IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application No.499 of 2017
In
Criminal Appeal No.136 of 2017

And

Criminal Application No.254 of 2017
In
Criminal Appeal No.136 of 2017

Criminal Application No.499 of 2017
In
Criminal Appeal No.136 of 2017

Prashant Rahi Narayan Sanglikar,
Age About 54 years,
Occupation – Journalist,
R/o 87, Chandrashekhar Nagar,
Krushikesh,
Deharadun, Uttarkhand,
(At present in Amravati Central Jail) … Applicant

Versus

State of Maharashtra,
through Station Police Officer
Aheri, District Gadchiroli. … Non-Applicant

<u>And</u>

<u>Criminal Application No.254 of 2017</u>
<u>In</u>
<u>Criminal Appeal No.136 of 2017</u>

Vijay Nan Tirki,
Aged about 30 years,
Occupation – Labour,
R/o Beloda,
Post P.V.92, Dharampur,
Taluqa, Pakhanjoor,
District Kanker,
Chhattisgarh
(At present in Nagpur Central Jail) … <u>Applicant</u>

<u>Versus</u>

State of Maharashtra,
through Station Police Officer
Aheri, District Gadchiroli. … <u>Non-Applicant</u>

<u>In both Criminal Applications :</u>

Ms Nitya Ramkrishnan, Advocate for Applicant.
Shri Prashant Kumar Sathianathan and Shri Shardul Singh, Special Public Prosecutors for Non-Applicant.

<u>CORAM : R.K. DESHPANDE & M.G. GIRATKAR, JJ.</u>

<u>DATE OF RESERVING THE ORDER : 22nd January, 2018</u>

<u>DATE OF PRONOUNCING THE ORDER : 25th January, 2018</u>

ORDER (Per : R.K. DESHPANDE, J.) :

1. Criminal Application No.499 of 2017 for suspension of sentence and enlargement on bail is filed by original accused No.4 Prashant Rahi Narayan Sanglikar, whereas Criminal Application No.254 of 2017 is filed for the same purpose by original accused No.5 Vijay Nan Tirki. By the common judgment and order dated 7-3-2017 passed by the Sessions Court at Gadchiroli in Sessions Case Nos.13 of 2014 and 130 of 2015, accused No.4 Prashant Rahi and accused No.5 Vijay Tirki are convicted for several offences under the provisions of the Unlawful Activities (Prevention) Act, 1967 ("UAPA") and the Indian Penal Code, 1860 ("IPC") and they are sentenced to suffer imprisonment and fine as under :

Accused No.4 Prashant Rahi :

1.	For the offence punishable under Section 13 of UAPA read with Section 120-B of IPC.	Rigorous imprisonment for seven years and fine of Rs.1,000/-, in default rigorous imprisonment for six months.
2.	For the offence under Section 18 of UAPA Act read with Section 120-B of IPC.	Imprisonment for life and fine of Rs.1,000/-, in default rigorous imprisonment for six months.
3.	For the offence under Section 20 of UAPA read with Section 120-B of IPC.	Imprisonment for life and fine of Rs.1,000/-, in default rigorous imprisonment for six months.
4.	For the offence under Section 38 of UAPA read with Section 120-B of IPC.	Rigorous imprisonment for ten years and fine of Rs.1,000/-, in default rigorous imprisonment for six months.
5.	For the offence under Section 39 of UAPA Act read with Section 120-B of IPC.	Rigorous imprisonment for ten years and fine of Rs.1,000/-, in default rigorous imprisonment for six months.

Accused No.5 Vijay Tirki :

1.	For the offence punishable under Section 13 of UAPA read with Section 120-B of IPC.	Rigorous imprisonment for four years and fine of Rs.1,000/-, in default rigorous imprisonment for six months.
2.	For the offence under Section 18 of UAPA Act read with Section 120-B of IPC.	Rigorous imprisonment for ten years and fine of Rs.1,000/-, in default rigorous imprisonment for six months.
3.	For the offence under Section 20 of UAPA read with Section 120-B of IPC.	Rigorous imprisonment for ten years and fine of Rs.1,000/-, in default rigorous imprisonment for six months.
4.	For the offence under Section 38 of UAPA read with Section 120B of IPC.	Rigorous imprisonment for five years and fine of Rs.1,000/-, in default rigorous imprisonment for six months.
5.	For the offence punishable under Section 39 of UAPA read with Section 120-B of IPC.	Rigorous imprisonment for ten years and fine of Rs.1,000/-, in default rigorous imprisonment for six months.

