

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 3007 OF 2018

Vernon s/o. Stanislaus Gonsalves,	]	
Aged 61 years, having address at	]	
C-3, New Prem Vasundhara, Off	]	
Mahakali Caves Road, Andheri East,	]	
Mumbai 400 093.	]	..Applicant

Versus

State Of Maharashtra	]	
(through ACP Swargate, Pune City)	]	...Respondent

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Mr. Mihir Desai, Senior Advocate i/b. Devyani Kulkarni, Advocate for the Applicant.

Ms. Aruna S. Pai, Special Public Prosecutor for the Respondent-State.

Dr. Shivaji Pawar, ACP, Crime Branch, Pune City – Investigating Officer.

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CORAM : SARANG V. KOTWAL, J.

RESERVED ON : 07.10.2019

PRONOUNCED ON : 15.10.2019

ORDER:

1. The applicant is seeking his release on bail pending trial in connection with C.R. No.4/2018 registered at Vishrambaug Police Station, Pune. The charge-sheet is already filed. The charge-sheet is filed against the applicant for commission of offences

punishable under Sections 121, 121A, 124A, 153A, 505(1)(b), 117, 120B read with 34 of the Indian Penal Code, 1872 (hereinafter referred to as 'I.P.C.') and under Sections 13, 16, 17, 18, 18B, 20, 38, 39, 40 of the Unlawful Activities (Prevention) Act, 1967, as amended in 2008 and 2012 (hereinafter referred to as 'UAPA').

2. The applicant was arrested on 28.8.2018. Initially he was kept under house-arrest. As of today, the applicant is in judicial custody. The charge-sheet is already filed against him.

3. The State of Maharashtra has opposed this application. On behalf of the State, the Assistant Commissioner of Police, Yerwada Division, Pune, Dr.Shivaji Panditrao Pawar has filed his affidavit dated 1.4.2019. For the sake of convenience, this affidavit is hereinafter referred to as "State's affidavit". On behalf of the applicant, rejoinder to this affidavit is filed.

BRIEF HISTORY AND CASE OF THE INVESTIGATING AGENCY :

4. The FIR was lodged on 8.1.2018 at Vishrambaug Police Station by one Tushar Ramesh Damgude. The FIR was registered

for commission of offences punishable under Sections 153A, 505(1)(b) and 117 read with 34 of IPC. According to the first informant, he was in the business of construction. Through a social networking site, he came to know that there was a programme at Shaniwar Wada, Pune on 31.12.2017 organized by Elgar Parishad. He attended that programme at around 2:00 p.m. on 31.12.2017. He further stated in the FIR that there were a few speakers, comperes, singers and other performers present on the stage. The informant was knowing Kabir Kala Manch and its members. He had read about them on social media and in the newspapers. He has further stated that some of the performers enacted short plays, performed dances and sung songs. According to him, the performances were provocative in nature and had effect of creating communal disharmony. At that time, some provocative speeches were delivered. A few objectionable and provocative books were kept for sale at the venue. It was his contention in the FIR that a banned organization-Communist Party of India (Maoist) (hereinafter referred to as 'CPI(Maoist)') was inciting violence by creating communal disharmony. According to him, the members of Kabir Kala Manch spread hatred through their songs,

plays and speeches causing enmity between different communities. As a result, there were incidents of violence, arson and stone pelting near Bhima-Koregaon. Accordingly, the FIR was lodged naming six members of Kabir Kala Manch. The investigation progressed and based on the material gathered during investigation, Section 120B of IPC was added on 6.3.2018.

5. On 17.4.2018, the investigating agency conducted searches at the residences of eight persons, namely, (1) Rona Wilson, R/o. Delhi, (2) Surendra Gadling, R/o. Nagpur, (3) Sudhir Dhawale, R/o. Mumbai, (4) Harshali Potdar, R/o. Mumbai, (5) Sagar Gorakhe, R/o. Pune, (6) Deepak Dhengale, R/o. Pune, (7) Ramesh Gaychor, R/o. Pune, and (8) Jyoti Jagtap, R/o. Pune. The residences of Shoma Sen and Mahesh Raut were searched on 6.6.2018.

6. It is the case of investigating agency that during the searches; documents were recovered from various computers / laptops/ pen drives / memory cards. The seized articles were sent to Forensic Science Laboratory (for short, 'FSL') for analysis. The cloned copies were received. On the analysis of those cloned copies, aforementioned Sections of UAPA were applied on

17.5.2018.

7. It is the case of investigating agency, as set out in the State's affidavit that, based upon the seized and recovered incriminating material, it was revealed that a few more persons were part of the criminal conspiracy and their role was not merely peripheral but was very vital. Therefore, searches were conducted at the residences or workplaces of other accused including the applicant. Those other accused were (1) Varavara Rao, R/o. Hyderabad, (2) Arun Ferreira, R/o. Thane, (3) Sudha Bharadwaj, R/o. Faridabad, (4) Gautam Navlakha, R/o. Delhi, besides the applicant who was resident of Mumbai. They were arrested and were initially put under house-arrest on 28.8.2018. The recovered devices were sent to FSL for analysis. The final analysis reports are still awaited. It is mentioned in the State's affidavit that in the document titled "Strategy and Tactics of The Indian Revolution", the motive of the banned terrorist organization i.e. CPI(Maoist) is mentioned thus : "the central task of the Indian Revolution is the seizure of political power. To accomplish this central task, the Indian people will have to be organized into a people's army and

will have to wipe out the armed forces of the Indian State through war and establish in its place the people's democratic State and will have to establish their own political authority. The very act of establishment of the State machinery of the people by destroying, through war, the present autocratic State machinery – the State's army, police and the bureaucracy of the reactionary ruling classes is the central task of the People's Democratic Revolution of India.”

