

YEDALA SUBBA RAO v. UNION OF INDIA

65

(2023) 6 Supreme Court Cases 65

(BEFORE ABHAY S. OKA AND RAJESH BINDAL, JJ.)

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a YEDALA SUBBA RAO AND ANOTHER . . . Appellants;
Versus
UNION OF INDIA . . . Respondent.

Criminal Appeal No. 1153 of 2023[†], decided on April 17, 2023

b **A. Terrorism and Organised Crime — Unlawful Activities (Prevention) Act, 1967 — S. 43-D(5) & proviso thereto r/w Ss. 18, 19, 20 and 39 — Bail — “Reasonable grounds for believing that the accusation against such person is prima facie true” for denial of bail as provided under S. 43-D(5) proviso — Whether made out in the present case against appellant-Accused 46 and 47 — Determination of — In an incident resulting in double murder, appellant-Accused 46 and 47, along with other co-accused prosecuted under S. 120-B r/w S. 302 IPC, Ss. 18, 19, 20 and 39 of UAPA and Ss. 4 and 5 of the Explosives Substances Act, 1908**

d — As per prosecution, on 23-9-2018, 45 accused persons belonging to CPI (Maoist), a terrorist organisation notified in First Schedule of UAPA, stopped convoy of vehicles of certain leaders and compelled two deceased to get out of their cars and, thereafter, both of them killed by three gunshots — Initially, FIR lodged on same day against named 45 accused — Earlier, investigation carried out by a SIT, which subsequently transferred to the NIA and as per charge-sheet filed by the NIA, there found 79 accused though initially there found 85 accused

e — As per charge-sheet, there found three material allegations against Accused 46 i.e. firstly regarding plantation of a landmine, secondly he provided shelter and logistic support to the Maoists for facilitating the commission of the offence and, thirdly he purchased medicines worth Rs 8000 as per the suggestion of Accused 84

f — Prima facie, “the Mediators’ Report and Seizure Panchnama” found not helpful to the prosecution in proving that the landmine was discovered at the instance of Accused 46 — Further, there found no statements of the witnesses having seen Accused 46 or 47 giving shelter to the Maoists — Further, both Accused 46 and 47 found not present at the time of the commission of the offence — Purchase of medicines worth Rs 8000 by Accused 46 at the instance of Accused 84 much before the incident held to have no connection with the incident, particularly when Accused 84 found already granted bail by High Court

g — In regard to allegations against Accused 47, his confessional statement recorded under the Mediators Report and Seizure Panchnama found not admissible evidence as he not disclosed any fact that led to any discovery

h [†] Arising out of SLP (Crl.) No. 10160 of 2021. Arising from the Judgment and Order in *Yedala Subba Rao v. Union of India*, 2020 SCC OnLine AP 4625 (Andhra Pradesh High Court, Criminal Appeal No. 381 of 2020, dt. 15-12-2020) [Reversed]

— Though his statement indicated that he was carrying Maoist literature and banners, but it found recorded in the panchnama that eight brochures, two banners, and one landmine, along with electric wire and detonators, were seized from four persons and, thus, it, held, not specifically mentioned in the panchnama that the brochures and banners were recovered from Accused 47 — Further, prosecution case that Accused 47, with one K, was found standing at a particular place on the day of occurrence also found very doubtful — Remaining allegation against Accused 47 that he was in touch with Accused 84 on the telephone, also held, not material, as facing similar allegations, Accused 84 found already released on bail by High Court

— Resultantly, considering entire materials, held, there are no reasonable grounds for believing accusations against the appellants of commission of offence under the UAPA being prime facie true — Hence, the embargo on the grant of bail under proviso to S. 43-D(5), held, not applicable — Further, the appellants not only found in custody for four-and-half years, but there also found no possibility of the trial commencing in the near future — Resultantly, appellants, held, entitled to bail subjecting them with stringent conditions to be imposed by trial court (Paras 22, 23 and 25 to 28)

Union of India v. K.A. Najeeb, (2021) 3 SCC 713, impliedly followed

B. Evidence Act, 1872 — S. 27 r/w Ss. 25 and 26 — Disclosure by accused to police — Extent to which admissible under S. 27 — Necessary requirements — Principles summarised

