(s) passed by the High Court in Criminal Appeal Nos. 136 and 137 of 2017. The matters are remitted back to the High Court to decide the said Appeals afresh in accordance with law and on its own merits, including the question of sanction. It will be open for the State to contend that once the accused are convicted after conclusion of the trial, the validity of the sanction and/or no sanction in case of one of the accused cannot be gone into and/or the same would become insignificant and as and when such issues are raised, the same be considered by the High Court in accordance with law and on its own merits. It will be open for the accused to counter the same. We have also specifically observed that all the contentions and the defences, which may be available to the respective parties are kept open to be considered by the High Court in accordance with law and on its own merits and on the basis of the evidence, which is already on record before the learned trial Court.*
>
> *7. We request the High Court to decide and dispose of the Appeals on merits at the earliest and preferably within a*

period of 4 months from the date of receipt of the present order. It is also observed that the propriety demands that, on remand, the Appeals be placed before another Bench so as to avoid any further apprehensions. Therefore, we request the Hon'ble Chief Justice of the High Court to see that the Appeals are placed for final hearing before the Bench other than the Bench, which passed the impugned judgment(s) and order(s).

The present appeals are, accordingly, allowed."

7. In turn, the learned Acting Chief Justice of this Court vide order dated 19.05.2023 assigned both appeals to the Bench headed by one of us (Vinay Joshi, J.). As per convenience of the learned Counsels appearing for different accused and learned special prosecutor, the appeals were heard extensively including through Video Conferencing. Both sides have canvassed various issues and relied on several decisions in support of their respective contentions. They have also filed written notes of arguments with charts indicating the factual chronology and events. With this prologue, we proceed to decide the Appeals.

8. The judgment and order under challenge is for the offfences punishable under a special statute namely UAPA. The UAPA was introduced with the aim and object of providing a more

effective mechanism for prevention of certain unlawful activities of individuals and organizations and for matters connected therewith. A special mechanism and procedure has been introduced right from the stage of investigation containing various checks and balances.

9. The present case relates to the act of terrorism or related activities covered under the UAPA. Initial arrest on suspicion has revealed the involvement of the accused in acts of terrorism covered under the provisions of UAPA. After completing all the formalities of investigation, charge-sheet was filed, which was followed by filing a supplementary charge-sheet with sanction to prosecute accused No.6 G.N. Saibaba.

10. The prosecution case can be stated in brief as below:-

At the relevant time, the informant, Assistant Police Inspector ('API') Atul Awhad was attached to the Special Branch, Gadchiroli. He received secret information that accused No.1 Mahesh Tirki and accused No.2 Pandu Narote were involved with a banned terrorist organization CPI (Maoist) and its frontal organization (RDF). They were active members of the said banned terrorist organization CPI (Maoist) and its frontal organization RDF.

API Awhad also received information that both of them were supplying material to the underground naxalites and they were providing protection to them. They were also facilitating the members of banned terrorist organization CPI (Maoist) and its frontal organization RDF to travel from one location to another. In pursuance of the said information, API Awhad and his team were keeping watch on the movements of accused No.1 Mahesh Tirki and accused No.2 Pandu Narote in naxal affected area of Etapalli, Aheri and Murewada. API Awhad received secret information that both of them, with their unknown associates were transmitting secret information to the banned terrorist organization CPI (Maoist) and its frontal organization RDF. The information led API Awhad and his team to keep them under surveillance.

11. On 22.08.2013 around 06.00 p.m., both accused No.1 Mahesh Tirki and accused No.2 Pandu Narote were found standing in suspicious conditions at a secluded place near Aheri Bus Stand. Within short time, by around 06.15 p.m. one person wearing a white cap came to them and they were conversing with each other. From the overall appearance and movements, their activities were found to be suspicious. API Awhad accosted them and made necessary

inquiries, to which however they gave evasive answers strengthening his suspicions of these accused. API Awhad took these three accused to the Police Station at Aheri. All three suspects were brought to the Police Station by API Awhad pursuant to which the Police Station incharge Narendra Dube, made a station diary entry No. 29/2013 around 06.35 p.m. Two panch witnesses were summoned. In their presence, accused No.1 Mahesh Tirki and accused No.2 Pandu Narote disclosed their names whilst the third person (accused no.3) who had come to meet them, disclosed his name as Hem Mishra. Police Inspector ('PI') Anil Badgujar has made further inquiries, but did not get any response. In the presence of panch witnesses, a personal search of all three accused was taken.

12. Initially, the search of accused No.1 Mahesh Tirki revealed on his person, three pamphlets of the banned terrorist organization CPI (Maoist) and its frontal organization RDF, one purse containing cash of Rs.60/-, platform ticket of Ballarshah Railway Station dated 28-5-2013, Identity Card and one Cell Phone of Micromax Company, which were all seized. During the search from accused No.2 Pandu Narote, one Cell Phone of Samsung Company, one purse containing cash of Rs.1480/-, platform ticket of Delhi Railway Station dated

28.05.2013, Pan Card and Identity Card, were seized. Then personal search of accused No.3 Hem Mishra was taken. During his search, one memory card of Scandisc Company of 16 GB, one purse containing cash of Rs.7,700/-, railway ticket of Delhi to Ballarshah dated 19-8-2013, Camera along with Charger, Pan Card, Identity Card and Cloth Bag were seized. All the articles were seized in presence of a panch witnesses under panchama (Exh.137). The seized property was taken into custody by PI Anil Badgujar.

13. On the basis of the seized material, API Awhad lodged a report (Exh. 219) containing the details of the seizure and official information regarding the material collected. API Awhad, during his preliminary inquiry concluded that accused No.1 Mahesh Tirki, accused No.2 Pandu Narote and accused No.3 Hem Mishra were involved with the banned terrorist organization CPI (Maoist) and its frontal organization RDF. The Officer Incharge of Police Station Aheri PW-15 Narendra Dube has registered a crime vide Crime No. 3017/2013 against them, for the offence punishable under Sections 13, 18, 20, 38, 39 of the UAPA read with Section 120-B of the Indian Penal Code and made a Station Diary entry to that effect.

14. Since the crime was registered under the provisions of UAPA, the investigation was handed over to PW-11 Sub-divisional Police Officer ('SDPO') Suhas Bawche. The apprehended accused were produced before the Magistrate on the following day and were remanded to police custody for the purpose of investigation. During interrogation, it was revealed that a lady named Narmadakka who was a Naxalite belonging to banned terrorist organization CPI (Maoist) and its frontal organization RDF, had assigned the job to accused No.1 Mahesh Tirki and accused No.2 Pandu Narote to receive accused No.3 Hem Mishra, who was arriving from Delhi and safely escort him to Murewad forest area. During interrogation of accused No.3 Hem Mishra, it was revealed that one person from Delhi i.e. accused No.6 G.N. Saibaba was an active member of the banned terrorist organization CPI (Maoist) and its frontal organization RDF. That accused no.6 had given one memory card to accused No.3 Hem Mishra which was wrapped in paper with a direction to deliver the same to naxalite Narmadakka.

15. Further interrogation of accused No.3 Hem Mishra uncovered the involvement of accused No.4 Prashant Rahi Narayan Sanglikar ('Prashant Rahi'). The investigating Officer also came to

know that accused No.4 Prashant Rahi was about to visit Raipur or Deori. The Investigating Officer passed this information to Police Station Chichgarh. On 01.09.2013, PW-14 PI Rajendrakumar Tiwari found accused No.4 Prashant Rahi and accused No.5 Vijay Tirki at Chichgarh T-point, Deori under suspicious circumstances, hence they were brought to Aheri Police Station on 02.09.2013 around 05.00 a.m. The Investigating Officer Suhas Bawche effected arrest of accused No.4 Prashant Rahi and accused No.5 Vijay Tirki under arrest panchnama Exh. 239 and 240. A personal search was carried out by the Investigating Officer Suhas Bawche. During the personal search of accused No.4 Prashant Rahi, one purse, cash of Rs.8,800/-, one Visiting Card, one Driving Licence, one Yatri Card, one Newspaper "Dainik Bhaskar" and eight papers containing naxal literature along with typewritten papers pertaining to the under-trial Maoist leader Narayan Sanyal were seized. Likewise while carrying a personal search of accused No.5 Vijay Tirki, one Cell Phone of silver colour, cash of Rs.5,000/-, four pieces of paper on which certain phone numbers were written and one newspaper "Dainik Bhaskar" were seized.

16. During investigation accused No.5 Vijay Tirki, revealed that he was assigned a job by one Ramdar, an active member of banned terrorist organization CPI (Maoist) and its frontal organization RDF to receive accused No.4 Prashant Rahi and to escort him safely to Abuzmad forest area to meet senior maoist cadre. Investigation further led to the revelation that accused No.3 Hem Mishra, accused No.4 Prashant Rahi and accused No.6 G.N. Saibaba entered into criminal conspiracy, pursuant to which accused No.6 G.N. Saibaba arranged a meeting of accused No.3 Hem Mishra and accused No. 4 Prashant Rahi with underground members of the banned terrorist organization CPI (Maoist) and its frontal organization RDF who were hiding themselves in Abuzmad forest area. It was revealed that accused No.6 G.N. Saibaba handed over a micro chip SD memory card of 16 GB of Sandisk company containing vital maoist communications to accused No.3 Hem Mishra and accused No.4 Prashant Rahi with instructions to deliver the same to the naxalities with an intention to furthering the activities of banned terrorist organization CPI (Maoist) and its frontal organization RDF.

17. It is the prosecution's case that during investigation, it was revealed on 26.08.2013 that accused No.3 Hem Mishra was using his face-book account for these activities. The Investigating Officer called two panch witnesses and in their presence, the face-book account of accused No.3 Hem Mishra was opened on the lap-top of Aheri Police Station. After opening the face-book account of accused No.3 Hem Mishra, some screen shots and their printouts were taken in the presence of panch witnesses. The entire process was video-graphed and panchnama was prepared vide Exh. 199. The material collected from the face-book account of accused No.3 Hem Mishra was seized vide panchnama Exh.200. The 16 GB memory card of Sandisk Company seized after the personal search of accused No.3 Hem Mishra was sent to Central Forensic Science Laboratory, Mumbai ('CFSL'). Scientific expert PW-21 Bhavesh Nikam has examined the said material and submitted his report at Exh.266. The certified hard copies printed from the data contained in the mirror images/clone of the data in the said memory card of Sandisk Company were annexed along with the CFSL report Exh. 266.

18. On completing the process of investigation, sanction under Section 45(1) of the UAPA was sought. PW-19 Dr. Amitab Ranjan

has accorded sanction vide order dated 15.02.2014 for the prosecution of accused Nos. 1 to 5 only. After obtaining sanction, final report in terms of Section 173(2) of the Code was filed in the Court of Judicial Magistrate First Class, Aheri on 16.02.2014. The case was committed to the Court of Sessions on 26.02.2014 which was registered and numbered as Sessions Case No. 13/2014.

19. During investigation and interrogation of accused No.3 Hem Mishra and accused No.4 Prashant Rahi, involvement of accused No.6 G.N. Saibaba was revealed. In turn, PW-11 Investigating Officer Suhas Bawche sought a search warrant from the Judicial Magistrate First Class, Aheri on 07.09.2013 for search of the house of accused No.6 G.N. Saibaba at New Delhi. The investigating Officer along with police staff proceeded to Delhi on 09.09.2013 after making a station diary entry to that effect. The Investigating Officer Suhas Bawche sought assistance from the Local Police of Maurice Nagar Police Station, New Delhi. The Local Police provided the police staff, computer expert and videogrpaher to facilitate the house search of accused No.6 G.N. Saibaba which was in the campus of Delhi University.

20. Investigating Officer Suhas Bawche along with his search party proceeded to the house of accused No.6 G.N. Saibaba. The Investigating Officer disclosed the purpose of his visit to the accused No.6 G.N. Saibaba in presence of panch witnesses. During the house search, seizure was made of a Compact Disk, Digital Versatile Disk, Pen Drive, Hard Disk, three Cell Phones, two Sim Cards, Books, Magazines and certain other articles vide panchnama (Exhibit 165). Electronic and digital gadgets and devices which were seized during the house search of accused 6-G.N. Saibaba, were sent to the CFSL, Mumbai for forensic analysis. Mr. Bhavesh Nikam (PW 21) has done the forensic analysis of the electronic gadgets and data and submitted a report at Exhibit 267, along with the cloned copies/mirror images of the data contained in the electronic gadgets and hard disk.

21. Investigating Officer Suhas Bawche attempted to arrest accused No. 6 G.N. Saibaba, however members of banned terrorist organization CPI (Maoist) and its frontal organization RDF protested. The Investigating Officer Suhas Bawche therefore, obtained an arrest warrant for accused No.6 G.N. Saibaba from the Judicial Magistrate First Class, Aheri on 26.02.2014 and then

effected his arrest vide panchnama Exh. 269 on 09.05.2014. From personal search of accused No.6 G.N. Saibaba, one mobile phone, RC Book of a vehicle and cash amount of Rs. 320/- was seized. Accused No.6 was brought from Delhi and produced before the Judicial Magistrate First Class, Aheri who in turn remanded him to the judicial custody.

22. The sanction for prosecution under Section 45(1) of the UAPA pertaining to accused No.6 G.N. Saibaba was applied for. PW-18 sanctioning authority Mr. K.P. Bakshi has accorded sanction vide order dated 06.04.2015 which led to filing of supplementary charge-sheet registered as Sessions Case No. 130/2015. Since both Sessions Cases No. 13/2014 and Sessions Case No. 130/2015 arose out of the same incident, the learned Sessions Judge directed a joint trial of both cases.

23. The learned Counsels for the appellants adopted two arguments to press for the acquittal of the accused. The validity of the sanction under Section 45(1) of the UAPA was challenged after which the veracity of the evidence was attacked to persuade us to

hold that the evidence led by the prosecution was unrealistic, unreliable and fabricated. We make it clear that though accused no.2 Pandu died, his appeal survives.

24. It is advantageous to advert first to the contentions relating to validity of the sanction being an important facet of the criminal prosecution under UAPA.

SANCTION FOR PROSECUTION UNDER SECTION 45 [1] OF UAP ACT.

25. Legality of sanction has been seriously challenged by the learned Counsels appearing for different accused. For the sake of convenience, we prefer to deal with sanction qua accused Nos. 1 to 5, separately from the challenge to the sanction qua accused No.6 G.N. Saibaba. Except the ground of non-application of mind by the Sanctioning Authority, the grounds for challenges are distinct.

26. Both sides have vehemently argued the point of prior sanction for the Special Court to take cognizance in terms of Section 45(1) of the UAPA. The learned special prosecutor submitted that sanction qua accused No1. 1 to 5 is a valid sanction issued by the competent authority after due application of mind. He would

submit that sanction as regards accused No.6 G.N. Saibaba, though issued post taking cognizance, does not vitiate the proceeding for two reasons. Firstly, in the absence of raising a specific challenge at initial stage itself, and secondly, it is a curable defect in terms of Section 465 of the Code. Per contra, the learned defence Counsel attacked the validity of sanction with all seriousness. It is the precise submission of the accused that the provisions of UAPA are quiet stringent in nature, the Act providing harsh punishment even for preparatory acts, or likelihood of the involvement, or for mere membership of a banned organization.

The UAPA was amended from time to time adding various stringent provisions. One of the major and extensive amendment was by amendment to the UAPA was amendment Act 35 of the year 2008. The central theme behind amendment of the year 2008 was to make further provisions to cover various facets of terrorism and terrorist activities. The object of avoiding possible misuse of the stringent provisions has direct nexus with amended Section 45 of the UAPA which pertains to prior sanction. It is argued that Section 45(2) of UAPA provides a special mechanism in the form of a two

tier filter to protect the personal liberty which was to be strictly complied.

27. Before dealing with the rival submissions, it would be apposite on our part to note some dates and events connecting to the aspect of sanction.

Sr. No.	Date	Event
1	11.02.2014	Received recommendation of reviewing authority.
2.	15.02.2014	Sanction for prosecution Against accused Nos. 1 to 5.
3.	16.02.2014	Charge-sheet against all six accused.
4.	13.06.2014	Validity of sanction challenged in Bail Application No. 96/2014.
5.	21.02.2015	Charge framed against all accused.
6	04.03.2015	Received recommendation of Reviewing authority on accused No.6 G.N. Saibaba.
7.	06.04.2015	Sanction as regards to accused No.6 G.N. Saibaba.
8.	27.10.2015	First prosecution witness was examined.
9.	30.11.2015	Supplementary charge-sheet against accused No.6 G.N. Saibaba with sanction order.
10.	05.01.2016	Recall of PW-1

28. We have heard Mr. Ponda learned senior Counsel for State at length on the point of sanction. Mr. Ponda initially drew

our attention to the questions framed by the Supreme Court in its earlier order dated 15.10.2022 which are as below:-

> *"1. Whether considering Section 465 Cr.P.C. whether after the conclusion of the trial and the accused is convicted on merits and on appreciation of evidences whether the appellate Court is justified in discharging the accused (so far as Accused Nos.1 to 5 are concerned) on the ground of irregular sanction, if any?*
>
> *2. In a case where the learned trial Court has convicted the accused on merits on appreciation of the evidences on record and thereafter having found the accused guilty for the offences for which they are tried, whether the appellate court is justified in discharging the accused on the ground of want of sanction and/or irregular sanction, more particularly, when the objection with respect to no sanction was not specifically raised by an appropriate application during the trial and trial was permitted to be proceeded further and thereafter the trial Court has convicted the accused on appreciation of evidences on record?*
>
> *3. What will be consequences of not raising the dispute with respect to sanction during the trial and thereafter permitting the trial Court to proceed further, and despite the opportunities given to the accused even at the stage of recording the further statement under*

Section 313 Cr.P.C. when no objection to the want of sanction at the time of taking cognizance was taken?"

29. The prosecution endeavoured to establish that sanction qua accused Nos. 1 to 5 issued by PW-19 Dr. Amitabh Ranjan was legal and valid. Secondly, sanction qua accused No.6 G.N. Saibaba though granted post cognizance, however for want of specific challenge and demonstrating some failure of justice, is a curable defect in terms of section 465 of the Code.

30. For the sake of convenience, we have reproduced Section 465 of the Code herein below:-

*"**465. Finding or sentence when reversible by reasons of error, omission or irregularity** - (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.*

> *(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."*

31. It is argued that the provisions of the Code would squarely apply to the prosecution under UAPA. In particular, it is submitted that Section 45 of the UAPA does not open with a non-obstante clause, meaning thereby the general provisions of the Code would apply with full force. Our attention is specifically drawn to Sub-clause (2) to Section 465 of the Code to contend that while determining the question as to whether there was any error or irregularity or omission, in grant of any sanction, the Court shall consider whether the objection has been raised at the earliest stage of the proceedings.

According to the prosecution, the accused did not raise any specific challenge at various stages of the case i.e. at the time of taking cognizance, framing of charge, recording of evidence, during cross-examination, during recording of statement under Section 313

of the Code and while advancing final arguments in the Trial Court. It is submitted that the accused have neither claimed discharge nor invoked inherent powers of this Court in terms of Section 482 of the Code to question the tenability of prosecution on account of irregularity/omission or invalidity of the sanction. It is contended that the accused cannot raise the issue of sanction first time in appeal that too in re-joinder. Moreover, it is submitted that no such specific ground was raised in the appeal memo.

32. It is contended that the irregularity of sanction cannot determine the competence of the Court to try the matter once having faced the trial and availed the opportunity of cross-examination. After issuance of sanction qua accused No.6 G.N. Saibaba dated 06.04.2015, PW-1 was recalled as well as cross-examined. Fullest opportunity was given in the Trial Court and thus it is not a case of failure of justice.

33. Mr. Ponda would submit that accused Nos. 1 to 5 have not challenged the validity of sanction by initiating substantive proceedings. Even if the order is void, it is required to be set aside by a competent Court of law and such order cannot be declared to

be void in collateral proceeding. Accused Nos. 1 to 5 have not challenged the validity of sanction during cross-examination. Full opportunity was given in Trial Court to inspect the original sanction file. There is no substance in the contention that the entire material was not placed either before Reviewing Authority or Sanctioning Authority.

34. According to Mr. Ponda, Section 45 of the UAPA does not prescribe for the recording of reasons nor provides a format in which sanction or opinion or recommendation is to be made. The accused cannot challenge the independence of the Reviewing Authority. The act of making recommendations is an executive or administrative order which is not amenable to an appeal. Moreover, legislative debates cannot be relied upon for the purpose of interpreting statutory provisions. Mr. Ponda relied on various decisions to which we will advert shortly.

35. Mr. Mandhyan, learned Counsel appearing for accused Nos. 1 to 3 has seriously challenged the legality of sanction. He submits that sanction is accorded without considering an independent review by the authority appointed by the Government.

The intention of the legislature in mandating sanction is to prevent the misuse of the stringent provisions. The recommendation for according sanction was given in absence of part of the material which was later produced as evidence, that too without any application of mind. He would submit that in absence of an independent opinion by the Reviewing Authority, the sanction is defective and tantamounts to absence of sanction which is an incurable defect. In the absence of valid sanction, the Court is not empowered in law to take cognizance. He has attacked the legality of the sanction based upon total non-application of mind by an independent reviewing authority as well as sanctioning authority. In support of his contention, he relied on several decisions, to which we would advert to.

36. Mr. Pais, learned senior Counsel appearing for accused Nos. 4 and 5 has on similar lines challenged the legality of the sanction by making exhaustive submissions backed by several reported decisions. He would submit that Section 386(b)(i) of the Code applies only to a stage after a full-fledge trial and thus, the Appellate Court is well within its competence to discharge the accused. When the entire trial is without jurisdiction, the accused

are entitled for discharge. Pre-condition of previous sanction under UAPA is done in a more specific and stringent manner than the other laws, because the consequences are serious. Though no particular form has been prescribed for recommendation, however it requires to reflect due application of mind.

37. Mr. Pais would submit that Section 45(1) of the UAPA bars a Court from taking cognizance of any offence in absence of valid sanction. The sanction has to be accorded only after consideration of the report of an independent authority which reviews the evidence and the material available on record. Valid sanction is essential to lift the statutory bar, and in its absence, the Court lacks jurisdiction to taking cognizance. He would submit that a fundamentally invalid sanction amounts to no sanction and goes to the root of the jurisdiction of the Court, being an incurable defect. The effect of invalid sanction would be as if the Court had tried the matter without jurisdiction. Mere formal order of sanction without due application of mind would not automatically render the validity nor could be cured with the aid of Section 465 of the Code. Sanction dated 15.02.2014 qua accused Nos. 1 to 5 is only for prosecution of acts under Section 45(1)(ii) under Chapter IV and VI

of the UAPA. There was no sanction for the offence falling under Chapter III of the UAPA. The sanction order is devoid of reasons as to how each specific charged offence applies to each of the accused against whom sanction has been accorded. It is criticized that the sanction order is nothing but a reproduction of the draft sanction order provided by the Investigating Officer.

38. In order to emphasize the importance of sanction under UAPA, it is submitted that the UAPA is a stringent statute and an extraordinary piece of legislation. The statute itself has provided a safeguard against its misapplication or misuse. The legislature thought that mere executive sanction is not enough, hence a two stage filter has been specifically provided. Every sanction must be preceded by reviewing of the entire material by an independent authority. The authority issuing the recommendation shall independently apply its mind to the material qua each accused. The recommendation is bereft of reasons or anything from which it could be perceived that there was due application of mind. Resultantly, the Sanctioning Authority was deprived from considering an independent review report mandated by law.

39. Mr. Pais submitted that the objection as to validity of sanction was very much taken at the earliest possible opportunity. While applying bail for accused No.6 G.N. Saibaba in Bail Application No. 96/2014, legality of sanction dated 15.02.2014 qua accused Nos. 1 to 5 was challenged, however the Trial Court kept these objections pending till examination of the Sanctioning Authority. The cross-examination of relevant witnesses and arguments advanced before the Trial Court equally suggest, the objection taken as to the legality of sanction. In sum and substance, the entire proceeding would stand vitiated in the absence of valid sanction in view of the specific statutory mandate provided under UAPA.

40. Mr.S.P. Dharmadhikari, Senior Counsel appearing for accused No.6 G.N. Saibaba while challenging the legality of sanction took us to the background of introduction of UAPA and more particularly the objects and reasons for introducing time to time amendments to the UAPA. His endevour was to impress that the provisions of the UAPA are stringent, hence the statute itself has provided various safeguards in the shape of power to arrest and search, procedure for arrest and seizure, modified application of

certain provisions of the Code, presumption as to the offences under Section 15, obligation to furnish information and more particularly the necessity of prior sanction, that too in the manner required under Section 45 of the UAPA. According to him, Section 45 is a unique provision adding a very important pre-cognizance, pre-sanction filter. The UAPA departs from the general procedure at every stage, provides a presumption as well as stringent punishment. The endeavour was to ensure that the UAPA and its provisions are not misused and citizens are not harassed, therefore various checks and balances are incorporated therein. With the said object, a two-layer filter has been provided at pre-cognizance stage. Even before the stage of grant of sanction, a review of the entire material was contemplated from an independent authority. Section 45(2) creates a statutory bar on grant of sanction unless independent authority "reviews" the evidence gathered and gives its recommendation in a time bound manner. Recommendations of an independent authority are not an empty formality.

41. On facts, it is submitted that the Trial Court has framed charge against accused No.6 G.N. Saibaba on 21.02.2015 whilst sanction against accused No.6 G.N. Saibaba was accorded on

06.04.2015 and filed in the Court with supplementary charge-sheet on 30.11.2015. Prior to sanction, cognizance as against accused No.6 had already been taken, charge was framed and evidence has commenced.

42. It is strenuously argued that Section 465 of the Code would cure the "error" or "irregularity" in grant of sanction, but does not cover omission or total absence of sanction. With the aid of Section 465 of the Code, cognizance taken by the Court in violation of the mandatory provisions of Section 45(1) of the UAPA cannot be cured. Absence of sanction is an illegality, rendering the whole trial vitiated. Only a valid sanction would confer the jurisdiction on the Court to take cognizance, and in absence of the same, all acts get vitiated. Departure from the statutory provision amounts to deprivation of the fundamental right of freedom and liberty violating Article 21 of the Constitution of India. In support of said submission, he took us through various provisions as well as reported decisions.

43. To address the issue, we feel it necessary to see the origin of UAPA. The genesis of The Unlawful Activities (Prevention) Act

1967 lies in the recommendations of the Committee on National Integration and Regionalism set-up by the National Integration Council to look, inter alia, into the aspect of putting reasonable restrictions on certain freedoms in the interests of the sovereignty and integrity of India. As reflected in the Statement of Objects and Reasons of the UAPA, it was pursuant to the recommendations of the said committee that Parliament enacted the Constitution (Sixteenth Amendment) Act 1963 to impose reasonable restrictions in the interest of sovereignty and integrity of India on:

(i) the freedom of speech and expression;
(ii) the right to assemble peacefully and without arms; and
(iii) the right to form associations and unions.

44. Pursuant thereto, the Unlawful Activities (Prevention) Bill was introduced in Parliament to make powers available for dealing with activities directed against the sovereignty and integrity of India, which bill came on the statute book as the Unlawful Activities (Prevention) Act 1967 ('UAPA', for short) w.e.f. 30.12.1967.

The Preamble to the UAPA as originally enacted read as follows :

> *"An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith".*

In 2004, the Preamble to the UAPA was amended and "terrorist activities" were brought within its fold by amending the Preamble and long-title with retrospective effect from 21.09.2004. The amended Preamble reads as under:

> *"An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations, and dealing with terrorist activities and for matters connected therewith".*
> (emphasis supplied)

45. Subsequently, in order to give effect to certain resolutions passed by the Security Council of the United Nations and to give effect to the Prevention and Suppression of the Terrorism (Implementation of Security Council Resolution) Order 2007 and further, to make special provisions for prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto, the UAPA was further amended in the year 2008 inter alia by substituting the then existing Section 15 relating to "terrorist act" with effect from 31.12.2008.

46. It was followed by further amendment by Act 3 of 2013 and then by the Amendment Act No. 28 of 2019. The legislative history indicates that from time to time, to tackle the challenges, UAPA was amended to provide effective remedy to cope-up with unlawful activities and the act of Terrorism.

47. In this background, we shall examine the much argued challenge regarding the validity of sanction in terms of Section 45 of the UAPA, and its effect on taking cognizance of the offences by the special Court. For the sake of convenience, Section 45 of the UAPA as it stands after amendment of the year 2008 reads as under:-

> *"**45. Cognizance of offences** – (1) No Court shall take cognizance of any offence-*
>
> *(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;*
>
> *(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and (if) such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.*

> *(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government."*

48. We take note that Sub-clause (2) has been inserted in the year 2008 mandating additional compliances to the initial requirement of Section 45 of the UAPA. Before insertion of Sub-clause (2), the original Section 45 precluded the Court from taking cognizance of the offence without previous sanction as contemplated under Sub-clause(i) and (ii) of Clause 1 to Section 45 of the UAPA. The initial fetter on the powers of the Court to take cognizance was akin to the other statutes. However, the legislature in its wisdom thought it fit to put an additional safeguard or a filter in terms of Sub-clause (2) to Section 45 of the UAPA. This necessitates examination of the background behind insertion of one more filter in the process of sanction. The best course to unfold the legislative

intent is to go through the Statement of Objects and Reasons of amendment Act 35 of 2008. This being of great significance, we have reproduced the same as below:-

> *"**Amendment Act 35 of 2008 – Statement of Objects and Reasons** – In view of the concerns and complaints expressed about the manner in which provisions of the Prevention of Terrorism Act, 2002 had been applied including instances of misuse, the Act was repealed in 2004. At the same time, keeping in view that India has been a front-runner in the global fight against terrorism, its commitments in terms of the United Nations Security Council Resolution 1373, dated 28th September, 2001 and the resolve not to allow any compromise in the fight against terrorism, the Unlawful Activities (Prevention) Act, 1967 was amended to make provisions to deal with terrorism and terrorist activities.*
>
> *There have been significant developments since then at the national and the international level. Terrorist incidents and activities sponsored from across the borders, in various parts of India and elsewhere, continue to cause concern. Hence, the legal framework for dealing with such activities, including measures related to financing of terrorism, has been further reviewed.The Administrative Reforms Commission in its Report "Combatting Terrorism – Protecting by Righteousness', has also made various recommendations in this regard. Suggestions in this respect have also been received from various other sources.*

> *After due consideration and examination of these recommendations and suggestions, the Government is of the view that further provisions are required to be made in the law to cover various facets of terrorism and terrorist activities, including financing of terrorism, which are not fully covered in the present law, and to make further provisions with the aim of strengthening the arrangements for speedy investigation, prosecution and trial of cases related to terrorism related offences, while at the same time ensuring against any possible misuse of such provisions.*
>
> *These provisions are proposed to be incorporated in the Unlawful Activities (Prevention) Amendment Bill, 2008."*

49. Much has been canvassed on the genesis behind introducing the bill to amend the UAPA in the year 2008. Rival submissions have been made about the use and utility of the Parliamentary Debates while interpreting statutory object. Elaborate submissions have been made on whether it is permissible to use Parliamentary Debates as an extrinsic aid to interpret construction of statutes. We do not wish to delve into the said aspect since to our mind the statement of objects and reasons behind amendment is the best guide to unfold the legislative intent in bringing the provision into the statute book.

50. The object was loud and clear to make additional provision for speedy investigation, prosecution and trial of cases related to terrorism, related offences, coupled with ensuring against any possible misuse of such provision. The initial provision requiring the sanction for taking cognizance was an important safeguard protecting the fundamental rights of the citizens guaranteed under the Constitution. Besides that, one additional safeguard was provided by insertion of Sub-clause (2) to ensure that the citizens are not unnecessarily engulfed into frivolous prosecution by the Investigating Agency. A second pre-sanction layer was put in requiring the scrutiny of material by an independent authority. Sub-clause (2) of Section 45 of the UAPA provides that the sanction for the prosecution under Sub-Section (1) shall be given **"only after"** considering the **"report"** of such authority appointed by the appropriate Government. The mode and manner for providing a report has also been specified. It provides that the authority so appointed, shall make an "**independent review**" of the evidence gathered in the course of investigation and make "**recommendation"** within a stipulated period. The colour is perceivable from the context in which the amendment has been

made i.e. to avoid curtailment of infringement of the fundamental rights guaranteed under the Constitution of India.

51. The UAPA as was originally enacted did not cover terrorist activities. After repeal of the POTA, the UAPA was strengthened with the amendment of the year 2008 continuing initial Section 45 of the UAPA prohibiting cognizance by any Court in absence of sanction in terms of Sub-clause (1) of Section 45 of the UAPA. The said initial provision pertaining to sanction under Section 45 of the UAPA was in juxtaposition with the provisions under the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA') and the POTA vide Section 20-A and 50 respectively. Despite that a need was felt to put an additional rider in the shape of one more filtering process by some authority other than the Investigating Agency, with a mandate to have an independent review before according a sanction. Obviously, an independent authority so appointed may take its own decision, which was the very purpose behind the insertion of Sub-clause (2) of the 45 of the UAPA. As stated above, the object of amendment is clearly discernible from the aims and objects of the amended Act. The rival submissions are required to be considered in the light of said specific provision introduced in the amended statute.

52. Mr. Ponda has strenuously argued that the sanction orders meet the requirement of law and they are in tune with Section 45(2) of the UAPA. We have been taken through the recommendations of the independent authority, sanction order and related evidence led by the respective Sanctioning Authorities. In addition, it is submitted that even if there is any error in the process of sanction, the same is a curable defect in terms of Section 465 of the Code. Much emphasis is laid on the point that the defence has not challenged the validity of sanction at any earlier point of time and thus, at a later stage they cannot challenge the same, more so after conviction recorded by the First Court.