According to the investigating agency, in view of achieving the central task, the CPI(Maoist) Party is waging not a conventional war, but, a people's war by mobilizing people on a massive scale both militarily and politically. It is the case of the investigating agency that the banned organization is trying to create disharmony between different castes with the objective to overthrow the democratically elected Government and to seize the political power through armed revolution.

8. Thus, the scope of investigation was not restricted to find out the object and effect of the programme organized on 31.12.2017 by Elgar Parishad or to carry out investigation into the

violence that followed the said event; but, the investigation was expanded to unearth a much larger conspiracy of seizing the political power through armed revolution by mobilizing masses.

9. After arrest of the applicant and others, viz., Varavara Rao, Sudha Bharadwaj and Arun Ferreira on 28.8.2018, a petition was filed before the Hon'ble Supreme Court vide Writ Petition (Criminal) No.260/2018, Romila Thaper and others Vs. Union of India and others. It was decided vide judgment dated 28.9.2018. It consisted of majority and minority views. The prayers in that Petition are reproduced in the judgment as follows :

“PRAYERS

It is therefore prayed that this Hon'ble Court be pleased to grant the following prayers:

- i) Issue an appropriate writ, order or direction, directing an independent and comprehensive enquiry into arrest of these human rights activists in June and August 2018 in connection with the Bhima Koregaon violence.
- ii) Issue an appropriate writ, order or direction, calling for an explanation from the State of Maharashtra for this sweeping round of arrests;
- iii) Issue an appropriate writ, order or direction, directing the immediate release from custody of all activists arrested in connection with

the Bhima Koregaon violence and staying any arrests until the matter fully investigated and decided by this court.

iv) Pass any such other order as may be deemed appropriate.”

10. In paragraph-26 of the judgment of the majority view, it is mentioned thus :

“26. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated.”

11. In dealing with the question of release of the arrested accused from custody, the Hon’ble Supreme Court, in the majority view, expressed that the accused must pursue that relief before the appropriate Court which would be considered by the concerned Court on its own merits in accordance with law. It was further observed that all questions were required to be considered by the

concerned Court in accordance with law and that Their Lordships had refrained from dealing with the factual issues raised by the parties; as any such observation might cause serious prejudice to the parties or their co-accused and even to the prosecution case.

12. Accordingly the applicant had preferred an application for bail before the learned Special Judge, Pune under UAPA vide Criminal Bail Application No.3999/2018. The learned Judge decided the applicant's bail application along with bail applications of Arun Ferreira and Sudha Bharadwaj, vide his common order dated 26.10.2018. All the three applications were rejected. After that, the applicant has preferred this application before this Court.

13. The investigating agency filed the charge-sheet on 15.11.2018. While giving the summary of their case, it was mentioned in column No.17 of the charge-sheet as to how the conspiracy was spread wide and deep. The summary of the allegations made in the charge-sheet is as follows :

According to the allegations, Rona Wilson, R/o. Delhi and Surendra Gadling, R/o.Nagpur, were members of CPI(Maoist).

They contacted accused Sudhir Dhawale who was working through the medium of Kabir Kala Manch. The accused Rona Wilson, absconding accused Com. M @ Dipak @ Milind Teltumbade and another absconding accused Prakash @ Navin @ Ritupan Goswami were active members of CPI(Maoist). They had conspired to mobilize masses and to spread hatred against the State, through provocative speeches, songs, plays etc. They incited feeling of hatred among the communities resulting in wide spread violence from 1.1.2018 onwards. The charge-sheet further mentions that the acts of the accused were not restricted to creating disharmony between the two communities, but, they were actually indulging in activities which were against the Nation. The incidents at Bhima-Koregaon were only a part of their larger conspiracy. The investigation revealed that funds were provided by the banned organization through their members. It was also alleged that students from eminent educational institutes were taken to forest area occupied by Maoist guerrilla and were given training.

14. Thereafter supplementary charge-sheet was filed, in which, it was mentioned that, the applicant along with the co-

accused Arun Ferreira and Sudha Bharadwaj had enrolled members for the banned organization CPI(Maoist). It is the case of the prosecuting agency that an organization known as Indian Association of Peoples Lawyers (for short, 'IAPL') was a frontal organization of CPI(Maoist) and the applicant was working through this frontal organization to accomplish the objects of the banned organization CPI(Maoist) i.e. destabilizing the country. The charge-sheet mentions a few more organizations, viz., Anuradha Ghandy Memorial Committee (AGMC), Kabir Kala Manch, Persecuted Prisoners Solidarity Committee (PPSC) as the frontal organizations of CPI(Maoist). It was alleged that the members of CPI(Maoist) were using these organizations to further their purpose.

SUBMISSIONS ON BEHALF OF THE APPLICANT

15. In the background of these allegations, learned Counsel Mr. Mihir Desai for the applicant, made his submissions. He referred to certain documents and statements of witnesses which are part of the charge-sheet.