The sentences imposed on both these accused are directed to run concurrently. The set-off is provided under Section 428 of the Code of Criminal Procedure.

2. How a criminal law was set in motion and progressed, need to be seen as under :

Upon receipt of the secret information from Atul Awhad, PW 6, the Assistant Police Inspector, attached to the Special Branch, Gadchiroli, an FIR was lodged on 22-8-2013 at Exhibit 220 in the Police Station at Aheri, alleging that accused No.1 Mahesh Tirki, accused No.2 Pandu Narote and accused No.3 Hem Mishra were working for the prohibited/banned organization CPI (Maoist) and its frontal organization, i.e. Revolutionary Democratic Front (RDF) and they were active members of the said organization (hereinafter called as "the banned organization). The movements of these three persons were watched in the area of Ettapalli, Aheri and Murewada and upon being found suspicious in a secluded place near Aheri Bus Stand, they were apprehended on 22-8-2013 at about 6 p.m. by PW 6 Atul along with the staff at Aheri Bus Stand.

3. The personal search of accused No.1 Mahesh Tirki was taken and from his possession three pamphlets regarding banned organization were recovered along with one pocket purse containing Rs.60/-, platform ticket dated 28-5-2013 of Ballarshah Railway Station, identity card and one mobile phone of 'Micromax' Company. The personal search of accused No.2 Pandu Narote was taken and from his possession newspaper 'Lokmat' dated 20-8-2013, one umbrella, mobile phone of 'Samsung' Company, one pocket purse containing cash of Rs.1,480/-, platform ticket dated 28-5-2013 of Ballarshah Railway Station, PAN card, identity card, etc., were seized. The personal search of accused No.3 Hem Mishra was taken and from his possession one memory card of 16 GB of 'Sandisk' Company wrapped in a paper, one identity card of Jawaharlal Nehru University in the name of Hem Mishra, one pocket purse containing cash of Rs.7,700/-, one daily newspaper 'Sahara' dated 19-8-2013, travelling ticket of Delhi to Ballarshah dated 19-8-2013, camera along with charger,

PAN card and cloth bag were seized.

4. The aforestated articles were seized and Crime No.3017 of 2013 vide FIR at Exhibit 220 under Sections 13, 18, 20, 38 and 39 of UAPA read with Section 120-B of IPC was registered at Aheri Police Station on 22-8-2013. All the three accused expressed willingness to confess their guilt. During the course of interrogation of accused No.3 Hem Mishra, it was revealed that one person in Delhi, i.e. accused No.6 Saibaba, who was the active member of banned organization had given him one memory card wrapped in a paper and told that he should take it to DVC Narmadakka, who was active in Gadchiroli area. The interrogation also revealed the involvement of accused No.4 Prashant Rahi and accused No.5 Vijay Tirki in the crime.

5. Upon receipt of the secret information that accused No.4 Prashant Rahi was coming to Raipur from Devri, such information was passed to the Police Station Chichgad on 1-9-2013. PW 14 PI Rajendrakumar Tiwari apprehended accused Nos.4 and 5 at Chichgad T-point in Devri in suspicious condition and thereafter

they were brought in Aheri Police Station on 2-9-2013 at 5 a.m. Accused Nos.4 and 5 were accordingly arrested under the arrest panchanamas at Exhibits 239 and 240 dated 2-9-2013. From accused No.4 Prashant Rahi, one money purse, cash of Rs.8,800-/-, one visiting card, one driving licence, one Yatri Card, one newspaper by name 'Dainik Bhaskar' and eight papers relating to naxal literature along with typewritten papers of under-trial prisoner maoist leader Narayan Sanyal were seized under the panchanama Exhibit 179. From the person of accused No.5 Vijay Tirki, one mobile phone of silver colour, cash of Rs.5,000/-, four pieces of paper on which phone numbers were written and one newspaper of 'Dainik Bhaskar' were seized under the panchanama at Exhibit 180.

6. During the investigation, it was further revealed that the accused No.5 Vijay Tirki, in pursuance of conspiracy with the underground member by name Ramdar of the banned organization received the accused No.4 Prashant Rahi, who was also its member. As per the directions of Ramdar, accused No.5 was attempting to take the accused No.4 Prashant Rahi to Abuzmad forest area for

meeting the senior maoist leaders, who were hiding themselves in Abuzmad forest area.