53. The statute itself provides twin safeguards against misuse of a stringent law. The statute has engrafted an additional filter of review by an independent authority before granting conventional executive sanction as contained in other Acts. It is argued that though the independent authority has submitted its report, it is nothing, but a sheer formality without application of mind. It has frustrated the very legislative object by such mechanical exercise. In this regard, we have been taken through the report of the Reviewing

Authority i.e. the Director of prosecution (Exh. 358) which reads thus:-

> *"Report regarding review of evidence gathered during Investigation in C.R.No.3017 of 2013, Registered at Police Station Aheri, District Gadchiroli*
> ---
>
> *I perused -*
>
> 1. *Copy of F.I.R.*
> 2. *Copy of panchnama.*
> 3. *Copy of Statement of witnesses, etc.*
> 4. *And other related documents (Image documents).*
>
> *It is clear that there is prima facie evidence against the arrested and non-arrested accused persons in the Police Station, Aheri, Gadchiroli C.R. No. 3017/2013 (1) Mahesh K. Tiraki, (2) Pandu P. Narote, (3) Hem K. Mishra, (4) Prashant Rahi, (5) Prasad @ Vijay N. Tirki, (6) G.N. Saibaba u/s. 13, 18, 20, 38 and 39 of Unlawful Activities Prevention Act.*
>
> *I therefore recommend to accord sanction in this case.*
>
> *This report regarding review of evidence is only with regard to the offences under the Unlawful Activities (Prevention) Act, 1967.*
>
> *sd/-*
> *(Vidya Gundecha)*
> *I/c. Director,*
> *Directorate of Prosecution,*
> *Maharashtra State, Mumbai."*

54. We have examined the report to understand what was perused by the Reviewing Authority, and what material prompted

the authority to form an opinion that there exists prima facie evidence against the accused, and therefore the recommendation. Can such a report be treated to be in conformity with the legislative expectations, and can the said report would achieve the purpose of assisting the Sanctioning Authority in forming its opinion?

55. Mr. Ponda submitted that Section 45(1) of the UAPA nowhere prescribes for assigning reasons for grant of sanction. He would submit that the law does not prescribe or mandate that the authority must assign reasons for grant of sanction, but according to him in case of refusal to grant sanction, it must be backed with reasons. He would submit that the provisions of Section 45(2) does not mandate the Authority so appointed to assign reasons while forwarding its recommendations. In support of this contention, the learned Special Prosecutor invited our attention to some of the provisions of the Code to impress that for taking action, reasons are not warranted, but for denial, reasons are necessary. He drew support from the decision of the Supreme Court in case of **U.P. Pollution Control Board**[1]. In the said decision, relating to the provisions of Section 203, 204 of the Code, it has been observed that

1. U.P. Pollution Control Board Vs. Mohan Meakins Ltd., (2000) 3 SCC 745

there is no legal requirement to pass detailed order for issuance of process, but for dismissal of complaint brief reasons are required. Applying the said analogy, it is submitted that the reasons are not required for grant of sanction since Section 45 of the UAPA does not prescribe assignment of reasons like the case of Section 204 of the Code. On similar lines, he drew our attention to the decision of the Supreme Court in case of **Kanti Bhadra Shah.**[2] where, in the context of framing of charge, it has been expressed that, in view of the language employed under Sections 239 and 240 of the Code, for framing charge reasons are not required, but for discharge, the Court must assign the reasons.

56. We are afraid that adopting this analogy drawn from general provisions of the Code would not be the correct course under UAPA. The said analogy could be made applicable at the stage of issuance of process, or framing of charge, but certainly not in the context of Section 45(2) of the UAPA which prescribes strict compliances in line with the objects of fair play sought to be achieved. We have no doubt in our mind that the report/recommendations of the Reviewing Authority is an executive

2.Kanti Bhadra Shah and another Vs. State of W.B (2000) 1SCC 722

act which is not at par with the quasi judicial orders amenable to the appellate jurisdiction. However, in the context of preserving the statutory spirit behind incorporating the pre-sanction layer, the provision is to be read and understood. The legislature thought the traditional executive sanction was inadequate for providing sufficient safeguards to the accused. The very provision of a two tier system took birth on the background of repeal of similar statutes, namely POTA and TADA, which were widely criticized. The UAPA came into force in the year 1967, however substantial amendments to tackle acts of terrorism have been introduced in the year 2004 and then elaborated in the year 2008 along with additional safeguards under Section 45(2) of the UAPA. The very statement of object and reasons behind Amendment Act 35 of 2008 conveys the reason for expanding the term “terrorist act” along with the statutory safeguards enacted in the same stroke. The object was clear, that the repealed POTA was largely criticized, hence to control the terrorist acts, expansive provision was made by way of amendment of the year 2008 along with a statutory safeguard. In the light of the said statutory object, the provisions of Section 45(2) are to be understood and interpreted.

57. Before amendment of the year 2008, Section 45 of the UAPA pertaining to cognizance of offences was in existence with a rider to obtain prior sanction like other parallel statutes. However, by way of amendment, Sub-clause (2) has been added with the object to protect uncalled prosecution and to prevent misuse. It puts in place a check on the Investigating Agency by intervention of an independent authority to independently examine the material and make recommendations as the authority deems fit. The wordings of Sub-clause (2) do not merely state that the prior "consent" of the independent authority is required, but spells out the mode and manner in which such pre-sanction exercise has to be done, that too within a prescribed time frame. At the cost of repetition, for ready reference, we once again extract Sub-clause (2) to Section 45 of the UAPA which reads as below:-

> *"**45. Cognizance of offences** – (1) ……*
>
> *(i) ……*
>
> *(ii) ……*
>
> *(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority*

appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government."

58. Words employed in the section itself conveys the legislative intent, that recommendation by an independent authority is prerequisite for grant of sanction. The Sub-clause (2) is specific, and mandates that the authority shall make an "independent review" of the evidence gathered and submit its recommendations. It is a prerequisite for Sanctioning Authority to consider the "report" of the independent authority before grant of sanction. The term report has its own significance. The word "report" does not mean to pass on assent, but is to be read in context. It is generally understood that a report is a concise piece of writing that refers to facts and evidence to look at issues, situations, events or findings. Reports are informative texts that aim at analyzing material with a specific purpose and audience in mind.

59. It is a statutory mandate for the authority to take independent review of the entire evidence. The legitimate expectation is that the authority will apply its mind, consider the entire material, re-scan the evidence before reaching to the particular conclusion. The term "review" in general parlance connotes to reconsider or to view again or to give second thought on the existing material or to re-examine. The report at least should indicate broadly the basis on which the conclusion was reached, however we cannot find a single word in the Report to lay such a foundation for making a recommendation for grant of sanction. The Report displays total non-application of mind to the material on record.

60. In the light of the above statutory requirement, we have looked at the report (Exh. 358) of the Director of Prosecution. The report only indicates in cryptic manner as to what the authority has perused. The report does not convey anything beyond the conclusion of finding of prima facie evidence and the recommendations to that effect. Cryptic non-speaking report neither gives an idea about the exercise done by the authority, nor convey anything even briefly, while reaching a conclusion. We find it

difficult to treat the said communication as a "report" in terms of Section 45(2) of the UAPA. Certainly, this was not the legislative intent. Rather it was expected that the Sanctioning Authority would get a good deal of assistance from the report of the independent authority for its consideration which is totally lacking. In the result, what was with the Sanctioning Authority for its consideration was nothing more than a mere green signal and certainly not an independent opinion. A cryptic communication cannot be considered as a "report" as expected under the law.

61. Having regard to the language used under Sub-clause (2), though the reasons are not required, but the independent authority is certainly expected to at least communicate in brief as to what prompted the authority to make the recommendation. It was an important facet of the process of sanction which has to be passed to the Sanctioning Authority to enable it to take an appropriate decision. We do agree that statute has not prescribed any format or a form in which the report is to be made. However, it was the minimum expectation from the Authority that the report would convey due application of mind. The very purpose was to provide assistance to the Sanctioning Authority. In turn, besides a go ahead

signal of the authority, there is nothing before the Sanctioning Authority for its consideration while granting sanction. As such the legislative object has been completely frustrated by said communication which was not in tune with the additional filter provided by the statute.

62. Mr. Ponda not only adhered to the legality of sanction, but, also endeavoured to impress that even if there happens to be an error or irregularity, it is a curable defect in terms of Section 465 of the Code. He would submit that an irregularity in the process of sanction cannot be capitalized on to stifle the genuine prosecutions. To avoid failure of genuine prosecution, Section 465 of the Code is to be taken into consideration. It is emphasized that Section 465 of the Code is meant for Appellate Courts/Revisional Courts to condone the irregularity in sanction unless failure of justice has occasioned thereby. Moreover, it is strenuously argued that in terms of Sub-clause (2) to Section 465 of the Code unless the objection to the validity of sanction has been raised at an earlier stage, the same cannot be entertained in appeal, that too after accused is held guilty.

63. On the other hand, the learned defence Counsel would submit that though ideally objection to the sanction was to be raised at an initial stage, however it can be raised at any stage even in appeal. The Central theme of submission is that it is not a case of mere error or omission, but the sanction is totally invalid, resulting in the Court lacking jurisdiction to take cognizance, which goes to the root of the case. Therefore, even if the validity of sanction has been challenged in context to a subsequent stage, still the objection has to be entertained.

64. Section 465 of the Code is undoubtedly meant for the Appellate Court to save the prosecution from its failure on mere error or irregularity. Sub-clause (2) to Section 465 of the Code conveys that objection to the sanction should be raised at an earlier stage, however the statue itself provides that it is one of the consideration for the assessment. Sub-clause (2) to Section 465 of the Code never precludes the Appellate Court from entertaining an objection, if raise at belated stage, but the Court shall have regard to the stage of objection.

65. Since the stage of raising objection to the validity of sanction is one of the major factor for consideration, we have

examined the said aspect in great detail. The learned Special Prosecutor emphasized that the validity of sanction has not been challenged during the entire trial. It is submitted that neither the accused have claimed discharge nor argued the aspect of sanction in the final submissions, nor during recording their statement under Section 313 of the Code. Rather, it is submitted that the accused gave no objection to frame the charge. It is submitted that though after framing of charge, sanction to prosecute accused No.6 G. N. Saibaba was tendered, the prosecution has recalled PW-1 Santosh Bawne to which accused No.6 G.N. Saibaba gave no objection and thus, there was no challenge to the legality of sanction during trial. Mr. Ponda would submit that the accused could have claimed discharge on account of invalidity of sanction or applied for quashing of the prosecution in terms of Section 482 of the Code, but they did not. In substance, he would submit that post conviction, the said objection cannot be entertained in terms of Section 465(2) of the Code.

66. Mr. Ponda relied on the decision of the Supreme Court in case of **Lal Singh**[3] to contend that the objection pertaining to the

3. Lal Singh Vs. State of Gujarat and another, (1998) 5 SCC 529

validity of sanction shall be raised at the earliest occasion. In this decision it has been observed that in view of Sub-clause (2) to Section 465 of the Code, the objection could and should have been raised at an earliest stage and if not, mere error or irregularity in sanction becomes ignorable. The said decision was later distinguished by the Supreme Court in case of Ashrafkhan to which we will advert.

67. In response, Mr. Pais would submit that though ideally the objection to the validity of sanction should be raised at the initial stage, however it can also be raised at different stages of trial i.e. at the time of taking cognizance, framing of charge, final argument and even in appeal. In support, reliance is placed on the decision in case of **S. Subbegowda**[4] which reads below:-

> *"10. Having regard to the afore-stated provisions contained in **Section 19** of the said Act, there remains no shadow of doubt that the statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of the Government/authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). It is also well settled proposition of law that the question with regard to the validity of such sanction should be raised at the earliest*

4.State of Karnataka, Lokayukta Police Vs. S. Subbegowda, 2023 SCC Online SC 911

stage of the proceedings, however could be raised at the subsequent stage of the trial also. In our opinion, the stages of proceedings at which an accused could raise the issue with regard to the validity of the sanction would be the stage when the Court takes cognizance of the offence, the stage when the charge is to be framed by the Court or at the stage when the trial is complete i.e., at the stage of final arguments in the trial. Such issue of course, could be raised before the Court in appeal, revision or confirmation, however the powers of such court would be subject to sub-section (3) and sub-section (4) of Section 19 of the said Act. It is also significant to note that the competence of the court trying the accused also would be dependent upon the existence of the validity of sanction, and therefore it is always desirable to raise the issue of validity of sanction at the earliest point of time. It cannot be gainsaid that in case the sanction is found to be invalid, the trial court can discharge the accused and relegate the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with the law."
(Emphasis supplied.)

68. In order to butress the submission that the objection regarding proper sanction can be considered at a later stage, reliance is also placed on the decision in the case of **C. Nagarajaswamy**[5]

5.State of Karnataka through CBI Vs. C. Nagarajaswamy, (2005) 8 SCC 370

with special reference to para 16 of the decision which is quoted below:-

> *"16. But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. [See B. Saha and Others Vs. M.S. Kochar, (1979) 4 SCC 177, para 13 and K. Kalimuthu Vs. State, (2005) 4 SCC 512]".*
> *(Emphasis supplied.)*

69. Besides that, the learned Counsel appearing for defence denied the submission of Mr. Ponda by stating that at each and every stage, the validity of sanction was challenged in the proceedings before the Trial Court. In order to impress that the objection to the validity of sanction was very much raised at initial stage, the defence heavily relied on the objection to the sanction raised in the bail application itself. Our attention has been invited to the order of rejection of bail dated 13.06.2014 passed by the Trial Court in the Miscellaneous Criminal Bail Application 96/2014. Bare perusal of the said order reflects that the validity of sanction was challenged with specific objection that the sanction was not issued after taking

into consideration the report of the authority. To bring clarity, we deem it appropriate to reproduce certain portion of the bail rejection order which is quoted below:-

> *"4……. The learned advocate appearing for applicant accused also submitted that the sanction to prosecute accused under the provisions of UAP Act is not legal and valid as the same was not issued after taking into consideration the report of Advisory Committee. Hence he submitted that the sanction order produced on record is invalid and cannot be considered against accused. He submitted that in absence of the same, the court cannot take cognizance of the offence punishable under UAP Act against accused. For all these reasons he submitted that there is no evidence against applicant accused to prosecute him under the provisions of UAP Act. The sanction accorded to prosecute accused under the provisions of UAP Act is invalid. The cognizance of the offences under the provisions of UAP Act cannot be taken against accused……..."*

> *11. The ld. Advocate appearing for accused has also mainly contested case on the ground that the sanction given by State government to prosecute accused under the provisions of UAP Act is invalid. Hence he submitted that court cannot take cognizance of the offence punishable under the provisions of UAP Act against applicant accused. For that purpose he submitted that the State*

Government had not considered the report of authorised officer before according sanction. I had gone through record of the case. On perusal of the same it has become clear that the State government had accorded sanction within the period of limitation to prosecute accused persons under the provisions of UAP Act. At this stage, it will have to be presumed that the sanction must have been given by following due process of law by the State government. At this stage, there is nothing on record to sow that the due process of law was not followed by the state government while granting sanction. I am of the opinion that the same will be decided on merit in the case when sanction authority will be examined in the case. However, at this stage, it will have to be considered that sanction was accorded after following due process of law by the State government."

(Emphasis supplied.)

70. The above order makes it abundant clear that at the inception before framing of charge, the validity of sanction was challenged, but the Court has postponed its consideration. It is a matter for consideration as to whether the accused are expected to challenge the sanction midway when the Court has postponed the objections till conclusion of recording of the evidence.

71. Defence submitted that the line of cross-examination as well as the arguments advanced before the Trial Court, indicates that validity of sanction has been challenged and was the subject matter of scrutiny by the Trial Court. In this regard, we have been taken through the suggestions put in the cross-examination of PW-11 Suhas Bawche (Investigating Officer), PW-18 Mr. K.P. Bakshi, PW-19 Dr. Amitabh Ranjan (Sanctioning Authority). Moreover, it is submitted that the Trial Court has exhaustively dealt with the objection to the validity of sanction by spending as many as 58 pages which itself demonstrates that the validity of sanction was very much under challenge before the Trial Court.

72. Besides that we have also gone through the cross-examination of PW-19 Dr. Amitab Ranjan who has accorded sanction qua accused Nos.1 to 5. It is evident from the line of cross-examination that the process of sanction has been challenged. During cross-examination, it has been suggested that there was no due application of mind. The cross-examination was on the lines that the entire papers were not placed before the Sanctioning Authority. The conclusions were reached without supporting material and thus, sanction was accorded without application of mind. We have also

gone through the cross-examination of PW-18 Mr. K.P. Bakshi who has accorded sanction as regards to accused No. 6. G.N. Saibaba. He was also subjected to lengthy cross-examination giving various suggestions indicating that the entire material was not produced and the sanction was mechanically accorded without application of mind.

73. After recording of evidence, accused were examined in terms of Section 313 of the Code. It was one of the argument advanced by the State that during recording of his statement, the point of sanction was not challenged. We have gone through the statements of accused to that extent. The accused have specifically denied suggestions to that effect by stating that said evidence is false. For ready reference, we have quoted the answers given by the accused to sanction related questions in the following form:-

Accused Name	Page Nos. of paper book	Question nos.	Answers
Accused No.1 Mahesh Kariman Tirki.	798	144 to 150	Denied by stating to be false.
Accused No.2 Pandu Pora Narote.	843	154 to 160	Denied by stating to be false.

Accused No.3 Hem Keshavdatta Mishra.	931	121 to 127	Denied by stating to be false.
Accused No.4 Prashant Rahi Narayan Sanglikar.	864	64 to 70	Shown ignorance to question Nos. 64 to 67 and 70 denied by stating to be false with question Nos. 68 to 69.
Accused No.5 Vijay Nan Tirki.	900	51 to 57	Shown ignorance by stating I do not know.
Accused No.6 G.N. Saibaba.	1002	112 to 119	Denied by stating to be false and a case of false implication.

74. The accused Nos. 1 to 6 have filed point wise written notes of arguments (Exh. 489) in the Trial Court making final submissions on various aspects, and particularly on the validity of the first sanction dated 14.02.2014 which was challenged under the separate caption. The relevant portion of written notes of argument is extracted herein below:-

21.0. <u>THE GRANT OF SANCTION DATED 14.02.2014 VIOLATIVE OF MANDATORY PROVISIONS OF LAW AND WITHOUT APPLICATION OF MIND.</u>

21.2. Non-application of mind by pw-19 Dr. Amitabh Ranjan

and in granting the sanction dated 15.02.2014.

21.3. Non-application of mind by the Director of Prosecution in performing the independent review while recommending the sanction.

21.4. Possibility of prior consultation of Pw-19 with the interested party before his deposition in the court: prejudice caused to the accused.

75. Likewise, the second sanction order dated 06.04.2015 for accused No.6 G.N. Saibaba was challenged under the following caption:-

22 VIOLATION OF MANDATORY PROVISIONS OF LAW IN GRANTING SANCTION DATED 06.04.2015 AGAINST G.N. SAIBABA.

22.1. Admissions made by Pw-18 in his cross-examination causing prejudice to the accused.

22.2. -------

22.3. No independent review by the director of prosecution.

22.4. Delay in granting sanction which goes beyond the statutory time limit - makes the sanction orders invalid and bad in law – no explanation given by the prosecution for the delay – prejudice caused to the accused.

22.5. The office of director of prosecution as well as the director of public prosecution are the same: it casts a

> doubt over the independent role to be played by the director of prosecution.

76. The above exercise is a complete answer to the submission that the defence has not challenged the validity of sanction before the Trial Court. Rather we may add that the Trial Court has devoted total of 58 pages (Page No. 1772 to 1830 of the paper book) in dealing with the point of sanction. At the first instance, even before framing of charge, sanction was challenged in the bail application itself. The Trial Court has specifically concluded that the point of sanction shall be considered after recording of evidence of the Sanctioning Authority. Thus, the objection regarding sanction was kept in abeyance by the Trial Court till the conclusion of evidence. The line of cross-examination, answers given in the statements recorded under Section 313 of the Code and in particular written notes of arguments, overwhelmingly point out that the sanction was very much challenged before the Trial Court.

77. Needless to say that in the appeal before us, the point of sanction has been exhaustively argued, meaning thereby the question of sanction was one of the main issues in challenge raised

by the defence. Paragraph No.36 of the appeal memo equally indicates the challenge to the sanction. Therefore, it is not a case to say that the validity of sanction was not challenged at the earliest point of time which is one of the factor for consideration while dealing with the aspect of sanction.

78. Mr. Pais argued another dimension of this issue by bringing to our attention, the powers of the Appellate Court in terms of Section 386(b)(i) of the Code, which empowers the Appellate Court to reverse the finding and sentence and acquit or discharge the accused or order for re-trial. In the said lines, he has argued that the Appellate Court is well empowered to discharge the accused even after conviction, which is provided for in the procedural law itself. According to him, recording of conviction by the Trial Court would by no means foreclose the right of the accused to object to the legality of sanction in appeal and claim discharge.

79. Though Sub-clause (2) to Section 465 of the Code contemplates that the objection to the sanction shall be raised at an earlier stage, however the Section itself postulates that stage of objection is a factor for consideration but not a decisive one. In

other words, Sub-clause (2) conveys that ideally objection to lack of sanction shall be raised at an earlier stage and said would be considered while dealing with the objection. By no means would Sub-clause (2) convey that objections to sanction, if raised at a belated stage, shall not be considered. Moreover, we have sufficiently demonstrated above that the validity of sanction was challenged in the Trial Court.

80. Mr. Dharmadhikari, the learned senior Counsel took us through Sub-clause (1) to Section 465 of the Code to contend that the language employed in the Section itself is specific and which cures procedural errors, omissions, or irregularity, but it does not speak about omission of sanction. True, Sub-clause (1) to Section 465 of the Code states that any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or other proceedings under this Code are curable. As regards sanction, the section is specific, that any error or irregularity in the sanction would be saved. Emphasis is laid on the later part of Sub-clause (1) pertaining to sanction which only speaks about error or irregularity and not about omission.

81. It is argued that the word omission, pertaining to the former part of Section is about other irregularities which do not cover sanction. Mr. Ponda responded to this submission by submitting that the former part about error, omission, and irregularity pertains to the "proceedings" before the Trial Court which according to him includes sanction. We are not in agreement with this submission because, if such an interpretation is accepted then there would be no reason to make a separate reference in the later part of section pertaining to sanction, which speaks about error or irregularity and not about the omission. The above submission assumes significance in the context of language employed in Section 465 of the Code which saves error or irregularity of sanction and not the omission which is the case relating to accused No.6 G. N. Saibaba.

82. Mr. Chitale, learned Counsel for prosecution would submit that this is not a case of omission of sanction qua accused No.6 G. N. Saibaba, but it is a case of delayed sanction for accused No.6 G.N. Saibaba. Admittedly, when cognizance was taken and charge was framed, there was no sanction for prosecution of accused No.6 G.N.

Saibaba and thus, under colour of delayed sanction, we cannot assume that while taking cognizance, there was a valid sanction which was a mandate of law in terms of Section 45(1) of the UAPA. We say so because of the negative language employed in the statute under Section 45(1) of the UAPA, which precludes the Court from taking cognizance in the absence of sanction and thus, it is a vital stage as there is a complete prohibition on the Court to take cognizance in the absence of sanction.

83. Mr. Ponda relied on the decision of **Bhooraji**[6] to contend that a procedural irregularity does not vitiate the trial unless failure of justice has been demonstrated. The Court of competent jurisdiction would not cease having competence merely because there happens to be a procedural lapse. To note the context in which the decision in **Bhooraji's** (supra) case was rendered, is a matter of significance. The long drawn trial for offences under the Indian Penal Code, and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('SC and ST Act') resulted in conviction. The Investigating Agency had directly filed a charge-sheet in the special Court, which, after taking cognizance ended the

6. State of M.P. Vs. Bhooraji and others, (2001) 7 SCC 679

trial in conviction. The accused filed appeal before the High Court of Madhya Pradesh. During the pendency of the said appeal, the Supreme Court, while deciding the case of **Ganguli Ashok** held that committal proceedings are necessary for special Courts to take cognizance. Till the said decision of the Supreme Court, the Full Bench decision of Madhya Pradesh High Court in the case of **Anand Swaroop** was followed holding that, for proceeding under the SC and ST Act, committal orders are not required. However, taking note of the change in legal position, the High Court of Madhya Pradesh held that the trial without committal was sans jurisdiction and thereby, quashed the entire trial and returned the charge-sheet for re-submission.

84. In the aforesaid background, in case of **Bhooraji** (supra), the Supreme Court considered that there were demerits for the accused at the stage of committal prior to the introduction of the Code of 1973, however the Court noted that after the Code of 1973 came into operation, there are no disadvantages to the accused at the stage of committal. In the said context, coupled with the fact that, after conviction only by noticing the change in legal position, objection was raised, the issue was considered. In the aforesaid

background, Section 465 under Chapter XXXV "irregular proceedings" was considered and it was held that the procedural irregularity does not make a validly constituted Court incompetent on account of such irregularity. In substance, it was held that there is no prejudice occasioned to the accused under the new Code of 1973 at the stage of committal which is totally a procedural aspect, curable under general provisions contained in Chapter XXXV of the Code. The issue of sanction was not involved in the said decision.

85. On the same line, prosecution relied on the decision of the Supreme Court in case of **Rattiram**[7], wherein the decision rendered in Bhooraji 's case (supra) was held to be the correct position of law. In the case of Rattiram, the trial under the provisions of SC and ST Act had commenced and concluded without committal of case to the Court of Sessions. It was canvassed that by virtue of the bar created under Section 193 of the Code, the entire trial stood vitiated. The Court has considered the substantive rights enjoyed by accused prior to the committal in context with the old Code of 1898. Note was taken of the fact that after the new Code of 1973, the Magistrate was only required to see whether the offence was exclusively triable by a

7.Rattiram and ors. Vs. State of Madhya Pradesh (2012) 4 SCC 516,

Court of Sessions. Earlier at the time of committal, the Magistrate was required to hold inquiry, record satisfaction, take evidence, and the accused had a right of cross-examination, but after the Code of 1973, the limited role was ascribed to the Magistrate to commit on satisfaction of cognizable offence. In the said context, it has been held that, since the accused did not have substantial rights at the time of committal under the new Code, there was no occasion for failure of justice. Considering the said position in the light of Section 465 of the Code, it was observed that the procedural lapses which do not vitiate the valuable rights of accused would not frustrate the trial as there is no failure of justice. The issue of invalid sanction or no sanction was not considered in the context of Section 465 of the Code.

86. Our attention has been invited to the decision of **Kalpanath Rai**[8] to contend that the legislature has purposefully introduced Sub-clause (2) to Section 465 in the Code of 1973 to save failure of prosecution on mere error or irregularity in prosecution. Likewise merely because an objection is raised at earlier point of time, it does not invalidate the proceedings, but it is

8.Kalpanath Rai Vs. State (through CBI) (1997) 8 SCC 732

only one of the consideration to be weighed. The relevant observations are extracted below:-

> *"27. When Parliament enacted the present Code they advisedly incorporated the words "any error or irregularity in any sanction for the prosecution" in Section 465 of the present Code as they wanted to prevent failure of prosecution on the mere ground of any error or irregularity in the sanction for prosecutions. An error or irregularity in a sanction may, nevertheless, vitiate the prosecution only if such error or irregularity has occasioned failure of justice.*
>
> *29. Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. The sub-section only says that "the court shall have regard to the fact" that objection has been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void trial."*
>
> (Emphasis supplied.)

87. Undisputedly, by virtue of Sub-section (2) of Section 465 of the Code, error or irregularity in sanction is saved, unless failure of justice has occasioned. It is a question of fact whether in the

context of given facts, process of sanction can be termed as mere error or irregularity and if so, whether failure of justice has occasioned.

88. Prosecution relied on the decision of the Supreme Court in case of **Girish Kumar**[9] under the provisions of Prevention of Corruption Act, to contend that mere absence or error or irregularity in grant of sanction, does not vitiate the proceeding in absence of raising objection at the initial stage. Moreover, after judicial scrutiny and the conclusion of guilt, the point of absence or error or omission would become inconsequential. The relevant observation made in paras 67 and 77 are as under:-

> *67. In CBI v. V.K. Sehgal, (1999) 8 SCC 501, it was held that for determining whether the absence of or any error, omission or irregularity in the grant of sanction has occasioned or resulted in a failure of justice, the court has a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if it had been raised at the trial and early enough, it would not be sufficient to conclude that there was a failure of justice. Whether in fact and in law there was a failure of justice would differ from case to case but it was made clear that if such an objection was not raised in the*

9.Girish Kumar Suneja Vs. Central Bureau of Investigation, (2017) 14 SCC 809

trial, it certainly cannot be raised in appeal or in revision. It was explained that a trial involves judicial scrutiny of the entire material before the Special Judge. Therefore, if on a judicial scrutiny of the evidence on record the Special Judge comes to a conclusion that there was sufficient reason to convict the accused person, the absence or error or omission or irregularity would actually become a surplusage. The necessity of a sanction is only as a filter to safeguard public servants from frivolous or mala fide or vindictive prosecution. However, after judicial scrutiny is complete and a conviction is made out through the filtration process, the issue of a sanction really would become inconsequential.

77. An allegation of 'failure of justice' is a very strong allegation and use of an equally strong expression and cannot be equated with a miscarriage of justice or a violation of law or an irregularity in procedure – it is much more. If the expression is to be understood as in common parlance, the result would be that seldom would a trial reach a conclusion since an irregularity could take place at any stage, inadmissible evidence could be erroneously admitted, an adjournment wrongly declined etc. To conclude, therefore, Section 19(3)(c) of the PC Act must be given a very restricted interpretation and we cannot accept the over-broad interpretation canvassed by learned Counsel for the appellants."

(Emphasis supplied.)

89. In the said decision a note was taken of the specific provision of Section 19 of the PC Act pertaining to the previous sanction for prosecution. Relying on the decision in case of **V.K. Sehgal,**[10] it has been observed that absence or error or omission or irregularity in grant of sanction would not *ipso facto* result in failure of justice. Moreover, if objection to the sanction has not been raised at the initial stage, post conviction, such absence, error or irregularity would become a surplusage. The term "failure of justice" has been explained in that it cannot be equated to miscarriage of justice or a violation of law, but is much more than that.

90. The said decision was rendered in context of the provisions of Section 19 of the PC Act pertaining to previous sanction for prosecution. Notably, Sub-clause (3) to Section 19 of the PC Act is a specific provision to cure or save any error, **omission** or irregularity in the sanction. For the sake of convenience, we have extracted clause (3) to Section 19 of the PC Act as below:-

> *"19 (1).....*
> *(2)....*
> *(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),*

10.C.B.I. Vs. V. K. Sehgal, (1999) 8 SCC 501

> *(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;*
>
> *(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;*
>
> *(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."*
>
> (Emphasis supplied.)

91. Clause (3) of Section 19 of the PC Act gives overriding effect to the provisions of the Code. It provides that the sanction does not vitiate the proceeding on the ground of absence of, or any error, omission or irregularity in the sanction unless in the opinion of the Court, a failure of justice has been occasioned. The clause

specifies the term "omission" which is not the position in case of Section 465 of the Code pertaining to sanction, on which much emphasis is laid by the prosecution. Sub-clause (1) of Section 465 of the Code saves procedural irregularities which are "omissions", but the later portion pertaining to sanction only cures the error or irregularity in the sanction and does not speak about omission of sanction.

92. PC Act has a specific inbuilt provision under Section 19(3)(a) to save omission in sanction, which is not the position under Section 45 of the UAPA which does not have such an arrangement. Moreover, the UAPA being a special stringent statute, the observations made in a different context cannot be made applicable in the light of specific requirements of Section 45(2) of the UAPA.

93. **Nishan Singh**[11] was a case under Section 302 of the Indian Penal Code. The issue about non-compliance of the provisions of Section 319(4)(a) of the Code was under consideration. It provides that on addition of an accused the proceeding shall be commenced afresh, and witnesses shall be re-heard. In the said context, the Court has reiterated the principles

11.Nishan Singh Vs. State of Punjab, (2008) 17 SCC 505,

enunciated in case of V.K. Sehgal (supra). Being different on facts and issues, it is of no assistance to the prosecution.

94. Mr. Ponda relied on the decision of the Supreme Court in case of **Pradeep Wodeyar**[12] to contend that generally a finding or order is not reversible due to irregularity unless a "failure of justice" is proved. The objection about irregularity should be raised at the earliest opportunity. The Court has considered the purport of Chapter XXXV of the Code which relates to the irregular proceedings. The relevant paras 46 and 47 of the decision runs thus:-

> *"46. Rattiram (supra), had distinguished Gangula Ashok (supra) on the basis of the stage of the proceedings since the trial had not begun in the latter but was completed in the former. Rattiram (supra) does not hold that Section 465 CrPC would not be applicable to pre-trial cases. The differentiation between trial and pre-trial cases was made only with reference to sub-Section (2) of Section 465. Since the cognizance order was challenged after the trial was over, the accused could not prove failure of justice in view of Section 465(2). However, Section 465(2) only provides one of the factors that shall be considered while determining if there has been a failure of justice. Section 465(2) by corollary <u>does</u>*

12.Pradeep S. Wodeyar Vs. State of Karnataka, 2021 SCC Online SC 1140

not mean that if the alleged irregularity is challenged at an earlier stage, the failure of justice is deemed to be proved. Even in such cases though, where the challenge is made before the trial begins, the party has the burden of proving a failure of justice'. Further, even if the challenge is made before the trial begins, the Court still needs to determine if the challenge could have been made earlier.

47. The test established for determining if there has been a failure of justice for the purpose of Section 465 is whether the irregularity has caused prejudice to the accused. No straitjacket formula can be applied. However, while determining if there was a failure of justice, the Courts could decide with reference to inter alia the stage of challenge, the seriousness of the offence charged, and apparent intention to prolong proceedings. It must be determined if the failure of justice would override the concern of delay in the conclusion of the proceedings and the objective of the provision to curb the menace of frivolous litigation."
(Emphasis supplied.)