— S. 27, held, an exception to the general rule under S. 25 that a confession made by an accused to a police officer is not admissible in evidence — Further, S. 27, held, a proviso to S. 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposited to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise — Further, held, first condition for the applicability of S. 27 is that the information given by the accused must lead to the discovery of the fact, which is the direct outcome of such information and, only such portion of the information given as is distinctly connected with the said discovery is admissible against the accused

— Accused showed the shop from which certain medicines were purchased and, in this way, he led the police to the shop, but there found no discovery of any fact as a result of the information supplied by this accused — Further, same appears to be the case with the other allegation that said accused showed a xerox shop where another accused and one K were allegedly standing on the day of occurrence — Therefore, the statements of said accused that he would show the medical shop and the xerox shop, held, may not be, prima facie, admissible under S. 27, particularly when material indicated that the NIA team was already aware of the location of the shop from which a large quantity of medicines was allegedly purchased by the said accused (Paras 15 to 18)

Jaffar Hussain Dastagir v. State of Maharashtra, (1969) 2 SCC 872; *Pulukuri Kotayya v. King-Emperor*, 1946 SCC OnLine PC 47, followed

C. Evidence Act, 1872 — S. 27 r/w S. 25 — Recovery at instance of accused — When not believable

- a* — Prosecution claimed to have recovered a landmine at the instance of first accused — As per recovery panchnama, styled as “Mediators’ Report and Seizure Panchnama”, the mediators were present at certain village with ASP for preparing the Mediators’ Report and Seizure Panchnama — Further, recorded in the panchnama that ASP along with other 9 or 10 police officials with a Bomb Disposal Team, visited the said village and, on the way, they saw four persons, including two accused, who were holding plastic bags and when they tried to flee, the police chased them and caught hold of them — Further, in the same panchnama, a long statement of first accused recorded in the nature of a confessional statement — There found also a confessional statement of second accused in the same panchnama
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- c* — Held, prima facie, these statements may not be admissible in evidence being hit by S. 25 — Further, held, going by the “Mediators’ Report and Seizure Panchnama”, the appellants gave confessional statements immediately after the police caught hold of them even before their arrest was recorded and, therefore, prima facie, it creates a doubt about the genuineness of the statements — Further, though there found no such confessional statement of first accused recorded that he will show the place where landmine was planted by him, but the Panchnama showed that first accused took them to a place and showed landmine — Held, there being no confessional statement made by the first accused giving information that he is in a position to show the place where he planted landmine, prima facie, “the Mediators’ Report and Seizure Panchnama”, held, not helpful to the prosecution in proving that the landmine was discovered at the instance of first accused (Paras 19 to 21)
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- e*

Yedala Subba Rao v. Union of India, 2020 SCC OnLine AP 4625, reversed

SK-D/69902/CR

Advocates who appeared in this case :

- f* Colin Gonsalves, Senior Advocate [Ms Mugdha and Satya Mitra (Advocate-on-Record), Advocates], for the Appellants;
K.M. Nataraj, Additional Solicitor General [Sharath Nambiar, Vaisal Joshi, Vinayak Sharma, Ms Indira Bhakar, Anuj S. Udupa, Nakul Chengappa K.K., Chithransh Sharma and Arvind Kr. Sharma (Advocate-on-Record), Advocates], for the Respondent.

Chronological list of cases cited

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| <i>g</i> 1. (2021) 3 SCC 713, <i>Union of India v. K.A. Najeeb</i> | 69b-c |
| 2. 2020 SCC OnLine AP 4625, <i>Yedala Subba Rao v. Union of India (reversed)</i> | 70d, 70f-g |
| 3. (1969) 2 SCC 872, <i>Jaffar Hussain Dastagir v. State of Maharashtra</i> | 71e, 71e-f |
| 4. 1946 SCC OnLine PC 47, <i>Pulukuri Kotayya v. King-Emperor</i> | 71e |

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The Judgment of the Court was delivered by

ABHAY S. OKA, J.— Leave granted.

Factual aspects

2. The appellants are Accused 46 and 47 in FIR No. 65 of 2018 registered on 23-9-2018 at Dumbriguda Police Station, District Vishakhapatnam, in Andhra Pradesh. The appellants, along with other co-accused, are being prosecuted for the offences punishable under Section 120-B read with Section 302 of the Penal Code, 1860, Sections 18, 19, 20 and 39 of the Unlawful Activities (Prevention) Act, 1967 (for short “UAPA”). The appellants are also charged with offences punishable under Sections 4 and 5 of the Explosives Substances Act, 1908 (for short “the Explosives Act”).