7. It is the case of the prosecution that accused No.3 Hem Mishra, No.4 Prashant Rahi and No.6 Saibaba entered into the criminal conspiracy with each other, and in pursuance of it the accused No.6 Saibaba arranged meetings of the accused No.3 Hem Mishra and No.4 Prashant Rahi with the underground members of the banned organization, who were hiding themselves in Abuzmad forest area, and in furtherance of the said criminal conspiracy the accused No.6 Saibaba handed over a micro-chip SD memory card of 16 GB of 'Sandisk' company containing vital maoist communications and other maoist documents to accused no.3 Hem Mishra and accused No.4 Prashant Rahi with an intention to further the activities of the banned organization.

8. The applicants are held guilty of the offences punishable under Sections 13, 18, 20, 38 and 39 of UAPA read with Section 120-B of the Indian Penal Code. According to Ms Nitya Ramkrishnan, the learned counsel for the applicants,

Section 13 of UAPA deals with punishment for "unlawful activities", which essentially pertain to activities of "unlawful association" declared by the notification issued under sub-section (3) of Section 3 of UAPA, and it is not the charge that the accused persons are members of such unlawful association. She further submits that for the offence under Section 18 of UAPA, unless a finding is recorded of commission of "terrorist act", as defined under Clause (k) of Section 2(1) read with Section 15, or "any act preparatory to the commission of such terrorist act" by any of the accused persons, no punishment can be imposed under Section 18 for conspiracy. She submits that there is no such finding recorded by the Sessions Court against the applicants and, therefore, the Sessions Court was obviously in error to record conviction. She further submits that Sections 38 and 39 of UAPA would also not be attracted in respect of each and every activity of a terrorist organisation and there is no case made out that the applicants acted with an intention to support or further the activities of a terrorist organisation.

9. Accused No.4 Prashant Rahi is found guilty of the offences alleged against him on the basis of recovery of naxal literature of eight pages from his person and the video clips of accused No.6 Saibaba seized, in which the applicant-accused was found present in the meeting where the other accused were also seen. It is urged by Ms Nitya Ramkrishnan that the membership of the applicant-accused with the banned organization has not been established, there is no recovery of the arms from them, it is not alleged that they were involved in the activities of violence or planning the act of violence. These two accused are arrested on the basis of the self-exculpatory alleged confessions of accused Nos.1 and 2, and there is absolutely no material to connect these two accused with the crime for which they are convicted.

10. Shri Prashantkumar Sathianathan and Shri Shardul Singh, the learned Special Public Prosecutors, separately appointed to oppose the applications of accused Nos.4 and 5, have invited our attention to various decisions of the Apex Court, including one in the case of *Sidhartha Vashisht alias Manu Sharma* v. *State (NCT of Delhi)*, reported in *(2008) 5 SCC 230*, to show the parameters for

suspension of sentence and release of the accused on bail pending the decision of appeal. According to them, merely because the accused persons were on bail during the pendency of trial, the said presumption of being innocent would no longer survive after their conviction is recorded by the Sessions Court.

11. According to the prosecution, the offences alleged against the accused are of a serious in nature, and relying upon the material placed on record after the accused are convicted, it is urged that it would be dangerous to release the accused persons on bail by suspending the sentence imposed upon them. It is their submission that no reasons exist to suspend the execution of sentence and grant of bail. They have taken us through various paragraphs of the judgment delivered by the Sessions Court to urge that the involvement of accused Nos.4 and 5 in the offences has been established and there is no *prima facie* case made out.

12. What should be the parameters for suspension of sentence and release of the accused on bail pending the appeal, is laid down in the decision of the Apex Court in the case of

Sidhartha Vashisht, cited supra, and similar other cases cited by the learned Special Public Prosecutors. The parameters can briefly be culled out as under :

(1) The Court should avoid to make observations on merits, which are likely to prejudice one or the other party to the appeal.

(2) The fact that the accused is found guilty and convicted by the competent Criminal Court has to be kept in mind with further principle that initial presumption of innocence in favour of the accused is not available.

(3) After recording the conviction by the Sessions Court, the Appellate Court will proceed on the basis that the accused is found guilty.

(4) While considering the prayer for bail in a case involving a serious offence, the Court should consider :

(a) the nature of accusation made against the accused,

(b) the manner in which the crime is alleged to have been committed,

(c) the gravity of the offence,

(d) the desirability of releasing the accused on bail after he has been convicted for committing serious offence,

(e) normal practice in cases of serious offence is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted,

(f) the mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not *per se* warrant suspension of execution of sentence and grant of bail, and

(g) the Court should consider whether reasons exist to suspend execution of sentence and grant of bail.