16. Mr. Desai invited my attention to three documents from the charge-sheet which the investigating agency were using against

the applicant. The details of the contents of such documents would be referred to in the following discussion.

17. For the sake of convenience, these documents are hereinafter referred to as 'document Nos.1 to 3'. The copies of those documents are produced before me through the compilation tendered by the learned Special Public Prosecutor Mrs. Aruna Pai. These documents are referred to in the State's affidavit. These documents, in short, are as follows :

Document No.1	A letter written to Surendra by an unknown writer.
Document No.2	A letter written by one 'R' dated 18.4.2017 addressed to Comrade Prakash.
Document No.3	A letter written by Comrade Prakash to Comrade Surendra dated 25.9.2017.

18. Mr. Desai submitted that none of the letters relied on by the prosecution was found on the device of the applicant. Neither of these letters was addressed to him or was written by him. The letters are vague and there are vague references to the applicant. The name 'Vernon' does not necessarily mean that

reference was made to the applicant in particular. He submitted that such documents are not admissible against him.

19. Mr. Desai submitted that the statements of witnesses Sudarshan Ramteke and Kumarsai @ Pahad Singh do not show that the applicant was an active member of the banned organization i.e. CPI(Maoist). The witness Sudarshan Ramteke has not even named him in his statement. His association with other accused by itself will not mean that he is an active member of the banned organization. There is nothing to suggest that the applicant was instrumental in getting students and other persons to join the banned organization. He further submitted that the house-search panchnama is not incriminating against him. Having books and literature of different ideology in his possession is not an offence and possession of such literature will not show that he is an active member of the banned organization. The State's affidavit does not mention that the literature found in his possession was objectionable in any manner. None of the books or literature found with him was banned under Section 95 of Cr.P.C. He further submitted that after such seizure of books and literature from his house, none of them was banned

even subsequent to that seizure. He further submitted that in any case it is well settled that being a member of a banned organization is not an offence. The applicant is unnecessarily made an accused in this case. He was shown as an accused in eighteen cases, out of which in sixteen cases he is either acquitted or discharged, which shows that the investigating agency is holding grudge against him and is targeting him. The only case in which he is convicted is pending before the High Court, in an appeal.

20. Mr. Desai submitted that the applicant is in custody for more than a year. He further invited my attention to the academic record of the applicant. The application mentions that he is a gold medalist from the Bombay University in Commerce and has been an Accounts Officer in a Multi-National Company. He was a Lecturer of Business Organization in various reputed colleges in Mumbai. On invitation, he had delivered lectures in reputed Universities and institutions. It is not the prosecution case that the applicant was present at the time of Elgar Parishad. He, therefore, submitted that the applicant deserves to be released on bail.

21. Learned Counsel Mr. Mihir Desai in support of his contentions relied on a few judgments.

22. For the proposition that merely being a member of a banned organization will not mean that he has committed any offence under the UAPA; Mr. Desai relied on the following judgments.

- (i) **State of Kerala Vs. Raneef**¹;
- (ii) **Arup Bhuyan Vs. State of Assam**²;
- (iii) **Indra Das Vs. State of Assam**³.

23. In **Raneef's** case (supra), the Hon'ble Supreme Court had considered the observations of U.S. Supreme Court in various judgments and approved of the same by observing that those observations apply in our country too. Those judgments have observed that there must be a clear proof that the person specifically intended to accomplish the aims of the organization by resorting to violence. Those who joined an organization but did not share its unlawful purpose and who do not participate in its unlawful activities do not pose threat, either as citizens or as

1 (2011) 1 SCC 784

2 (2011) 3 SCC 377

3 (2011) 3 SCC 380

public employees. These observations made distinction between active “knowing” membership and passive, merely nominal membership in a subversive organisation.

24. In **Arup Bhuyan’s** case (supra), the Hon’ble Supreme Court in paragraph-12 has observed that mere membership of a banned organisation would not make a person a criminal unless he resorted to violence or incited people to violence or created public disorder by violence or incitement to violence.

25. In **Indra Das’s** case (supra), the Hon’ble Supreme Court considered Section 10 of the UAPA and observed that the said provision will have to be read down so as not to violate Articles 19 and 21 of the Constitution.

26. Mr. Desai then relied on a judgment passed by a learned Single Judge of the High Court of Gujarat in the case of **Vishvanath @ Vishnu Vardhraj Aaiyar Vs. State of Gujarat**⁴, wherein it was observed that seizure of incriminating material by itself in absence of any contact or connection with banned terrorist outfit cannot be said to be an activity prohibited by any law. It was further

⁴ Decided on 18.11.2010 in Criminal Misc. Application No.12435/2010 along with other companion matters (Gujarat High Court).

observed that possession of such material without there being any overt act or actual execution of such ideas by itself would not form or constitute any offence.

. This judgment was relied on by a Single Judge of this Court in the case of **Ms. Jyoti Babasaheb Chorge Vs. State of Maharashtra**⁵. The relevant paragraph No.30 from that order is as follows :

“30. 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

⁵ Decided on 3.10.2012 in Criminal Bail Application No.1020/2012 a/w Criminal Bail Application No.1066/2012 (Bombay High Court).

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 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.”

