

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 730 of 2017****Order reserved on 10.03.2017****Order delivered on 22.03.2017**

1. Ch Prabhakar S/o Rammaya Aged About 48 Years R/o Chikadpalli, Hyderabad, Telangana.
 2. B. Durga Prasad S/o Ilaiah Aged About 35 Years R/o Beghumbarepet, Hyderabad, Telangana.
 3. K. Rajendra Prasad S/o K. Badrayya Aged About 28 Years R/o Uppal, Hyderabad, Telangana.
 4. D. Prabhakar S/o Thirupalu Aged About 52 Years R/o Uppal, Hyderabad, Telangana.
 5. B. Ravindranath S/o B. Somayya Aged About 42 Years R/o Bagh Amburpet, Hyderabad, Telangana.
 6. Md. Nazir S/o Md. Yakub Aged About 27 Years R/o Oligunda, Hyderabad, Telangana.
 7. R. Laxmayya S/o R. Sitayya Aged About 45 Years R/o Elandu, District Khammam, Telangana.
- Applicants**

Versus

- State of Chhattisgarh through Station In Charge, Police Station Kistaram, District Sukma, Chhattisgarh.
- Respondent**

For the applicants	:	Mr. Kanak Tiwari, Sr. Advocate with Mr. Vikas Dubey, Advocate
For the Respondent	:	Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri**CAV ORDER**

1. This is first bail application filed under Section 439 of the Code of Criminal Procedure seeking grant of regular bail to the applicant in connection with Crime No. 09/2016 registered at Police Station Kistaram, Distt. Sukma (C.G) for

the offence punishable under Sections 8(1)(2)(3)(5) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam.

2. As per the prosecution case, on 01.12.2016 certain information was received by the Police that some suspicious persons were roaming in the forest on motorcycles within the jurisdiction of Police station Kistaram at village Dharampeta to propagate Naxalism who were supporters of Maoist. The information was again repeated on 12.12.2016, 20.12.2016 and lastly on 24.12.2016. The information was also to the fact that they were distributing certain literature and were asking support for "*Jantana Sarkar*". After such information having received by the surveillance of State, continuously they were followed and on 25.12.2016 while they were moving near village Dharmapenta near a canal they were intercepted. On search being made, from their possession Naxalite literature, certain pamphlets, old currency notes of Rs. 1 lakh and motorcycles were seized. On further inspection of seized property, it was found that they were promoting Naxalite activities in this region as the publication and propagation of such books have been prohibited by the State Government. Further investigation and pamphlets recovery revealed that they were highlighting the people who died in encounter with the police and their names were projected as sacrificers of the movement and were illuminating the killing of the security forces of the State.
3. (i) Shri Kanak Tiwari, learned senior counsel appearing on behalf of the applicants assisted by Mr. Vikas Dubey, Advocate, would submit that the applicants belonged to Telangana Democratic Forum. It is stated that applicants 1

& 5 namely Ch. Prabhakar and B. Ravindranath are advocates practicing at Andhra Pradesh High Court. Applicants 3 & 6 K. Rajendra Prasad and Mohd. Nazir are the students. Applicant No.2 B. Durga Prasad is a journalist. Applicant No.4 D. Prabhakar is a Dalit activist and Applicant No.7 R. Laxmayya is a tribal leader.

(ii) Learned senior counsel contends that the T.I., of Police Station Konta registered FIR at 2.30 p.m., at Konta and though the arrest was made on 25.12.2016, the information was given to the family members on the next date i.e., 26.12.2017 and actually the time of arrest was not mentioned. It was further contended that the police without mentioning the time, sought permission to register the FIR at Konta and the S.P., Konta allowed the FIR to be registered though the offence was within the jurisdiction of Kistaram Police Station. It is stated that according to section 16(3) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 (hereinafter called as the "Act, 2005"), the offences under this Act committed or abetted or attempted or designed to be committed shall only be registered under the written permission by the Superintendent of Police of that district. It is contended that no permission of SP for registering the offence at Police Station Kistaram was sought for. It is further stated that thereafter the T.I., Police Station requested the Superintendent of Police, Sukma to appoint the investigating officer. Reference was made to section 8(4) of the Act 2005 and further submitted that the Police Officer was not authorized to investigate the crime under sub-sections (1) & (2) of section 8 until the Superintendent of

Police of the District had granted permission. It is stated that the FIR was transferred from Konta to Kistaram on 27.12.2017, therefore, when the FIR was registered and investigation was made, the police officer was not authorized to investigate the crime. It is stated that the S.P., Sukma further amended his order and authorized S.D.O(P) Dornapal to investigate the case, despite such order the investigation was made by other police officer.