95. In case of **Pradeep Wodeyar** (supra), relating to the provisions of Mines and Minerals Act, 1957, the Supreme Court has considered the effect of irregularity in committal proceedings and its consequence in the context of failure of justice. Emphasis

is laid on the test as to whether the irregularity has caused failure of justice with reference to the stage of challenge.

96. Prosecution relied on the decision in case of **V.K. Sehgal** *(supra)*. The relevant para 10 and 11 are as quoted below:-

> *"10. A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2) enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court. In Kalpnath Rai v. State (through CBI) this Court has observed in paragraph 29 thus :*
>
> *29. Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. he sub-section only says that `the court shall have regard to the fact' that*

objection has been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void trial.

11. In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant, because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure."

(Emphasis supplied.)

97. In this decision relating to the PC Act, the issue of competence of the Sanctioning Authority was raised for the first time in appeal which is not the case here.

98. Reliance is placed by Mr. Ponda on the decision of the Supreme Court in case of **Rajmangal Ram**[13] to impress that unless the Court reaches to the conclusion that a failure of justice has been occasioned, error, omission or irregularity in sanction may not be entertained. In the said decision relating to the PC Act, the objection about sanction was raised midway through the trial. Taking note of the specific provision of Section 19(3) of the PC Act, read with Section 465 of the Code, it is expressed that under both the enactments any error, omission or irregularity in the sanction does not vitiate the eventual conclusion in the trial unless a failure of justice has occurred. The aspect of failure of justice would be considered after leading evidence and not at the midst of the trial.

99. Our attention has been invited to the decision of the Supreme Court in case of **Deepak Khinchi**[14], which was a case under the Explosive Substances Act. In the said case, sanction was accorded after three years of the occurrence which took the lives of 14 innocent persons. Before framing charge, the Court directed

13.State of Bihar and others Vs. Rajmangal Ram, (2014) 11 SCC 388
14.Deepak Khinchi Vs. State of Rajasthan, (2012) 5 SCC 284

the prosecution to obtain sanction for which there was delay of three years. In that context, it was observed that three years delay in obtaining sanction cannot be considered fatal, but it is a duty of the Court to see that the preparators of crime are tried and convicted if offences are proved against them.

100. Though Mr. Ponda relied on the decision in case of **V.K. Sasikala**[15] the said decision is of no assistance. In the said case, the issue was of denial of access to documents in custody of the Court, but not relied upon by the prosecution. In that context, it has been ruled that the objection of prejudice, if raised by the accused, it should be dealt by the Court then and there.

101. Mr. Ponda relied on the decision of the Supreme Court in case of **Virender Kumar Tripathi**[16] to contend that in absence of pleadings about failure of justice, the objection to the validity of sanction cannot be entertained. Our attention has been invited to paras 9 and 10 of the decision which read as under:-

> *"9. Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision*

15.V.K. Sasikala Vs. State represented by Superintendent of Police, (2012)9 SCC 771
16.State of Madhya Pradesh Vs. Virender Kumar Tripathi, (2009) 15 SCC 553

> *makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of /or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the Court a failure of justice has in fact been occasioned thereby.*
>
> *10. In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established is yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was led. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [2004(7) SCC 763] and in Prakash Singh Badal v. State of Punjab [2007(1) SCC 1] need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct."*
> *(Emphasis supplied.)*

In the said decision, the Trial Court had not entertained the objection to the sanction while framing charge. The accused has filed a revision petition against said order on the ground that sanction was accorded without consulting the parent department in terms of Circular dated 09.02.1988. In that context, it was

observed that the provisions of Section 19(3) of the PC Act have not been considered by the High Court. There was no whisper or pleading of any failure of justice. Moreover, the stage when this failure was to be established was yet to reach, therefore, the High Court's decision of quashing was set aside. The above decision was in the context of specific provision of Section 19(3) of the PC Act, and the stage of prosecution.

102. The decision in case of **Kuppuswamy**[17] has been cited to contend that unless failure of justice is pleaded and proved, the trial cannot be quashed. The relevant observations made in para 15 reads as below:-

> *"15. It is therefore clear that even if the trial before the III Additional City Civil and Sessions Judge would have in a Division other than the Bangalore Metropolitan Area for which III Additional City Civil and Sessions Judge is also notified to be a Sessions Judge still the trial could not have been quashed in view of Sec. 462. This goes a long way to show that even if a trial takes place in a wrong place where the Court has no territorial jurisdiction to try the case still unless failure of justice is pleaded and proved, the trial can not be quashed. In this*

17.State of Karnataka Vs. Kuppuswamy Gownder and others, (1987) 2 SCC 74

> *view of the matter therefore reading Sec. 462 alongwith* Sec. 465 *clearly goes to show that the scheme of the Code of Criminal Procedure is that where there is no inherent lack of jurisdiction merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure an order or sentence awarded by a competent court could not be set aside unless a prejudice is pleaded and proved which will mean failure of justice. But in absence of such a plea merely on such technical ground the order or sentence passed by a competent court could not be quashed."*
> *(Emphasis supplied.)*

103. The above decision was rendered in context of specific saving provision of Section 462 of the Code. It has been observed that on the ground of mere technicality or lack of territorial jurisdiction the sentence cannot be set aside unless failure of justice is shown. The issue of validity of sanction was not involved in the said decision.

104. On the similar line, our attention was drawn to the decisions of the Supreme Court in cases of **Mohd. Shahabuddin**[18] and **Fertico**[19] to impress the importance of pleadings of failure of

18.Mohd. Shahabuddin Vs. State of Bihar and others, (2010) 4 SCC 653
19.Fertico Marketing and Investment Private Limited Vs. CBI and another, (2021) 2 SCC 525

justice. The issue for consideration in case of Mohd. Shahabuddin was about place of sitting of Court in context with Section 462 of the Code. In case of investigation by C.B.I, prior consent under Section 6 of the Delhi Special Police Establishment Act was not obtained to investigate a public servant, which was accorded later. In that context, absence of pleading about prejudice to the accused was considered.

105. On the other hand, the learned defence Counsel, strenuously argued that the material defect in grant of sanction goes to the root of the case. In view of special requirement of section 45(2) of the UAPA in absence of valid compliance, sanction vitiates the whole process which is an incurable defect. It is submitted that the general provisions of the Code namely Section 465 would protect the procedural irregularity but nor the fundamental defects which goes to the root of the case. According to the learned Counsel for defence, the legislative object of providing twin layers of protection was frustrated by flagrant breach committed by the Reviewing Authority. The said material defect itself amounts to failure of justice which touches the fundamental rights of the citizen.

106. Mr. Mandhyan strenuously argued that the use of negative words employed in the statute itself shows its mandatory nature. For this purpose, he relied on the decision of the Supreme Court in case of **Rangku Dutta**[20] with special reference to para 18, 19 and 21of the decision:-

> *"18. It is obvious that Section 20(A)(1) is a mandatory requirement of law. First, it starts with an overriding clause and, thereafter, to emphasise its mandatory nature, it uses the expression "No" after the overriding clause. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Reference in this connection can be made to G.P. Singh's Principles of Statutory Interpretation, 12th Edition. At page 404, the learned author has stated: .....*
>
> *We are in respectful agreement with the aforesaid statement of law by the learned author.*
>
> *19. So there can be no doubt about the mandatory nature of the requirement of this Section. Apart from that, since the said section has been amended in order to prevent the abuse of the provisions of TADA, this Court while examining the question of complying with the said provision must examine it strictly.*

20. Rangku Dutta alias Ranjan Kumar Dutta Vs. State of Assam, (2011) 6 SCC 358

21. Whether the Deputy Superintendent of Police is a District Superintendent of Police or not is a different question which we need not decide in this case. But one thing is clear that the requirement of approval must be made at the initial stage of recording the information. If there is absence of approval at the stage of recording the information, the same cannot be cured by subsequent carrying on of the investigation by the DSP. Reference in this connection is made to the principles laid down by Lord Denning speaking for the Judicial Committee of Privy Council in Benjamin Leonard MacFoy Versus United Africa *Co. Ltd. [1961(3) Weekly Law Reports 1405]. Lord Denning, speaking for the unanimous Bench, pointed out the effect of an act which is void so succinctly that I better quote him:*

……If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.

We are in respectful agreement with the aforesaid view. Therefore, the evidence of PW 4 and PW 6 do not come to any aid of the State Counsel in the facts of the present case."

(Emphasis supplied.)

107. Above observations made in context of the provisions of Section 20-A(1) of a similar statute such as TADA assist us in interpretation of the mandatory nature of Section 45(1) of the UAPA.

108. In order to impress that defect in sanction is incurable, initial reliance is placed on the decision of the Privy Council in case of **Gokulchand Dwarkadas**[21]**,** with reference to para 12 of the decision which reads as under:-

> *"12. It was argued by Mr. Megaw, though not very strenuously, that even if the sanction was defective, the defect could be cured under the provisions of Section 537, Criminal P. C., which provides, so far as material, that no finding, sentence or order passed by a Court of competent jurisdiction shall be altered or reversed on account of any error, omission or irregularity in any proceedings before or during the trial, unless such error, omission or irregularity, has, in fact, occasioned a failure of justice. It was not disputed that if the sanction was invalid the trial Court was not a Court of competent jurisdiction, but Mr. Megaw contends that there was in this case a sanction, and that the failure of the Crown to prove the facts on which the sanction was granted amounted to no more than an irregularity. Their Lordships are unable to accept this view. For the reasons above expressed the sanction given was not such a*

21. Gokulchand Dwarkadas Morarka Vs. The Kind, 1948, SCC Online PC 3

> *sanction as was required by Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943, and was, therefore, not a valid sanction. A defect in the jurisdiction of the Court can never be cured under Section 537."*
> *(Emphasis supplied.)*

In the said decision, it has been expressed that in absence of valid sanction, the Court would loose jurisdiction and the defect in jurisdiction of the Court can never be cured under Section 537 of the old Code. The said decision was rendered on the canvass of the old section which does not have specific enabling provision like Section 465(1) of the Code which requires to be noted.

109. Mr. Mandhyan relied on the decision of the Supreme Court in case of **Pulin Das**[22] to impress the mandatory nature of the requirement of sanction with reference to para 23 of the decision which is quoted below:-

> *"23. In a case of this nature, particularly, in the light of the stringent provisions as provided in sub-section (1) of Section 3 as well as Section 20-A which mandates that no information about the commission of an offence under this Act shall be recorded by the police without prior approval of the D.S.P, and no court shall take cognizance*

22.Pulin Das alias Panna Koch Vs. State of Assam, (2008) 5 SCC 89

> *of any offence under this Act without previous sanction of the Inspector General of Police or Commissioner of Police, we are of the view that PW9 DSP ought to have explained all the details about the ULFA organization, its activities and the alleged connection of the accused persons."*

110. Mr. Mandhyan would submit that the UAPA is a special statute with a dual safeguard in sanction process which cannot be tinkered with in terms of the general provisions of the Code. By relying on the decision of the Supreme Court in case of **Dilwar Singh**[23] it is contended that in case of special statute, maxim *"generalia specialibus non derogant"* would apply.

111. Reliance is placed on the decision of the Supreme Court in case of **Rambhai Gadhvi**[24] to contend that validity of sanction is *sine qua non* for enabling the Court to take cognizance. The relevant observation made in para 8 of the decision runs as below:-

> *"8. Taking cognizance is the act which the Designed Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the sub-section is the permission to*

23.Dilwar Singh Vs. Parvinder Singh Alias Iqbal Singh and another, (2005) 12 SCC 709,
24.Rambhai Nathabhai Gadhvi and others Vs. State of Gujarat (1997) 7 SCC 744

prosecute a particular person for the offence or offences under TADA. We must bear in mind that sanction is not granted to the Designated Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report. Thus, a valid sanction is sine qua non for enabling the prosecuting agency to approach the court in order to enable the court to take cognizance of the offence under TADA as disclosed in the report. The corrolary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction."

(Emphasis supplied.)

112. The above decision relates to the pari materia provision of Section 20-A(2) of the TADA which is as under:-

*"**20-A. Cognizance of offence.-** (1) Notwithstanding, anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.*

> *(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police."*

TADA was a similar statute under which these observations have been made which assumes significance. Observations made under similar stringent statutes bears relevance in the context of UAPA running on the same lines.

113. In order to emphasise the necessity of valid sanction, heavy reliance is placed on the decision of the Supreme Court in case of **Ashrafkhan**[25] with special reference to para 34 which reads as under:-

> *"34. From a plain reading of the aforesaid provision it is evident that for the purpose of trial Designated Court is a Court of Session. It has all the powers of a Court of Session and while trying the case under TADA, the Designated Court has to follow the procedure prescribed in the Code for the trial before a Court of Session. Section 465 of the Code, which falls in Chapter 35, covers cases triable by a Court of Session also. Hence, the prosecution can take shelter behind Section 465 of the Code. But Section 465 of the Code shall not be a panacea for all error, omission or irregularity. Omission to grant prior approval for registration of the case under TADA by the Superintendent of Police is not the kind of omission*

25.Ashrafkhan Alias Babu Munnekhan Pathan Vs. State of Gujarat , (2012) 11 SCC 606

which is covered under Section 465 of the Code. It is a defect which goes to the root of the matter and it is not one of the curable defects.

35. The submission that absence of sanction under Section 20-A(2) by the Commissioner of Police has been held to be a curable defect and for parity of reasons the absence of approval under Section 20-A(1) would be curable is also without substance and reliance on the decision of Lal Singh v. State of Gujarat, (1998) 5 SCC 529, in this connection, is absolutely misconceived. An Act which is harsh, containing stringent provision and prescribing procedure substantially departing from the prevalent ordinary procedural law cannot be construed liberally. For ensuring rule of law its strict adherence has to be ensured. In the case of Lal Singh (supra) relied on by the State, Section 20-A(1) of TADA was not under scanner. Further, this Court in the said judgment nowhere held that absence of sanction under Section 20-A(2) is a curable defect. In Lal Singh (supra) the question of sanction was not raised before the Designated Court and sought to be raised before this Court for the first time which was not allowed. This would be evident from the following paragraph of the judgment:: (SCC p.530, para).

38. .....However, the decision by the Designated Court to proceed with the trial shall not prevent the accused to contend in future that they cannot be validly prosecuted under TADA. We hasten to add that even in a case which is not fit to be tried by the Designated Court but it

decides to do the same instead of referring the case to be tried by a court of competent jurisdiction, it will not prevent the accused to challenge the trial or conviction later on."
(Emphasis supplied.)

114. Considering its earlier pronouncement in case of Lal Singh (supra), the Supreme Court in case of Ashrafkhan (supra), observed that the defect in sanction goes to the root of the case and is not a curable defect. The Court has observed that the provisions of stringent and harsh statute are to be strictly followed. Moreover, it is clearly observed that omission in prior approval in taking cognizance under similar statute, TADA is not a curable defect under Section 465 of the Code. Above observations are quite relevant since both are stringent and harsh statutes made to combat terrorist acts.

115. Mr. Pais has placed reliance on the decision in case of **Nanjappa**[26] to contend that grant of proper sanction is a *sine qua non* for taking cognizance and even the plea of no sanction can be raised for the first time before the Appellate Court. The special emphasis is laid on para 22 of the decision which reads thus:-

26.Nanjappa Vs. State of Karnataka, (2015) 14 SCC 186

> "*22. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution."*
>
> *(Emphasis supplied)*

116. Mr. Pais further relied on the decision of the Supreme Court in **Seeni Nainar Mohammed**[27] where, having regard to the stringent provisions of the TADA with special reference to Section 20-A. it is observed that non-compliance of those provisions vitiates

27 Seeni Nainar Mohammed Vs. State (2017) 13 SCC 685,

the proceedings. Relying on the decision in case of **Ashrafkhan** (supra), it is expressed that TADA being a stringent penal statute, it requires strict interpretation and failure may vitiate the entire proceeding. In this regard, we may reproduce para 11 and 21 of the decision which read thus:-

> *"11. We, without hesitation, are of this considered opinion that the answer to this question is in the negative for settled principle of non- application of mind by sanctioning authority while granting approval for taking cognizance under TADA Act and undermining the objective of the Act. This relevant provision was inserted by Act 43 of 1993 which came into force on 23.05.1993 which is prior to the date of commission of the offence i.e., 10.10.1994 disputed in instant appeal which makes it crystal clear that Section 20-A(1) of TADA must be construed by indicating that prior approval from the competent authority is mandatory for taking cognizance of offence punishable under TADA. However, it shall always be borne in mind by the sanctioning authority that application of such provisions which forms part of penal statues requires strict interpretation and failure to comply with the mandatory requirement of sanction before cognizance is taken, as mentioned in TADA, may vitiate the entire proceedings in the case. In the recent past, it has been observed by this Court in respect of Section 20-A of TADA in Hussein Ghadially Vs. State of*

Gujarat, (2014) 8 SCC 425, at para 21, as follows: (SCC p.438).

> *"21. A careful reading of the above leaves no manner of doubt that the provision starts with a non obstante clause and is couched in negative phraseology. It forbids recording of information about the commission of offences under TADA by the Police without the prior approval of the District Superintendent of Police."*

> *21. We are therefore of this considered opinion that as a result of illegal sanction order the criminal proceedings for prosecution under the* TADA Act *are vitiated entirely. Suffice it to say that Learned Court under the TADA Act has grossly erred in taking cognizance of the case."*
> *(Emphasis supplied)*

117. Mr. Pais submitted that the aspect of failure of justice may not occur at the initial stage, but it is to be demonstrated after conclusion of trial. He drew support from the decision of the Supreme Court in case of **Virender Kumar Tripathi (**supra**)**, wherein, it is observed that whether or not failure has occasioned, has to be determined once the trial commences and evidence was led. Similarly, Mr. Pais would submit that all types of errors or irregularity cannot be cured with the aid of Section 465(2) of the

Code, nor would delay in raising objections foreclose the right to challenge the legality of sanction. In this regard, he would also rely on the decision in case of **Kalpnath Rai** (supra).

118. Mr. Pais heavily relied on the decision of the Supreme Court in case of **Anwar Osman**[28] to contend that Sanctioning Authority is under obligation to accord sanction specific to an offence in relation to the provisions of TADA. It is observed that the question of prior approval or prior sanction goes to the root of the matter and is *sine qua non* for valid prosecution concerning offences under TADA. The relevant observations made in para 19, 20 and 21 read thus:-

> *"19. On a bare perusal of Exh.57, there is nothing to indicate as to whether the sanctioning authority was conscious of the materials gathered during investigation qua the concerned accused (respondent No.3), which merely suggested possession and recovery of two walky-talkies from him. If that is the only incriminatory material against accused No.3-respondent No.3, the sanctioning authority ought to have pondered over the crucial aspects including as to how such possession would entail in commission of any offence much less punishable under Sections 4 or 5 of TADA. Further, section 3 of*

28.State of Gujarat Vs. Anwar Osman Sumbhaniya and others, (2019) 18 SCC 524

TADA posits different offences, namely, terrorist acts [Section 3(2)], being party to conspiracy or abetment or knowingly facilitating the commission of terrorist acts [Section 3(3)], harbouring or concealing any terrorist [Section 3(4)], being member of a terrorist gang or terrorist organization, which is involved in terrorist acts [Section 3(5)], and to hold any property derived or obtained from commission of any terrorist act [Section 3(6)]. The sanctioning authority was under a bounden duty to accord sanction, specific to offences, from amongst the different offences under sub-sections (1) to (6) of Section 3 of TADA. Similarly, we are at a loss to know as to how Sections 4 & 5 of TADA would apply to a case of mere possession of walky-talkies. Section 4 refers to disruptive activities whereas Section 5 refers to possession of unauthorized classified arms and ammunition. A walky-talky is certainly not one of those classified arms and ammunition. In our opinion, the purported sanction vide Exh.57 also suffers from the vice of non-application of mind, on this count alone."

20. The necessity of obtaining prior sanction under Section 20-A(2) need not be underscored considering the draconian provisions of TADA. In our opinion, therefore, even sanction qua Accused No.3-Respondent No.3 dated 1-4-2005 (Exh.57) does not stand the test of a valid sanction to prosecute him for offences punishable under TADA. Indeed, the prosecution has relied on the evidence of PW10 and PW-13. That, in our opinion, at best,

would suggest that all the relevant papers gathered during the investigation were placed for consideration before the sanctioning authority. The fact remains that Exh.57 issued under the signature of A.K. Bhargav, IGP, makes no attempt to even remotely indicate as to why sanction to prosecution for offences punishable under Sections 3, 4 or 5 of TADA has been accorded qua accused No.3-Respondent No.3 merely on the basis of possession and recovery of two walky-talkies from him. Further, he has not been examined by the prosecution which also could have thrown light on that crucial aspect. Therefore, we have no hesitation in concluding that the sanction dated 1-4-2005 (Exh.57), is not a valid sanction qua Accused No.3-Respondent No.3.

21. We are conscious of the fact that the Designated Court did not frame any issue regarding validity of prior approval under Section 20-A(1) or prior sanction under Section 20-A(2). As the question of prior approval or prior sanction goes to the root of the matter and is sine qua non for a valid prosecution concerning TADA offences and including the jurisdiction of the Designated Court, no fault can be found with the Designated Court for having answered that issue at the outset."
(Emphasis supplied)

In above decision it has been specifically observed that the issue of prior sanction goes to the root of the matter and is a *sine qua non* for

valid prosecution under the TADA. Moreover, our attention has been invited to the observations made therein that the duty of the Sanctioning Authority cannot be underscored considering the draconian provisions of TADA. In the said decision, the Supreme Court, after considering its earlier pronouncements in the case of **Seeni Nainar** (supra), **Ashrafkhan** (supra), **Rambhai Gadhvi** (supra) reiterated the position of law about importance of sanction under a stringent statute and its effect on prosecution.

119. The Supreme Court has consistently emphasized in a series of decisions rendered under similar statute that validity of sanction is a *sine quo non* for valid prosecution, and absence thereof vitiates the proceedings. We find these decisions more relevant and appropriate for consideration under the UAPA which was introduced to achieve the same object. In this regard we drew support from the observations of Supreme Court in case of **Vernon**[29], particularly paragaraph no.36 thereof, which reads as under.

> *"36.....When the statutes have stringent provisions the duty of the Court would be more onerous. Graver the offence, greater should be the care taken to see that the offence would fall within the four*

29 Vernon .vrs. State of Maharashtra and another – 2023 SCC online SC 885.

> *corners of the Act. Though these judgments were delivered while testing similar rigorous provisions under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the same principle would apply in respeect of 1967 Act as well."*

The above observations assist us to the great extent.

120. Mr. Dharmadhikari drew our attention to the decision of the Supreme Court in case of **Ajmer Singh**[30] to emphasize that by virtue of Section 5 of the Code, in the absence of specific provision to the contrary, it would not affect any special or local law for the time being in force.

121. Mr. Dharmadhikari relied on the decision in case of **Prakash** [31] to emphasis the need of stricter interpretation of a stringent law of which para 14 is relevant:-

> *"14. The more stringent the Law, the less is the discretion of the Court. Stringent laws are made for the purpose of achieving its objectives. This being the intendment of the legislature the duty of the court is to see that the intention of the legislature is not frustrated. If there is any doubt or ambiguity in the statutes, the rule of*

30.Ajmer Singh and others Vs. Union of India and others, (1987) 3 SCC 340

31.Prakash Kumar alias Prakash Bhutto Vs. State of Gujarat (2005) 2 SCC 409

purposive construction should be taken recourse to, to achieve the objectives. (See Swedish Match AB vs. Securities & Exchange Board, India, (2004) 11 SCC 641. (2004) 7 Scale 158 para 84 at p. 176.)."
(Emphasis supplied)

122. Mr. Dharmadhikari would submit that a stringent law is to be interpreted strictly. He relied on the decision of the Supreme Court in case of **Karnal Singh**[32] with special emphasis on para 6 of the decision which reads as under:-

"6. The NDPS Act prescribes stringent punishment. Hence a balance must be struck between the need of the law and the enforcement of such law on the one hand and the protection of citizens from oppression and injustice on the other. This would mean that a balance must be struck in. The provisions contained in Chapter V, intended for providing certain checks on exercise of powers of the authority concerned, are capable of being misused through arbitrary or indiscriminate exercise unless strict compliance is required. The statute mandates that the prosecution must prove compliance with the said provisions."
(Emphasis supplied)

123. We may take note of the Constitutional Bench decision in case of **Baij Nath**[33] in which while dealing with the provisions of

32.Karnal Singh Vs. State of Haryana, (2009) 8 SCC 539
33.Baij Nath Prasad Tripathi Vs. The State of Bhopal and another, AIR 1957 SC 494

Section 403 (Old Code) about maintainability of a second trial, it is expressed that the trial without sanction is null and void being by a Court not competent. The relevant observations made in para 6 are quoted below:-

> *"6. ……. If no Court can take cognizance of the offences in question without legal sanction, it is obvious that no Court can be said to be a Court of competent jurisdiction to try those offences and that <u>any trial in the absence of such sanction must be null and void</u>, and the sections of the Code on which learned Counsel for the petitioners relied have really no bearing on the matter. Section 530 of the Code is really against the contention of learned Counsel, for it states, inter alia, that if any Magistrate not being empowered by law to try an offender, tries him, the the proceeding shall be voids. Section 529(e) is merely an exception in the matter of taking cognizance of an offence under Section 190, sub-section (1), clauses (a) and (b); it has no bearing in a case where sanction is necessary and no sanction in accordance with law has been obtained."*
> *(Emphasis supplied)*

124. When confronted with various decisions rendered under the provisions of TADA, Mr. Ponda responded by submitting that they

are of no assistance in view of peculiarity of Section 20-A of the TADA which reads as below:-

> *"**20-A. Cognizance of offence.-** (1) Notwithstanding, anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.*
>
> *(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police."*

It is canvassed that Section 20-A(1) opens with a non-obstante clause which specifically excludes the applicability of the general provisions made under Chapter XXXV of the Code. The decisions rendered under the TADA cannot be made applicable since Section 45 of the UAPA does not open with a non-obstante clause giving an overriding effect. Though at first blush this submission seems to be attractive, however the entire Section 20-A of the TADA requires consideration with its true import. Sub-clause(1) to Section 20-A of the TADA opens with non-obstante clause giving overriding effect to the general provisions of the Code. The said clause pertains to the prior approval of the District Superintendent of Police for

registration of crime. Certainly Sub-clause (1) gives overriding effect to Section 154 of the Code which mandates the Police Officer to register a crime on receiving information relating to the commission of cognizable offence. We are afraid to stretch the effect of a non-obstante clause to Sub-clause (2) of Section 20-A of the TADA which pertains to pre-sanction required for the Court to take cognizance. Sub-clause (2) of Section 20-A of the TADA does not open with a non-obstante clause, but it is akin to Section 45(1) of the UAPA with the only difference that such sanction is only of the Sanctioning Authority spcified in the Section.

125. We cannot equate or import a non- obstante clause incorporated in Sub-clause (1) of TADA into Sub-clause (2) which does not have one. If it was the legislative intent to give overriding effect to Sub-clause (2) pertaining to sanction, then Sub-clause (2) would also have been opened with a non-obstante clause like the case of Sub-clause (1). We cannot read something which is not provided under the statute. For these reasons, we are unable to accede the submission of Mr. Ponda for discarding the precedents cited under the provisions of TADA. Rather in our opinion, TADA was a similar stringent statute made to tackle acts of terrorism. We

can trace the genesis for amending UAPA Act of 2008 covering terrorist acts to TADA and POTA. These statutes on the same subject introduced with the object of tackling terrorism run on same lines. Therefore, according to us, the guiding principles laid down by the Supreme Court in the context of TADA would assist us to great extent compared to other statutes like PC Act.

126. Mr. Ponda laid further emphasis on the absence of pleadings and satisfaction on account of failure of justice. It is strenuously argued that the accused have neither pleaded the case of failure of justice on account of irregularity in the sanction, nor it has been demonstrated before us. Adverting to Section 465(1) of the Code, it is canvassed that unless the Court comes to the conclusion that a failure of justice has occasioned, the error or irregularity in sanction is of no consequence.

127. The legislative intent behind Section 465 is to save the prosecution from technical errors or irregularity post conviction, that too if it does not occasions failure of justice. The core issue is whether in given facts, the sanction accorded in the manner as discussed above can be termed as a mere error or irregularity. We

have extensively dealt the issue of sanction in the context of special pre-requirement under the UAPA. The mechanical exercise done by the Director of Prosecution cannot be termed as a mere curable procedural error or irregularity. In case of mere error or irregularity, it is for the defence to show the failure of justice, but if the sanction itself is void for material defect, it goes to the root of the case and vitiates the entire proceedings which itself is an instance occasioning failure of justice.

128. In addition to Section 465 of the Code, our attention has been invited by the learned special prosecutor to Section 460 of the Code relating to the irregularity which does not vitiate the proceedings. Chapter XXXV of the Code under caption of "irregular proceedings" has specified the contingencies, in which the irregularity does not vitiate the proceedings (Section 460 of the Code) and eventualities in which irregularity would vitiate the proceedings (Section 461 of the Code). It is argued that Section 460(e) of the Code provides that if any Magistrate not empowered by law to take cognizance of an offence under Clause (a) or Clause (b) of Sub-section (1) of Section 190 of the Code takes cognizance, it does not vitiate the proceedings. Based upon these provisions in

addition to Section 465 of the Code, it has been canvassed that if cognizance is taken without empowerment, it is a curable defect.

129. As a matter of fact, UAPA being a special stringent statute, the provisions of the UAPA would prevail over the general provisions of the Code. Section 45 of the UAPA specifically precludes the Court from taking the cognizance of any offence in absence of valid sanction which goes to the root of the case. The said material deficiency cannot be cured by invoking general provisions of the Code.

130. The next hurdle which the prosecution has to surmount is the challenge to the sanction on account of non-application of mind by the Sanctioning Authority. It is argued that both the Sanctioning Authorities have not applied their mind nor satisfied themselves about sufficiency of material to put accused on trial. The relevant material and the relevant facts in relation to the commission of offence were not considered by the authority. Particularly, it is submitted that CFSL report was not available for consideration by the Sanctioning Authority and PW-19 Dr. Amitab Ranjan despite that made a statement about perusal of the CFSL report. Moreover, it is

submitted that the approach of the Sanctioning Authority was casual and has merely approved the draft sanction forwarded by the Investigating Officer.

131. Mr. Pais would submit that in order to demonstrate due application of mind by the Sanctioning Authority, the entire relevant material must be placed before the Authority. For this purpose, he relied on the decision of the Supreme Court in case of **Navjot Sandhu**[34]. In the said decision, it is observed that the test to be applied is whether relevant material that form the basis of allegations constituting the offence was placed before the Sanctioning Authority and the same was perused before granting sanction (para 16). It is also observed that grant of sanction is an executive act and the validity thereof cannot be tested in the light of principles applied to a quasi-judicial order.

132. Mr. Pais relied on the decision of the Supreme Court in **Ashok Kumar**[35] to contend that the entire relevant record must be placed before the Sanctioning Authority who in turn applies its mind to this material and passes an order of sanction. From following such

34.State (NCT of Delhi) Vs. Navjot Sandhu Alias Afsan Guru, (2005) 11 SCC 600.
35.Central Bureau of Investigation Vs. Ashok Kumar Aggarwal , (2014) 14 SCC 295

process one can conclude that the authority has applied its mind. The relevant observations made in para 16 are as under:-

> *"16. In view of the above, the legal propositions can be summarised as under:*
>
> *16.1. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.*
>
> *16.2. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.*
>
> *16.3. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.*
>
> *16.4. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.*

> *16.5. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."*

133. No doubt, grant of sanction is a sacrosanct act and is intended to provide safeguard against frivolous and vexatious litigation. The Sanctioning Authority after being apprised of all the fact, must form an opinion that prima facie case is made out. Application of mind by the Sanctioning Authority is a *sine qua non* for valid sanction. Moreover, sanction order must speak for itself and enunciate that the authority has gone through the entire record of the investigation. Sanction as regards to accused Nos. 1 to 5 has been accorded by the Additional Chief Secretary, Home Department Dr. Amitabh Ranjan (PW-19) whilst sanction for accused No.6 G.N. Saibaba was granted by the Additional Chief Secretary, Home Mr. K.P. Bakshi (PW-18). Both the Sanctioning Authorities have been examined by the prosecution. We have gone through the evidence of

the Sanctioning Authorities on the canvas of objection about non-application of mind.

134. It is the evidence of PW-19 Dr. Amitabh Ranjan that on 11.02.2014, his office has received the independent review report from in-charge Director of prosecution under signature of Mrs. Gundecha (Exh.358). On 13.02.2014, the Section Officer and Deputy Secretary of Home has studied the file which he received on 14.02.2014 for according sanction. It is his evidence that along with the file, he received all investigation papers, calendar of events and opinion of Director of Prosecution along with 257 pages. He deposed that he carried the file to his residence for study. He has gone through the investigation papers, CFSL report, soft copies of the electronic data, mirror images of hard copies containing the electronic gadgets. It is his evidence that after going through all the documents, he came to the conclusion about commission of offence and accorded sanction against accused Nos. 1 to 5 for the offence punishable under Sections 13, 18, 20, 38, 39 of the UAPA which is Exh. 17.

135. PW-19 Dr. Amitabh Ranjan has been subjected to cross-examination. Certain technical as well as factual suggestions were put to him, however, over all he has withstood cross-examination. True, CFSL report was not available, however, he has categorically deposed that mirror images of hard copies have been perused. Pertinent to note that Director of Prosecution though recommended grant of sanction against accused Nos. 1 to 6, has not granted sanction to accused No.6 G.N. Saibaba who was not arrested. We have gone through the sanction order (Exh.17) dated 15.02.2014 along with the schedule. Grant of sanction is an administrative act which cannot be evaluated like a quasi judicial order. In that view of the matter, we are not inclined to accept the case of non-application of mind on his part.