27. Mr. Desai relied on the judgment of the Hon’ble Supreme Court in the case of **Shreya Singhal Vs. Union of India**⁶. He particularly relied on the observations in paragraph-13, on page-130, which reads thus :

“13. This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is

6 (2015) 5 SCC 1

incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc.”

Mr. Desai, therefore, submitted that there is nothing to show that the applicant had in any manner incited violence.

28. Mr. Desai relied on a few more judgments. It may not be necessary to refer to them because they are more or less on the similar lines.

SUBMISSIONS ON BEHALF OF THE STATE/INVESTIGATING AGENCY:

29. Mrs. Pai opposed this bail application. Mrs. Pai invited my attention to the notification dated 22.6.2009 whereby in exercise of the powers conferred by sub-section 1 of Section 35 of the UAPA, the Central Government made an order to add the Communist Party of India (Maoist) and all its formations and front

organizations as terrorist organization in the Schedule to the UAPA by making corresponding amendment. According to the case of the investigating agency, the banned organization was operating through its members in different fields. Some of the operations were recruiting cadres, procuring weapons etc..

30. Mrs. Pai submitted that the applicant Vernon Gonsalves was involved in recruiting cadres for the Party. Therefore, according to Mrs. Pai he was an active member of the Party and he was actively taking steps for furthering the objectives of the Party by recruiting cadres. To establish his participation at this stage, the investigating agency was relying on certain documents recovered from the devices of the co-accused as well as some material recovered from his possession during the raid conducted at his house.

31. Mrs. Pai submitted that C.D.R. of the phone-call details of the applicant's mobile phone shows that he was constantly in touch with other accused, and, in particular, there were telephone contacts between the applicant and the co-accused Arun Ferreira on 229 occasions since October, 2017 before their arrest.

32. Mrs. Pai further relied on recovery of a book about struggle of Dandakaranya Adivasi women. According to the investigating agency this is a book of front organization. Therefore, finding of this material was incriminating against the applicant. The seizure panchnama also mentions a book by name 'S. Shridhar'. According to the investigating agency he was co-accused of the applicant in the case in which the applicant was convicted. Finding of this literature showed his continued association with the banned organization.

33. Mrs. Pai submitted that the applicant was convicted in the past for commission of offence punishable under Sections 10 and 13 of the UAPA. He was sentenced to suffer RI for five years. In the same trial, he was convicted for commission of offence under the Indian Arms Act and was sentenced to suffer RI for six years. There is sufficient material against him to show that he was involved in the recruitment of cadres. He was an active member of the banned organization and he was instrumental in recruitment of other members for the banned organization. She submitted that the applicant was not merely a passive member but an active

member of the banned organization. There is sufficient material against him to show his involvement in the larger conspiracy. She submitted that some of the letters referred to the term 'Bolshevik training', which was a terminology used by the banned organization for impressing upon new recruits their ideology. She submitted that the term 'ERB' refers to Eastern Regional Bureau. She submitted that the investigation reveals that the term 'APT' was essentially used for the word 'appointment'. It was also used for referring to point of contact, exchange of material, sending persons or money, exchange of logistic and equipments.

REASONING

34. The charge-sheet mentions following offences under different Acts against the accused. These offences are as follows:

The offences alleged against the accused under IPC:

- Section 121 is about waging or attempting to wage war, or abetting waging of war, against the Government of India.
- Section 121A is conspiracy to commit offences punishable by Section 121 of I.P.C.
- Section 124A is the offence of sedition.

- Section **153A** speaks of the offence of promoting enmity between different groups and doing acts prejudicial to maintenance of harmony.
- Section **505(1)(b)** provides punishment for offences making statements conducing to public mischief.
- Section **117** provides punishment for abetting commission of offence by more than ten persons.
- Section **120B** provides punishment for criminal conspiracy.

The offences alleged against the accused under the UAPA:

- Section **13** provides punishment for unlawful activities.
- Section **16** provides punishment for terrorist act.
- Section **17** provides punishment for raising funds for terrorist act.
- Section **18** provides punishment for conspiracy, etc.
- Section **18B** provides punishment for recruiting of any person or persons for terrorist act.
- Section **20** provides punishment for being member of terrorist gang or organisation.
- Sections 16, 17, 18, 18B and 20 fall within Chapter IV of the UAPA.
- Section **38** provides punishment for the offence relating to

membership of a terrorist organisation.

- Section 39 provides punishment for the offence relating to support given to a terrorist organisation.
- Section 40 provides punishment for the offence of raising fund for a terrorist organisation.
- Sections 38, 39 and 40 fall within Chapter VI of the UAPA.

35. The main thrust of argument of Mr. Desai was to show that the material collected against the applicant during investigation was not incriminating at all. It was vague and inadmissible material and that there was nothing to show that the applicant was in any manner connected with the banned organization. His argument was that even assuming, without admitting, those documents were admissible, even then the applicant's involvement is not established even *prima facie*.