3. The incident is of 23-9-2018. At about 1210 hours, Shri Kidari Sarveswara Rao, a member of the Legislative Assembly and whip of the Telugu Desam Party in Legislative Assembly and one Shri Siveri Soma, a former MLA belonging to Telugu Desam Party, were killed near Village Livitiputtu, Pothangi Panchayat within the jurisdiction of Dumbriguda Police Station at Visakhapatnam. This incident took place when both of them were proceeding to Village Sarai to attend a function. The allegation is that 45 accused persons who belonged to the Communist Party of India (Maoist), a terrorist organisation notified in the First Schedule of the UAPA, stopped the convoy of vehicles of the aforesaid two leaders. The accused compelled them to get out of their cars. Both of them were taken towards Y-Junction. Thereafter, the MLA was taken to the left-hand side of Y-Junction and the Ex-MLA was taken to the right-hand side of Y-Junction. Both of them were killed by three gunshots.

4. The Personal Secretary of the deceased sitting MLA lodged FIR on the same day in which he named 45 accused. Earlier, investigation was carried out by a Special Investigation Team, which was subsequently transferred to the National Investigation Agency (NIA). The case was registered by NIA as RC-02/2018 NIA/HYD on 6-12-2018. The appellants were arrested on 13-10-2018. A charge-sheet was filed against them on 10-4-2019. It appears from the said charge-sheet that there are 79 accused though initially there were 85 accused. About 144 witnesses have been named in the charge-sheet so far. The charge has not yet been framed. Some of the accused are absconding. The appellants have been in custody for the last four years and seven months.

Submissions

5. Shri Colin Gonsalves, the learned Senior Counsel appearing for the appellants, has taken us through the relevant portions of the charge-sheet filed against the present appellants. He pointed out that the recovery of landmine is shown at the instance of Appellant 1-Accused 46, which on the face of it, is highly suspicious. He pointed out that there is no recovery shown at the instance of Accused 47. He pointed out that the second allegation against Accused 46 is that the call details record of Accused 46, 47 and 84 show that they were

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always in touch with each other which shows that they were partners in the criminal conspiracy. He pointed out that Accused 84 has been granted bail by the High Court. He pointed out that another allegation against Accused 46 is that he purchased huge quantity of medicines worth Rs 8000 which were to be handed over to a Maoist sent by Accused 84. He submitted that there is no material against both the accused to show that they provided shelter and logistic support to the Maoists as well as co-accused and that they planted landmines. He pointed out that there is no evidence to show that the alleged landmines had any connection with the offence of killing the aforesaid two leaders. He would, therefore, submit that there is no prima facie evidence of the involvement of the two appellants in the offence. He relied upon a decision of this Court in *Union of India v. K.A. Najeeb*¹. He submitted that even charges have not been framed. Some of the accused are absconding. Considering the fact that there are 144 prosecution witnesses, the trial is going to take years and therefore, continuing incarceration of the appellants will amount to a violation of their rights under Article 21 of the Constitution.

6. Shri K.M. Nataraj, learned ASG appearing for the respondent, pointed out the Memorandum dated 13-10-2018 under Section 27 of the Evidence Act, 1872 (for short “the Evidence Act”), which shows that a steel can weighing about 10 kg containing bolts, nuts and filled with explosive material and connected to a detonator through a wire was recovered at the instance of Accused 46 near a kaccha road near Village Sarai where the deceased political leaders were to visit. He also pointed out that the landmine was planted with the object of killing the said two leaders. He pointed out that the disclosure statement made by Accused 46 on 16-1-2019 shows that he purchased a huge quantity of medicines worth Rs 8000 and handed them over to a Maoist. He pointed out that the appellant-accused used different SIMs standing in the names of third parties to remain in touch with the co-accused. As regards Accused 47, he submitted that the disclosure statement of 13-10-2018 records that both the appellants dug a pit near a kaccha road leading to Sarai Village and planted a landmine therein. He also pointed out that Accused 46 and 47 were constantly in touch with each other on cellphones for 18 days prior to the incident and thereafter, the cellphone of Accused 47 was switched off. Shri Nataraj further urged that both Accused 46 and 47 are involved in the offence and there is a strong prima facie material against them. He, therefore, submitted that in view of the proviso to sub-section (5) of Section 43-D of UAPA, the appellants are disentitled to bail as there is material on record to believe that the accusations against the appellants are prima facie true.