136. We have also gone through the evidence of PW-18 Mr. K.P. Bakshi who has accorded sanction for accused No.6 G.N. Saibaba. It is his evidence that on 15.02.2015, his office has received proposal for sanction which he forwarded to the Director of Prosecution for independent review on 26.02.2015. He has received the independent review on 04.03.2015. It is his evidence that all the documents including search warrant, investigation papers, CFSL

report, hard copies certified by the CFSL, all seizure panchnamas, arrest panchnamas and other papers were submitted to him. He deposed that he has studied the file and gone through all the documents. He was subjectively satisfied that there is a prima facie case against accused No. 6 G.N. Saibaba for commission of offence punishable under Sections 13, 18, 20, 38, 39 of the UAPA. He came to the conclusion that it was a fit case for grant of sanction and accordingly passed the sanction order on 06.04.2015 (Exh. 349). His cross-examination does not reflect anything to construe the non-application of mind. Such an inference cannot be drawn easily by conjecture and surmise. The grant of sanction is an executive act which cannot be treated at par with quasi judicial order. Therefore, we are not inclined to accept the defence submission that the sanction order suffers from non-application of mind by the Sanctioning Authority.

137. We have given thoughtful consideration to the various precedents cited by both sides. Though Mr. Ponda would submit that he has cited more Supreme Court decisions rendered by a Three Judge-Bench, however, we are not impressed by said submission, since the applicability matters more than the number of citations.

We have carefully gone through all the reported decisions and considered their applicability to the facts of this case. Most of the decisions pertain to a specific provision under the PC Act and the error in non committal of proceedings and of like nature.

138. Stringent nature of the provisions of UAPA necessitates us to consider the precedents rendered by the Supreme Court relating to the provisions of TADA which was a statute running on the parallel lines, introduced with the same object. The necessity of obtaining prior sanction under Section 45(1) of the UAPA cannot be underscored in view of the stringent provisions of the UAPA. The UAPA which is harsh containing stringent provisions prescribing procedure substantially departing from the ordinary law cannot be considered casually or liberally. In the case of **Ashrafkhan** (supra), the Supreme Court in the context of invalid sanction, considered the effect of general provisions of Section 465 of the Code. It is worthwhile to note that in the said context, it has been observed that Section 465 of the Code shall not be a panacea for all errors, omissions or irregularities. The omission to grant prior approval for prosecution is not a kind of omission covered under Section 465 of

the Code. It is a defect which goes to the root of the matter and it is not one of the curable defects.

139. In the latter decision of **Seeni Nainar Mohammed** (supra), the Supreme Court reiterates that the penal statute requires strict interpretation and failure to comply with the mandatory requirement of sanction before cognizance is taken, as mentioned in TADA may vitiate the entire proceedings in the case. With those observations, the Supreme Court concluded that as a result of illegal sanction order, the criminal proceedings for prosecution under the TADA Act are vitiated entirely. The Supreme Court considering its earlier pronouncements in case of **Rambhai Gadhvi** (supra), **Ashrafkhan** (supra), and **Seeni Nainar Mohammed** (supra) has re-enforced the said view in its later decision in case of **Anwar Osman** (supra) that in case stringent statute like TADA prior sanction goes to the root of the matter and is *sine qua non* for valid prosecution. Moreover, it is observed that the duty of the Sanctioning Authority cannot be underscored considering the draconian provisions of the TADA. The line of consistent decisions rendered in the same field

postulates that valid sanction for prosecution is *sine quo non* and in absence, vitiates the entire proceedings.

140. We have elaborated that the accused have objected to the validity of sanction during trial right from the bail application till final arguments. It is not a case that post conviction, first time in appeal the objection to the validity of sanction has been raised. Rather the Trial Court while rejecting the bail, postponed the objection for consideration till recording of the evidence.

141. We have no doubt that the report qua accused Nos. 1 to 5 was a mechanical empty formality complied by the Director of Prosecution. The report is bereft of material to display consideration to arrive at the conclusion of existence of a prima facie case. We have already elaborated above that when terrorist acts have been expansively brought under the umbrella of UAPA, the additional filter was provided with the object of providing one more safeguard. Re-visiting Sub-clause (2) of Section 45 of the UAPA makes the legislative intent clearer, that the Sanctioning Authority is bound to consider the report of an independent authority before taking a decision. The laconic half page communication cannot be called a

report since there is no material found therein to infer that the authority has reviewed the evidence gathered and formed a particular opinion on that basis. The very legislative intent was for the report to assist the Sanctioning Authority in arriving at the conclusion by going into the report of the independent authority.

142. Section 48 of the UAPA postulates that the provisions of UAPA or Rules made thereunder, shall have overriding effect over anything inconsistent therewith contained in any other enactment. The very intent of legislature is to give primacy to the provisions of the UAPA, meaning thereby it shall be followed in stricter sense. The principle expressed in the maxim *"generalia specialibus non derogant"* would apply i.e. if a special provisions has been made in a certain matter, it would have overriding effect over the general provision. Therefore, there is no gainsaying that general provisions of the Code would save acts which are not in tune with the special Act i.e. UAPA.

143. The stringent provisions of the UAPA would preclude the Court from taking cognizance of an offence in absence of sanction accorded in the manner as provided by Section 45 of the

UAPA itself. The Special mechanism has been provided under the statute for the process of sanction which is a statutory requirement to make the sanction legal and valid. This Special arrangement cannot be equated with general provisions of the Code nor can be frustrated by applying the general law. Every statutory safeguard made by a special statute must be followed scrupulously. The line of decisions rendered by the Supreme Court in parallel legislation (TADA) would provide the best guide to interpret the provisions of the UAPA. In the case of **Anwar Osman** (supra), the Supreme Court has succinctly ruled that the valid sanction is a *sine qua non* and its invalidity vitiates the trial. The case in hand falls on the same lines which persuades us to hold that the sanction is in variance with the special requirement of the UAPA and would go to the root of the matter making the entire process invalid.

144. As observed above, besides a half page communication to go ahead, there is nothing on the part of the authority to demonstrate its consideration. Scanty communication of the Director of Prosecution does not stand the test of valid report expected under the special law. Consequently, the sanction accorded in the absence

of compliance with the mandatory pre-requisite cannot be termed as a valid sanction within the meaning of Section 45(2) of the UAPA. This was a fundamental error which has invalidated cognizance as being without jurisdiction. Defect of this kind is fatal and cannot be cured with the aid of general provisions of the Code. It must, therefore follow that the Trial Court could not have taken cognizance of the offence punishable under the provisions of the UAPA for want of valid sanction.

145. As regards to the accused No.6 G.N. Saibaba the position is even worse. We have amply expressed hereinabove that a valid sanction is a pre-requisite for launching prosecution under the UAPA. We may reiterate that Section 45(1) of the UAPA puts a complete embargo on the Court to take cognizance in the absence of sanction. Admittedly, the Trial Court has not only taken cognizance, but also framed charge without sanction. To be noted here that the Trial Court has taken cognizance and framed charge against accused No. 6 G.N. Saibaba on 21.02.2015 whilst sanction against him was accorded on 06.04.2015 and tendered in the Court on 30.11.2015. Thus, there is total non-compliance with the sanction provision which goes to the very root of the case, vitiating everything against

accused No.6 from its inception for want of authority of the Trial Court to proceed. In sum and substance, the prosecution against accused No.6 G.N. Saibaba for want of valid sanction is also totally vitiated.

TIME FRAME FOR SANCTIONING PROCESS.

146. A further challenge that is thrown to the prosecution is about non-compliance of the time frame in the process of grant of sanction in terms of Section 45(2) of the UAPA, read with Rules 3 and 4 made thereunder. It is argued that the period prescribed under the Rules has not been followed, which vitiates the entire process of sanction. Our attention has been invited to Section 45[2] of the UAPA, which mandates following of the time frame provided under the Rules. Section 45[2] of UAPA requires sanction for prosecution within such a time as is prescribed, after considering the report of Authority so appointed.

147. The 2008 Rules are enacted specifically to prescribe the time as mandated in Section 45[2] of the UAPA. Rule 3 prescribes the time for making the report containing recommendations by the Authority to the appropriate Government, whilst Rule 4 prescribes

the time limit for issuance of sanction for prosecution by the appropriate Government. Both these Rules prescribe 7 [seven] working days, as time within which the recommendation is to be made and the sanction has to be accorded. Emphasis is laid to the term 'shall' used in Section 45[2] of the UAPA as well as in Rules 3 and 4 of the Rules of 2008. The defence drew support from the decision of Kerala High Court in case of **Roopesh**[36], wherein the time limit prescribed in Rules 3 and 4 is held to be mandatory.

148. Per contra, the learned Special Prosecutor would submit that during the process of trial, sanction was not challenged on account of non-compliance of the time limit prescribed under the Act and Rules. It is contended that the term 'shall' is to be construed in tune with the legislative intent and should be read as "may". Particularly, it is submitted that the UAPA does not prescribe any consequence for non-compliance of the Rules. Moreover, prejudice has not been shown to have been caused because of non-compliance of the time frame.

149. Generally the use of the word 'shall' prima facie indicate that a particular provision is imperative, however, that is not

36 Roopesh .vrs. Sate of Kerala 2000 SCC Online Ker 1372

so always. The meaning to be given to a particular word depends upon the context in which it is used. It is the function of the Court to ascertain the real intention of the legislature by carefully examining the entire scope of the statute, the purpose it seeks to achieve and the consequences that would flow from the construction to be placed therein. The word 'shall' therefore, ought not to be construed in accordance with the language with which it is clothed, but, in the context in which it is used and consequences of its non-compliance.

150. The special prosecutor heavily relied on the decision of the **T.V. Usman**[37] to contend that the provision as to the time specified shall be construed as directory unless the delay has caused prejudice to the rights of the accused. Particularly, reference is made to para 11 of the decision quoted below:-

> *"11. In Rule 7(3) no doubt the expression "shall" is used but it must be borne in mind that the rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the court and it is only on the basis of this report of the Public Analyst that the authority concerned has to take a decision whether to institute a prosecution or not. There is no time-limit pre-*

37. T.V. Usman v. Food Inspector, Tellicherry Municipality, Tellicherry, (1994) 1 SCC 754

scribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the court may not attach any value to the report but merely because the time- limit is prescribed, it cannot be said that even a slight delay would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, sub-section (2) of Section 13 *of the Act confers valuable right on the accused under which provision the accused can make an application to the court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the*

sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under Section 13(2) and that depends on the facts of each case and violation of the time limit given in Sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out."

151. The above decision conveys that the word "shall" ought to be construed not according to the strict language, but in the context in which it is used and particularly consequence or prejudice which would be caused to the other side.

152. So far as the sanction qua accused nos. 1 to 5 dated 25.02.2014 [Exh.17] is concerned, there is no dispute that the dual time rider has been complied. However, the order of sanction qua the accused no.6 – G.N. Saibaba, has been challenged on account of non-compliance of the mandatory time frame prescribed by the Statute and Rules. On facts, a proposal for sanction qua accused no.6 G.N.Saibaba was received by the Director of Prosectuion on 26.02.2015 whilst the report from the Director of Prosecution, was received by the State Government on 04.03.2015. The sanction has

been accorded by Sanctioning Authority P.W.18 – Bakshi on 06.04.2015. It is evident that the Director of Prosecution has complied with the time limit by forwarding the report within 7 days on 04.03.2015, however the real glitch is with respect to the grant of sanction after 7 working days from 04.03.2015, which was infact granted on 06.04.2015.

153. Though the word "shall" no doubt connotes the sense of urgency, but the consequence of non-compliance in strict sense which flows from the wordings in the rule, has not been spelt out under the statute. Neither at an initial stage of the prosecution nor even before us the defence has projected any prejudice from strict non-compliance of time frame.

154. The very purport of the provision is to convey that the process has to be complied with and completed in an expeditious manner. Particularly, we have taken into account the contingency which may occur, if the word "shall" in the context is held mandatory. In that case, even if a single days delay would stifle the prosecution intending to curb the act of terrorism. Certainly, the legislative intent behind incorporating the term "shall" is not to stifle

the prosecution on such insignificant technicality, but conveys that the process ought to be completed in an expeditious manner. We are unable to persuade ourselves to accept the contention that the term "shall" is to be strictly treated as a mandatory provision and failure to comply with the timeline strictly vitiates the process. Therefore, we respectfully defer with the view taken by the Kerala High Court in the case of **Roopesh** (supra) in that regard.

155. We are of the view that and accordingly hold that to achieve legislative intent the dual mandate is to be complied with in its true spirit. Though a minuscule delay would not thwart the legislative intent, but delay if writ large from the record, which is unexplained, would certainly have its own adverse impact on the process of sanction. In the present case, the report of Director of Prosecution (qua accused No.6 G.N. Saibaba) was received by the Sanctioning Authority on 04.03.2015 whilst sanction was accorded after a long period of one month, i.e. on 06.04.2015. In such eventuality, it was obligatory on the prosecution to at least explain the circumstances causing this delay. Evidence of PW-18 Bakshi is totally silent on this count nor is any submission canvassed in that

regard. In the circumstances, a long period of three weeks of unexplained delay would certainly work against the legislative spirit engrafted in Section 45(2) read with Rule 4 of the Rules 2008. For aforesaid reason also, the sanction is vitiated and the act of the Court taking cognizance without authorization is consequently contrary to the mandate of law. The Trial Court could not take cognizance of the case and has acted without jurisdiction.

156. In view of the conclusions reached hereinabove, we are of the considered view that no cognizance could have been taken against any of the accused in the absence of valid sanction/no sanction. To sum up, the first sanction qua accused Nos. 1 to 5 was not based upon the "independent review of evidence" carried by the Director of Prosecution and sanction qua accused No.6 G.N. Saibaba was not in-existence at the time of taking of cognizance by the special Court despite a statutory bar. Therefore, the very foundation for initiation of prosecution being not in consonance with law, the order of taking of cognisance by the Special Court vitiates the entire further proceedings.

157. At the end, Mr. Mandhyan, learned Counsel would submit that Section 45 of the UAPA contemplates an independent review/ assessment of the evidence, meaning thereby assessment by an independent authority. It is submitted that the Director of Prosecution works under the Home Department which cannot be treated as an independent authority. Undoubtedly, the Director of Prosecution is an authority appointed by the State Government for the purposes of Section 45(2) of the UAPA. The said appointment of the Director of Prosecution cannot be questioned in incidental proceedings which is the subject matter of a separate challenge. The plea that the authority is not independent has not been raised by proper pleadings nor is opportunity given to the respondent to meet the challenge. The Supreme Court in **E.I.D. Parry**[38] has expressed that a Court may not decide a question not raised before it unless the pleadings contain a contention that a particular rule/appoint-ment is bad. The said exercise would be, of-course by appropriate proceedings in a proper way. In that view of the matter, in absence of specific challenge raised to the competence and independence of a Director of Prosecution being appointed as the Independent

38.Union of India Vs. E.I.D. Parry (India) Ltd., (2000) 2 SCC 223

Authority by way of pleadings and opportunity to other side, we are not inclined to entertain this objection.

APPLICABILITY OF THE STATUTORY PRESUMPTION.

158. At the inception, Mr. Ponda would submit that UAPA is a preventive statute introduced to cope up and tackle the acts of terrorism. In order to achieve the object of the UAPA, the statute has provided mandatory presumptions under Section 43-E of the UAPA which shifts the burden on the accused to explain. He drew our attention to the Section 4 of the Evidence Act, to contend that when the statute provides the words “shall presume”, the Court has no choice than to presume a fact unless it is disproved. The burden would shift on the accused to rebut the presumption, if some definitive evidence suggesting his involvement in a terrorist act has been proved.

159. Mr. Ponda would submit that the presumption under Section 43-E of the UAPA is mandatory since the word “shall” has been used in the section itself. He relied on the decisions of the

Supreme Court in cases of **Dhanvantrai**[39], **Hiten**[40], **K.N. Beena**[41], **Neeraj Dutta**[42], **Ram Krishna**[43], **Sanjay Dutt**[44], **Seema Silk**[45], **Sailendra**[46] and **A. Vaidyanatha Iyer**[47] to contend that when the presumption is mandatory, the Court has no choice. It is a presumption of law and therefore, it is obligatory on the Court to raise this presumption.

160. In these decisions, the scope and mandate of presumptions under different statutes namely PC Act, Negotiable Instruments Act, Evidence Act and TADA has been explained. We have no doubt in our mind of the principle stated therein that, if the case is brought under Section 43-E of the UAPA then there is an obligation on the Court to raise the statutory presumption. For ready reference, we have extracted Section 43-E of the UAPA as under:-

> *"**43-E. Presumption as to offences under section 15.** — In a prosecution for an offence under section 15, if it is proved —*

39. Dhanvantrai Balwantrai Desai Vs. State of Maharashtra, 1962 SCC Online SC 7
40. Hiten P. Dalal Vs. Bratindranath Banerjee, (2001) 6 SCC 16
41. K.N. Beena Vs. Muniyappan and another, (2001) 8 SCC 458
42. Neeraj Dutta Vs. State (Government of NCT of Delhi), (2023) 4 SCC 731
43. Ram Krishna Bedu Rane Vs. State of Maharashtra, (1973) 1 SCC 366
44. Sanjay Dutt Vs. State through C.B.I. Bombay(II), (1994) 5 SCC 410
45. Seema Silk & Sarees and another Vs. Directorate of Enforcement and others, (2008) 5 SCC 580
46. Sailendra Nath Bose Vs. State of Bihar, AIR (1968) 3 SC 1292
47. State of Madras Vs. A. Vaidyanatha Iyer, 1957 SCC Online SC 3

(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or
(b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence, the Court shall presume, unless the contrary is shown, that the accused has committed such offence."

161. It is submitted that though reading of Section 43-E of the UAPA provides presumption for an offence under Section 15 of the UAPA, however Section 15 merely defines the term "terrorist act". It is submitted that statutory presumption is applicable to all the Sections wherever the term "terrorist act" has been employed. In this context, he took us through Section 18 (punishment for conspiracy), Section 20 (punishment for member of terrorist gang or organization), which refers to a terrorist act. According to him, since those penal provisions pertains to "terrorist act" as defined under Section 15, presumption would apply in those cases. In short, he would submit that the presumption operates against the accused

and as they failed to discharge the burden, the offence is presumed to be proved.

162. The learned defence Counsels strongly opposed the applicability of statutory presumption under Section 43-E of the UAPA. It is submitted that the presumption is restricted to an offence under Section 15 of the UAPA only to those made punishable under Section 16 of the UAPA. It is submitted that though Section 15 defines "terrorist act", however Section 16 particularly provides a punishment for terrorist act and thus, presumption would apply to Section 15 read with Section 16 of the UAPA only.

163. We are unable to accept the submission canvassed by the Special Prosecutor that wherever the word "terrorist act" has been employed in the statute, a presumption would follow. Had it been the legislative intent to do so, then there was no necessity to restrict the applicability of presumption in a prosecution for an offence under Section 15 of the UAPA only. Statutory presumption under Section 43-E being part of stringent legislation, requires strict interpretation and any violation would frustrate the rights of accused.

164. This apart, it is the contention of Mr. Ponda that in terms of Sub-clause (b) to Section 43-E of the UAPA, if any kind of definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence, is sufficient to draw the presumption. It is submitted that seizure of incriminating material in the form of electronic data is a definitive evidence suggesting the involvement, therefore, the presumption would apply with full force. In that context, we have taken a note that accused are not charged for the offence of 'Terrorist Act' punishable under Section 16 of the UAPA.

165. Besides that, we have examined Section 43-E of the UAPA. Sub-clause (a) which pertains to recovery of arms or explosives or any other substances specified in Section 15 recovered from the accused and used in the commission of terrorist act. Sub-clause (a) is to be read with Section 15 which is clear from the language itself. It provides that arms or explosive or other substances specified in the said Section obviously means Section 15, if recovered from the possession of the accused and there is reason to believe that it has been used in the commission of such offence, means offence of

terrorist act, then only presumption can be invoked. In order to apply Sub-clause (a), two things are essential, namely that there shall be a recovery from the possession of accused of the articles specified in Section 15 of the UAPA and that there shall be reason to believe that these were used in the terrorist act.

166. Contextually, we have gone through Sub-clause (a) of Section 15 of the UAPA which refers to the use of bombs, dynamite or other explosive substances or inflammable substances, firearms or substances of hazardous nature or by any other means to cause or likely to cause the effect as stated under clauses (i) to (iv) of Sub-clause (a) to Section 15 of the UAPA. Apparently, the seizure must be of some articles used to create violence resulting in death, injury, damage, destruction etc. Though it provides use of any other means of whatever nature, however it necessarily must be connected to the result as stated under Clauses (i) to (iv). The residuary provisions are to be read in context with the bombs or explosive or any article of hazardous nature and certainly not pamphlets or communication which have no relevance with the cause or likelihood to cause the result as stated in Sub-clauses (i) to (iv) of Section 15(a) of the UAPA. Sub-clause (a) contemplates that the seizure must be of a

physical article like bomb, explosive etc and not pamphlets. In substance, Sub-clause (a) of Section 43-E of the UAPA has no application at all.

167. The prosecution heavily relied on Sub-clause (b) of Section 43-E of the UAPA with particular reference to finding of definitive evidence suggesting the involvement of the accused in the offence. According to the State, finding of incriminating electronic data and pamphlets amounts to definitive evidence suggesting the involvement of the accused in the offence. The submissions is misconceived, wholly untenable and contrary to the provisions of the Act. A reading of Sub-clause (b) suggests that the evidence demonstrating the involvement of the accused in the offence shall be the offence of a terrorist act and be connected with what is found at the site of offence or shall have connection with the commission of the terrorist act. The legislative intent is to cover up the evidence which was found at the site of the offence of terrorist act. In case at hand, the seizure of incriminating articles from accused Nos. 1 to 3 was from the Aheri Bus Stand, for accused Nos. 4 and 5 from Chichgarh T-point and seizure from accused No.6 G.N. Saibaba from his house. Certainly those places cannot be construed as a site of the

offence of a terrorist act. In order to apply Sub-clause (b) there must be finding of definitive evidence at the site of offence which is totally lacking. By no stretch of imagination, can the bus-stand or house be termed a site of offence i.e. offence of Terrorist Act. The word "anything" used in Sub-clause (b) should be in connection with the offence of terrorist act. Morevoer, it is not the prosecution's case that any Terrorist Act has been committed at any of these sites.

168. In that view, we have no hesitation to hold that mere finding of some incriminating material in the form of pamphlets and electronic data cannot be termed as a recovery of the articles in terms of Sub-clauses (a) and (b) to Section 43-E of the UAPA and thus, the presumption would not apply. Moreover, we may reiterate that the statutory presumption would apply only in prosecution for an offence under Section 15 punishable under Section 16 of the UAPA of which the present accused have not been charged. Stretching the presumptions to other Sections of the UAPA would be reading something into the provisions which is not contemplated in the statute. In the above view, we are totally in disagreement with Mr. Ponda as to the applicability of statutory presumption under

Section 43-E of the UAPA to the facts of this case and we hold accordingly.

Besides such inherent lacuna we undertake to examine prosecution case on merits.

PROSECUTION CASE AND DEFENCE.

169. In a nutshell, the prosecution alleges that accused No.6 G.N. Saibaba sent some secret messages stored in the 16 GB memory card relating to the banned terrorist organisation CPI (Maoist) and its frontal organisation (RDF). The secret messenger was accused No.3 Hem Mishra. One Naxalite lady named Narmadakka had sent accused No.1 Mahesh Tirki and accused No. 2 Pandu Narote to receive accused No.3 Hem Mishra at Aheri Bus-stand, however on the basis of the intelligence inputs, all three were apprehended on 22.08.2013, followed by the seizure of incriminating material from their possession.

170. It is also the prosecution case that accused No.4 Prashant Rahi and accused No.5 Vijay Tirki linked with the banned terrorist organisation CPI (Maoist) and its frontal organisation (RDF), were found in possession of literature belonging to CPI

(Maoist) and RDF. It was followed by the seizure of incriminating material from accused No.4 Prashant Rahi. The investigation reveals that the accused No.6 G.N. Saibaba was an active member of CPI (Maoist) and its frontal organisation (RDF) having close connection with the arrested accused. Accused No.6 G.N. Saibaba sent secret information which led the Police to seek his search warrant and consequential seizure of incriminating material from his house.

171. The prosecution mainly alleges that the accused have conspired or advocated or abetted the commission of terrorist act. They were active members of a terrorist organization which was involved in terrorist activities. Moreover, it is alleged that they were associated with a terrorist organization with an intention to further the activities of the terrorist organization. The accused have also actively supported this terrorist organization with an intention to facilitate the activities of the terrorist organization. The prosecution case entirely hings around the seizure of incriminating material from the accused. The arrest and seizure of incriminating material is the backbone or foundation of the entire prosecution.

172. By and large, the prosecution case can be divided into three parts leading to the arrest of different accused at different time

and places. The first set of arrest is of accused Nos. 1 to accused No. 3 on 22.08.2013, near Aheri Bus Stand around 06.15 p.m. This arrest was on suspicion about their involvement in naxalite activities relating to banned terrorist organisation CPI (Maoist) and its frontal organization (RDF). Seizure of certain incriminating material coupled with the information extracted during interrogation revealed involvement of the accused No.4 Prashant Sanglikar and accused No.5 Vijay Tirki involved in similar activities. In pursuance of this information, accused No. 4 Prashant Sanglikar and accused No.5 Vijay Tirki were arrested on 01.09.2013 at Chichgarh T-Point, Deori around 06.00 p.m. Likewise, investigation further revealed involvement of accused No.6 G.N. Saibaba with his leading role. The police sleuth went to Delhi and took house search of accused No.6 G.N. Saibaba on 12.09.2013 in the late afternoon. Voluminous electronic devises have been seized during his house search. Later on accused No.6 G.N. Saibaba came to be arrested on 09.05.2014.

173. It is the prosecution case that accused Nos.1 to 6 were part of the larger criminal conspiracy with some other accused who were not under arrest. They have planned to wage war against the Government of India. The seizure effected from different sets of

accused disclose their involvement with terrorist organisation CPI (Maoist) and its frontal organisation RDF. The prosecution claimed that contents of seized material amounts to involvement of the accused in the offences under the UAPA. It is the definitive evidence suggesting their involvement in a terrorist organization and acts of terrorism. The material suggest their involvement with CPI [Moist] and its frontal organization [RDF]. This organization has been placed in the first schedule the UAPA as a terrorist organization vide entry No.34 in a notification issued in terms of Section 2[1][m] of the UAPA. The Organization is deemed to have been involved in the terrorism by committing, participating, preparing, promoting, encouraging terrorism.

174. It is the prosecution case that naxal related documents, various communications, reports of review meeting in the form of electronic data disclose that the accused have conspired to commit a terrorist act. According to the prosecution, the accused have associated themselves with this terrorist organization with intent to further the activities of the terrorist organization CPI (Maoist) and its frontal organization RDF. The accused have also intentionally supported the said terrorist organization. Seizure of incriminating

material in the form of literature and videos, disclose that accused No.6 G.N. Saibaba rejected a parliamentary form of governance and supported an armed struggle against the Government of India and the State of Maharashtra.

175. The defence has strongly assailed the seizure itself by making a variety of submissions. Apart from violation of various statutory safeguard provided under the UAPA, it is canvassed that the arrest of accused Nos. 1 to 5 itself is not free from doubt. It is their defence that accused No.3 Hem Mishra was already apprehended on 20.08.2013 from Ballarshah and subsequently a scene was created that on 22.08.2013 accused Nos. 1 to 3 were arrested from Aheri Bus-stand. Likewise, it is their defence that accused No.4 Prashant Rahi was taken charge of from Raipur whilst shown to be arrested from Chinchgarh T-point. It is the defence that the FIR was antedated and arrest was fabricated. According to the defence the entire process of arrest and seizure is suspicious. The incriminating material has been planted to suit the purpose of prosecution under the UAPA . Arrest as well as seizure panchnamas were seriously in doubt, not credible and unreliable and a case of fabrication.

176. It is submitted that no incident of violence occurred or is even alleged to have occurred. There is no material to infer the conspiracy since the prosecution has not spelt out as to what has been conspired to be done by the accused, besides a vague allegation of conspiracy to wage war against the Government.

177. In the light of above challenge to the process of arrest and seizure, coupled with the factum of the prosecution solely relying on the seizure of incriminating material, evidence needs close examination. The prosecution, though examined 23 witnesses, the prosecution evidence mainly consists of Police personnel and panch witnesses. In order to have a bird's eye view of the entire evidence, we have preferred to extract this material into a chart prepared by the Trial Court containing the oral and documentary evidence for the sake of convenience which is given below:-

P.W.No.	Name of the Witness	Exh.No.
1	Santosh Nanaji Bawne, the panch witness to seizure panchnama and seizure of articles from the possession of the accused Nos. 1 to 3 (Exh.137)	136
2	Jagat Bhole, the panch witness on seizure panchnama (Exh.,165) of electronic gadgets and other articles from the house search of accused No.6 Saibaba	164

3	Umaji Kisan Chandankhede, the panch witness on the point of personal search of accused No.4 (Exh.179) and personal search of accused No.5 (Exh.180)	178
4	Shrikant Pochreddy Gaddewar, the panch witness on facebook activities of accused no.3	198
5	Ravindra Manohar Kumbhare, the police constable, who carried and deposited the muddemal with CFSL, Mumbai	210
6	Atul Shantaram Avhad, Police Officer and informant	218
7	Apeksha Kishor Ramteke, Woman Police Constable, who brought the muddemal property from CFSL, Bombay to Aheri Police Station	222
8	Ramesh Koluji Yede, Police Head Constable, who brought the accused No.4 & 5 to Police Station, Aheri	223
9	Raju Poriya Atram, the witness to an earlier incident	225
10	Police Inspector Anil Digambar Badgujar	226
11	S.D.P.O Suhas Prakash Bawche, the Investigating Officer	235
12	Nileshwar Gaurishankar Vyas, the J.M.F.C. who recorded confessional statements of accused No.1 Mahesh and No.2 Pandu	277
13	Ganesh Keshav Rathod, Moharar who deposited the muddemal in Malkhana	297
14	Police Inspector Rajendrakumar Parmanand Tiwari	307
15	Narendra Shitalprasad Dube, Station Diary Duty Amaldar	308
16	Ravi Khemraj Pardeshi, Nodal officer	329

17	Khumaji Devaji Korde, Court Superintendent	339
18	Kalyaneshwar Prasad Bakshi, Addl. Secretary	345
19	Dr. Amitabh Rajan S.N.Kishore, Home Secretary	355
20	Rajneeshkumar Ratiram, Nodal Officer, BSNL	359
21	Bhavesh Neharu Nikam, Scientific Expert, CFSL Mumbai	371
22	Manoj Manikrao Patil, Circle Nodal Officer, Indian Airtel, Dadar, Mumbai	411
23	SDPO Ramesh Malhari Dhumal	414

S.No.	Documents	Exh.No.
1	Sanction order issued by Dr. Amitabh Rajan, Additional Chief Secretary to the Government of Maharashtra Home Department against accused No.1 to 5	17
2	Seizure panchnama in respect of property seized from the possession of accused No. 1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra	137
3	Seizure panchnama in respect of property seized from the possession of accused No.6 Saibaba	165
4	Seizure panchnama in respect of seizure of property from the possession of accused No.4 Prashant Rahi	179
5	Seizure panchnama in respect of seizure of property from the possession of accused No.5 Vijay Tirki.	180

S.No.	Documents	Exh.No.
6	Panchnama of proceedings in respect of activities of facebook account of accused No.3 Hem Mishra	199
7	Panchnama to the effect that CD was taken out from the computer and it was put back in the same condition and was sealed	200
8	Panchnama to the effect that the memory card was sealed with labels and signatures of panchas taken	201
9	Panchnama to the effect that the packets containing laptop, books and mobiles were sealed with labels and signatures of panchas taken	202
10	Panchnama in respect of seizure of mobiles of accused No.6 G.N.Saibaba	203
11	Panchnama to the effect that hard-disk was sealed with labels and signatures of panchas taken	204
12	Panchnama to the effect that hard-disks were sealed with labels and signatures of panchas taken	205
13	A letter to Forensic Laboratory, Mumbai for examination of memory-card and report	211
14	Questionnaire with regard to the memory card for forensic science lab	211A
15	A letter to Forensic Laboratory, Mumbai for examination of electronic gadgets seized from the house search of accused No.6 Saibaba and report	212
16	Oral report lodged by the informant P.S.I Atul Shantaram Awhad (P.W.6)	219
17	F.I.R. lodged by the informant P.S.I. Atul Shantaram Awhad (P.W.6)	220

S.No.	Documents	Exh.No.
18	Arrest panchnama of accused No.1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra	227 to 229
19	Special Report of Police Station, Aheri about registration of crime	236
20	Letter dated 25.8.2013 issued by P.W.11 Suhas Bawche for getting CDR	237
21	Arrest panchnama of accused No.4 and 5	239 & 240
22	Report addressed to P.I. Police Station Devri dated 1.9.2013	241
23	Search warrant of house search of accused No.6 Saibaba dated 7.9.2013	244
24	Letter to Mauricenagar Police Station at Delhi for providing police staff, computer expert and videographer by P.W.11 Suhas Bawche	252
25	Notice sent to accused No.6 Saibaba to remain present for investigation by P.W.11 Suhas Bawche	256
26	Letter dated 17.9.2013 to S.P. Gadchiroli for obtaining CDR	257
27	Letter dated 16.1.2014 sent by P.W.11 Suhas Bawche to mobile companies for CDR	262
28	Attested copy of charge-sheet of Nanakmatta Police Station against accused No.4 Prashant Rahi	264
29	Scientific analysis report of CFSL, Mumbai annexed with 15 pages in respect of 16 GB memory-card seized from accused no.3 Hem Mishra	266
30	Scientific analysis report of CFSL, Mumbai annexed with 247 pages in respect of Exh.1 to 25 i.e. electronic gadgets seized	267

S.No.	Documents	Exh.No.
	from the house search of accused No.6 Saibaba	
31	Arrest panchnama of accused No.6 Saibaba	269
32	Extracts of station diary entries	275A to 275J
33	Attested extract copies of muddemal register	276A to 276E
34	Memorandum regarding questions and answers put to accused No.2 Pandu Narote	278
35	Memorandum regarding questions and answers put to accused No.1 Mahesh Tirki	279
36	Confessional statement of accused No.1 Mahesh Tirki	280
37	Certificates I, II and III affixed to confessional statement of accused No.1 Mahesh Tirki	281 to 283
38	Confessional statement of accused No.2 Pandu Narote	286
39	Certificates I, II and III affixed to confessional statement of accused No.2 Pandu Narote	287 to 289
40	Complaint made by accused No.1 Mahesh Tirki and No.2 Pandu Narote regarding retraction of confessional statement	292
41	The CDR of mobile phone numbers of accused no.3 Hem Mishra and No.4 Prashant Rahi	330 to 332
42	Certificate us/65B of the Evidence Act	333
43	Customer application form of mobile SIM card of accused No.4 Prashant Rahi	335
44	Customer application forms of mobile SIM card of accused No.3 Hem Mishra	336 and 337

S.No.	Documents	Exh.No.
45	Certificate dated 15.2.2014 u/s 65B of the Evidence Act.	338
46	Copy of the property register of Sessions Court, Gadchiroli	340
47	Letter dated 26.2.2015 to Director of Public Prosecutor issued by Desk Officer for independent review	346
48	Independent review received from Director of Public Prosecutor	348
49	Sanction order dated 6.4.2015 for prosecution of accused No.6 Saibaba	349
50	Covering letter with sanction	350
51	Letter dated 7.2.2014 to Director of Public Prosecutor issued by Desk Officer for independent review	356
52	Independent review received from Director of Public Prosecutor	358
53	Mirror images retrieved from 16 GB memory-card of Sandisk company sent along with letter dated 30.8.2013	372
54	Letters issued by P.W.23 Bhavesh Nikam to SDPO Aheri along with mirror-images of hard-disks	373 & 374
55	Certificate dated 23.3.2016 by Head of Department Assistant Director of Cyber Crime	375
56	16 GB memory-card of Sandisk company	376
57	Hard-disks	377, 381 to 384
58	Pen-drives	378 to 380
59	DVDs	387 to 394
60	CD	395
61	CDR details of mobile SIM card of accused	413

S.No.	Documents	Exh.No.
	No.6 Saibaba	
62	Customer application form for mobile SIM card of accused No.6 Saibaba	418
63	Telephone bill in the name of accused No.6- Saibaba	419
64	Attested copy of ID card of accused No.6 Saibaba	420

178. Subject to the relevancy, we have gone through the entire material adduced by the prosecution. For the sake of convenience, we undertake to examine all three seizures along with related evidence separately.