36. Mr. Desai did not make any submissions regarding the notification dated 22.6.2009 by which CPI(Maoist) was included in the Schedule of the UAPA as the banned organization. Therefore, the investigating agency needed to show material that the acts attributed to the applicant were in any manner furthering the

objectives of the banned organization. It is necessary, therefore, to refer to, in brief, to the objectives of this banned organization. For this purpose Mrs. Pai referred to a document titled “Strategy and Tactics of the Indian Revolution”. This document was recovered from the pen-drive of one of the co-accused Varavara Rao. This document is dated 27.1.2007 and the foreword shows that it was issued by the Central Committee of Communist Party of India (Maoist). This document is divided into different Parts and Chapters. The first Part refers to ‘Strategy’. There is a discussion about the Political Strategy and Military Strategy. The discussion on Military Strategy mentions that the military strategy had to be formulated basing on the specific characteristics of the revolutionary war in India. It was mentioned that the revolutionary based areas in the countryside where the enemy was relatively weak should be targeted first and then gradually the cities should be encircled and captured because they were the bastions of the enemy forces.

37. Chapter-6 speaks about seizure of political power through protracted people’s war. The relevant discussion on the

topic reads thus:

“The Central task of the Indian revolution also is the seizure of political power. To accomplish this Central task, the Indian people will have to be organized in the people’s army and will have to wipe out the armed forces of the counter-revolutionary Indian state through war and will have to establish, in its place, their own state – the People’s Democratic State and will have to establish their own political authority. The very act of establishment of the state machinery of the people by destroying, through war, the present autocratic state machinery – the army, the police, and the bureaucracy of the reactionary ruling classes – is the Central task of the People’s Democratic Revolution of India.”

38. Chapter-10 of that document is about building the People’s Army. This Chapter refers to PLGA, which according to the prosecution, means People’s Liberation Guerrilla Army. The Central Committee provides politico-military leadership to the PLGA. The Central Committee decides the general plans while the lower level commands draw the corresponding operational plans. It is mentioned in the discussion that the People’s Guerrilla Army was weak on that point and was confronting strong enemy forces and, therefore, there was need to protect the leadership, forces, people’s

support and arms & ammunition in view of the Party's final objective of defeating the enemy forces.

39. It was further discussed that enemy's armed forces should be destroyed bit by bit through guerrilla methods of warfare. When sufficient arms were acquired the PLGA should be expanded by going into new formations through development of platoons and companies, improving the training, and qualitatively developing these into battalions and divisions.

40. Another document was recovered from the pen-drive of Shri Varavara Rao, which deals with the work in urban areas. This is also a literature of the banned organization. The first chapter mentions that the urban movement was one of the main sources which provided cadres and leadership having various types of capabilities essential for the people's war and for the establishment of liberated areas. It is mentioned that the Party must have a comprehensive line of revolutionary struggle, including armed struggle, for the urban areas also in conformity with the line of protracted people's war, i.e., the line of liberating the countryside

and encircling urban areas from the countryside first, and then capturing the urban areas.

41. In Chapter-3 there is a discussion about the Party building and the discussion mentions that the best elements that emerged through the struggles should go through a process of politicization in struggle, ideological and political education in activist groups, study circles and political schools, and consolidation into party cells.

42. Chapter-4 refers to Military Tasks and sub-chapter 4.4 thereof speaks about sending cadre to the rural areas and the PLGA. A steady supply of urban cadre was felt necessary to fulfill the needs of the rural movements as they were required for various tasks involving technical skills and the responsibilities were placed on the Party organization for providing such cadre.

43. Thus, the case of the investigating agency is that the banned organization was operating in different ways to achieve its objects. Different members were entrusted with different activities, which was part of the larger conspiracy. According to the

investigating agency, the applicant was mainly involved in recruiting cadre. This was in consonance with the Party's tactics and plans. According to Mrs. Pai the applicant was an active member of the banned organization and, therefore, he was charged with all the offences mentioned hereinabove.

44. For deciding this bail application, Section 43D sub-section (5) of the UAPA is very important, which reads thus:

“43D. Modified application of certain provisions of the Code.

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(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:

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.”

45. The language of Section 43D(5) of the UAPA needs special attention. There are other Statutes which put restrictions on grant of bail in relation to the offences committed under those Acts. For example, Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short, 'MCOCA') provides thus :

“21. Modified application of certain provisions of the Code:-

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(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall if in custody, be released on bail or on his own bond, unless-

- (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
- (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

46. However, there is a vital difference between the language of Section 21(4) of MCOCA and Section 43D(5) of the UAPA. This difference is explained by the Hon'ble Supreme Court in the case of **National Investigation Agency Vs. Zahoor Ahmad Shah Watali**⁷. This judgment lays down as to what should be the approach of the Court in deciding bail applications involving offences under Chapters IV and VI of the UAPA. Pursuant to those guidelines, I am deciding this application in the light of the observations made in this judgment.

47. The Hon'ble Supreme Court, in this case, was considering the question of grant of bail to an accused who was charged with various Sections, mainly under Chapters IV and VI of the UAPA as well as Sections 120B, 121 and 121A of I.P.C. The accused in that case was accused of raising funds in conspiracy with other accused.

48. In paragraph-21, the Hon'ble Supreme Court stated the settled position about the matters to be considered for deciding an application for bail. Those principles provided for deciding

⁷ (2019) 5 SCC 1

whether there was any *prima facie* or reasonable ground to believe that the accused had committed the offence; nature and gravity of the charge; severity of the possible punishment in the event of conviction; danger of the accused not being available for trial; character, behaviour, means, position and standing of the accused; likelihood of repetition of the offence; possibility of tampering with the evidence; and possibility of justice being thwarted by grant of bail.