Our view

7. We have given careful consideration to the submissions. We have perused the material against the appellants in the context of stringent provisions for the grant of bail incorporated under the proviso to sub-section (5) of Section 43-D

¹ (2021) 3 SCC 713

of UAPA. We have perused the charge-sheet filed against the appellants. The allegation against the first appellant-Accused 46 is that he provided shelter and logistic support to Maoists and co-accused for facilitating the offence of murder of the two leaders. The second allegation is that the present appellants planted landmines near the village where the programme was to be held. It is further alleged that Appellant 1-Accused 46 was in constant touch with Accused 84, who in turn was in touch with the Maoists. It is further alleged that the cellphone call record shows that the appellants were in touch with each other immediately after the incident. Accused 46 purchased huge quantity of medicines and handed over the same to a Maoist sent by Accused 84.

8. The allegation against Accused 47 is that he had association with Accused 46. He was found in possession of certain pamphlets and literature of the terrorist organisation — CPI (Maoist). Another allegation is that Accused 47 had given shelter to Communist Party workers.

9. One of the allegations in the charge-sheet is that the present appellants were in touch with each other for about 17-18 days before the incident. Moreover, they were regularly conversing with Accused 84, who in turn was communicating with the workers of the CPI (Maoist) Party.

10. We may note here that by the judgment and order dated 15-12-2020 passed by a Division Bench of the Andhra Pradesh High Court in *Yedala Subba Rao v. Union of India*², Accused 84 has been granted bail. We have perused the judgment, which is produced along with IA No. 21015 of 2022. In the said judgment, the High Court has considered the CDR records of the telephonic conversation between Accused 46 and Accused 84. In para 9, the High Court observed that Accused 46 was an Ex-Sarpanch of the village where Accused 84 was teaching in a government school and therefore, it was natural that being an Ex-Sarpanch, people were constantly approaching him. The calls were exchanged between these two accused on the date of the offence and after the offence. The High Court observed that when an offence of such a nature happened in the vicinity, it is not unusual that Accused 46, who was an Ex-Sarpanch, would receive calls from many persons immediately after the commission of the offence.

11. The High Court in *Yedala Subba Rao*² further observed that there was an allegation that medicines worth Rs 8000 were purchased at the instance of Accused 84 which were handed over at his instance to one Kiran, who was also a Maoist. The High Court observed that in the charge-sheet filed against Accused 46, it was noted that the said Kiran was arrested on 18-9-2018 and was in custody on the date of the offence. Therefore, the High Court opined that Accused 84 was prima facie not involved in the offence and, at the highest, was guilty of an offence punishable under Section 202 IPC.

a **12.** The grant of bail by the High Court to Accused 84 is very relevant in this case as in Para 17.19 of the charge-sheet filed against the present appellants, the allegation is that call detail records of Accused 46, 47 and 84 show that they were exchanging calls which indicates that they are the parties to the conspiracy.

b **13.** As regards the allegation of purchase of medicines worth Rs 8000 by Accused 46, the prosecution has relied upon a Disclosure Memo dated 16-1-2019. In the disclosure memo, it is alleged that Accused 46 disclosed that one Kiran approached him in July 2018 to help him to purchase medicines. Thereafter, he received a call from Accused 84, who informed him that one person will give him a list of medicines and cash of Rs 10,000 and he should help him to purchase medicines. The disclosure statement records that
c Accused 46 helped that person to purchase medicines from a medical shop and he led the police party to the said medical shop. In the disclosure statement, he also stated that on 23-9-2018, he saw Accused 47 along with one person (Kiran) at a xerox shop at Dumbriguda Junction. Accused 46 stated that he will be able to show the said shop, and accordingly, he showed the said shop.

d **14.** We fail to understand how the purchase of medicines worth Rs 8000 by Accused 46 at the instance of Accused 84 much before the incident has any connection with the incident which took place on 23-9-2018. This is apart from the fact that Accused 84 has been granted bail by the High Court.