179. The prosecution mainly sought to take shelter of statutory presumption under Section 43-E of the UAPA claiming that the prosecution led evidence establishing foundational facts and thus, it is for accused to rebut the presumption. According to the prosecution, electronic evidence in the definitive form suggest the involvement of accused. Notably, the accused have not been charged for the offence of terrorist act defined under Section 15 and made punishable under Section 16 of the UAPA. We have held above that the presumption is restricted to the prosecution for Section 15 only.

Further more, we have analyzed Sub-clause (a) and in particular Sub-clause (b) and arrived at a conclusion that definitive evidence suggesting the involvement in the offence of a terrorist act must be found at the site of the offence i.e. offence of terrorist act defined under Section 15 of the UAPA and thus, the presumption would not apply.

180. In view of the above conclusion, the onus which generally lies on the prosecution continues to lie on the prosecution. Needless to say that in criminal jurisprudence, it is a well-recognized principle that the onus of proof lies on the prosecution and is higher than the mere preponderance of probability. The prosecution is under an obligation to establish the guilt of the accused beyond reasonable doubt. We are certainly aware that the doubt need not be a fanciful or imaginary one. Though the offences are against the security and integrity of the nation, the law does not dilute the standard of proof, except in cases, where statutory presumptions would apply. The prosecution is thus bound to establish the guilt of the accused with the standard of proof ordinarily required to prove criminal offences. In view of this requirement of law, we have

analysed and scanned the evidence led by the prosecution to establish the guilt of the accused.

181. At the inception, perceiving serious challenge to the credibility of evidence, the learned special prosecutor would submit that the defective investigation by itself cannot be made a ground for discarding the prosecution case. The story of prosecution has to be examined dehors the lapses on the part of the Investigating Officer. To substantiate this contention, he relied on the various decisions of the Supreme Court in cases of **Allarakha K. Mansuri[48], Amar Singh[49], C. Muniappan[50] Chandan Khan[51], Paramjit Singh[52], Paras Yadav[53], Ram Bali[54] Mast Ram[55]** and **. K. Yarappa Reddy[56]**. We have gone through these decisions laying down propositions pertaining to rules of appreciation of evidence.

182 In the above referred decisions, the Supreme Court has emphasized that defective investigation *ipso facto* would not give a

48.Allarakha K. Mansuri Vs. State of Gujarat, (2002) 3 SCC 57,
49. Amar Singh Vs. Balwinder Singh and others, (2003) 2 SCC 518
50.C. Muniappan and others Vs. State of Tamil Nadu . (2010) 9 SCC 567
51.Chandan Khan and another Vs. State of U.P. (1995) 5 SCC 448
52.Paramjit Singh Alias Mithu Singh Vs. State of Punjab (2007) 13 SCC 530
53.Paras Yadav and others Vs. State of Bihar, (1999) 2 SCC 126
54. Ram Bali Vs. State of U.P. (2004) 10 SCC 598
55. State of H.P. Vs. Mast Ram, (2004) 8 SCC 660
56.State of Karnataka Vs. K. Yarappa Reddy, (1999) 8 SCC 715

right to accused to claim acquittal. In the case of defective investigation, the Court has to be circumspect in evaluating the evidence. There is a legal obligation on the Court to examine the prosecution evidence carefully to find out whether the evidence is reliable or not, and whether such lapses affect the object of finding the truth. We are conscious that criminal justice should not be made a casualty for the wrongs committed by the Investigating Officer in the case. Certainly, unnecessary importance given to the defects would tantamount of giving decisive role to the Investigating Officer in the process of reaching the truth.

183. It is a general principle that defective investigation does not vitiate a valid prosecution. However, it is a matter of fact and depends on the facts of each case. To our mind, if the lapses or irregularities are inconsequential or negligible then it has no impact on the merits of the case. On the other hand, if the defect or lapses on the part of the Investigating Officer raises an entertainable doubt on the fabric of prosecution, it matters. In short, on the basis of material adduced by the prosecution vis-a-vis the defect in investigation, the worth of evidence is to be determined. Keeping in

mind this general principle that mere defect would not vitiate a valid prosecution, we have examined the evidence adduced before the Trial Court.

184. The line of challenge requires us to consider each seizure separately and to assess the credibility thereof. For the sake of convenience, we have considered the aspect of seizure in three parts firstly, arrest and seizure of accused Nos. 1 to 3 dated 22.08.2013, secondly, arrest of seizure of accused No. 4 Prashant Sanglikar and accused No.5 Vijay Tirki dated 01.09.2013 and seizure from the house search of accused No.6 G.N. Saibaba dated 12.09.2013.

ARREST OF ACCUSED NOS.1 TO 3 AND SEIZURE.

185. The first limb pertains to the arrest of and seizure from accused Nos. 1 to 3 dated 22.08.2013. For ready reference, we may recapitulate that it is the case of prosecution that on the basis of secret inputs about involvement of accused No.1 Mahesh Tirki and accused No.2 Pandu Narote with the banned terrorist organisation CPI (Maoist) and its frontal organisation (RDF), the Police were keeping watch on their movements. According to secret

information, the Police traced them on 22.08.2013 around 06.00 p.m., standing at a secluded place near Aheri Bust-stand. At about 06.15 p.m. one person wearing a cap on his head came there and started talking with each other in a suspicious manner. The Police apprehended them and brought them to the Aheri Police Station. From their personal search, several incriminating articles including three Naxal pamphlets and a 16 GB memory card, were seized by drawing Panchnama. It led the Police to register a crime and their arrest was effected.

186. The defence has particularly doubted the process of arrest as well as seizure on account of material irregularity, lack of transparency, manipulation and a case of fabrication. In order to demonstrate the improbabilities in the prosecution case, the defence took us through the relevant documents coupled with several admissions given by the relevant witnesses.

187. The evidence of PW-6, informant API Avhad, PW-1 Panch witness Santosh Bawne, PW-10, In-charge Police Inspector Anil Badgujar and the evidence of PW-9 Atram is relevant for our purpose. Besides that, certain documents bear relevance which are - written FIR (Exh. 219), Printed FIR (Exh. 220), Carbon Copy of FIR

(Exh. 221), spot-cum-seizure panchnama (Exh. 137), arrest panchnama of accused No.1 Mahesh Tirki (Exh.227), arrest panchnama of accused No.2 Pandu Narote (Exh.228), and arrest panchnama of accused No.3 Hem Mishra (Exh.229).

188. The episode unfolded through the evidence of PW-6 informant API Avhad. It is his evidence that in pursuance of secret information, on 22.08.2013, at 06.00 p.m., he found accused No.1 Mahesh Tirki and accused No.2 Pandu Narote standing at a secluded place near bus stand Aheri. Within a short time, one person wearing a cap on his head came there and they started conversing with each other. Finding their movements suspicious, PW-6 API Avhad took them to Aheri Police Station and briefed the information to PW-10 Police Inspector Anil Badgujar. In turn, PW-10 Anil Badgujar made a preliminary inquiry and on not being satisfied with their explanation, called panch witnesses. In the presence of panch witnesses, personal search of accused Nos. 1 to 3 was taken in which various articles were seized.

189. During personal search of accused No. 1 Mahesh Tirki, three naxal pamphlets regarding banned organization, one mobile,

one pocket purse containing Rs. 60/-, and a platform ticket were found. On search of accused No.2 Pandu Narote, platform ticket, one mobile, cash of Rs. 1400/-, election identity card, school leaving and birth certificate were found. On personal search of accused No.3 Hem Mishra, one memory card of 16 GB, railway ticket, cash Rs. 7,500/-, one camera, his identity card of JNU University, election identity card, one cloth bag, PAN card were found. All articles were seized and taken into custody in presence of panch witnesses by drawing panchnama (Exh.137) in between 06.30 p.m. to 07.55 p.m. on the very day. The said panchnama was carried out by PI Anil Badgujar.

190. During interrogation, it was revealed that accused No.1 Mahesh Tirki and accused No.2 Pandu Narote were deputed by one Naxalite lady Narmadakka to receive the messenger sent by an activist from Delhi (accused No.6 G.N. Saibaba) with important information, and to escort accused No. 3 Hem Mishra to Morewad Forest. The Police concluded that all were activist of banned terrorist organisation CPI (Maoist) and its frontal organisation (RDF), hence PW-6 API Avhad has lodged a report (Exh.219) at

Aheri Police Station around 09.30 p.m. Duty in-charge PW-15 Narendra Dube has registered crime No. 3017/2013 for the offence under the provisions of UAPA. This was followed by arrest of accused Nos. 1 to 3 vide arrest panchnama exhibits 227, 228 and 229.

191. The prosecution has examined PW-10 PI Anil Badgujar who was incharge of Aheri Police Station at the relevant time. He stated that API Avhad has brought accused Nos. 1 to 3 to Aheri Police Station on that day. He has also stated that in his presence personal search of accused Nos. 1 to 3 was taken, wherein, articles were seized under the panchnama (Exh. 137) in presence of two panch witnesses. He deposed that the articles were sealed with wax seals, which was followed by lodging of the report by PW 6 API Avhad and registration of crime No. 3017/2013.

192. Since the process of arrest and seizure has been seriously doubted, we turn to the evidence of panch witness PW-1 Santosh Bawne, in whose presence seizure and arrest was made. His evidence is of great significance. PW-1 Santosh Bawne deposed that on 22.08.2013, he went to Aheri Police Station around 06.00 p.m. to

06.30 p.m. having been called by the Police. In his presence, personal search of accused Nos. 1 to 3 was taken, wherein various articles including three naxal pamphlets and a 16 GB memory card were seized under panchnama (Exh.137). He deposed that seized articles were sealed with wax. He has identified his signature on seizure panchnama (Exh.137).

193. In this regard, the defence has seriously assailed the prosecution case right from the alleged arrest of accused Nos. 1 to 3 dated 22.08.2013 and consequent seizure vide panchnama (Exh. 137). It is their defence that accused No. 3 Hem Mishra was already taken into custody by Police from Balarasha Railway Station on 20.08.2013. The Police have prepared a story that all three accused were arrested on 22.08.2013 from the area of Aheri Bus-stand. It is argued that after planting documents, conveniently they have been shown to be arrested on 22.08.2013 which is a high handed act of Police of false implication. To substantiate this stand, our attention has been invited to various aspects relating to the arrest of accused Nos. 1 to 3.

194. It is pointed out that various columns of FIR were purposely kept blank which were filled in later to suit their purpose.

There are apparent mistakes and variance in the arrest panchnama which shows its falsity. It is argued that PW-1 Santosh Bawne was a stock panch of the Police who is wholly unreliable. Another panch witness was not examined to support the first panch witness. Arrest was made in the presence of a single panch Narendra Empalwar, however he was not examined. The description of the title of three Naxal pamphlets has not been incorporated in the panchnama with a purpose. The seized pamphlets [articles Exh. 139 to 141] do not bear signatures of panchas or Police to vouch their credibility. In fact, they do not bear any signatures or identification marks.

195. Pursuing the line of objection, we have revisited the prosecution evidence. Coming to the evidence of PW-1 Santosh Bawne (panch) admittedly he was in the service of Home Guard attached to Aheri Police Station from the year 2000. We note, in particular that at the relevant time, he was serving as a home guard with Aheri Police. Though initially, he denied the label of regular panch, however he admits that in the past, he has acted as a panch witness in another case. He admits that three pamphlets do not bear the label containing signatures of panch witnesses. He did not remember the heading of the pamphlets which were seized. He has

stated that another panch Umaji was present with him, which is factually incorrect, since the other seizure panch was one Narendra Empalwar. He has admitted that he does not know the difference between card reader, pen-drive and memory card nor can identify the storage capacity of different electronic applications.

196. There is variance in the evidence of Police personnel as to who has summoned PW-1 Santosh Bawne for effecting panchnama. During cross-examination of PW-1 Santosh Bawne, stated that he was called by PW-15 Narendra Dube, but PW-15 Narendra Dube did not claim so. Rather PW-15 Narendra Dube says that at the relevant time, he was on station diary duty from 06.00 p.m. to 10.00 p.m. PW-6 informant API Avhad says that panchas were called by PW-10 PI Anil Badgujar, but, the latter is not specific in that regard.

197. Be that as it may, it is not material as to who has called the panch witnesses, however what is relevant is that within just 5 to 10 minutes, PW-1 Santosh Bawne arrived at Police Station, admittedly since he was called from another place. Pertinent to note that the Police have not ventured into examining another panch

witness to gain support in the process of seizure, which is an important facet of the case. Though the fate of the prosecution largely hinges around seizure from accused Nos. 1 to 3, prosecution has not offered any plausible explanation for not examining another panch witness. True, it is not necessary to examine a second panch, however considering the peculiarity of the case, which is largely dependent on the credential of seizure, the prosecution ought to have examined him to remove the needle of suspicion. It appears that only because PW-1 Santosh Bawne was a Home Guard attached to the same Police Station since a long time, he has been chosen as a panch as a man of the confidence of the police. Therefore, it is difficult to treat him as an independent panch witness. Moreover, he was an illiterate person, who does not know the difference between different electronic gadgets, which was the material part of the seizure. Pertinent to note that the alleged arrest was made from Aheri Bus Stand, where admittedly there were pan stalls, tea stalls and hotels, from where services of independent/natural panch witnesses could easily have been secured.

198. A great deal of criticism has been made on account of planting, fabrication and registration of antedated FIR and arrest.

We have gone through the printed FIR (Exh.220) coupled with its carbon copy (Exh.221). It has come in the evidence of PW-15 Narendra Dube that on the basis of report lodged by PW-6 API Avhad (Exh.219), he has registered crime No.3017/2013. He has identified printed FIR (Exh.220) and its carbon copy (Exh.221). It is strongly contended in defence that FIR was antedated, and was prepared later. In that connection, we have examined printed FIR (Exh.220). As per the prosecution case, accused No.3 Hem Mishra was brought at Aheri Police Station on 22.08.2013 at 06.15 p.m. After preliminary interrogation by PW-10 PI Anil Badgujar, seizure was effected between 06.30 p.m. to 7.55 p.m followed by registration of FIR at 09.30 p.m. In this context, the submission is that it is practically impossible to complete all formalities in this short duration. We have seen the chain of events that at 06.15 p.m., the accused were for first time accosted near Aheri Bus-stand. It would certainly take a few minutes to interact and then, further, some more time would be required to bring them to the Police Station. According to the prosecution, PW-6 API Avhad has briefed PW-10 PI Anil Badgujar who again interacted with the accused, summoned two panch witnesses and thereafter seizure panchnama

was effected. In substance, from the first interaction with accused at 06.15 p.m., all preliminary steps were taken within just 15 minutes and then seizure panchnama has commenced, which is improbable and requires to be noted.

199. Our attention has been invited to the printed FIR (Exh.220) which bears signature of informant, and signature of Head constable, PW-15 Narendra Dube. In this regard, it is argued that PW-10 PI Anil Badgujar was not present at the relevant time, which resulted in signing of form 1-C of FIR by the Head Constable instead of Officer in-charge of the Police Station. The prosecution has not offered any explanation in that regard.

200. Besides that, it is argued that Column No. 3(b) and (c) of printed FIR pertaining to the information about time of receipt of information and general diary reference, there are discrepancies. In this regard, we have been taken through the evidence of PW-6 API Avhad who initially avoided to state that the entries in Column No. 3(b) and (c) are in different ink, however he has admitted that entries in Column No. 3(b) and (c) are subsequently written.

Besides that, he admits that there is overwriting in entry at Column No.3(c) of the carbon copy of printed FIR (Exh.221). Attention of PW-6 API Avhad was particularly invited to the copy of printed FIR (Exh.221) to which he admits that those three entries in Column No.3(b) and (c) are in different ink. We may hasten to add that copy of FIR (Exh. 221) is a carbon copy on which the time is mentioned in blue ink, whilst the time and general diary reference is in black ink. We do not find any explanation coming forth in this regard from the prosecution to remove this doubt.

201. It is the case of defence of accused No.3 Hem Mishra that the arrest as alleged by prosecution is fake. It is his stand that he was taken into custody from Balarasha Railway Station two days earlier i.e. on 20.08.2013 which was followed by implicating him in the case after two days. In this regard, initially we have been taken through the evidence of PW-9 Atram who has been examined in the capacity of an independent witness. Evidence of this witness is somewhat strange. As per the prosecution case itself, he was an associate of the accused, however he has been examined as an independent witness. PW-9 Atram deposed that on 20.08.2013, the

Police called him for interrogation. On that day, he went to the Police Station in the afternoon around 02.00 to 2.15 p.m. He deposed that during the interrogation, he was made to understand that the Police have earlier interrogated some accused, on which basis they came to know about his involvement (PW 9 Atram) in his past acts of handing over cash at the instance of Naxalite lady Narmadakka. In his evidence, he specifically deposed that he knew accused No.1 Mahesh Tirki and accused No.2 Pandu Narote since long. Both of them once took him to naxalite lady Narmadakka and at her instance, he received cash of Rs. 5,00,000/- which was later on handed over at Balarshah Railway Station by A1 and A2 to someone else. This witness was examined to demonstrate the involvement of accused No.1 Mahesh Tirki and accused No.2 Pandu Narote in naxal activites.

202. Witness PW-9 Atram stated that on 20.08.2013 itself, the Police came to know about his involvement in the earlier money deal obviously, from the interrogation of A1 and A2 itself. Thus it emerges a strong possibility of police interrogation A1 and A2 in this crime on 20.08.2013 or prior to that. Moreover, this witness has

specifically stated that on 21.08.2013, his statement was recorded by the Police to that effect. His evidence suggests that prior to alleged arrest of accused Nos. 1 to 3 dated 22.08.2013, the Police had already interrogated some accused from which the role of PW-9 Atram was revealed. Thus, a strong possibility emerges in support of the defence that custody of accused No.3 Hem Mishra was actually taken on 20.08.2013. We are not holding so only on the basis of statement of PW-9 Atram, but, the possibility emerges from variety of circumstances like not picking up an independent panch, choosing a panch related to Police, discrepancies and overwriting at the time of registration of crime etc. It is for the prosecution to remove all these doubts. We are aware that there may be minor mistakes, however, the overall effect of the evidence is to be considered on the basis of variety of circumstances.

203. We have been taken through one more circumstance which pertains to the time of arrest of accused Nos. 1 to 3. It is the prosecution case that, after registration of crime accused Nos. 1 to 3 were arrested. We have gone through the evidence of PW-6 API Avhad and PW-10 PI Anil Badgujar in particular, which does not specify the exact time of arrest of accused Nos. 1 to 3. In the context

of the defence of antedated arrest, we have gone through the entire related material. The arrest of A1 to A3 was effected by PW-10 PI Anil Badgujar. He has merely deposed that he has arrested accused by drawing arrest panchama (Exh. 227 to 229) without specifying the time and date. Examination reveals that all three arrest panchnamas are in different handwriting with the use of different ink pertaining to the date and time of arrest. The defence has specifically questioned to PW-10 PI Anil Badgujar, to which he has admitted that, on arrest panchnamas (Exh. 227 to 229), FIR number, date of arrest and time of arrest is in different handwriting and in different ink. Moreover, a glaring discrepancy is pointed by defence that the arrest panchnamas (Exh. 227 to 229) at its foot bears the date of arrest as 23.08.2013, whilst on first page, the date and time of arrest is mentioned as 22.08.2013 at 09.30 p.m. in a different ink.

204. Close examination of arrest panchnama Exh. 227 pertaining to accused No.1 Mahesh Tirki denotes that the entire panchnama is written in black ink, whilst crime number, date of registration of crime and date and time of arrest are in blue ink. Panchnama (Exh. 228) pertaining to arrest of accused No.2 Pandu Narote discloses that the entire portion is in blue ink, whilst date

and time of arrest is in black ink. Again we find material discrepancy in the arrest panchnama (Exh.229) pertaining to accused No.3 Hem Mishra, wherein the entire panchnama is written in black ink, whilst crime number, date of registration of crime, date of arrest, time of arrest and station diary entry number was written in blue ink. Likewise on the first page of all panchnamas, the date of arrest is mentioned as 22.08.2013 at 09.30 p.m. whilst the last entry below the signature of PW-10 PI Anil Badgujar, the date of panchnama is mentioned as 23.08.2013. When PW-10 PI Anil Badgujar was confronted with these discrepancies, he gave a feeble explanation that it may be a mistake. These discrepancies coupled with the insertion of date and time of arrest raises further suspicion about the date and time of arrest, in the background of defence version. PW-10 PI Anil Badgujar stated that these three arrest panchnamas were written by three different Police Officers. It is surprising to note that three Police Officers have simultaneously committed the same mistake of putting another date at the end of panchnama as 23.08.2013 which again enhances the degree of suspicion.

205. In the background of the above discrepancies, it was incumbent on the prosecution to examine panch witnesses to the arrest panchnama, to vouch the credibility of the date and time of arrest. The Prosecution was alerted by the line of cross-examination, that the defence of accused No. 3 Hem Mishra, was his illegal custody for two days and registration of the antedated FIR. In the circumstances, it was the duty of the prosecution to either explain the said material discrepancy or to examine the sole panch witnesses on arrest panchnama, but, they have avoided to examine him.

206. The defence has invited our attention to the cross-examination of PW-11 SDPO Suhas Bawche, wherein he admits (para No.19) that while replying to the bail application, in his say dated 02.06.2014, he stated that accused No.1 Mahesh Tirki and accused No.2 Pandu Narote had gone to Balarasha Railway Station. Specific suggestion was put to him that on 20.08.2013 accused No.3 Hem Mishra had come to Balarasha Railway Station. In response, PW-11 SDPO Suhas Bawche stated that he might have communicated to the Court that accused No.3 Hem Mishra had come to Balarsha Railway Station on 20.08.2013. These admissions falsify the prosecution case that A3 came to Aheri bus stand on

22.08.2013, to whom A1 and A2 came to receive. The defence also brought our attention to the answers given by accused No.3 Hem Mishra in his statement under Section 313 of the Code (question No.6), wherein he took a specific stand. Accused No.3 Hem Mishra stated that on 20.08.2013 itself, he was taken into custody by the Police from Balarasha Railway Station. His belongings were forcibly taken into custody and he was illegally detained at Gadchiroli Police Head Quarter.

207. The learned defence Counsel, strenuously argued that, though CDR of the mobile SIM of accused No.1 Mahesh Tirki and accused No.2 Pandu Narote were obtained by the Police, they have been purposely suppressed. It is contended that the CDR of their mobile phones would have exposed the foul play as the tower locations of both of these accused would be of Gadchiroli Police Head Quarter from 20.02.2013 to 22.02.2013. During cross-examination, PW-11 SDPO Suhas Bawche admitted that he has collected the CDR of the mobile SIM of accused No.1 Mahesh Tirki and accused No.2 Pandu Narote, however, he has not filed the same on record. We do not see any explanation from the side of the prosecution as to why they have not filed these CDR's to demolish

the defence raised since the inception. True, it is not the duty of prosecution to demolish the defence stand, however all circumstances have to be taken together while drawing an inference. The said circumstance denotes that more than a reasonable doubt is created about the alleged arrest of accused Nos.1 to 3 on 22.08.2013 from the area of Aheri Bus-stand.

208. The above discussion leads us to hold that the prosecution failed to establish by adducing reliable evidence that, on 22.08.2013, accused Nos. 1 to 3 were found in suspicious circumstances moving near Aheri Bus-stand and the consequential seizure of incriminating material from them. We are led to think so on the basis of the quality of the evidence, admissions given by the prosecution witnesses and particularly the above-noted discrepancies highlighted by us in the process of registration of crime, seizure and effecting arrest of accused. The defence has succeeded in creating a reasonable doubt about the arrest of and seizure from accused Nos. 1 to 3, as alleged. In the result, the prosecution case regarding arrest of A1 to A3 on 22.08.2013 and consequential seizure of incriminating material is doubtful and cannot be relied upon.

SEIZURE FROM FACE BOOK ACCOUNT OF ACCUSED NO.3 HEM MISHRA.

209. It is the prosecution case that screen shots and video shooting of the Face Book account of accused No.3 Hem Mishra, was taken on 26.08.2013 and 29.08.2013 in presence of PW-4 Shrikant Gaddewar (panch). According to the prosecution, incriminating material was seized from the Face Book account of accused No.3 Hem Mishra which shows his involvement with the banned terrorist organisation CPI (Maoist) and its frontal organisation (RDF). In order to establish the said seizure, prosecution relied on the evidence of PW-4 Shrikant Gaddewar and PW-11 SDPO Suhas Bawche. It has come in the evidence of PW-11 SDPO Suhas Bawche that during interrogation on 26.08.2013, he came to know that accused No.3 Hem Mishra was using a Face Book account. On instructions, accused No.3 Hem Mishra has opened his Face Book account in the presence of PW-4 Shrikant Gaddewar. After opening the Face Book account, screen shots have been taken and the entire process was video-graphed. Related panchnama (Exh. 199) was drawn in presence of two panch witnesses. He has clarified that in panchnama (Exh.199),

mistakenly the date of panchnama was mentioned as 26.09.2013 instead of 26.08.2023.

210. Further, it is his evidence that to verify the friends list from the Face Book account of accused No.3 Hem Mishra, they have again called panch witnesses. In the presence of accused No.1 Mahesh Tirki and accused No.2 Pandu Narote, video recording dated 26.08.2013 about the opening of the Face Book account of accused No.3 Hem Mishra was played on 29.08.2013 and Panchnama (Exh.200) was drawn of this process. The prosecution has examined PW-4 Shrikant Gaddewar to that effect. He has stated that on 26.08.2013 in his presence, accused No.3 Hem Mishra, by entering his password has opened his Face Book account. All the activities on Face Book account including the friends list were verified by the PW-11 SDPO Suhas Bawche and screen shots were taken. Panchnama (Exh.199) to that effect was drawn in his presence. He deposed that on 29.08.2013, again he was called by PW-11 SDPO Suhas Bawche for identification of the video shooting taken during panchnama dated 26.08.2013. CD of the video dated 26.08.2013 was played in the presence of accused No.1 Mahesh Tirki and accused No.2 Pandu Narote. Both of them have identified two persons from the friend

list of accused No.3 Hem Mishra namely Ajay Kumar and Dona Willson. The Police have again drawn a panchnama (Exh.200) on 29.09.2013 during the identification by accused No.1 Mahesh Tirki and accused No.2 Pandu Narote from the video shooting of the Face Book account of accused No.3 Hem Mishra. The screen shots were identified and marked as A/1 to A/16 for the purpose of identification.

211. The defence has strongly criticized the said evidence by stating that no such panchnama was drawn either on 26.08.2013 or 29.08.2013. The Police had already obtained printouts, but, made it appear that accused No.3 Hem Mishra had opened his Facebook account in presence of panchas and this video was seen in the presence of accused No.1 Mahesh Tirki and accused No.2 Pandu Narote. The learned Counsel appearing for the accused has drawn our attention to the printouts of the screen shots article A/1 to A/16 to contend that those printouts had already been taken on 09.08.2013. We have gone through all the printouts of screen shots and find that at the right side bottom corner, there is mention of the time and date of taking of these screen shots. All these screen shorts were taken on 09.08.2013 between 08.51 p.m. to 09.14 p.m. (prior

to arrest dated 22.08.2013) We find considerable force in the above submissions to which there is no explanation from the prosecution.

212. Next, it is argued that in the Facebook account, if a person is not in the friends list of the account holder then there would be an option of “add friend” on the Facebook page. In this regard, we have been taken through the printout as well as admission given by PW-4 Shrikant Gaddewar who was a computer expert. He has specifically admitted that if a person’s name is not in the friends list, then there would be an option as “add friend”. Particularly, he admits that in the screen shots, A/15 and A/16 option “add friend” appears and not the name of a friend. Perusal of A/15 and A/16 discloses that in front of the name 'Ajay Kumar and Dona Willson', there is a column “add friend”. Thus, the said admission falsifies the prosecution case that those two persons were in the friends list of accused No.3 Hem Mishra. Moreover, it is not clarified who were those two persons. This time also we could not get any explanation from the prosecution.

213. The learned defence Counsel would submit that according to the evidence of the prosecution, the first panchnama

(Exh.199) of the Facebook account was prepared on 26.08.2013, whilst the second panchnama (Exh.200) of the viewing of the video during opening of the account was dated 29.08.2013. These panchnamas reveal that on the top and bottom of both panchnamas, there is specific mention that these have been prepared on 29.09.2013. PW-11 SDPO Suhas Bawche has explained that due to oversight, the date is wrongly mentioned. However, the said explanation has to be tested on the above background.

214. The learned defence Counsel submitted that in the charge sheet index at Serial No. 53 it is mentioned that Facebook photos dated 09.08.2013 have been annexed. We have verified this from the record which does exists. It is apparent that screen shots were taken on 09.08.2013 (prior to arrest), however, both panchnamas were shown to be carried out on 26.08.2013 and 29.08.2013. From these material discrepancies, we are unable to accept the prosecution case regarding seizure of screen shots from the Facebook account of accused No.3 Hem Mishra and panchnama of the video shooting of the process. Though the prosecution alleges that they have video-graphed the entire process of taking screen shots of the Facebook account of accused No.3 Hem Mishra, the said

CD of video recording dated 26.09.2013 has not been brought on record which adds to the suspicion.

SEIZURE FROM ACCUSED NO.4 PRASHANT RAHI, ACCUSED NO.5 VIJAY TIRKI AND THEIR ARREST.

215. It is the prosecution case that during interrogation of accused No.3 Hem Mishra, it was revealed that accused No.4 Prashant Rahi was coming from Raipur and Deori to meet accused No.5 Vijay Tirki, who under instructions of naxalite Ramdar was to escort accused No.4 Prashant Rahi to Abuzmad forest area to meet senior Moist Leaders. According to the prosecution, PW-11 SDPO Suhas Bawche had passed this information to PW-14 API Rajendrakumar Tiwari of Deori Police Station with the description of the suspect. At the relevant time, PW-14 API Rajendrakumar Tiwari along with driver PW-8 Yede were on patrolling duty at Chinchgarh area, District Gondia in search of accused Pahad Singh. On receipt of information, PW-14 API Rajendrakumar Tiwari went to Raipur but, learn that the suspects have gone towards Deori. He went to Deori and found that two persons (accused No.4 Prashant Rahi and accused No.5 Vijay Tirki) were at Chichgarh T-point under

suspicious circumstances, so he took them into custody. PW-14 API Rajendrakumar Tiwari brought them to Aheri Police Station and handed them over to PW-11 SDPO Suhash Bawche. It was followed by seizure of incriminating material and effecting arrest of both of these accused. It is the prosecution case that from the possession of accused No.4 Prashant Rahi, naxal documents have been seized.

216. In order to establish the arrest and seizure of accused No.4 Prashant Rahi and accused No.5 Vijay Tirki, the prosecution relied on the evidence of PW-8 Yede, PW-14 API Rajendrakumar Tiwari, PW-11 SDPO Suhas Bawche and panch PW-3 Umaji Chandankhede. Moreover, prosecution has relied on seizure panchnama (Exh.179) of articles from accused No.4 Prashant Rahi and seizure panchnama (Exh.180) of articles from the possession of accused No.5 Vijay Tirki.