49. Paragraph-22 of the judgment reproduced Section 43-D of the UAPA. It is observed that, when it came to offences punishable under special enactments, something more was required to be kept in mind in view of Section 43-D of the UAPA.

50. Paragraphs-23 to 27 discussed the guiding principles in deciding bail applications for the offences under Chapter IV and VI of the UAPA. Since I am basing my order on these observations, it would be appropriate if these paragraphs are reproduced in this order. They are as follows :

“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "*prima facie*" true. By its very nature, the expression "*prima facie true*" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "*prima facie true*", as compared to the opinion of the accused "not guilty" of such offence as

required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act. Nevertheless, we may take guidance from the exposition in *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294*, wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paras 36 to 38, the Court observed thus:

- “36. Does this statute require that before a person is released on bail, the court, albeit *prima facie*, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?
37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.
38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all

probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. ... What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*.”

And again in paras 44 to 48, the Court observed:

“44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to

maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.
46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The

findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528, this Court observed:

‘18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in the case Puran v. Rambilas, (2001) 6 SCC 338:

8. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. ... That did not mean that whilst granting bail some reasons for *prima facie* concluding why bail was being granted did not have to be indicated.

We respectfully agree with the above dictum of this Court. We also feel that such

expression of *prima facie* reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned Counsel for the accused that the High Court was not expected even to indicate a *prima facie* finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a *prima facie* finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High

Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.'

48. In *Jayendra Saraswathi Swamigal v. State of T.N.*, (2005) 2 SCC 13 this Court observed:

'16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State v. Jagjit Singh*, (1962) 3 SCR 622 and *Gurcharan Singh v. State (UT of Delhi)*, (1978) 1 SCC 118 and basically they are – the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.'

24. *A priori*, the exercise to be undertaken by the Court at this stage – of giving reasons for grant or non-grant of bail – is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.
25. From the analysis of the impugned judgment - Zahoor Ahmad Shah Watali V. NIA, 2018 SCC OnLine Del 11185, it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 Cr.PC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is *prima facie* true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173

CrPC) and other material gathered by the investigating agency during investigation.

26. Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is *prima facie* true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.
27. For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of

evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.”

51. In paragraph-52, the Hon’ble Supreme Court has observed that the issue of admissibility and credibility of the material and evidence presented by the investigating officer would be a matter for trial.

52. These guiding principles direct the Courts to consider the totality of the material gathered by the investigating agency and the Court was not expected to analyze individual piece of evidence or circumstance. Importantly, it was clearly observed that the question of discarding a document at the stage of bail on the ground of that document being inadmissible in evidence was not permissible. The issue of admissibility of the document or evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is. The degree of satisfaction is lighter when the Court has to opine that the accusation is ‘*prima facie* true’.

53. Therefore, I am considering the totality of the material gathered by the investigating agency against the applicant, keeping in mind above principles. My observations are made only for deciding this bail application. The trial Court shall decide the trial in accordance with law on the basis of evidence led before it.

54. The State's affidavit mentions that the investigating agency was relying on a few documents recovered during the investigation to support their case against the applicant. These documents are as follows.

55. Document No.1 is a letter written to Surendra by an unknown writer, which is recovered from the computer of the accused Surendra Gadling. The letter starts with the discussion on efforts needed to extend financial help to cover legal defence of a Party worker Murugan and the members of F.F. in Jharkhand. Surendra was instructed to ask 'Arun' to manage the financial expenses of these cases. The letter further mentions thus, "Radical student union initiative by Arun and Vernon appears to be going in the right direction. Mahesh and Nandu have reached to us safely

on 3rd Jan. Both are extremely inspired by Arun and Vernon's struggle, and have shown utmost dedication through Bolshevik training. Sometime in May-June we are expecting 2-3 PR's from TISS and other institutions where the students are inclined to follow the path of revolutionary politics and Bolshevism. Their responsibilities would be to create and translate propaganda material in Hindi." In the letter, further information is sought about the IAPL conference which was to be held in March-April.

Mr. Mihir Desai submitted that this letter does not show that the applicant was taking active part in the activities of the banned organization. There is a vague reference to his name. According to him the document is inadmissible.

Mrs. Pai submitted that this document was recovered from the device of Surendra Gadling. The letter mentions that radical student union initiative by Arun and Vernon was going in the right direction. House search panchnama of the applicant carried out on 28.8.2018 mentions that literature concerning Radical Study Circle was recovered from the applicant's house. Mrs. Pai, therefore, submitted that the leaders of the banned

organization were happy about the efforts taken by the applicant in respect of the Radical Student Union. According to Mrs. Pai finding of such literature pertaining to Radical Study Circle corroborates this particular document and that the letter indicates that some students were expected to join the Party to follow the path of revolutionary politics and Bolshevism. There is a reference to two members, namely, Mahesh and Nandu, who were inspired by the applicant's struggle. According to Mrs. Pai, the term 'PR' stands for 'Professional Revolutionaries'. Thus, the applicant was instrumental in recruiting such members through his movement of 'Radical Study Circle'.