Keeping in mind the aforesaid parameters, we proceed to deal with the cases of accused Nos.4 and 5.

13. The object of UAPA, as we gather it from its preamble, is to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith. Most of the offences under UAPA are covered by Chapter II of Unlawful Associations, Chapter III regarding Offences and Penalties of unlawful association and unlawful activities, Chapter IV regarding Punishment for Terrorist Activities, and Chapter VI dealing with Terrorist Organisations.

14. Clause (a) of sub-section (1) of Section 2 regarding Definitions defines "association" means any combination or body of individuals. Clause (ec) of sub-section (1) of Section 2 defines "person" to include (i) an individual, (ii) a company, (iii) a firm, (iv) an organization or an association of persons or a body of individuals, whether incorporated or not, (v) every artificial juridical person, not falling within any of the preceding sub-clauses, and (vi) any agency, office or branch owned or controlled by any person falling within any of the preceding sub-clauses.

15. As per Clause (k) of Section 2(1), "terrorist act" has the same meaning assigned to it in Section 15 of UAPA, and the expressions "terrorism" and "terrorist" shall be construed accordingly. Clause (l) therein defines "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act. Clause (m) therein defines "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed.

16. Clause (o) of Section 2(1) of UAPA defines "unlawful activity", and Clause (p) therein defines "unlawful association", and both the definitions are reproduced below :

> *"2. **Definitions**.-- (1) In this Act, unless the context otherwise requires,--*
>
> *(o) "**unlawful activity**", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),--*

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India.

*(p) "**unlawful association**" means any association,--*

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153-A or section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which

the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir."

17. We put a specific question to the learned Special Public Prosecutors, separately appointed to oppose the applications of accused Nos.4 and 5, to point out to us any finding by the Sessions Court in respect of any terrorist activity contained in Chapter IV, more particularly Section 15 therein. Though both of them have answered it saying that there is no such finding in specific words, they could not bring to our notice any remote finding by the Sessions Court to indicate the involvement of the accused Nos.4 and 5 in the "Terrorist act", as defined under Section 15 of UAPA.

18. In our *prima facie* view, the expression "association" defined in Clause (a), "person" defined in Clause (ec), "terrorist gang" defined in Clause (l), ""unlawful activity" defined in Clause (o), and "unlawful association" defined in Clause (p) of sub-section (1) of Section 2 of UAPA are capable of being read as independent of "unlawful association" declared under

sub-section (3) of Section 3, and "terrorist organisation", as defined under Clause (m) of sub-section (1) of Section 2 of UAPA. Though Section 18 of UAPA deals with the punishment for conspiracy in relation to a terrorist act or any act preparatory to the commission of a terrorist act, the charge is also under Section 120-B of the Indian Penal Code. The questions of law, as are urged by Ms Nitya Ramkrishnan, are arguable and we need not express our final verdict on it so as to prejudice one or the other party.

19. Accused Nos.4 and 5 are punished for unlawful activities under Section 13 of UAPA, which reads as under :

> *"13. **Punishment for unlawful activities**.-- (1) Whoever--*
>
> *(a) takes part in or commits, or*
>
> *(b) advocates, abets, advices or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.*

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India."

Perusal of the aforesaid provision prima facie shows that the offences under sub-sections (1) and (2) of Section 13 of UAPA are distinct and independent and the expression "unlawful activity" employed under sub-section (1) can be by an "association", as defined under Clause (a) of sub-section (1) of Section 2 or by any "person", as defined under Clause (ec) of sub-section (1) of Section 2 of UAPA. Such "association" or "person" need not be - (a) an "unlawful association" declared under sub-section (3) of

Section 3, or (b) a member of any "terrorist gang", as defined under Clause (l) of sub-section (1) of Section 2 or of a "terrorist organisation", as defined in Clause (m) therein. This is merely to say that the point is arguable and we are not expressing final verdict on it.

20. Section 18 of UAPA deals with punishment for conspiracy, etc., and it runs as under :

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

The question is whether in the absence of any proof regarding "terrorist act" or "any act preparatory to the commission of a terrorist act", the punishment under Section 18 of UAPA is attracted or not. The applicants are charged with the commission of offence under Section 120-B of the Indian Penal Code and it may be possible to sustain the conviction in respect of conspiracy for "unlawful activity", as defined under Clause (o) of sub-section (1) of Section 2 of UAPA.