217. The learned Counsel for accused strongly assailed the prosecution case on the point of arrest as well as seizure from the possession of accused No.4 Prashant Rahi and accused No.5 Vijay Tirki. It is the defence version that accused No.4 Prashant Rahi had gone to Raipur in relation to Court proceeding from where he had

been illegally taken into custody. The defence has specifically denied the alleged arrest at Chichgarh T-point and particularly seizure of various articles including naxal documents. The learned defence Counsel made a variety of submissions to discredit the entire process of arrest followed by seizure.

218. It is the evidence of PW-14 API Rajendrakumar Tiwari of Deori Police Station that, on 01.09.2013 he had been to Chinchgarh in search of accused Pahad Singh relating to Crime No. 39/2011. He received a message on his mobile that suspects of crime No. 3017/2013 registered with Aheri Police Station are in Raipur area, so he should search and take them into custody. Accordingly, he went to Raipur, but, learnt that the suspects had proceeded towards Deori by a four-wheeler. PW-14 API Rajendrakumar Tiwari came to Deori and found the suspects at Chichgarh T-point as per description given to him. On their examination, Maowadi and naxal literature was found in their possession, hence, they have been taken into custody and handed over on the following day in wee hours (02.09.2013) to Aheri Police Station.

219. We have gone through the evidence of PW-11 SDPO Suhas Bawche. It is his evidence that on 02.09.2013, PW-14 API Rajendrakumar Tiwari brought accused No.4 Prashant Rahi and accused No.5 Vijay Tirki at Aheri Police Station. He made preliminary inquiry and took their personal search in the presence of pancha witnesses. The articles seized from both of them were sealed and handed over to the Muddemal Clerk and then arrested both accused. His evidence is silent on what was seized from the possession of accused No.4 Prashant Rahi and accused No.5 Vijay Tirki. Personal search of accused No.4 Prashant Rahi and accused No.5 Vijay Tirki was taken in the presence of panch PW-3 Umaji Chandankhede.

220. It is the evidence of P.W.3 Umaji that on 02.09.2013, around 05.45 p.m. he had been called by the PW-11 SDPO Suhas Bawche. He went to the Police Station and in his presence, personal search of accused No.4 Prashant Rahi and accused No.5 Vijay Tirki was taken. Pertinently he has described the seized material as cash amount of Rs. 8,800/-, visiting card, driving licence, Pan card, Yatri Card news paper and some “other property”. He has not stated anything about the seizure of incriminating material such as naxal

documents. We cannot assume the term “other property” pertains to naxal documents. As far as accused No.5 Vijay Tirki is concerned, it is not even the prosecution case that any incriminating material has been seized from his possession.

221. We have gone through the seizure panchnama (Exh.179) pertaining to accused No.4 Prashant Rahi. The panchnama bears description of the seized articles which include papers relating to arrested naxalite Narayan Alias Vijay Alias Prasad, so also, 8 naxal related papers stapled together. While doubting the whole process of effecting seizure, it is primarily argued that as to on which basis PW-14 API Rajendrakumar Tiwari had arrested accused No.4 Prashant Rahi and accused No.5 Vijay Tirki at Chichgarh T-point. According to the defence the prosecution case is totally unbelievable of identifying the passengers moving by four-wheeler to be suspects of a crime. Moreover, none of the Police Officers including PW-14 API Rajendrakumar Tiwari, PW-8 Yede stated the description of the suspects received by them. It is argued that the entire process of arrest is mysterious, hence it supports the defence version of taking accused No.4 Prashant Rahi into custody from Raipur.

222. Though PW-14 API Rajendrakumar Tiwari submitted that he received the message about the suspects to be apprehended, however he did not say as to who has commanded him to find the suspects. PW-11 SDPO Suhas Bawche does not speak of passing of the message to PW-14 API Rajendrakumar Tiwari regarding the suspects with their description. In this scenario, the evidence of panch PW-3 Umaji Chandankhede carries significance. He deposed that on 02.09.2013 at 5.45 p.m. i.e. in the evening, he has been called at Aheri Police Station. In that regard we have gone through both seizure panchnama (Exh. 179 and 180) which were drawn in between 06.15 to 06.30 O'Clock and 06.30 to 06.45 O'Clock. Pertinent to note that both panchnamas do not state whether they were carried out in the morning or in the evening, by mentioning "A.M." or "P.M." Arrest panchnama discloses that both were arrested on 02.09.2013 around 07.10 O'Clock similarly without specifying A.M. or P.M.

223. The defence has produced a copy of remand order dated 02.09.2013 showing that on that day around 03.45 p.m., both accused No.4 Prashant Rahi and accused No.5 Vijay Tirki

have been produced in the Court of Magistrate seeking Police custody remand. Thus, it remains a mystery whether they were actually arrested on 02.09.2013 in the early morning or in the evening. Be that as it may, if they have been arrested in the evening then it is difficult to believe that for 24 hours they were in possession of the documents which were seized in the evening. If arrest was made in the morning, then they would be in possession of the documents overnight. PW-14 API Rajendrakumar Tiwari states that at the time of taking them in custody on 01.09.2013, they were in possession of Maowadi and Naxal literature, however, PW-14 API Tiwari did not describe what documents were possessed by them. We have noted earlier that PW-11 SDPO Suhas Bawche has not deposed the nature of documents seized. Panch PW-3 Umaji Chandankhede though stated the detailed description of insignificant material i.e. cash, driving licence, Pan Card, Yatri Card, has not deposed of seizure of Maowadi and naxal literature. Seizure panchnama (Exh.179) merely bears a reference to papers relating to arrested naxalite Narayan [8 pages related to naxal movement]. Thus, neither oral evidence nor panchnama bears a reference to the description of documents except papers relating to

arrested naxalite Narayan. It is argued that the prosecution has not produced the Court paper relating to naxalite Narayan which carries importance. The State has not responded in showing that such papers were included in the charge-sheet.

224. Coming to the credentials of panch witness, it is in defence that the documents have been planted by creating a scene of effecting seizure panchnama by using regular panch i.e. panch PW-3 Umaji Chandankhede. Panch PW-3 Umaji Chandankhede admitted during cross-examination that he is illiterate, cannot read or write Marathi and Hindi language. In such a scenario, it is difficult to hold that panch was aware as to what was disclosed in the seizure panchnama. He did not state that the contents of panchnama were at least read over to him, and its contents were accepted. It is noteworthy to see that this witness admitted that he used to attend Aheri Police Station for cleaning the office premises, as a sweeper. He has admitted that he had gone to the Police Station on 22 to 25 occasions in the past. He admits that he has acted as a panch of the Police on 4 to 5 occasions and more particularly he stated that Aheri Police Station used to call him as

panch whenever there was a need. These admissions unequivocally show that PW-3 Umaji Chandankhede was a stock panch witness of the Police. He is an illiterate person and he does not know Marathi language. Thus, it is difficult to believe that this panch was aware of the recitals in panchnama specifying the description of incriminating material. Besides that neither PW-3 Umaji Chandankhede nor PW-11 SDPO Suhas Bawche have stated the description of the incriminating documents seized from the possession of accused No.4 Prashant Rahi.

225. The defence would submit that this is a case of planting of evidence and the Police have purposely not written a specific time of arrest and seizure, by leaving its options open to treat it as morning or evening. True, neither the arrest panchnamas (Exh. 239 and 240) bears A.M. or P.M. nor both seizure panchnamas (Exh. 179 and 180) bears such reference. In this context, though the Police claimed to have effected seizure and arrest in the morning on 02.09.2013, the sole panch PW-3 Umaji Chandankhede states that he went to the Police Station on 02.09.2013 in the evening. Therefore, possibility of preparing

these documents in the evening, after Police remand, cannot be ruled out.

226. Strikingly, as per the prosecution case on 01.09.2013, in the evening both were taken into custody from Chichgarh T-point, however, the search and seizure was not effected at the said place. Since panchnama was executed on the following day, it is difficult to believe that both arrested accused kept the incriminating material intact with them, which was seized later. Though the Investigating Officer is not obliged to disclose the source of information, however, PW-14 API Rajendrakumar Tiwari ought to have said who has asked him to apprehend suspect and what was the description. The suspicion is further raised since PW-11 SDPO Suhas Bawche was silent about this aspect. Thus, the entire process of arrest of and seizure from accused No.4 Prashant Rahi and accused No.5 Vijay Tirki is not free from doubt. Hence, we are not inclined to rely on this evidence.

HOUSE SEARCH AND SEIZURE FROM A6- SAIBABA.

227. It is the prosecutions case that in pursuance of search warrant issued by the Judicial Magistrate First Class, Aheri dated

07.09.2013, the Police carried out a house search of accused No.6 G.N. Saibaba on 12.09.2013. During the search, the Police have seized incriminating material in the form of electronic gadgets which were seized under a panchnama in presence of panch witnesses. The defence has seriously challenged the entire process of seizure claiming the same to be illegal and planted. Defence alleges manipulation in the seizure of incriminating articles from the house of accused No.6 G.N. Saibaba. Infact it is the primary duty of the prosecution to establish the case of seizure.

228. The prosecution has relied on the evidence of PW-10 PI Anil Badgujar, PW-11 SDPO Suhas Bawche, PW-2 Jagat Bhole (Panch) and related documents. It is the evidence of PW-10 PI Anil Badgujar that after the complicity of accused No.6 G.N. Saibaba was revealed, they had obtained search warrant from Judicial Magistrate First Class, Aheri and with the help of Delhi Police, seized incriminating material from the house of accused No.6 G.N. Saibaba on 12.09.2013. He deposed that the seizure was made in the presence of accused No.6 G.N. Saibaba and panch

witness. Seizure panchnama was drawn by PW-11 SDPO Suhas Bawche.

229. Evidence of PW-11 SDPO Suhas Bawche carries importance since he has conducted the entire process of the raid and consequential seizure. It is his evidence that on receipt of the search warrant, he went to Delhi on 09.09.2013 along with a Police team. He has contacted Moris Nagar Police Station at Delhi. He has issued a requisition letter to the Police of Moris Nagar for providing Police staff, computer expert and videographer for the process of search and seizure. In response, Moris Nagar Police provided police staff, computer expert and videographer for effecting search.

230. It is in the evidence of PW-11 SDPO Suhas Bawche that on 12.09.2013 in the afternoon, they went to the house of accused No.6 G.N. Saibaba, situated in the campus of Delhi University. They have shown the search warrant to accused No.6 G.N. Saibaba and obtained his signature. The purpose of their visit was explained, as well as the Police offered their personal search, to which accused No.6 G.N. Saibaba declined. The Police

carried a thorough search of the house of accused No.6 G.N. Saibaba. During the search, they have collected six CDs, 24 DVDs, 3 Pen-drives, 32 GB memory card, five hard disks, Lap-top, Blue-tooth, three mobiles, 2 SIM cards, documents related to naxal literature (book, magazines, printed material, photograph of lady naxal) etc. The electronic devices were sealed in one plastic box. Lap-top was sealed in a separate packet and printed material was seized in 3 separate packets. All articles were sealed with a label and signature of panchas. The copy of the panchnama was given to accused No.6 G.N. Saibaba and his signature was obtained. PW-11 SDPO Suhas Bawche deposed that the entire process of seizure and drawing of panchnama was videographed through a videographer provided by Moris Nagar Police Station. He stated that during the process, memory capacity of the video camera went full, hence the Police staff took further video recordings on their mobile phone which was later on stored and then transferred to a CD. Thereafter, the entire raiding party returned to Aheri Police Station on the following day i.e. on 13.09.2013 and deposited the entire seized property with the Muddemal Clerk of Aheri Police Station as well as station diary entry was effected.

231. It is evident from the line of cross-examination that the process of seizure of incriminating material itself is doubtful, fake and fabricated. The submission on the question of power of search and seizure, as well as questions of chain and safe custody of seized articles are dealt with separately. We have scrutinized the entire material to see whether the prosecution evidence regarding seizure of incriminating material is reliable. The said aspect is of great significance, since the entire prosecution is based only on seizure.

232. In order to vouch for the credibility of the seizure, the prosecution relied on the evidence of panch witness PW-2 Jagat Bhole. It is his evidence that on 12.09.2013, around 2.45 p.m. while he was at his barber shop situated near Delhi University campus, he was called by the Police to act as panch. Accordingly, he has accompanied Delhi and Maharashtra Police to the house of accused No.6 G.N. Saibaba situated at Delhi University campus. The Police started recording the process of search and seizure on a video camera. During the house search, 25 to 30 CDs, Laptop, 4 to 5 Pen-drives, 4 to 5 hard disk, 5 to 6 books were found in a drawer of a wooden table. The Police sealed all this material in his

presence and drew a panchnama to that effect. Panchnama (Exh.165) was read over to him, on which he has signed. All seized articles have been identified by PW-2 Jagat Bhole.

233. Since the process of search and seizure is under challenge, we have carefully gone through the cross-examination of these witnesses. Though PW-2 Jagat Bhole stated that all the articles have been sealed, he admits that the labels affixed on the articles do not bear his signature. It is not the prosecution case that the articles have been sealed with wax. We have gone through the seizure panchnama (Exh.165) drawn on the date of seizure. The entire panchnama does not bear reference to the fact that articles were sealed with wax seal or even with labels containing signatures of the panch. We only find a reference that the panchnama was carried out on 12.09.2013 between 03.00 p.m. to 05.45 p.m. and all articles were taken in custody by the Police for the purpose of investigation. Thus, the first infirmity is about securing the seized material by proper sealing and labelling.

234. The learned special prosecutor would submit that accused No.6 G.N. Saibaba has signed on the seizure panchnama

and the same has been shown to us. True, accused No.6 G.N. Saibaba has not denied his signature. However, the entire process shows that a huge batch of 25 to 50 Police barged in for the raid and at that time his signature was obtained. Merely because he has signed the panchnama, it does not mean that the seizure was legal and valid as required under the law. At the most, it can only be inferred that the copy of seizure panchnama was provided to accused No.6 G.N. Saibaba and nothing beyond that.

236. The defence has seriously challenged the credibility of panch witness. It is submitted that this witness was a poor illiterate barber who has signed on the panchnama and deposed in Court under pressure of the Police. According to the defence, he was not present at the time of panchnama, but he was tutored by the Police. It is interesting to go through the cross-examination of panch PW-2 Jagat Bhole. He is running a barber shop situated outside the campus of Delhi University. It has come in his evidence that he cannot read or write any language except to sign in the English language. He is an illiterate person. He has requested the Police for taking another panch as he is illiterate, however, the Police insisted him to act as a panch. It has come in

his evidence that thousands of students and professors were available in the vicinity to act as a panch. It is his evidence that when they went to the house of the accused No.6 G.N. Saibaba, several students and professors had gathered near the house of accused No.6 G.N. Saibaba.

237. Panch PW2 Jagat Bhole admitted that at the relevant time, accused No.6 G.N. Saibaba requested the police that the search should be taken in the presence of professors or his Advocate. Particularly, he admits that at the time of house search, he himself and accused No.6 G.N. Saibaba were kept by locking the door within and the Police carried out the process of search. He stated that the Police did not allow anyone to enter into the house of accused No.6 G.N. Saibaba during the search. Though the prosecution argued that this is a vague admission, in the context of nature of his evidence, we are unable to overlook this vital admission by merely assuming it to be an oversight admission. This witness has in so many words stated that he is totally illiterate and he should not be taken as panch on account of his illiteracy. Moreover, he stated that near about 20 to 25 Delhi Police and equal number of Maharashtra Police went inside the house of the accused No.6 G.N. Saibaba and by

locking the door carried searches. He stated in particular that he himself and accused No.6 G.N. Saibaba were kept out of the house. These specific admissions speak volumes about the credibility of the process of entire search and seizure.

238. It has come in the evidence of PW-2 Jagat Bhole that he does not know the difference between CD and DVD, or difference between Pen-drive and blue-tooth, or between a CD Drive and DVD Drive. He also states that he does not know what is meant by hard disk. In the context of these admissions, coupled with being admittedly illiterate, his deposition as to identification of articles will have to be assessed. All seized articles which are about 40 to 50 in number, particularly, electronic gadgets have been shown to the witness during his evidence. Most of the electronic gadgets were shown to him by reference to the company specification, writing on the CDs and DVDs in English language etc. which he claimed to identify. Since this witness was totally illiterate, we deem the said exercise in futility. It can be easily inferred that the prosecution has shown articles one by one, read whatever is printed on the electronic gadgets in English Language, on which the illiterate panch has

merely nodded his acceptance of identification. In true sense, this long exercise does not convince us to hold that the witness has identified the seized material. He does not know how to read the English language, but is also digitally illiterate and thus, it is difficult to hold that this witness has identified the articles claimed to be seized during the house search. In any event, details and descriptions of these articles are not specified by colour, unique ID number or container on the panchnama.

238. It is the prosecution case that before proceeding to the targeted house of accused No.6 G.N. Saibaba, the Maharashtra Police went to Maurice Nagar Police Station who had provided additional Police force with technician, photographer etc. The high ranking Police Officers including ACP Meena, SDPO Suhas Bawche, PI Anil Badgujar, along with the officers of Delhi Police were on this mission. The Police team was equipped with a computer expert and videographer. It assumes significance that it was a pre-planned raid with participation of high ranking Police Officers. Despite that, surprisingly one illiterate witness, a barber by profession was chosen as panch. This is not a case of the Police accidentally catching a suspect, and then taking his search. In such a case, one can

understand the propriety and paucity of time in choosing a panch witness. We reiterate that it was a very well planned raid that too under the stringent statute like UAPA, being a joint venture of two police forces led by high ranking police officers. Despite this, they chose an illiterate barber as panch over a large number of potential witnesses available in the housing complex of the University campus where the raid took place. Surely, several highly educated witnesses would be available. The entire search is therefore not free from suspicion. True, a panch can be any one, however considering the propriety of the whole matter and involvement of high ranking Police officers, it is difficult to accept that the choice of panch is natural one, especially for a case as under UAPA which was so sensitive.

239. Notably, PW-2 Panch Jagat Bhole requested the Police to choose someone literate as a panch as he could neither read or write. Still the wisdom of high ranking Police officers did not prevail, strangely insisted only he should act as a panch which has created grave doubt in our mind. It is not a case that panchas were not available. It was in broad daylight, a pre-planned raid in Delhi

University campus, wherein thousand of people were available; however, police acted as if this were a hobson's choice. The search commenced in a planned manner under requisition, the Maharashtra Police asked Maurice Nagar Police to provide a photographer, computer expert and Police staff for the raid. In all fairness, they could have also requested them to look for someone as an independent panch witness, but, they did not. Having regard to such colourable exercise coupled with the clear admission of the panch that the seizure was a close door affair by keeping the panch and accused No.6 G.N. Saibaba out of the premises, does not allow us to accept the genuineness of seizure keeping all this material at bay. The suspicion has been further aggravated because the seizure panchnama (Exh.165) does not bear a reference to either the articles which were sealed with wax or with label with pancha's signature. The evidence of the panch also states that the label containing his signature was not affixed on the articles. This circumstance further raises a suspicion about the genuineness of the raid.

240. Strikingly, the raiding party, though was well equipped with computer expert/technical expert still neither hash value of the electronic gadgets was drawn nor the description of the devices was

incorporated in seizure panchnama. Again, we say that it was a planned raid conducted by high ranking Police Officers equipped with computer expert, however, electronic devices have not been secured at all. In order to secure the devices found, hash value could have been easily drawn on the spot. Moreover, mirroring of the contents would have been taken in panchnama, which was not done. Apart from hash value, unique identification number of the hard disk and electronic gadgets have not been recorded in panchnama to vouch for its credibility. The description of the electronic gadgets in the nature of outer appearance, cover, serial number, or some other factors, which could have been easily incorporated in the panchnama with the help of experts, have not been done. The seizure was like an ordinary articles of crime.

241. Moreover, the defence has drawn our attention to the evidence of PW-2 Jagat Bhole to establish that he was wholly under the police influence even at the time of recording his evidence. We have re-visited the evidence of PW-2 Jagat Bhole who stated that on 03.01.2016, he came from Delhi to Gadchiroli for leading evidence. The Trial Court has recorded his evidence on 06.01.2016 and 16.01.2016. He stated that after reaching Gadchiroli, he has

halted at one place at Gadchiroli which he cannot remember. However, he admits that it was a Police guest house. When the learned APP has alerted the witness, he denied that it was a Police guest house. It has also come in his evidence that the second panch Umar also came with him from Delhi, but the prosecution did not choose to examine him, which is a matter to be noted. During cross-examination, it has amply come on record that PW-2 Jagat Bhole was illiterate and during search he was kept away.

242. It has come in the evidence of Investigating Officer PW-11 SDPO Suhas Bawche that accused No.6 G.N. Saibaba gave in writing that the search should be conducted in presence of professors and his advocate, but, no heed was paid to this request. The Investigating Officer has explained that said letter was given after completion of the house search. However, it is evident that before search such request was made, but, was neglected, hence written application. No doubt, accused has no choice of panch witness, but, his objection appears to be to the unreliable nature of the panch who was illiterate.

243. It is the prosecution's case that the entire process of seizure and search was video-graphed by officers from Maurice

Nagar Police Station Delhi. PW-11 SDPO Suhas Bawche stated in his evidence that the videography was done through a photographer provided by Maurice Nagar Police Station. While carrying out the panchnama, the memory of the card in the video camera became full, hence the Police staff made video recording of the panchnama on their mobile. He deposed that after returning, the video shooting taken by Aheri Police on mobile was stored and saved on a computer and a CD was prepared. PW-11 SDPO Suhas Bawche stated that repeatedly they sent requisition to the Maurice Nagar Police Station to provide the video recording done by their videographer, but, the Police avoided their request. Admittedly, no such written requisition was sent to the Maurice Nagar Police Station was produced in evidence. Besides that video recording on mobile phone though allegedly done, was not tendered in the course of trial. Moreover, there is no mention in seizure panchnama (Exh.165), that the entire process was video-graphed. In the context of the admission that during the search, the panch and accused No.6 G.N. Sabiaba were kept out of the house, absence of the video recording carries importance, and creates doubt. During the course of the arguments,

we sought a copy of this videography even though not produced in evidence, but the same was not forthcoming.

244. It is the prosecution's case that on 04.09.2013, they have applied to the Judicial Magistrate First Class, Aheri for issuance of search warrant. In-turn, the learned Magistrate has issued search warrant (Exh. 244) on 07.09.2013, on the basis of which, the search was conducted. The defence has drawn our attracted to the extract of the case diary (page 593) of Aheri Police Station dated 13.09.2013. The case diary bears a reference to the fact that the Investigating Officer met the Additional Commissioner of Police on 11.09.2013 with a warrant, seeking his assistance, however the then Police asked him to bring a specific search warrant under Section 93 of the Code. It is stated that thereafter, search warrant under Section 93 of the Code was procured for that process. In that context, there is no evidence of the Investigating Officer about obtaining search warrant under Section 93 of the Code. Rather letter dated 12.09.2013 issued by the Investigating Officer (Exh.252) shows that while seeking assistance of the Police, a search warrant issued by the Judicial Magistrate First Class, Aheri dated 07.09.2013 was produced. There is no record to indicate that a fresh search

warrant particularly under Section 93 of the Code was obtained. We have gone through the search warrant (Exh.244) which was issued by the Magistrate jointly under Sections 93 and 94 of the Code.

245. There is marked distinction between the search warrant under Section 93 and under Section 94 of the Code. Warrant under Section 93 of the Code pertains to the production of documents or other things which are necessary for the purpose of investigation and which the Court believes that a person despite summons would not produce the same. However, warrant under Section 94 of the Code relates to a search of a place suspected to contain stolen property or forged documents. We have examined the search warrant (Exh.244) though captioned as search warrant under Sections 93 and 94 of the Code, however it is in the Form No.11 of the Second Schedule of the Code under Section 94 relating to seizure of stolen property. The prosecution has not explained whether warrant under Section 93 of the Code was obtained, though it may not be essential, in view of the specific powers of search and seizure provided under the UAPA.

246. It appears that the Police under assumption of necessity to have a search warrant from a Magistrate have obtained the

warrant which was issued with a specific rider (as per format), that the property seized shall be forthwith brought before the Court on return of warrant. In this regard, admittedly no such compliance was done, but, only a report dated 13.09.2013 (Exh.258) was made to the Magistrate along with the list of seized articles without its production. Be that as it may, even according to the prosecution case, they did not comply with the conditions of warrant which, otherwise, according to us, is not required in the context of the special provisions made under the UAPA in that regard.

247. In substance, the entire process of search and seizure from the house of accused No.6 G.N. Saibaba is doubtful. We reiterate the importance of the seizure because the whole prosecution depends on the said search and seizure. Despite a pre-planned raid by High Ranking Police Officers, an illiterate panch was used, though he resisted. During the process of search, the panch was kept out of the searched premises. Though the entire process was videographed the said material is not proved nor was the other panch examined. Panchnama does not bear reference to sealing and labeling of seized articles. In that view of the matter and for these reasons, we hold that prosecution has failed to prove seizure and

search of incriminating material from the house search of accused No.6 Saibaba by leading credible evidence.

248. The learned special prosecutor relying on the decisions in **Anter Singh[57], Mallikarjun[58]** and **Rameshbhai Mohanbhai Koli[59]** submits that there is no difficulty in relying on the seizure by accepting the evidence of the Investigating Officer dehors hostility of panch witness. In the above quoted cases, principally it has been ruled that if the evidence of the Investigating Officer regarding seizure is convincing, that evidence cannot be rejected solely on the ground that the panch witnesses did not support the prosecution version.

249. It is fairly well settled that the evidence of the Investigating Officer can be relied upon to prove the recovery even if the panch witness turns hostile. In other words, the evidence of the Investigating Officer about seizure, if it does not suffer from any infirmity or doubt, the hostility of panch would be inconsequential. It is an usual phenomenon that in criminal cases often panchas resile from the facts in the signed panchnama for a

57.Anter Singh Vs. State of Rajasthan, (2004) 10 SCC 657,
58.Mallikarjun and others Vs. State of Karnataka, (2019) 8 SCC 359
59.Rameshbhai Mohanbhai Koli Vs. State of Gujarat, (2011) 11 SCC 111

variety of reasons. Certainly the hostile tendency of panchas would not handicap the prosecution. Criminal law does not offer a driving seat to the panch witness, though it depends upon the credibility of the evidence of the Investigating Officer and if it stands upto judicial scrutiny, it can be very well accepted.

250. This is a case having its own peculiarity. Generally in criminal cases, the seizure of articles are mostly used as a piece of corroborative evidence to substantiate the evidence led through other sources. In the case at hand, the entire prosecution case is based upon three different seizures and nothing beyond that. The prosecution has built a case of commission of offence under the UAPA only on the basis of seizures. Thus, the seizure being the very foundation of prosecution, it must pass the test of reliability. Pertinent to note that in the above referred decisions, the panch witnesses have not supported the prosecution case which is not the case in this matter. Three independent panch witnesses namely PW-1 Santosh Bawne (Panch for the first seizure dated 22.08.2013 from accused Nos. 1 to 3), PW-3 Umaji Chandankhede (panch for the second seizure dated 02.09.2013 from accused No.4 Prashant Rahi

and accused No.5 Vijay Tirki) and witness PW-2 Jagat Bhole (panch for the third seizure dated 12.09.2013 from accused No.6 G.N. Saibaba) have supported the prosecution case. None of the witnesses was declared hostile to claim the exception. These witnesses have supported the prosecution case, however several admissions given by these witnesses has created substantial doubt about the entire process of seizure. We cannot wash of vital admissions and the character of those panchas with the aid of certain general propositions which have been led in above referred cases. Rather in criminal cases, cross-examination is the only effective weapon in the armory of defence to impeach the credibility of prosecution witnesses. Admissions given by these witnesses made us to hold that they are not natural, responsible and reliable witnesses. They are in fact regular stock witnesses of the Police and that too illiterate used by the Police to prove the seizure which we do not accept for the reasons stated earlier.

CORROBORATIVE EVIDENCE OF PW-9 ATRAM.

251. This takes us to the evidence of one more prosecution witness PW-9 Atram. His evidence is led to impress that accused

No.1 Mahesh Tirki and accused No.2 Pandu Narote were involved in the terrorist activities. It is his evidence that he was acquainted with both of them. In the year 2013, accused No.2 Pandu Narote came to him informing that naxalite lady Narmadakka called him. Accordingly, he went to the Todalgatta forest area with accused No.2 Pandu Narote to meet this naxalite lady Narmadakka. He was accompanied with accused No.1 Mahesh Tirki and accused No.2 Pandu Narote. The naxalite lady Nambadakka gave him a sum of Rs.5 lakhs and asked him to give it to A1- Mahesh and A2-Pandu at Ballarsha Railway Station. On 27.05.2013, he has been asked by accused No.1 Mahesh Tirki and accused No.2 Pandu Narote to come to Balarsha Railway Station along with the money. Accordingly, on 29.05.2013, he reached Ballarsha Railway Station, where accused No.1 Mahesh Tirki and accused No.2 Pandu Narote were present. He deposed that two unknown persons came therewith whom accused No.2 Pandu Narote talked and took money from him and handed over the money to one of them.

252. This is the only evidence of this witness stating that at the behest of naxalite lady Narmadakka, he has handed over money to one unknown person at Ballarsha Railway Station through accused

No.1 Mahesh Tirki and accused No.2 Pandu Narote. It is pertinent to note that accused were not charged for the offence punishable under Section 17 of the UAPA for raising or providing fund for terrorist act. The endevour was to show the nexus of accused No.1 Mahesh Tirki, accused No.2 Pandu Narote with the naxalite lady Narmadakka and their activities of sending money.

253. The defence has strongly assailed the evidence of this witness by stating that his evidence is that of an accomplice. According to the defence, if he was involved in the act of facilitating terrorism or he was associated with some terrorists, he ought to have been made accused in the crime. It is argued that according to the prosecution case, this witness has assisted the co-accused and therefore, he is not an independent truthful witness worthy to be believed. The evidence of this witness is very general and vague. It is not the prosecution case that accused No.1 Mahesh Tirki and accused No.2 Pandu Narote have provided finance to a particular person that too for the purpose of terrorist activities. Besides his evidence, there is no link evidence as to whom accused No.1 Mahesh Tirki and accused No.2 Pandu Narote have paid the sum. It is not made clear as to who is naxalite lady Narmadakka. Moreover, this

witness has been stated to have assisted the accused of this crime and therefore, it is not safe to rely on his version without corroboration. Considering the nature of his vague statement, it is of no assistance to the prosecution to prove any particular act.

JUDICIAL CONFESSION.

254. This takes us to considering another piece of evidence pertaining to confessional statements allegedly given by A1-Mahesh and A2 Pandu. It is the prosecution case that both of them have voluntarily shown their willingness to give a confession. In turn, they were produced before the Magistrate who after completing the statutory formalities recorded their confessional statements, supporting the prosecution case. The learned Special Prosecutor would submit that the evidence of PW 12- Mr. Vyas [Magistrate] coupled with confessional statements [Exhs.280 and 286] unerringly points towards the active participation of both of them in the act of terror. It is submitted that the confession of the accused recorded by the Magistrate after ensuring the same to be voluntary can be accepted as the best piece of evidence in support of the prosecution case.

255. Section 164 of the Code makes a confession made before a Magistrate admissible in evidence. The manner in which such confession is to be recorded by the Magistrate is provided in the section itself. The said provision inter alia seeks to protect the accused from making a confession under influence, threat or promise from a person in authority. Before we examine the legal implication with regard to recording of judicial confession we may turn to the factual aspect since on the basis of facts, a call has to be taken as to whether the confession was truthful, voluntary and free from doubt. PW 12- Mr. Vyas, Magistrate has been examined on the point of recording of confession. It is his evidence, that on 02.09.2013, the investigating officer applied for recording confessional statements of A1-Mahesh and A2 Pandu. On that day though both were willing to make confessional statements, however, the Magistrate gave them two days time for retraction and called on 04.09.2013. It is the evidence of Mr. Vyas, that again on 04.09.2013, both the accused were brought by the police for recording confession. The Magistrate once again put several questions with a bid to ascertain the voluntary nature of the

confession and still thought it fit to give some more time for retraction.

256. In turn on 06.09.2013 A1-Mahesh was again produced before the Magistrate for recording confessional statement. The learned Magistrate has put him several questions to ascertaining his voluntariness, on satisfaction recorded his confessional statement [Exh.280]. The Magistrate gave necessary certification [Exh.281 to 283], stating the voluntary nature of accused and his own satisfaction about this aspect. Further it has come in the evidence of PW 12 Mr. Vyas, that on 08.09.2013 A2 Pandu was brought for recording confessional statement. The Magistrate has asked him several questions and on satisfaction, recorded his statement [Exh.286] and certified at Exh.287 to 289 it was voluntary, truthfulness and to his satisfaction. Record indicates that the Magistrate has complied with the legal requirement that disclosure to the accused that his is a Magistrate, the accused is not bound to give a statement, but, if given it will be used against him. The Magistrate also enquired whether both accused were threatened, allured or promised by the police or any one else. The Magistrate also ensured that the accused were not brought from the police

custody and also explained that even if they refuse to give statements, they would not be kept in police custody. The Magistrate asked the reason for making the confession, to which both stated that because they have committed wrong, they are giving a statement.

257. A1-Mahesh has stated in his statement that he is resident of Murewada, Taluq Etapalli, District Gadchiroli and was doing painting work. He stated that generally naxalites used to visit Murewada and compel the villagers to give help. One naxalite lady named Narmadakka called him and stated that he should go to Ballarsha Railway Station with A-2 Pandu and receive two persons. He was also informed about the appearance of those persons along with a sign for identification with a nickname. Accordingly on 27.05.2013 he went to Ballarsha railway station with A2- Pandu, received a person as per description given to him and then the said person left with A2 – Pandu towards Morewada. A1 Mahesh remained at the railway station. On the following day i.e. 29.05.2013, one Raju Atram PW9, came to the railway station with Rs.5 lakhs, which they handed over to a fellow who came from Delhi.