e **15.** Now we will have to decide whether the disclosure statement dated 16-1-2019 is admissible in evidence. It is necessary to advert to the law laid down by a Bench of three Hon'ble Judges of this Court in *Jaffar Hussain Dastagir v. State of Maharashtra*³. This Court followed a decision of the Privy Council in *Pulukuri Kotayya v. King-Emperor*⁴ which is a locus classicus. In para 5 of the decision in *Jaffar*³, this Court held thus: (*Jaffar case*³, SCC p. 875)

f “5. Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is
g confessional or otherwise. *The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact*

h ³ (1969) 2 SCC 872

⁴ 1946 SCC OnLine PC 47

must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled. If an accused charged with a theft of articles or receiving stolen articles, within the meaning of Section 411 IPC states to the police, “I will show you the articles at the place where I have kept them” and the articles are actually found there, there can be no doubt that the information given by him led to the discovery of a fact i.e. keeping of the articles by the accused at the place mentioned. The discovery of the fact deposed to in such a case is not the discovery of the articles but the discovery of the fact that the articles were kept by the accused at a particular place. In principle there is no difference between the above statement and that made by the appellant in this case which in effect is that “I will show you the person to whom I have given the diamonds exceeding 200 in number”. The only difference between the two statements is that a “named person” is substituted for “the place” where the article is kept. In neither case are the articles or the diamonds the fact discovered.” (emphasis supplied)

16. As held by this Court, Section 27 of the Evidence Act is an exception to the general rule under Section 25 that a confession made by an accused to a police officer is not admissible in evidence. The first condition for the applicability of Section 27 is that the information given by the accused must lead to the discovery of the fact, which is the direct outcome of such information. Only such portion of the information given as is distinctly connected with the said discovery is admissible against the accused.

17. Now looking at the Discovery Memo dated 16-1-2019, at the highest, it means that Accused 46 showed the shop from which the medicines were purchased. Thus, he led the police to the shop. There was no discovery of any fact as a result of the information supplied by Accused 46. The same is the case with the other allegation that Accused 46 showed a xerox shop where Accused 47 and one Kiran were allegedly standing on 23-9-2018. Therefore, the statements of Accused 46 that he would show the medical shop and the xerox shop may not be, prima facie, admissible under Section 27 of the Evidence Act. Moreover, as noted in the order of the High Court granting bail to Accused 84, the said Kiran, who was allegedly standing with Accused 47 near the xerox shop on 23-9-2018 was already in custody from 18-9-2018 and he continued to be in custody even on 23-9-2018.

18. There is one more crucial aspect. A statement of one G. Narasinga Rao, who was allegedly running the said medical shop has been recorded during the investigation. In the statement, he has stated that on 16-1-2019, NIA team visited his shop and inquired about the sale of medicines involving a large amount in July 2018 and the team brought Accused 46 with them. This shows that the NIA team was already aware of the location of the shop from which a large quantity of medicines was allegedly purchased by Accused 46 in July 2018.

19. Now, we come to the material to show that there was a recovery of landmine at the instance of Accused 46. It must be noted here that it is not the case of the prosecution that the recovery of landmine was at the instance of Accused 47. The recovery panchama (Annexure A-1) to IA No. 74099 of 2022 is styled as “Mediators’ Report and Seizure Panchnama”. It records that at about 4 p.m. on 13-10-2018, the mediators were present at Livitiputtu Village with ASP Amitabh for preparing the Mediators’ Report and Seizure Panchnama. It is recorded in the panchnama that ASP Amitabh, an IPS officer, along with other 9 or 10 police officials with a Bomb Disposal Team, visited Livitiputtu Village. On the way, they saw four persons, including Accused 46 and 47, who were holding plastic bags. When they tried to flee, the police chased them and caught hold of them. In the same panchnama, a long statement of Accused 46 is recorded, which is in the nature of a confessional statement. There is also a confessional statement of Accused 47 in the same panchnama. Prima facie, these statements may not be admissible in evidence being hit by Section 25 of the Evidence Act. Going by the “Mediators’ Report and Seizure Panchnama”, the appellants gave confessional statements immediately after the police caught hold of them even before their arrest was recorded. Therefore, prima facie, it creates a doubt about the genuineness of the statements.