(iii) It is further submitted that u/s 16(4) of the Act, the charge sheet was filed before the Court of Judicial Magistrate but the District Magistrate did not authorize that Court to take cognizance and direct communication was made by the District Magistrate to District and Sessions Judge which would not suffice to the compliance of Section 16(4) of the Act, 2005. It is further stated that in such raid, the motorcycles, cash and certain literature were recovered. So even if the literature was possessed by the applicants, it cannot be restricted and it was not a Naxalite literature and keeping any literature would not make out any offence. Further it is stated that no overt act was done by the present applicants which can be termed as an offence under the Act. Referring to the law laid down in **(2011) 7 SCC 547 – Nandini Sundar and others Vs. State of Chhattisgarh** it is stated that in the case of like nature, the Supreme Court at para 6 has focused on the blindness to the constitutional limitation of State of Chhattisgarh and submits that in fact possessing the literature would not amount to an offence. Further reference was made to **1972 Cr.L.J. 388 (Manubhai Tribhovandas Patel Vs. State of Gujrat**

and another) and stated that even if the literature contains the some philosophy or speeches, they cannot be rendered as criminal act. Referring to Judgment of Kerala High Court in W.P(C).No.24902/2014 (*Shyam Balakrishna Vs. State of Kerala*) it was submitted that being the Maoist is no crime though the political ideology of Maoists does not synchronize with the constitutional polity and if an individual or organization resorts to physical violence, the law agency can prevent or take action against that individual or organization. It is only when private thoughts or ideas become repugnant to the public values as envisaged under law, the private activities become unlawful. Lastly a reference was made to a case law reported in **(2015) 7 SCC 440 – Prasad Shrikant Purohit Vs. State of Maharashtra and another** and submitted that taking cognizance by the Court is bad as specific conditions have been imposed under section 16(4) of the Act. It is further submitted that the charge sheet has been filed; no further investigation is necessary, therefore, the applicant may be enlarged on bail.

4. On the other hand, learned State Counsel vehemently opposes the bail. It is stated that initially from 01.12.2016 the daily dairy would show that the applicants were roaming in and around the forest area to promote the commission of offence by supporting naxalite activities. He referred to Daily Diary of 01.12.2016, 12.12.2016, 24.12.2016, 28.12.2016 and stated that the applicants on being intercepted, the pamphlets and literature were recovered from the possession of applicants. It is submitted that initially 'O'

(zero) FIR was registered at P.S. Konta, therefore, the S.H.O., Konta had written a letter to the S.P., Sukma for investigation and accordingly the SP Sukma permitted the investigation on 26.12.2016. He referred to the Statement of Pirdo Aayta who is an independent witness and submits that the statement would show that the offence has been committed as the applicants were roaming in an around the jungle with such naxal pamphlets, cash etc. It is submitted that considering the large scale violence and massacres being carried out by the Naxalites in the State, if the applicants are enlarged on bail, the independent witnesses would be threatened which results in tampering of evidence, therefore, the applicants may not be enlarged on bail.

5. Heard learned counsel for the parties and perused the documents. The charge sheet has been filed u/s 8(1)(2) & (5) of the Act, 2005. For ready reference, the relevant extract of section is reproduced herein-below:

8. Penalties.--(1) Whoever is a member of an unlawful organization or takes part in meetings or activities of any such organization or contributes or receives or solicits any contribution for the purpose of any such organization shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever not being a member of an unlawful organization in any manner contributes or receives or solicits any contribution or aid for such organization or harbours, any member of such organization be punished with imprisonment for a term which may extend to two years and shall also be liable to fine.

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) Whoever commits or abets or attempts to commit or plans to commit any unlawful activity in any specified area shall be punished with imprisonment for a term which may extend to seven years and also be liable to fine."

6. The State was asked to furnish what was the nature of

literature so seized as certain documents which are in Telugu and other languages have been placed. Out of all those documents, only 2 & 3 pages are in Hindi. Despite repeated queries, the prosecution was unable to explain the contents of the documents and explain that what are the translated meaning. At this stage, the court was left with only 2-3 Hindi Pages and pamphlets to read it and understand. Reading of one of the pamphlets would show that it refers to highlighting the encounters and the deaths caused wherein the police officers were referred to as mercenary. It also glorified the damage caused to police officers and security forces. Further it also highlights and glorifies the success for death of 50 para military forces and injuries to 90 police. It refers to the war, highlights violence and takes the credit for deaths caused to police and para-military forces. It also invited different persons to join the PLGA so that their war can be raged and further appeal is made to kill the armed forces DRG commando etc. Similar Hindi part also refers to different encounters which projects and appreciates different killings made over a period of time. The heading of literature is in the name of "*Jantana Sarkar*". The charge sheet also contains notification of the State Government which shows that "*Jantana Sarkar*" organization along-with other organizations have been banned and branded as unlawful organizations. The author of pamphlets is shown as भारत की कम्युनिस्ट पार्टी (भा.क.पा.) माओवादी Such an organization has also been enlisted as unlawful organization.

7. Reading of section 8(5) would show that whoever commits or abets or attempts to commit or "plans to commit" any

unlawful activity in any specified area shall be punished with imprisonment for a term which may extend to 7 years and also be liable to fine. The literature so seized apart from Hindi carries certain photographs and the literature also projects that the appeal is being made to general public to join the organization to carry forward their war. As such, prima facie, even if a plan to commit any unlawful activity is done, it may be an offence subject to proof. Considering such facts situation of the case, at this stage, the hard realities of spreading violence and killing of security personnel cannot be shelved and the persons adopting the path of violence can be projected as perpetrators of organized crime for self serving the need. The presence of applicants roaming around for a considerable period of time from 1.12.2016 till their arrest on 25.12.2016 is beyond all natural explanation of innocence especially when on being arrested the literature was seized which propagates the killing of police personnel and appeals are made to public to join and carry forward their war. Prama facie, as per the Act of 2005 even if someone makes plan to commit any unlawful activity he can be charged for the offence. Therefore, taking into the totality of the facts and circumstances of the case, I am not inclined to allow this bail application, at this stage. Accordingly, this bail application is rejected.

**Sd/-
GOUTAM BHADURI
JUDGE**