258. A1- Mahesh stated that on 14.08.2013, he was asked by the naxalite lady Narmadakka to receive one person at Ballarsha railway station on 20 or 22 August, 2013 along with A-2 Pandu. Similarly the sign language and specific marks have been informed. Accordingly A1 Mahesh along with A2 Pandu went to Ballarsha railway station in the morning. Around 9.45 a.m. The said person came and on matching the identity mark and sign all three came to Aheri by bus. After alighting from bus they were talking with each other at the side of bus stand from where the police apprehended them and took them to Aheri police station.

259. It is the evidence of PW 12 Vyas [Magistrate] that on 08.09.2013 A2-Pandu was produced for recording confession. He has put all preliminary questions for ensuring the voluntary nature of his statement and on satisfaction recorded the confessional statement of A2-Pandu [Exh.286] on the very day. It is the statement of A2- Pandu that he is also resident of Morewada, Taluq Etapalli, District Gadchiroli. Once he was called by Narmadakka along with A1-Mahesh. They were asked to receive a person coming from Delhi on 28.05.2013. Accordingly after matching the sign, he

escorted the said person. He stated that A1 – Mahesh stayed back at Ballarsha station, as he was assigned the job of handing over Rs.5 lakhs to a person coming from Delhi. He stated that around 15.08.2013, A1-Mahesh came to him conveying that naxalite lady Narmadakka has called him. Both of them went to the said lady, and they were informed that one person is coming from Delhi on 20 or 22 August, and both shall receive him at Ballarsha railway station and safely escort him. Accordingly on 22nd August both of them went to Ballarsha railway station. Around 10 a.m. one person met them who was possessing articles like a cap, newspaper, spectacle cover, which matched the description. After verifying the identity through a code name, both of them brought him to Aheri bus stand and while they were standing at the side of bus stand, the police apprehended and brought them to police station Aheri.

260. A confession ordinarily is admissible in evidence if it is relevant, subject to its voluntariness. Section 164 of the Code cast a statutory duty on the Magistrate to ensure about voluntariness in strict sense. Considering the guarantee enshrined under Article 20[3] of the Constitution of India, the evidence of confession needs to be seen cautiously and even more cautiously if the confession is

retracted. Both the accused have filed a joint application [Exh.292] on 27.09.2013 retracting the confessions recorded on 06.09.2013 and 08.09.2013 respectively. It is relevant to note the contents of said application by which both the accused to retracting the confession urged the Magistrate to discard the same.

261. In the said application [Exh.292], accused have stated that on 23.08.2013 they have been produced before the Magistrate who has remanded them to police custody for 10 days i.e. upto 02.09.2013. In the said application they have explained that they had been kept in illegal custody for 2 days preceding 22.08.2013. It is stated that during the period of police custody i.e. from 23.08.2013 to 02.09.2013, the police have beaten them mercilessly. The police have also mentally tortured them due to which they were in deep terror of police. It is stated that the police threatened that they would also implicate relatives of the accused in the crime. The police assured them if they give a confessional statement, they would not be implicated and if tried, they would not be punished. The police also threatened to cause destruction of their property and family. It is stated that on 06.09.2013 and 08.09.2013 while taking them to the Magistrate from jail, the police initially took them

to Aheri Police Station where they have been tutored for giving a statement. They were threatened by the Aheri police and escort party. Finally they stated that whatever statement they gave was false and was given under police pressure, and it should not be acted upon.

262. Generally confession can be acted upon if the Court is satisfied that it is voluntary and true. The voluntary nature of the confession depends upon whether there was any threat or inducement. Trustworthiness is to be judged in the context of the entire prosecution case, because the confession must fit into the proved facts and shall not run contrary to them. Retracted confession however, stands on a slightly different footing. There is no embargo on the court to take into account the retracted confession but, the Court must look for the reasons for making of confession, as well as its retraction. The Court may act upon the confession made voluntarily, but, in case of retraction the general assurance about its voluntary nature has to be ascertained. The value of retracted confession is well known. The Court must be satisfied that the confession at the first instance is true and

voluntary. The stage of retraction also matters while appreciating the voluntariness and truthfulness.

263. It is the prosecution case that both A-1 and A2 were arrested on 22.08.2013 and remanded to police custody for 10 days i.e. till 02.09.2013, on which they were sent to judicial custody. Both were produced before the Magistrate for recording confession on 04.09.2013 i.e. while in judicial custody, but, the Magistrate gave time for retraction, which led the police to produce A1 Mahesh on 06.09.2013 and A2 Pandu on 08.09.2013 for recording confession. It is revealed from the evidence of P.W.12 Mr. Vyas [Magistrate], that the accused persons [A1 Mahesh and A2 Pandu] were produced on 02.09.2013 when they were remanded to Magisterial custody. It is not in dispute that the Magistrate has remanded them to police custody for 10 days on 23.08.2013, meaning thereby till 02.09.2013 they were in police custody and have been produced before the Magistrate, who sent them to judicial custody.

264. The evidence of Magistrate [PW-12] discloses that on 02.09.2013 itself the investigating officer filed an application for recording confessional statement of both the accused. The

Magistrate stated that immediately he informed both the accused about such application, and inquired whether they desire to make a confession. However, it emerges that when the application was moved to the Magistrate, both the accused were continuously in police custody and no sooner they were brought to the Court from police custody on 02.09.2013, an application for recording confession was moved. It is apparent that the accused were not in judicial custody, but, they were in police custody when the application was moved. It is further revealed that the Magistrate had interacted with both of them in the Court which accentuates that both had not yet been sent to judicial custody. At that time the investigating officer has pressed for recording their confession. Therefore, it can safely be said that the accused were in continuous 10 days police custody when they allegedly expressed their willingness to make a confession, which is one of the factors for consideration.

265. Both the accused in their retraction application [Exh.292] dated 27.09.2013 stated the reasons for delayed retraction. It is explained that after 08.09.2013 [date of confession of A2], the next date for production was 24.09.2013, meaning thereby they had no

opportunity in the meantime to put their grievance. The accused stated that in the meantime they decided to write an application for retraction, however, they were threatened. We have gone through the evidence of PW 12 Vyas [Magistrate], who admitted that on 24.09.2013 accused A1 Mahesh has disclosed to him that he was threatened by the police to make a confession, but, the Magistrate did nothing. It shows that even before filing of the retraction application dated 27.09.2013 on first occasion when the accused got a chance to come to the Court for remand. A-1 Mahesh has disclosed to the Magistrate about threats given by the police for giving a confessional statement. The entire chain of events discloses that before expressing to give confession, for 10 days the accused were continuously in police custody and even after confession as and when they got the opportunity they have retracted the confession.

266. In the background that the accused were in long police custody before expressing willingness and its retraction on the first possible opportunity, the value of confession is to be assessed. The issue of evidentiary standard is a very delicate one and has a great bearing on the outcome of the case. The confession is one element of consideration of all the facts proved in the case, as it can be put

into the scale and weighed with other evidence. If the confession is retracted, the probe requires to be deeper to satisfy its truthfulness. No doubt the Magistrate has complied with the legal requirement, but, the question is whether confession is made under torture, threat, promise, if so it is inadmissible.

267. It is the prosecution case that the accused [A1 and A2] were arrested from Aheri bus stand on 22.08.2013 around 6.15 p.m. It is the evidence of P.W.6-API Awhad, that they were keeping surveillance on the movement of A1 Mahesh and A2 Pandu. On 22.08.2013 around 6 p.m. both of them were found standing at a secluded place near Aheri bus stand. After 15 minutes, around 6.15 p.m. one person wearing a cap arrived, after which they started to talk with each other. On suspicion API Awhad took them into custody. We have gone through both the confessional statements [Exhs.280 and 286]. Both of them stated a different story that on that day in the morning they went to Ballarsha railway station from where they received a person who had earlier been described to them. All three returned by bus to Aheri bus stand, and no sooner they alighted from the bus and were talking, they were apprehended

by the police. The said narration in the confessional statement contradicts the prosecution case that A1 and A2 went to Aheri bus stand to receive some one and after waiting for 15 minutes, a third person came and thereafter they were arrested.

268. Both of them have stated a past incident of receiving some one in the month of May at Ballarsha station and handing over a sum of Rs.5 lakhs on the following day to someone else. These instances are without specification. It is not the prosecution case as to whom both of them had received at Ballarsha railway station and as to whom they have handed over the cash amount. Thus, part of the said statement lends no assistance to the prosecution. Besides a general and vague statement, that they were acting on the instructions of one naxalite lady Narmadakka, nothing can be culled out from this part of their narration. Both have stated that either on 20.08.2013 or 22.08.2013, they went to Ballarsha and then followed their arrest at Aheri bus stand. However, as we have mentioned hereinabove, there is a strong possibility of both of them having been taken into custody on 20.08.2013 itself. Moreover, in the application for retraction dated 27.09.2013, itself it is stated that

they have been taken into custody on 20.08.2013. Thus, the confessional statement given by them does not match with their own stand.

269. Reading the confession as a whole besides past instances, it is of no assistance. The accused were in police custody for continuous 10 days and on the last date then expressed willingness to give a confession. Moreover, on the first possible opportunity they have disclosed about extracting a confession under threat, as well as given written application within a couple of days to the Magistrate for said purpose. Thus, there is immediate retraction of the confessional statements. The accused gave detailed reasons in their application as to what persuaded them to give a confession and under which circumstances they did so. The reason for giving confession is that they did wrong and nothing more. Taking an overall view of the matter, in the context of the facts of this case, we do not find it safe to rely on the retracted confession which is uncorroborated. In the result, for the above reasons we are not in a position to accept the retracted confession as a legally admissible piece of evidence.

AUTHORIZATION FOR ARREST AND SEARCH

270. The learned Counsel appearing for accused would submit that the officers effecting arrest and search were not authorized in terms of provisions of the UAPA, hence search and seizure was illegal. It was submitted that PW-11 SDPO Suhas Bawche who has investigated the matter has no authority under the special statute to effect arrest and search and thus, the whole investigation is vitiated. It is submitted that in terms of Sub-clause (2) of Section 43-B of the UAPA, the seized articles ought to have been forwarded to the nearest Police Station at Delhi, but it was not done. Moreover, it is submitted that the provisions of Section 25 of the UAPA have not been complied with since the information relating to seizure has not been forwarded to the Designated Authority within 48 hours from the seizure. Per contra, the learned special prosecutor would submit that PW-11 SDPO Suhas Bawche was an officer competent to investigate in terms of Section 43(c) of the UAPA. Moreover, Police have general powers of search and seizure under the Code, which are not taken away by the special statute. Besides that, Section 465 of the Code would cure the defect, if any.

271. The first objection is about competency of the Investigating Officer to arrest and conduct search of accused No.6 G.N. Saibaba. The defence heavily relied on the provisions of Section 43-A of the UAPA to contend that the special requirement incorporated in the Section has not been complied with. For the sake of convenience, we have extracted Section 43-A of the UAPA which reads as under:-

> *"**43A. Power to arrest, search, etc.**—Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept*

or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place."

273. Investigation was entrusted to PW-11 SDPO Suhas Bawche who was of the rank of Deputy Superintendent of Police. Section 43 of the UAPA specifies who is competent to investigate the offence under Chapter IV and VI of the UAPA. Sub-clause (a) and (b) of Section 43 are not relevant for our purpose. Sub-clause (c) provides that investigation shall be carried out by an Officer not below the rank of the Deputy Superintendent of Police or a Police Officer of an equivalent rank. There is no dispute that PW-11 SDPO Suhas Bawche, Investigating Officer was holding the rank of Deputy Superintendent of Police, and was competent to investigate in terms of the provisions of the UAPA.

274. The dispute is about the competency of PW 11- Suhas Bawche I.O. to arrest and take search of the house of A6- Saibaba. Section 43-A of the UAPA has a specific provision requiring

authorization for effecting arrest and search relating to cases under the UAPA. It provides that any officer (competent under Section 43 of the UAPA) of the Designated Authority empowered in this behalf, by general or special order may authorize any officer sub-ordinate to him to arrest or search a building. In other words, only the competent officer in terms of Section 43 of the UAPA who has been specially empowered by the Designated Authority to arrest or effect search is competent to effect search and arrest or his sub-ordinate, on his authorization. It is not enough that he is competent in terms of Section 43, to investigate, but the additional requirement is that he should be authorized by the Designated Authority and be conferred the powers for effecting arrest or search.

275. The term "Designated Authority" has been defined under Section 2(1)(e) of the UAPA which reads as below:-

> *"2(1)....*
>
> *(a).....*
>
> *.....*
>
> *(e) "Designated Authority" means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the*

case may be, as may be specified by the Central Government or the State Government, by notification published in the Official Gazette."

276. In short, a Designated Authority is an officer appointed by the State Government not below the rank of the Secretary of the Government appointment by a Notification published in the Official Gazette. There is no dispute that the Home Department has issued a Notification dated 18th March, 2005 in exercise of powers conferred by Clause (e) of Sub-section (1) of Section 2 of the UAPA for appointment of the Designated Authority. By the said notification, the Government of Maharashtra has appointed Principal Secretary (Appeals and Security), Home Department, Government of Maharashtra to be the Designated Authority for the purposes of UAPA. Though Section 43-A has been inserted by an amendment in the year 2008, no fresh notification has been issued by the State, thereafter. However, we need not consider this aspect in the light of the following facts.

277. It is not the prosecution's case that PW-11 SDPO Suhas Bawche is authorized by the Designated Authority i.e. the Principal Secretary for the purpose of effecting arrest or search as required

under Section 43-A of the UAPA. The scheme of the UAPA, though empowers a high ranking Police Officer at the level of Deputy Superintendent of Police to be competent to investigate, the power of arrest and search however were specifically kept under the control of the Designated Authority i.e. the Principal Secretary who is a Higher Ranked officer of the Government. The legislative intent was therefore to confer powers of arrest and search on an officer specifically authorized in that behalf by the Competent Authority and such search and arrest can be conducted by only under the supervision and control of this Higher Ranking Government Officer (The Designated Authority) which is independent to Police Authority.

278. In the case of arrest and search, the statute has incorporated the intervention of a High Ranking Officer of the State Government in the process with a view to have an independent check over the Police Officer to avoid abuse of the provisions of law. Clearly, the Investigating Officer PW-11 SDPO Suhas Bawche was not authorized by the Designated Authority to effect arrest and search. Mr. Chitale, the learned prosecutor would submit that no such permission, much less authorization of the Designated

Authority is required since PW-11 SDPO Suhas Bawche was holding the rank as specified under Section 43 of the UAPA. As stated above, the said submission is wholly untenable since a special provision has been made under Section 43-A of the UAPA which we have dealt with above.

279. Mr. Chitale would submit that Section 43 of the UAPA does not bear a reference to the Designated Authority for the purposes of investigation and thus, the authorization of the Designated Authority is not essential. We may reiterate that for the purpose of investigation, intervention of the Designated Authority is not warranted in terms of Section 43 of the UAPA, of which we have no doubt. However, the statute, though permits the competent officer in terms of Section 43 of the UAPA to investigate the offence, however, puts a restriction on his power of arrest and search which is required to be authorized in terms of Section 43-A of the Act. Therefore, the argument, that merely because PW-11 SDPO Suhas Bawche was competent to investigate, he has also power to effect arrest and search is wholly untenable.

280. Mr. Chitale further submits that the later part of Section 43-A of the UAPA provides for authorization of any subordinate

officer to effect arrest or search. We are not prepared to accept this submission, which, if accepted, would amount to authorizing any subordinate officer to effect arrest and search which would be against the spirit of Section 43-A. Plain reading of Section 43-A would postulate that the competent officer in terms of Section 43 of the UAPA who has been specially authorized by the Designated Authority for effecting arrest and search, may authorize his sub-ordinate. The basic requirement is that the officer who assigns authorization to his subordinate must be empowered conferred by the Designated Authority, and then only then can he delegate the authority to his subordinate. Therefore, the submission in this regard being against the spirit of Section 43-A of the UAPA is not worthy of acceptance.

281. Another argument put forth by the prosecution was that the UAPA does not take away the general powers conferred by the Code, on the Police. According to the prosecution, the Police have general power of arrest and seizure under the Code and thus, even otherwise they are competent to that extent. In this regard, our attention has been invited to Section 43-C of the UAPA which reads as below:-

> *"**43-C. Application of provisions of Code**.—The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act."*

282. It is submitted by the prosecution that the provisions of the Code would clearly apply for the prosecution under the UAPA and therefore, despite authorization by the Designated Authority under the UAPA, the Police have power to effect arrest and search. We are afraid we cannot subscribe to this submission because Section 43-C of the UAPA though speaks of the applicability of the Code, qualifies that the provisions of the Code are applicable in so far as they are not inconsistent with the provisions of the UAPA relating to arrest, search and seizure. Thus, if the special statute namely UAPA, makes a specific arrangement as regards powers of arrest or seizure, the special provision/regulation would prevail over the general provisions of the Code. To that extent, the powers conferred by the Code are inconsistent and in conflict with the provisions of Section 43C of the UAPA and must yield to the special statute.

283. Though the prosecution advanced an argument that Section 465 of the Code saves such an irregularity, however we are

unable to accept the submission in view of the specific provision contained under Section 43-A of the UAPA which is a stringent statute. Having regard to the severity of punishment, the statute itself has provided inbuilt safeguards. Section 43-A is a specific safeguard incorporated with a view to require empowerment from a High Ranking State Officer before arrest and seizure. Obviously, the very purpose is to avoid false implication of a citizen. Having regard to the aims and object of providing a special mechanism, the general provisions would not cure the defect. We may hasten to add that this is not a case where there was procedural irregularity or lapse while obtaining authorization by the Designated Authority, but a case of total absence of empowerment of the Investigating Officer by the Designated Authority. Thus, the said material deficiencies cannot be cured with the aid of Section 465 of the Code otherwise, the statutory requirement under Section 43-A would become otious.

284. Apart from the general provisions of Section 465 of the Code, the prosecution also canvassed that even if the seizure is illegal, however, it can be used in evidence. For this purpose the prosecution drew support from the decision of the Supreme Court in

case of **Pooram Mal**[60]. In the said decision which is under the Income Tax Act, the search and seizure was challenged on account of contravention of the requirement of Section 132 and Rule 112 of the Income Tax Act. In that context, it was observed that where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as result of illegal search or seizure is not liable to be shut out. We are afraid that, to borrow the said proposition in the context of statute like UAPA, wherein a special provision of Section 43-A prescribes a special mechanism for authorization to effect arrest and search cannot be countenanced. In other words, a general provision is curtailed/restricted by the special statute and thus, observations made in that judgment are in a totally different context and would not assist the prosecution in any manner.

285. In order to escape from the clutches of Section 43-A of the UAPA, Mr. Ponda made one another submission that the provisions of Section 43-A would apply only when the Authority gets information of its own accord. We do not see any distinction carved

60.Pooram Mal Vs. Director of Inspection (Investigation) of Income Tax, AIR 1974 SC 348

out under Section 43-A of the UAPA pertaining to source of information. The Section plainly provides the requirement of authorization/ empowerment by the Designated Authority, whatever the source of information may be i.e. to his personal knowledge or information received in writing. The distinction sought to be carved out by Mr. Ponda is artificial which is not in consonance with the statutory requirement. In short, we are unable to accept the submission. We may reiterate that when the special statute has provided a specific mechanism for authorization of search and arrest by the Designated Authority, then that would have overriding effect and exclude application of the general provisions of the Code.

286. The defence also argued that the non-compliance of the provisions of Section 43-B of the UAPA which requires that the person arrested be forwarded with the articles seized to the officer in charge of the nearest Police Station would not be of any effect. The said provision of Section 43-B reads as under:-

> *"**43-B. Procedure of arrest, seizure, etc.**—(1) Any officer arresting a person under section 43-A shall, as soon as may be, inform him of the grounds for such arrest.*

(2) Every person arrested and article seized under section 43-A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest Police Station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code."

287. Sub-clause (2) of Section 43-B of the UAPA provides that every person arrested and article seized under Section 43-A of the UAPA has to be forwarded to the officer in-charge of the nearest Police Station. In this regard, it is not the prosecution's case that either after arrest accused No.6 G.N. Saibaba was forwarded to the nearest Police Station i.e. Maurice Nagar Police Station, Delhi or that articles which were seized were forwarded to the said Police Station. Sub-clause [3] to Section 43-B casts a further duty on the said incharge officer to take further necessary steps as provided under the Code.

288. Apparently seized articles were not forwarded to the officer in-charge of the nearest Police Station. After seizure, only

information was given vide letter (Exh. 254) to said Police Station with copy of panchnama. Sub-clause (2) to Section 43-B of the UAPA does not contemplate just the forwarding of information of seizure but, requires that the articles seized be forwarded, hence there is total non-compliance of statutory requirement of Section 43-B of the UAPA. In view of that, we hold that the arrest and seizure is not in accordance with the requirement of the Special Statute namely UAPA.

289. The defence also assailed the seizure on account of non-compliance of the provisions of Section 25 of the UAPA. It is argued that the seized material i.e. electronic gadgets amount to “property” within the meaning of Section 2(1)(h) of the UAPA. According to the defence, the words electronic items are movable in nature, having value and can be used for terrorist activity, hence, it falls under the term “proceeds of terrorism”. It is argued that the seizure being 'proceeds of terrorism', the prosecution ought to have complied with the mandate of Section 25 of the UAPA. For this purpose, we were taken through Section 25 of the UAPA which requires prior approval in writing of the Director General of the

Police to seize the 'proceeds of terrorism'. Sub-clause (2) to Section 25 of the UAPA further mandates the Investigating Officer to inform about the seizure to the Designated Authority within 48 hours. Moreover, it requires the Authority to confirm or to revoke the seizure or attachment within 60 days which is made appealable to the Court within the period of 30 days from the date of order. It is also submitted that proviso to Sub-clasue (3) of Section 25 of the UAPA gives an opportunity to a person whose property has been seized or attached of making a representation. According to the defence, no such procedure has been followed and therefore, seizure vitiates.

290. The relevant part of Section 25 is reproduced herein below for ready reference:-

> *"25. **Powers of investigating officer and Designated Authority and appeal against order of Designated Authority.**—(1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior*

approval in writing of the Director General of the Police of the State in which such property is situated, or where the investigation is conducted by an officer of the National Investigation Agency, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) ……

(5) …….

(6)……"

291. Section 25 of the UAPA is a complete scheme for dealing with seizure or attachment of proceeds of terrorism. No doubt if seized electronic gadgets are held to be 'proceeds of terrorism', the mandate of Section 25 of the UAPA would come into play. Reading of the whole of Section 25 of the UAPA conveys that the term "proceeds of terrorism" is used in the sense of some valuable movable or immovable, obviously acquired by the act of terrorism. Exhaustive provisions are made for the seizure and attachment of property, opportunity to make a representation, confirmation or rejection of the order of seizure or attachment and the right of appeal to the aggrieved person. The whole scheme conveys that it relates a valuable movable or immovable property which was acquired through the act of terrorism.

292. The UAPA has not defined the word "proceeds of terrorism". The ordinary meaning of the word "proceeds" would mean money or value that one gets by sale of something. In other

words, a profit or return derived from a transaction, herein an act of terrorism. The term proceeds of terrorism cannot be equated with the articles used or intended to be used for the act of terrorism. Therefore, we are unable to accept the defence submission that the seized incriminating electronic data amounts to "proceeds of terrorism" within the meaning of Section 25 of the UAPA requiring further mandatory compliance. For this reasons, we reject the defence argument to that extent.

293. The learned special prosecutor would submit that though under criminal jurisprudence the guilt of the accused must be proved beyond all reasonable doubt, however the burden on the prosecution is only to establish its case beyond reasonable doubt and not from all doubt. The standard of proof under the criminal law is of a high degree but, not of absolute nature. What degree of probability amounts to "proof" is an exercise, particular to a case. The principle of "beyond reasonable doubt" shall not be stretched to the extent that would break down the credibility of the system. In order to substantiate this contention, initially he relied on the decision of the Supreme Court in case of **Leela Ram**[61] laying special

61.Leela Ram (dead) through Duli Chand Vs. State of Haryana, (1999) 9 SCC 525

emphasis on the observations in para 12 thereof, which read as under:-

> *"12. It is indeed necessary to note that hardly one comes across a witness whose evidence does not contain some exaggeration or embellishments - sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give slightly exaggerated account. The Court can sift the chaff from the corn and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness - If this element is satisfied, they ought to inspire confidence in the mind of the Court to accept the stated evidence though not however in the absence of the same."*

294. Though the prosecution further relied on the decisions in cases of **Bhaskar Ramappa Madar[62], Shivaji Sahabrao Bobade[63], Jagir Singh Baljit Singh[64], Krishna Gopal[65]** and **Valson[66], h**owever, after considering those decisions in case of

62 Bhaskar Ramappa Madar and others Vs. State of Karnataka, (2009) 11 SCC 690

63. Shivaji Sahabrao Bobade and another Vs. State of Maharashtra, (1973) 2 SCC 793

64. The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh (1974) 3 SCC 277

65. State of U.P. Vs. Krishna Gopal and another, (1988) 4 SCC 302

66. Valson and another Vs. State of Kerala, (2008) 12 SCC 241,

Yogesh Singh[67], the principles in this regard have been set out in paras 15 to 18 which read thus:-

> *'15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J., in State of U.P. Vs. Krishna Gopal and Anr (SCC pp.313-14 paras 25-26)*
>
> > *25....Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It*

67.Yogesh Singh Vs. Mahabeer Singh and others, (2017) 11 SCC 195

must grow out of the evidence in the case.

26. .....

16. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. [Vide Kali Ram Vs. State of Himachal Pradesh, State of Rajasthan Vs. Raja Ram, (2003) 8 SCC 180; Chandrappa & Ors. Vs. State of Karnataka, Upendra Pradhan Vs. State of Orissa, and Golbar Hussain Vs. State of Assam"].

17. However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by this Court in the case of State of Punjab Vs. Jagir Singh, (SCC pp. 285-86, para 23).

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself

with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge, the evidence by the yard-stick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures.

18. Similarly, in Shivaji Sahebrao Bobade & Anr. Vs. State of Maharashtra, V.R. Krishna Iyer, J., stated thus: (SCC p.799 para 6)

6. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a

thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."

295. It is a consistent law that though the cardinal principles of criminal jurisprudence are requirement of proof beyond reasonable doubt, however they denote that standard of proof is higher, but, not absolute. Certainly, doubts must be actual and substantial doubt as to the guilt of the accused arising from the evidence or from lack of evidence so as to oppose mere vague apprehension. We are conscious of the fact that reasonable doubt is not an imaginary, trivial or a mere possibility, but, a fair doubt which would command judicial mind. The law does not expect the kind of evidence which is impossible to prove, but the standard shall be to the extent which excludes an entertainable doubt.

296. Similarly, we must keep in mind the golden rule of criminal jurisprudence expressed by the Supreme Court in the case of Leela Ram (supra), that if two views are possible, the view favourable to the accused would take precedence. In the light of

above well cherished principles, we have scrutinized the prosecution case while arriving at our conclusions.

CHAIN OF CUSTODY OF SEIZED ARTICLES.

297. During the course of investigation, from time to time, incriminating material has been seized from different accused persons. The same was deposited in the malkhana, and then from time to time the same were sent for analysis to CFSL Mumbai. Various panchnamas have been drawn to that effect.

298. The defence would urge that the chain of custody is not properly established, meaning thereby chances of tampering cannot be ruled out. The first seizure from A1 to A3 is dated 22.08.2013, whilst the seized muddemal articles were deposited with the malkhana clerk on the very day. The second seizure from A4 and A5 is of 02.09.2023, and on the same day it was deposited with the malkhana clerk. The third seizure is from A6 – Saibaba dated 12.09.2023, which was deposited with the malkhana clerk on 13.09.2013.

299. The learned defence counsel drew our attention to some discrepancies in establishing that from time to time muddemal was

taken out from the custody of the malkhana clerk without proper verification, and it has changed hands without endorsement. It is submitted that though the evidence of the investigating officer PW-11 shows that on 12.09.2013 the seized electronic articles were sealed in one plastic bag, the laptop in a separate packet and printed material in three packets, however, the relevant malkhana register entry dated 13.09.2013 discloses that only one plastic bag and two paper envelopes have been deposited. It is argued that the labels containing panchas signatures obtained on the date of seizure i.e. 12.09.2013 were never preserved nor produced to vouch for their credibility. According to the defence, the said muddemal was taken out on 14.09.2013 for forwarding to CFSL, however, the relevant panchnama does not disclose that the plastic container was re-sealed. Particularly, it is argued that the mirror images, though stated to be received from time to time, however, the said evidence is contradicted by PW 21 - Nikam, who is a Scientific Analyst. Our attention has been invited to the muddemal entry dated 16.02.2014. It does not bear specification as to what has been deposited by PW 7 - Constable Apeksha Ramteke, which she brought from the CFSL Mumbai.

300. On the point of custody, the evidence of P.W.11- Suhas Bawche, investigating officer, P.W.5- Constable Kamble [carrier], P.W.7 Constable Apeksha Ramteke [carrier], P.W.13 Constable Rathod [malkhana clerk] and P.W.21 Scientific Analyzer – Nikam is important. With the assistance of both sides we have gone through their evidence and relevant malkhana register entries which are at Exhs.276-A to 276-E. We have also gone through the muddemal challan at Exhs.299-A to 299-C, 300-A and 300-B, 301-A to 301-I. So also invoice challan of muddemal deposited in Court Exh.302, has been tendered on record. We find that from time to time entries have been taken in the muddemal register, which supports the oral evidence led by the prosecution witness, with little variance in the description. We are not prepared to accept that the minor discrepancies, affect the credibility of deposit of muddemal.

301. Particularly we have gone through the evidence pertaining to receipt of mirror images by the investigating officer from CFSL Mumbai. In this regard, P.W.11- Suhas Bawche, stated that on 31.08.2013 he received the mirror images of the memory card seized from the possession of Hem Mishra, which is corroborated by the

evidence of P.W.21- Bhavesh Nikam. It is in the prosecution evidence that on 20.09.2013, P.W.5 Constable Kumbhare received mirror images regarding one hard disk, which he has deposited on 21.09.2013. However, the evidence of P.W.21 Analyst Nikam no where supports the said contention, who states that he has issued mirror images on 30.08.2013 and then on 05.10.2013. We have gone through the evidence of these witnesses along with the time, description and related panchnamas. Though there are certain discrepancies about the description of the container namely plastic box and packets, however, nothing has been brought on record to create a doubt. Such minor discrepancies are bound to occur. The oral evidence is supported by relevant muddemal entries and thus, interference cannot be lightly drawn about the possibility of tampering on conjectures and surmises.

ASSESSMENT OF ELECTRONIC EVIDENCE

302. The Prosecution case solely rests on the electronic evidence seized from the possession of accused. Therefore, it necessitates us to undertake the exercise whether the said evidence is duly proved in accordance with the provisions of the Evidence Act, Information Technology Act and Rules framed thereunder.

303. Under the Evidence Act, 1872, the contents of electronic record may be proved in accordance with the provisions of Section 65-B of that Act. Section 65-B stipulates that any information contained in an electronic record which is then printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer shall also be deemed to be a document provided conditions mentioned in Section 65-B are satisfied in relation to the information and the computer in question. If the conditions are satisfied, such "document" shall be admissible, without further proof or production of the original, as evidence.

304. The conditions required to be fulfilled for such "document" to be admissible in evidence are stipulated in Sub-Section 2 of Section 65-B. In terms of Section 65-B, amongst the various conditions stipulated in Sub-Section 2 and 3, if evidence is to be given of the information contained in the electronic record in the device, a certificate is required to be issued in terms of Sub-Section 4 of Section 65-B wherein the identity of the electronic record is to be specified, the particulars of the device involved in production of the

electronic record are to be specified and this certificate is to be issued by a person who has at the relevant time been familiar with the operation of the device.

305. Section 85-B of the Evidence Act raises presumptions as to electronic records in a proceeding involving a "Secure Electronic Record"; The Court shall presume, unless the contrary is proved that the Secure Electronic Record has not been altered since the specific point of time to which the secure status relates.

> *"**Section 85B**. - Presumption as to electronic records and electronic signatures. - (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.*
>
> *(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that—*
>
> *(a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;*
>
> *(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption, relating to authenticity and*

integrity of the electronic record or any electronic signature.

306. In order to attach any presumption that the Secure Electronic Record has not been altered, certain procedures have been prescribed in terms of the Information Technology Act, 2000 in which Section 14 defines a "Secure Electronic Record" and Section 16 prescribes the security procedure and practices to be adopted in relation to such a record, in order to attract the presumption. Section 14 and Section 16 read as under:-

"*Section 14. - Secure electronic record.—Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.*

Section 16. - Security procedures and practices.—The Central Government may, for the purposes of sections 14 and 15, prescribe the security procedures and practices:"

Provided that in prescribing such security procedures and practices, the Central Government shall have regard to the commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.]

307. The security procedure and practices have been prescribed by the Central Government for the purpose of Section 14 and Section 16 in the Information Technology (Security Procedure) Rules 2004 published on 29.10.2004. Under Rule 3 a "Secure Electronic Record" shall be deemed to be a secure record for the purpose of the Act if it has been authenticated by means of a Secure Digital Signature. Rule 4 provides the manner in which the digital signature is deemed secure for the purpose of the Act by providing a procedure which is reproduced hereinbelow.