Mrs. Pai submitted that document No.1 mentions that the senior Party leaders were satisfied that the Radical Student's Union initiative by Arun and Vernon was going in the right direction. She submitted that finding of this literature directly shows the applicant's active involvement in propagating ideology of the banned organization through this Radical Study Circle. The same document mentions that the Party was expecting 2-3 PRs from TISS. Mrs. Pai, therefore, submitted that there is sufficient

material to show that the applicant had recruited some students from TISS. Significantly, the literature of Radical Study Circle found in his house was in respect of TISS Student Union. According to Mrs. Pai, the applicant was not concerned with TISS and yet this literature concerning TISS Student Union in his possession shows his direct contact and connection with such initiative of recruiting cadre from TISS.

56. Document No.2 is a letter written by one R dated 18.4.2017 and addressed to Comrade Prakash. The letter opens with the line “Regarding the current situation here Arun, Vernon and others are equally concerned about the two-line struggle that is slowly taking shape on the urban front. Followed by the very unfortunate demise of Bijoy da. He was a strong leader with great vision and selfless devotion to the party and the Red revolution!” The same paragraph in the letter ends with the expectation that Prakash would have received the details of the meeting and requirement of Rs.8 Crores for annual supply of M4’s with 400000 rounds.

This letter also mentions that on 20th April a programme

was to be organized under the banner of 'Committee for the Defence and Release of G. N. Saibaba'.

Mr. Mihir Desai submitted that this letter is inadmissible. The author is not known and even there is only a vague reference to the applicant. There is nothing to show that the person mentioned as "Vernon" is the applicant himself.

Mrs. Pai on the other hand submitted that this letter is corroborated by a Press Release dated 20.4.2017 issued by the 'Committee for the Defence & Release of Dr. GN Saibaba'. This particular document was dated 18.4.2017 and it mentions a programme which was to be organized on 20.4.2017 under the banner - "Committee for the Defence and Release of G.N. Saibaba'. Thus, this letter finds corroboration from the Press Release. The Press Release is corroborated further by a form submitted to the Press Club of India for holding that Press Meeting on 20.4.2017. Therefore, this letter is not vague and unsubstantiated document.

This letter mentions that Arun, Vernon and others were concerned about the two-line struggle that was slowly taking shape on the urban front. The letter mentions requirement of the Party to

procure arms and ammunition which is described as 'M4's with 400000 rounds'.

Mrs. Pai on the other hand submitted that the 'two line struggle' mentioned in this letter is the conflict between Delhi and West Bengal Party units that is reflected from an email recovered from Rona Willson's device. It was addressed to Comrade 'VV' by Chandrashekhar, both of whom were senior Party leaders. The same concern was expressed by the applicant. Mrs. Pai submitted that this document No.2 shows that the applicant was concerned about this conflict as a senior Party leader.

Mrs. Pai submitted that during investigation, the investigating agency had intercepted secret key required to open the documents. One such document which was opened with the said key was a letter written to Comrade Prakash by 'R'. According to the investigating agency 'R' stands for 'Rona Wilson'. This document is dated 26.12.2017 and it mentions that as per their conversation of April that year, they were in touch with the supplier through designated contact from Nepal. It was mentioned in the letter that they were losing dozens of Comrades in encounters and

there was pressing need to inflict heavy damage on the enemy forces which they were not able to do since 2013 Darbhanga ambush and that even the Sukma ambush of that year had not deterred the enemy in any significant way.

This letter was accompanied by specification and photographs of Grenade Launcher. This document and the photographs are part of the compilation tendered in the Court by Mrs. Pai, at page Nos.65 to 68. Mrs. Pai relying on this document and photographs submitted that this material sufficiently corroborates this document No.2.

57. Document No.3 is a letter written by Comrade Prakash to Comrade Surendra dated 25.9.2017. According to the State's affidavit it was recovered from Surendra Gadling's computer. Some significant lines from the letters are as follows :

“Enemy forces are overwhelming in most regions especially around MH/CHH border. PLGA strength is insufficient to protect all SC leaders, we are in the process to regroup and deploy more guards for the most senior leaders to ensure their survival. We are also working relentlessly to strengthen WG special zone through military and Bolshevik training on daily basis.”

There are references to a meeting held on 9th and 10th at Hyderabad and to the two pgp files containing elaborate observations of senior leader like 'Com G'. There is a mention regarding plans to launch further attacks after gauging strength of 'enemy forces'.

The letter further mentions that they were awaiting input from Surendra and local activists to gauge the strength of enemy forces before they launched further attacks and Surendra was instructed to arrange for wires, nails and nitrate powder. Surendra was further instructed to coordinate with Shoma Sen to ensure that all pgp files were securely wiped from all computers. It was further mentioned that 'Com.G' had specifically instructed to arrange 'APT' to meet with Com.Vernon before the end of that year and that 'Com.M' had expressed satisfaction with regard to Arun's efforts to motivate research scholars and to get them involved in the revolutionary movement.

Mr. Desai submitted that identity of 'Com.G' is not established and again there is only a vague reference to the applicant without attributing any active participation to him. The

name 'Vernon' may not necessarily refer to the applicant alone.

Mrs. Pai submitted that this letter mentions that there was a meeting (9-10) at Hyderabad. Comrade 'G' had specifically instructed to arrange APT to meet with Com.Vernon before end of the year. Mrs. Pai relying on the call data record of the applicant – Vernon, pointed out that his mobile phone location shows that he was in Hyderabad on 10.9.2017 which corroborates the letter which refers to a meeting at Hyderabad on 9th & 10th September. According to the investigating agency Comrade 'G' stands for Comrade 'Ganpati', who was a senior Party leader. Mrs.Pai further submitted that these two facts together leave no doubt that name 'Vernon' mentioned in all these documents means none other than the present applicant.