21. Section 20 of UAPA deals with the punishment for being member of terrorist gang or organisation. The finding of the Sessions Court is that the applicants are working for the prohibited/banned organisation, which is at Item No.27 in the First Schedule, which can be called as "terrorist organisation", as referred to in Section 20 read with the presumption under sub-section (2) of Section 35 of UAPA. Once the finding recorded by the Sessions Court is that the accused Nos.4 and 5 are the members of "terrorist organisation", as defined under Clause (m) of sub-section (1) of Section 2 of UAPA, the activities alleged and proved against them are required to be scrutinized on merits, after deciding the correctness of such finding.

22. It is alleged and also held by the Sessions Court that the banned organization is the one at Item No.27 in the First Schedule.

The allegations against accused Nos.1 to 6 are that on or before 12-9-2013 within India, they hatched a criminal conspiracy to wage war against the Government of India, and more particularly, as under :

(i) to collect people with the intention of waging war against the Government of India, to overawe by means of criminal force the Government of Maharashtra and the Government of India,

(ii) to shake and reduce the faith of the common citizen in its democratic Government by large scale violence destruction of lives and property and thereby destabilize the system of Government established by law,

(iii) to organize the spread of secessionist and rebellious thoughts by holding convert and secret meetings,

(iv) to collect money in India for achieving the objects of the said criminal conspiracy by illegal means, to continue unlawful activities of Communist Party of India (Maoist) ["CPI (Maoist)"] and its frontal organization Revolutionary Democratic Front ("RDF"), for achieving the object of criminal conspiracy,

(v) to continue the activities of Terrorist Gang, banned terrorist organization or unlawful association, singly or jointly as a member of the Terrorist Gang and banned organization CPI (Maoist) and its frontal organization RDF,

(vi) to conspire, advocate, incite, abet and knowingly facilitate the commission of a terrorist act and unlawful activities by use of violence or other unlawful means,

(vii) to take part or commit or advocate, abet or incite the commission of unlawful activities, being the members of a banned Terrorist Gang, etc.

The acts alleged and proved against the accused Nos.4 and 5 are of very serious in nature, for which punishment ranging from seven years to life imprisonment are prescribed. The offences are not against individuals but of hatching a criminal conspiracy to wage war against the Government of India. Normal practice of not to suspend the sentence need to be followed in the absence of exceptional case being made out.

23. From the story of the prosecution and the events those have occurred, we gather an impression, after going through the

findings recorded by the Sessions Court, that accused No.4 Prashant Rahi and accused No.5 Vijay Tirki are found to be the servers in the link between the alleged naxals and the banned organization, i.e. CPI (Maoist), and its frontal organization, i.e. RDF. The findings recorded by the Sessions Court indicate the role of accused Nos.4 and 5 to identify the members of the banned organization at the instance of the alleged naxals on the basis of the secret codes and to help or assist them in reaching to the goal. The articles seized in the form of literatures and the presence of accused Nos.4 and 5 in the functions of the banned organization along with the other accused persons, show their close association with it. The findings recorded by the Sessions Court are not without basis and establish the complete chain in which accused Nos.4 and 5 are found to be the vital link. If these accused are released on bail, it would amount to breaking or snapping the vital links. The material produced on record in reply to these applications by the prosecution reflects support to the findings of the Sessions Court. It is, therefore, not desirable to release the applicants on bail.

24. It is a fact that accused No.4 Prashant Rahi and accused No.5 Vijay Tirki are found guilty and convicted by the competent Criminal Court and the presumption of innocence in their favour has lost. Merely because accused Nos.4 and 5 were on bail during the course of trial and that they have not misused the liberty, does not *per se* warrant suspension of execution of sentence and grant of bail, as has been laid down by the Apex Court. We do not find that any exceptional case is made out, and the grounds of challenges raised before us can be gone into at the time of final hearing of the matter.

25. Keeping in view the law laid down by the Apex Court and its applicability to the findings of fact recorded by the Sessions Court, we are not left with any option but to say that no case is made out for suspension of sentence and enlargement of accused No.4 Prashant Rahi and accused No.5 Vijay Tirki on bail.

26. Both the criminal applications are, therefore, rejected.

(M.G. Giratkar, J.) **(R.K. Deshpande, J.)**