20. The material portion of the “Mediators’ Report and Seizure Panchnama” appears after the confessional statement of Accused 46. It reads thus:

“After that he himself taken us to some far kuccha road towards Sarvai Village. He then shown us the landmine plotted along with the electrical wire. Thereafter Bomb Disposal team removed bomb in presence of us (Mediators), ASP Amitabh Bardar, IPS and by examining it was found to be a steel can weighing about 10 kg, containing bolts, nuts and filled with explosive material and connected to a detonator through a hole. A 20 m long red wire is attached to operate it. After that Bomb Disposal Team defused and recorded videos and took pictures and seized landmine, detonator, electrical wire. We Mediators examined the plastic bag of Yedala Subbarao, found brochures and banners along with his Karbonn mobile and has been seized.” (emphasis supplied)

21. It is pertinent to note that a long confessional statement of Accused 46 has been recorded within inverted commas in the said document, and thereafter, the aforesaid portion has been written. It is not noted in the confessional statement of Accused 46 that he stated that he would show the place where he had planted the landmine. If Accused 46 had made such a statement leading to the discovery of the landmine, the discovery of the fact that the landmine was planted by Accused 46 at a particular place could have been proved, provided the landmine was to be used in the offence. However, there is no such confessional statement of Accused 46 recorded that he will show the place where landmine was planted by him. The panchnama shows that Accused 46

took them to a place and showed landmine. There is no confessional statement made by him giving information that he is in a position to show the place where he had planted landmine. Therefore, prima facie, “the Mediators’ Report and Seizure Panchnama” is not helpful to the prosecution in proving that the landmine was discovered at the instance of Accused 46. a

22. As can be seen from the charge-sheet, in Para 17.32, there were three material allegations against Accused 46. The first was of plantation of a landmine which we have already discussed. The second one was that he provided shelter and logistic support to the Maoists for facilitating the commission of the offence. The third circumstance that he purchased medicines worth Rs 8000 as per the suggestion of Accused 84 will also have to be kept out of consideration for the reasons already recorded. In Para 5 of the additional affidavit of the respondent, the material against the appellants has been set out in a tabular form. In the tabular form, it is not mentioned that there are statements of the witnesses who had seen Accused 46 or 47 giving shelter to the Maoists. In any case, Accused 46 and 47 were not present at the time of the commission of the offence. Therefore, we cannot form an opinion that there are reasonable grounds for believing that the accusations against Accused 46 are prima facie proved. b
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23. Coming to allegations against Accused 47, we may note here that his confessional statement recorded under the Mediators Report and Seizure Panchnama is not admissible evidence as he has not disclosed any fact that led to any discovery. In his statement, it is recorded that he was carrying Maoist literature and banners. It is recorded in the panchnama that eight brochures, two banners, and one landmine, along with electric wire and detonators, were seized from four persons. It is not specifically mentioned in the panchnama that the brochures and banners were recovered from Accused 47. The prosecution case that Accused 47, with one Kiran, was found standing at a particular place on 23-9-2018 appears to be very doubtful, as noted by us earlier. Then what is against Accused 47 is that he was in touch with Accused 46 on the telephone. The same was the allegation against Accused 84, who has been enlarged on bail. d
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24. Sub-section (5) of Section 43-D of UAPA reads thus:

“**43-D. (5)** Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: g

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.” (emphasis supplied) h

25. We have examined material relied upon against the appellants in Para 5 of the additional affidavit of the respondent as well as the charge-sheet. Taking the material against the appellants as it is and without considering the defence of the appellants, we are unable to form an opinion that there are reasonable grounds for believing that the accusations against the appellants of commission of offence under the UAPA are prime facie true. Hence, the embargo on the grant of bail under proviso to sub-section (5) of Section 43-D will not apply in this case. We, however, make it clear that the findings recorded in this judgment are only prima facie observations recorded for the limited purposes of examining the case in the light of the proviso to sub-section (5) of Section 43-D of UAPA. The trial shall be conducted uninfluenced by these observations.

26. As narrated earlier, the appellants are in custody for four-and-half years. The charge has not been framed and the prosecution proposes to examine more than 140 witnesses. Some of the accused are absconding. Thus, there is no possibility of the trial commencing in the near future.

27. It is obvious that while granting bail, stringent conditions will have to be imposed. We propose to leave it to the learned Special Judge to impose appropriate conditions.

28. Accordingly, we set aside the impugned orders. We direct the respondent to ensure that the appellants are produced before the learned Special Judge for the trial of NIA cases at Vijayawada within a maximum period of one week from today. The learned Special Judge shall release the appellants on bail on appropriate conditions determined by him after hearing the appellants and the respondent. The appeal is, accordingly, allowed.

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