> ***Rule 4****. - Secure digital signature. - A digital signature shall be deemed to be a secure digital signature for the purposes of the Act if the following procedure has been applied to it, namely:-*
>
> *(a) that the smart card or hardware token, as the case may be, with cryptographic module, in it, is used to create the key pair;*
>
> *(b) that the private key used to create the digital signature always remains in the smart card or hardware token as the case may be;*
>
> *(c) that the hash of the content to be signed is taken from the host system to the smart card or hardware token and the private key is used to create the digital signature and the signed hash is returned to the host system;*

(d) that the information contained in the smart card or hardware token, as the case may be, is solely under the control of the person who is purported to have created the digital signature;

(e) that the digital signature can be verified by using the public key listed in the Digital Signature Certificate issued to that person;

(f) that the standards referred to in rule 6 of the Information Technology (Certifying Authorities) Rules, 2000 have been complied with, in so far as they relate to the creation, storage and transmission of the digital signature; and

(g) that the digital signature is linked to the electronic record in such a manner that if the electronic record was altered the digital signature would be invalidated."

308. From a combined reading of the above-quoted provisions, the process of giving electronic evidence a status of "Secure Electronic Record", to which the presumptions under Section 85-B of the Evidence Act would be attracted is laid down. In the present case, the burden was heavily upon the prosecution to demonstrate how the various devices seized/attached, which include the 16 GB pendrive seized from Accused No.4, and the hard disk and other devices seized from the residence of Accused No.6 at New

Delhi, were "secured" by following the process referred to in the above referred paragraphs.

309. The electronic data or record in the present case concerning Accused No.6 was mainly contained in a hard disk at his residence. In order that the contents of the electronic evidence contained within this device attract the presumptions, two procedures would have to be followed. The identity and description of the device itself i.e. hard disk would have to be properly recorded, which description would have to be deposed to and the device identified by its external description, serial number, colour of its casing or cover, the product number or other such specific identification marks such as stickers or printing thereon. The seizure panchanama would obviously have to have a fairly clear description of the device, which would also include its photographs countersigned by the witnesses to the seizure.

310. In the present case, apart from the panch witness who was examined, who is alleged to have attended the search operations at the residence of Accused No.6, no other witness has been examined and deposed as to the description of the electronic

devices, which included the computer hard disk and the laptop attached during the search. The panchanama, Exh. 165 does not contain a description of the electronic devices by serial number, colour of the outer cover or box, the product number or even the colour of the device. Thus, there is no physical identification of the device which contains the electronic record or in other words, there is no co-relation established between the device which is not physically identified in the seizure panchanama, to the electronic record sought to be relied upon as evidence in Court. Having failed to establish this co-relationship, the electronic record or content of the hard disk could not have been referred to as a "Secure Electronic Record".

312. Further, if one seeks to draw a presumption as to this electronic record, the procedure that would have to be followed would be, as set out in Rule 4; This procedure requires that the forensic expert or computer expert who intends to ultimately use the electronic evidence contained in the device in Court should first have the device physically identified in a written record, by its description, product number, serial number and any other identification marks on the cover or box within which lies the electronic record. The

same person is required to then apply a private key which is issued to him to the device which has his personal digital signature in it, which process would take the hash value of the electronic content in the device from the host system to the smart card or hardware token, and the private key is used to create the digital signature and signed hash is then returned to the host system. In this manner, at a later stage, when the device is reopened, the digital signature of the computer expert could be identified. The computer expert may also create a mirror image or clone of the information contained in the device on to another device, and if he undertakes this process, in order that there is evidence that the hash value at the start of the information and end point of the information on the original device matches exactly with the hash value of the cloned information, the procedure under Rule 4 would have to be complied by appropriately applying the expert's digital signature on the cloned information/data.

313. The computer expert would then record the hash value at the starting point of the electronic data and the end point of this data which could be later ascertained by the forensic expert who would examine the data in the lab as well as re-ascertain before the

Court recording the evidence when the device or the evidence contained therein is sought to be produced and admitted in evidence. The presumptions under Section 85-B of the Evidence Act would be attached to this evidence only if the hash values certified by the computer expert who has first examined the device match with those certified by the expert who examines the device at a forensic lab and then again these would match when the device is produced in Court. Of course, the presumptions would flow only if it is established that the electronic record in question could be co-related to the physical description of the device produced in Court.

314. Looking at the evidence produced in relation to Accused No.6, the panchanama does not refer to the physical description of the hard disk seized during the raid and strangely, even though a computer expert accompanied the raiding team, he has not given a detailed physical description of the device or even mentioned its serial number. This same person has also not been examined to ascertain the compliance of the afore-stated rules, to establish that the content of this electronic record could truly be considered a "Secure Electronic Record" to which any presumption could be attached. This being the case, the prosecution has failed to prove

beyond any doubt that the computer hard disk or any of the other devices attached during the search conducted at the residence of Accused No.6 were Secure Electronic Record in terms of Section 85-B of the Evidence Act. Even the investigating officer who was present throughout the search has not recorded these details and has miserably failed to follow the procedure laid down in Rule 4 of the I.T. Rules. Thus, the contents of the hard disk could not be looked into as evidence and would be wholly unreliable if relied upon, to prove the offences alleged against Accused No.6.

315. Adverting to the compliance of issuance of a certificate in relation to the electronic evidence contained and sought to be produced in Exhibit 375 i.e. the hard disk seized from Accused No.6, we are of the opinion that the requirements of Section 65-B of Evidence Act have not been complied with. Section 65-B requires five conditions stated in Sub-Section 2 thereof to be complied with. A perusal of the certificate at Exhibit 375 would show that the same does not identify the electronic record contained in the statement in evidence nor does the certificate describe the manner in which the electronic record sought to be produced in evidence was produced. There is no description of the device with its serial numbers used in

the production of the electronic record or copy. There is thus no compliance with the requirements of a valid certificate under Section 65-B. For that reason, we are of the opinion that the evidence/information produced under the certificate at Exhibit 375 would not be admissible and could not be relied upon. With such inherent lacuna, we proceed further.

316. Notwithstanding the fact that the prosecution has failed to prove that the hard disk contained a Secure Electronic Record, we would nevertheless also proceed to record our findings on the content of this unproved record which is plainly in the form of writings, video films of public speeches and what appears to be propaganda material. The first question that we address is whether merely being in possession of such material in one's computer, any offence could be said to be made out in terms of the various sections of the UAPA of which the Accused have been charged. Even assuming that the content of the speeches or written literature contained in the electronic material on the hard disk attached from the residence of Accused No. 6 was inflammatory or denounced a certain form of governance or expressed dissent with any government, would the mere fact that a person was in

possession of such material fall within the ingredients of any offence under the UAPA.

317. The Supreme Court in **Thwaha Fasal**[68], was dealing with a case where the allegation against the accused was that he was found in possession of soft and hard copies of various materials concerning the banned organization CPI (Maoist) and he was seen present in a gathering which was part of the protest arranged by an organization alleged to have links with the banned organization. The material also contained minutes of meetings where the accused were alleged to have been part of various committees of the banned organization. Whilst dealing with the question as to whether mere possession of such material attract offences under Sections 20, 38 and 39 of the UAPA, the Supreme Court has held as under:-

> "*32. FSL report shows that the cell phone of the accused no.1 had a video clip with the title "Kashmir bleeding", as well as portraits of various communist revolutionary leaders, like Che Guvera and Mao Tse Tung, as also portrait of Geelani, a Kashmiri leader. Copies of certain posters were also found. Pdf files extracted showed that it contained material regarding abrogation of Article 370 of the Constitution and various other items. The photographs also showed that the accused no.1 attended*

68.Thwaha Fasal Vs. Union of India reported in 2021 SCC Online SC 1000

protest gathering conducted in October 2019 by Kurdistan Solidarity Network.

33. As regards the accused no.2, on his devices, images of CPI (Maoist) flag, files relating to constitution of central committee of CPI (Maoist), files relating to CPI (Maoist) central committee programme, image of hanging Prime Minister, various newspaper cuttings relating to maoist incidents were found. A book was also seized relating to encounter with PLGA (Maoist) at Agali.

35. Another piece of evidence against the accused no.2 is that during the search of his residence, he shouted slogans, such as inquilab zindabad and maoisim zindabad. He also shouted slogans containing greetings to the brave martyrs who died in an armed encounter between Maoist members and police. Another material forming a part of the charge sheet is that absconding accused no.3 visited the place where the accused no.1 was staying as a paying guest. Material was found regarding collection of membership fees and other amounts by the accused for the benefit of the said organization.

36. Taking the charge sheet as correct, at the highest, it can be said that the material prima facie establishes association of the accused with a terrorist organisation CPI (Maoist) and their support to the organisation.

37. Thus, as far as the accused no.1 is concerned, it can be said he was found in possession of soft and hard copies of various materials concerning CPI (Maoist). He was seen present in a gathering which was a part of the protest arranged by an organisation which is allegedly having link with CPI (Maoist). As regards the accused

no.2, minutes of the meeting of various committees of CPI (Maoist) were found. Certain banners/posters were found in the custody of the accused no.2 for which the offence under Section 13 has been applied of indulging in unlawful activities. As stated earlier, sub-section (5) of Section 43D is not applicable to the offence under Section 13.

38. Now the question is whether on the basis of the materials forming part of the charge sheet, there are reasonable grounds for believing that accusation of commission of offences under Sections 38 and 39 against the accused nos.1 and 2 is true. As held earlier, mere association with a terrorist organisation is not sufficient to attract Section 38 and mere support given to a terrorist organisation is not sufficient to attract Section 39. The association and the support have to be with intention of furthering the activities of a terrorist organisation. In a given case, such intention can be inferred from the overt acts or acts of active participation of the accused in the activities of a terrorist organization which are borne out from the materials forming a part of charge sheet. At formative young age, the accused nos.1 and 2 might have been fascinated by what is propagated by CPI (Maoist). Therefore, they may be in possession of various documents/books concerning CPI (Maoist) in soft or hard form. Apart from the allegation that certain photographs showing that the accused participated in a protest/gathering organised by an organisation allegedly linked with CPI (Maoist), prima facie there is no material in the charge sheet to project active participation of the accused nos.1 and 2 in the activities of CPI (Maoist) from which even an inference can be drawn that there was an intention on their part of furthering the activities or terrorist acts of the terrorist organisation. An allegation is

> *made that they were found in the company of the accused no.3 on 30th November, 2019. That itself may not be sufficient to infer the presence of intention. But that is not sufficient at this stage to draw an inference of presence of intention on their part which is an ingredient of Sections 38 and 39 of the 1967 Act. Apart from the fact that overt acts on their part for showing the presence of the required intention or state of mind are not borne out from the charge sheet, prima facie, their constant association or support of the organization for a long period of time is not borne out from the charge sheet.*
>
> *(Emphasis supplied)*

318. A Single Judge of this Court in **Jyoti Babasaheb Chorge Vs. State of Maharashtra** reported in **2012 SCC OnLine Bom 1460**, had earlier considered the very same question as to whether possession of certain literature containing a particular social or political philosophy could be considered incriminatory to implicate an accused under Section 20 of the UAPA and has held thus:-

> "*12. Undoubtedly, from the material collected during investigation, it does appear, prima facie, that the applicants were in contact, or had some association with some members or admirers of the Communist Party of India (Maoists). The applicant Jyoti, it appears, was found in possession of some literature of the Communist*

Party of India (Maoists), including publicity and propaganda material. She was in the company of the co-accused Jenny @ Mayuri Bhagat when she was apprehended by the police, and the said Mayuri @ Jenny was also found in possession of certain articles, allegedly incriminating, including some cash.

13. As regards applicant Sushma, she was staying in the same room where the accused no.1 Angela was staying and as aforesaid, in the said room, a number of articles which are alleged to be the publicity materials or literature of the Communist Party of India (Maoists), were found. Further, it appears that she had 9/26 BA 1020 AND 1066-12 secured employment in a different name - Shraddha Omprakash Gurav, and had also opened bank account in the said assumed name, with the object of hiding her identity.

18. Article 19 of the Constitution, inter alia, protects the following rights of citizens:

(a) to freedom of Speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions.

19. Undoubtedly, Article 19(2) empowers the Parliament to impose, by law, reasonable restrictions on these rights in the interests of sovereignty and integrity of India. Section 20 has been enacted as and by way of reasonable restriction on the aforesaid freedoms and rights, guaranteed by the Constitution. Inasmuch as the said clause imposes restrictions on the aforesaid freedoms and rights, the interpretation thereof has to be in consonance with the constitutional values and principles,and the concept of membership contemplated

by the said section, is required to be interpreted in the light of the aforesaid freedoms and rights.

20. It follows that considering from this point of view, the membership of a terrorist gang or organization as contemplated by section 20, cannot be a passive membership. It has to be treated as an active membership which results in participation of the acts of the terrorist gang or organization which are performed for carrying out the aims and objects of such gang or organization by means of violence or other unlawful means. In her oral arguments, Ms.Rohini Salian, the learned Special Public Prosecutor submitted that there was a great danger to the whole nation from the said Organization, and that the unity and integrity of the nation was already in danger because of their activities. She submitted that section 20 of the UAP Act has been deliberately worded very widely by keeping these aspects in mind. She submitted that mere association with such type of people, and sharing their ideology would make a person a member of their organization.

24. Their Lordships of the Supreme Court of India expressed agreement with the aforesaid views, and opined that the same would apply to India also, as the fundamental rights in Indian Constitution are similar to the bill of rights in the US Constitution. Their Lordships ultimately concluded as follows:-

> *"In our opinion, Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organization will not make a person a criminal unless he resorts to violence or*

incites people to violence or creates public disorder by violence or incitement to violence."

25. Even prior to the aforesaid Judgment, the Supreme Court of India had an occasion to consider a similar question i.e. in State of Kerala Vs.Raneef, (2011)1 SCC 784. In that case,the Kerala High Court had granted bail to one Dr.Raneef - respondent before the Supreme Court, who was, inter alia, accused of having committed offences punishable under various provisions of IPC, the Explosive 16/26 BA 1020 AND 1066-12 Substances Act and the UAP Act. The allegation was that the said respondent was a member of the Popular Front of India (P.F.I), alleged to be a terrorist organization. Their Lordships noted that there was till then, no evidence to prove the P.F.I to be a terrorist organization, but observed that even assuming it to be so, whether all members of the said organization can be automatically held to be guilty, would need consideration. Their Lordships referred to the observations made by the US Supreme Court in Scales vs. United States, 367 U.S. 203, distinguishing 'active knowing membership and 'passive, merely nominal membership' in a subversive organization. The following observations of the US Supreme Court were quoted with approval:-

The clause does not make criminal all association with an organization which has been shown to engage in illegal activity. A person may be foolish, deluded, or perhaps mere optimistic, but he is not by this statute made a criminal. There must be clear proof that the Defendant specifically intends to accomplish the aims of the organization by resort to violence. (Emphasis supplied)

26. Again, the following observations of US Supreme Court in Elfbrandt Vs. Russell, 384 US 17 19 (1966) were also quoted:

Those who join an organization but do not share its unlawful purpose and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. A law which applied to membership without the 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here.

28. The aforesaid discussion leaves no manner of doubt that passive membership is not what is contemplated by section 20 of the UAP Act. It is very clear from the observations made by the Supreme Court that if section 20 were to be interpreted in that manner, it would at once be considered as violative of the provisions of section 19 of the Constitution of India, and would be struck down as ultra vires. In fact, Their Lordships of the Supreme Court of India have interpreted the concept of membership as an active membership to save the relevant provision from being declared as unconstitutional."

319. In **Jyoti Chorge** (supra), after considering the specific material in electronic form found with the accused, this Court observed that in the absence of any allegation or material that the applicants had at any time agreed to do any illegal acts or had handled arms, weapons or explosive substances to commit a violent or unlawful act or some material to show that

the literature found with accused was banned under Section 95 of the Code, merely because the applicants were sympathisers of Maoist philosophy, they cannot be brought within the umbrella of the Act. Taking this principle further, this Court held:

> "*33. That the possession of certain literature having a particular social or political philosophy would amount to an offence, though such literature is not expressly or specifically banned under any provision of law, is a shocking proposition in a democratic country like ours. A feeble attempt to put forth such a proposition was made by the Learned SPP in the oral arguments. Such a proposition runs counter to the freedoms and rights guaranteed by Article 19 of the Constitution. In this regard, a reference may also be made to a decision of the Gujarat High Court, on which reliance has been placed by Shri Mihir Desai. (Criminal Miscellaneous Application Nos.12435 to 12437 and other connected applications, decided on 18.11.2010). The applicants therein had been alleged to be in contact with a person involved in Naxal movement and serious charges of offences punishable under Section 121-A, 124-A, 153-A, 120-B etc. of the IPC were leveled against them along with offences punishable under Sections 38, 39 and 40 of the UAP Act (as it stood then). Certain documents such as agenda of a meeting, in which one of the items was to pay homage to a dead Naxalvadi who was killed in encounter and some literature about revolution and lessons of Communist Party of India (Maoists / Leninists) containing, inter alia, features of Guerrilla 22/26 BA 1020 AND 1066-12 Warfare etc.was seized from the applicants. While releasing the applicants on bail, the*

High court observed that the seizure of the so called incriminating material, by itself, cannot show participation in an activity prohibited by law. It was held that mere possession of such literature, without actual execution of the ideas contained therein, would not amount to any offence.

35. Since none of the applicants is said to have indulged into any acts of violence or of being a party to any conspiracy for committing any particular violent act or crime, they cannot be held, prima facie, to have committed the offences in question. Though it appears that they had come in contact with the members of the said organization, and were perhaps learning about the philosophy and ideology of the said organization, they cannot be prima facie held as offenders. Even if they were impressed by the said philosophy and ideology, still they cannot be said to be members - much less such members as would attract the penal liability - of the said organization. There does not seem to be a prima facie case against the applicants even in respect of an offence punishable under section 38 of the UAP Act, which expands the scope of the criminal liability attached to the membership of a terrorist organization, inasmuch as, the mens rea in that regard, should necessarily be with respect to such activities of the organization as are contemplated in section 15, and made punishable by sections 16 to 19 of the UAP Act."

320. The defence has relied on the decision of the Supreme Court in the case of **Vernon** (supra), wherein the Court has considered the different provisions of UAPA and about its

applicability under certain circumstances. The observations made in the said decision are worthwhile to note which reads as below:-

> "*24. As it would be evident from the analysis of the evidence cited by the NIA, the acts allegedly committed by the appellants can be categorised under three heads. The first is their association with a terrorist organisation which the prosecution claims from the letters and witness statements, particulars of which we have given above. But what we must be conscious of, while dealing with prima facie worth of these statements and documents is that none of them had been seized or recovered from the appellants but these recoveries are alleged to have been made from the co-accused. The second head of alleged offensive acts of the appellants is keeping literatures propagating violence and promoting overthrowing of a democratically elected government through armed struggle. But again, it is not the NIA's case that either of the two appellants is the author of the materials found from their residences, as alleged. None of these literatures has been specifically proscribed so as to constitute an offence, just by keeping them. Thirdly, so far as AF is concerned, some materials point to handling of finances. But such finances, as per the materials through which the dealings are sought to be established, show that the transaction was mainly for the purpose of litigation on behalf of, it appears to us, detained party persons. The formation of or association with a legal front of the banned terrorist organisation has also been attributed to AF, in addition. The High Court while analysing each of these documents individually did not opine that*

there were reasonable grounds for believing that the accusations against such persons were not prima facie true. Those offences which come within Chapters IV and VI of the 1967 Act, charged against the appellants, are Sections 16, 17, 18, 18B, 20, 38, 39 and 40. We have summarised the nature of allegations reflected in the chargesheet as also the affidavit of the NIA. Now we shall have to ascertain if on the basis of these materials, the prosecution has made out reasonable grounds to persuade the Court to be satisfied that the accusations against the appellants are prima facie true. There is charge under Section 13 of the 1967 Act and certain offences under the 1860 Code against the appellants also. But we shall first deal with the appellants' case in relation to charges made against them under the aforesaid provisions.

26. In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any allegation against them which would attract sub- clause (c) of Section 15(1) of the said statute. As regards the acts specified in Section 15(1) (b) thereof, some of the literature alleged to have been recovered from the appellants, by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. Mere

holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act. Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants under Section 15(1) (b) of 1967 Act can be held to be true.

29. We have already observed that it is not possible for us to form an opinion that there are reasonable grounds for believing that the accusation against the appellant of committing or conspiring to commit terrorist act is prima facie true. The witness statements do not refer to any terrorist act alleged to have been committed by the appellants. The copies of the letters in which the appellants or any one of them have been referred, record only third-party response or reaction of the appellants' activities contained in communications among different individuals. These have not been recovered from the appellants. Hence, these communications or content thereof have weak probative value or quality. That being the position, neither the provisions of Section 18 nor 18B can be invoked against the appellants, prima facie, at this stage. The association of the appellants with the activities of the designated terrorist organisation is sought to be established through third party communications. Moreover, actual involvement of the appellants in any terrorist act has not surfaced from any of these communications. Nor there is any credible case of conspiracy to commit offences enumerated under chapters IV and VI of the 1967 Act. Mere participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act, with which they have been charged.

31. This judgment has not been interfered with by this Court and we also affirm this interpretation given to Section 20 of the 1967 Act for testing as to who would be a member of terrorist gang or terrorist organisation. Moreover, no material has been demonstrated by the NIA before us that the appellants are members of the terrorist organisation. AF's involvement with IAPL as a frontal organisation of the Communist Party of India (Maoist) is sought to be established, and that has been referred to in the chargesheet as well. But the link between IAPL and the CPI (Maoist) has not been clearly demonstrated through any material. Reference to AF and VG as members of the CPI (Maoist) appears from the statement of protected witness, but that link is made in relation to events between the years 2002-2007, before the organisation was included in the First Schedule to the 1967 Act. No evidence of continued membership after the party was classified as a terrorist organisation has been brought to our notice. Nor is there any reliable evidence to link IAPL with CPI (Maoist) as its frontal organisation. We have already dealt with the position of the appellants vis-à-vis terrorist acts in earlier paragraphs of this judgment and we prima facie do not think that Section 20 can be made applicable against the appellants at this stage of the proceeding, on the basis of available materials.

34. Section 38 of the 1967 Act carries the heading or title "offence relating to membership of a terrorist organisation". As we have already observed, a terrorist act would have to be construed having regard to the meaning assigned to it in Section 15 thereof. We have given our interpretation to this provision earlier.

> *"terrorist organisation" [as employed in Section 2(m)], in our opinion is not a mere nomenclature and this expression would mean an organisation that carries on or indulges in terrorist acts, as defined in said Section 15. The term terrorism, in view of the provisions of Section 2(k) of the said Act, ought to be interpreted in tandem with what is meant by 'terrorist Act' in Section 15 thereof. (Emphasis supplied.)*

321. Keeping in mind above observations, we have examined the worth of material adduced in support of the prosecution case. It is the argument of the prosecution that broadly, the following material contained in electronic form in the computer of Accused No.6, would connect him with the banned organization CPI(Maoists) and would demonstrate that he had knowledge about the activities of this organization or was a member of RDF, a frontal organization of CPI (Maoists):

Interview posted on 21.05.2011 (page 389 of the paper book),

Interview of September, 2009 speaking as Vice President of RDF (page 376 of the paper book),

Review for RDF work of the year 2012 (page 352 of the paper book),

Pamphlet of CPI (Maoists) (page 453 of the paper book),

Letter by Prakash to SUCOMO (page 542 of the paper book),

Pamphlet from CPI (Maoists) dated 03.06.2011 (page 506 of the paper book).

322. Perusing these and various other literature contained in the hard disk, as claimed to have been seized from Accused No.6, the contents of these documents read and understood by any person, by themselves would not constitute an offence under Sections 13, 18, 20, 38 or 39. The documents relate to the period from the year 2006 to the year 2012, ranging for a period of 1 year to 7 years prior to registering the FIR. The content of these documents if taken cumulatively, would perhaps demonstrate that the accused were sympathisers of a Maoist philosophy or sympathized with the cause of certain tribal groups or certain people who were perceived to be marginalized or disenfranchised, and mere possession of such literature, having a particular political and social philosophy by itself is not contemplated as an offence under the UAPA.

323. It is the argument of the prosecution that **Vernon** (supra) and **Thwaha Fasal** (supra), the judgments rendered by the Supreme Court at the stage of grant of bail and the considerations therein are only to conclude whether there was (prima facie) material against the accused. It is also argued that in the above

decision, the statutory presumption in terms of Section 43E of the Act has not been considered, and therefore would not apply to the present case. We are unable to accede to this argument since in both these cases, the Supreme Court has examined the requirement to bring home an offence under Section 18, 20, 38, 39 and 40 of the UAPA; The discussion in both these judgments on the requirements of bringing out the offence, and the balance to be struck whilst doing so to uphold the fundamental rights of freedom of speech and liberty of the accused enshrined in Article 19 would be, in our opinion, binding precedent and must be followed by us.

324. The ratio laid down in **Jyoti Babasaheb Chorge** (supra), **Vernon** (supra) and **Thwaha Fasal** (supra) would squarely apply to the material content in all this literature; As held in these judgments, passive membership, even if demonstrated from the material is not contemplated as an offence under the above referred provisions of UAPA. In any event, merely because a particular philosophy is contained in the literature, which in any case has not been proved is under the authorship of any of the accused, or because a person chooses to read such literature which is otherwise accessible from the internet from various websites containing

Communists or Maoists literature and philosophy, would to a certain extent be violative of the fundamental rights of any citizen under Article 19 of the Constitution of India. We take note of the deposition of the investigating officer, PW-11 Suhas Pauche at para 31 thereof where he states that he is aware that there is a website where "Naxal related banned thoughts" are available and this website also contains "All information regarding CPI (Maoists) and Naxal literature, meetings, resolutions and such material is available on other websites on the internet. (Page 265 of paper book)

325. It is by now common knowledge that one can access a huge amount of information from the website of Communist or Naxal philosophy, their activities including videos and video footage of even violent nature; Merely because a citizen downloads this material or even sympathizes with the philosophy, would itself not be an offence unless there is specific evidence led by the prosecution to connect an active role shown by the accused with particular incidents of violence and terrorism, which would be offences within the purview of Sections 13, 20 and 39 of the UAPA. No evidence has been led by the prosecution by any witness to any incident, attack, act of violence or even evidence collected from some earlier scene of

offence where a terrorist act has taken place, in order to connect the accused to such act, either by participating in its preparation or its direction or in any manner providing support to its commission.

326. Similarly, we refer to videos played during the course of the arguments wherein, it was submitted that the presence of A-6 and A-4 has been established. These videos are of a rally at Hyderabad somewhere in the year 2012 in an open space, accessible to any member of the public where certain speeches were made by various persons. The content of the speeches may portray dissent or criticism or even a streak of militancy, but by themselves, the content of these videos do not in any manner portray any acts of "terrorism" contained in the various provisions of the UAPA. In fact, there is no evidence brought forth by the prosecution to connect the persons in these videos with any actual act of terrorism which had taken place in the past or to demonstrate how the persons in the video were directly connected with and responsible for the commission of any other act of terrorism.

327. The prosecution has not established that the speeches made in these videos are in the nature of support to any banned

organization under the UAPA. We are of the opinion that the prosecution ought to have connected the content of the speeches to some past incident of terrorism or violence and the mere presence of the Accused Nos.3, 4 and 6 in these videos by itself would not make out any case for the prosecution. In fact, there is no deposition on record identifying various accused in these videos or deposing to the specific parts of the speech or actions in these videos which constitute a terrorist act under the UAPA.

328. Though a great deal of electronic evidence is produced in the form of printed/hard copies of the content stored in digital form or in the nature of video footage, no evidence has been led by any witness identifying the various persons in these videos, or deposing as to the specific statements made by such persons and quoting them, or how these statements or actions in videos constitute material to make out an offence under the Act. Playing several videos or requesting the Court to read through hundreds of pages of literature does not constitute evidence. In our opinion, there should have been specific evidence led through witnesses to connect with the making out of an offence. In the absence of any

depositions to this effect, we are afraid we cannot consider all this footage to be evidence.

329. For the above reasons, we reject the arguments of the prosecution that the content of electronic evidence produced, though not proved, by itself constitutes an offence under any of the provisions of the UAPA of which the accused have been charged. We reiterate that for the sake of this judgment we have done the above exercise. Infact since the prosecution has failed to establish the electronic evidence in accordance with law, the said material need not be gone into as an evidence in this case.

INTENTION, PREPARATION AND CONSPIRACY.

330. The prosecution relied on the decisions in cases of **Aman Kumar**[69] **and Malkiat Singh**[70] to contend the stages of crime and in particular, the offence of preparation is complete if some of the positive steps have been taken to achieve the intended act. In these cases, the Court has considered that in every crime, there is first intention to commit, secondly, preparation to commit it, and thirdly, attempt to commit the crime. The culprit first intends to commit offence, then makes preparation for committing it and then

69.Aman Kumar and Another Vs. State of Haryana, (2004) 4 SCC 379
70.Malkiat Singh and another Vs. State of Punjab, (1969) 1 SCC 157

attempts to commit the offence. It has been observed that the preparation consists of devising or arranging the means or measures necessary for the commission of the offence.

331. Certainly, in order to establish the offence of preparation to commit crime, there must be some positive steps to achieve the object. It is the prosecution case that accused undertook a preparatory act for commission of a terrorist act punishable under Section 18 of the UAPA. In order to attract the offence of conspiracy, besides vague allegations that they have conspired to wage war against the Government or advocated arms struggle, there is no other material. The preparatory act must be for commission of a terrorist act. The accused have not been charged of making preparation to commit a particular terrorist act. CDR will only show their acquaintance with each other, which factor without corroboration will yield nothing. It is difficult to accept that have conspired and made preparation to commit a terrorist act which is not spelt out.

332. The defence has also criticized the mode and manner of the investigation. Our attention has been invited to the evidence of PW-11 SDPO Suhas Bawche who is an Investigating Officer. He

admits that the case diary is neither paginated nor in bound condition, but, it is in loose condition, kept in the file. Since inception, the learned defence counsel has blamed the Investigating Officer for manipulating record and fabrication of incriminating material. In the said context, it is submitted that the case diary was purposely kept in loose paper form, so as to replace the same to suit the purpose.

333. Section 172 of the Code mandates the Investigating Officer to carry day to day entry in a case diary with particulars of time, steps, places of visit and all other relevant circumstances. The Criminal Court may use such diaries in a case in aid of the trial. Amended Sub-clause (1-B) to Clause 1 of Section 172 of the Code mandates that the case diary shall be a volume and duly paginated. Admittedly, such procedural mandate was not followed in a serious crime like this, which is not free from doubt.

334. It is a prosecution case that on 12.09.2013, house of accused No.6 G.N. Saibaba was searched, in which voluminous electronic gadgets containing incriminating material have been seized. It is in the evidence of the Investigating Officer that on

15.02.2014, the Police tried to arrest accused No.6 G.N. Saibaba, however, his party members created a law and order problems, hence they did not arrest him. PW-11 SDPO Suhas Bawche deposed that on 26.02.2014, he has applied to the Magistrate (Exh.268) seeking an arrest warrant. Despite filing of the charge-sheet, the Police did not think it appropriate to arrest accused No.6 G.N. Saibaba, which was ultimately done on 09.05.2014 almost eight months later. It does not stand to reason because of law and order problem, the Police did not arrest him. The reason for not arresting accused No.6 G.N. Saibaba for considerable period despite knowing his alleged complexity and his place of abode has not been explained to our satisfaction.

CONCLUSION

(A) In conclusion, we observe that the objection pertaining to the validity of sanction has been raised before the Trial Court, right from the stage of bail application till final arguments. Therefore, non-filing of a separate objection, does not make any difference and the question of validity of the sanction can be gone into in this appeal. The conviction rendered by the Trial Court would always be subject to the appeal. After analysing the evidence, we hold that the

conviction is not sustainable in the eyes of law, and therefore it would not come in our way in this appeal to entertain objections to the validity of the sanction.

(B) In our view, there is total non-compliance of various provisions of UAPA. The sanction accorded to prosecute Accused Nos.1 to 5 is invalid. Taking of cognizance by the Trial Court without valid sanction or no sanction to prosecute accused No.6 G.N. Saibaba goes to the root of the case, which renders the entire proceedings null and void. There is non-compliance of the provisions of Sections 43-A and 43-B of the UAPA pertaining to arrest, search and seizure. Statutory presumption under section 43-E of the UAPA would not apply for the offences charged. We hold that the trial held despite violation of mandatory provisions of law itself amounts to failure of justice.

(C) We summarize that, the entire prosecution is vitiated on account of invalid sanction to prosecute accused Nos.1 to 5 and against accused No.6, for want of valid sanction in terms of Section 45(1) of the UAPA. The prosecution has failed to establish legal arrest and seizure from accused Nos.1 to 5, and failed to establish the seizure of incriminating material from the house search of accused No.6

G.N. Saibaba. The prosecution has also failed to prove the electronic evidence in terms of the provisions of the Indian Evidence Act, and the Information Technology Act.

(D) In view of the above conclusion, the common judgment rendered by the Trial Court in Sessions Case No. 13/2014 and 130/2015 is not sustainable in the eyes of law. We therefore, allow both the appeals by setting aside the impugned common judgment and order of conviction dated 07.03.2017.

(E) Accused No.1 Mahesh Kariman Tirki, accused No.2 Pandu Pora Narote, accused No.3 Hem Keshavdatta Mishra, accused No.4 Prashant Rahi Narayan Sanglikar, accused No.5 Vijay Nan Tirki and accused No.6 G.N. Saibaba stand acquitted for the offence punishable under Sections 10, 13, 20, 38, 39 read with Section 18 of the UAPA and under Section 120-B of the IPC.

(F) Bail bond of accused No.5 Vijay Nana Tirki stands cancelled. Accused No.1 Mahesh Kariman Tirki, accused No.3 Hem Keshavdatta Mishra, accused No.4 Prashant Rahi Narayan Sanglikar,

and accused No.6 G.N. Saibaba be released forthwith, if not required in any other offence.

(G) The accused shall execute bond of Rs.50,000/- each with surety in the like amount to the satisfaction of the Trial Court in terms of provisions of Section 437-A of the Code.

(H) Muddemal property be dealt with in accordance with law.

(I) The appeals stand disposed of in the aforesaid terms.

(VALMIKI SA MENEZES, J.) (VINAY JOSHI, J.)

Gohane