58. Mrs. Pai then relied on a document recovered from Surendra Gadling's computer which was addressed to Sudarshan Da by one 'SG'. According to the investigating agency, 'SG' means 'Surendra Gadling' and said Sudarshan Da was a Central Committee member. This letter is at page-70 of the compilation tendered by Mrs. Pai. This letter mentions that 'SG' was putting

forth requirement of about Rs.10.5 Lakhs to cover the expenses of IAPL/CRPP programmes and the legal costs for the most urgent cases. Mrs. Pai, therefore, submitted that the investigating agency's case that IAPL was a front organization finds support from this letter.

59. Mrs. Pai referred to a document written by Comrade 'M' to Comrade Rona dated 2.1.2018. This letter mentions that Comrade Manglu and Comrade Deepu were coordinating with Comrade Sudhir, and, that, Higher Committee had provided two rounds of funds to Comrade Sudhir. According to Mrs. Pai this 'Sudhir' was 'Sudhir Dhawale', who was mentioned in the FIR. This letter is at page-50 of the compilation tendered by Mrs. Pai.

60. Apart from these documents, the prosecution is relying on the statements of two witnesses, namely, (1) Sudarshan Ramteke @ Makbool @ Harsha @ Atul and (2) Kumarsai @ Ashok @ Ram Mohd. Singh @ Pahad Singh @ Jangaleshwar Singh as also the seizure panchnama carried out at his residence. The seizure panchnama dated 28.8.2018 shows some CDs, books, literature etc. were recovered from his residence.

61. The witness Kumarsai @ Pahad Singh's first statement is recorded on 2.11.2018. In that statement, he has stated that he is a resident of Chattisgarh. He is from a poor Adivasi Gond family and has completed education upto 12th standard. In the year 1999, he had gone to Khedepar village in Chattisgarh. There he came in contact with Devchand @ Chandu @ Naresh. He was a Naxalite Commandant. This witness was influenced by Devchand and agreed to work for Naxalites. He was included in their *Dalam* in the year 2000. He worked with them till 8.8.2018 and then he left their Party and surrendered before the police. He has stated that in the year 2008 he met Milind Teltumbde @ Deepak @ Jiva, who was Member of Central Committee of their Party – CPI(Maoist). He was the Secretary of Maharashtra State Committee. According to this witness, Milind Teltumbde issues Press-Notes by the name 'Sahyadri'. The statement further mentions that Surendra Gadling was given about Rs.2.5 Crores (in old notes) during demonetization. He has further stated that he was knowing Arun Ferreira since the year 2003. This witness has described Arun Ferreira as a Maoist Worker. This witness had attended North Gadchiroli–Gondia Division Conference in the year 2006. At that

time, Arun Ferreira was entrusted with the responsibility of continuing with agitation of Khairlanji. Arun Ferreira was arrested in the year 2007. After his release, the Party had asked him to continue his work by remaining underground. However, Arun Ferreira had informed that he would work for the Party from his house. This witness has further stated that since then Arun Ferreira was continuing with his work in the cities. The witness ended his statement by stating that CPI(Maoist) Party was creating a situation described as 'People's War'. They were infiltrating cities and various strata of the society, were creating unrest against the Government and were creating a war like situation. They are residing in jungle, but, they are known in the cities by different names.

62. The same witness i.e. Kumarsai @ Pahad Singh has given his supplementary statement on 23.12.2018. He has given a little more details regarding the operation of the Party. He has stated that the Maoist leaders were forming different associations under different names in different classes in the society. These leaders were continuously changing their names and were carrying

out their operations by remaining underground. The second group was residing in jungle and the members were creating their own armed forces. In this connection Arun Ferreira was described as a Maoist leader who was infiltrating the student's organizations and preparing cadre and was sending them to jungle. This witness had not actually seen the applicant, but, had heard that the applicant was working towards involving intellectuals in the Party work. This witness has taken names of other accused as well in the same context. He was shown a photograph and he has stated that said person was from Assam. In the year 2011, he had come to Gadchiroli by using name 'Aakash'. He was sending instructions to the Senior Cadre of the Party from cities according to the directions of 'C.C.' in the name of 'Prakash' and that he was in contact with C.C.M. Deepak.

63. The statement of witness Kumarsai @ Pahad Singh shows that he had not met the applicant but he was knowing Arun Ferreira personally and has spoken about his activities. Mrs. Pai pointed out that there was high number of communications between the applicant and Arun Ferreira from October, 2017 to

28.8.2018; for which period C.D.R. was obtained. This submission was based on the call data records of the applicant collected during the investigation.

64. The statement of Kumarsai @ Pahad Singh shows that one Prakash was sending instructions to the senior members of the Party from cities according to the directions of 'C.C.'. Thus, the Central Committee of the Party was getting in touch with the senior cadres through this Prakash. Document No.2 above was a letter written by one 'R' to Comrade Prakash and document No.3 above was a letter written by Comrade Prakash to Comrade Surendra. These facts in the light of Kumarsai @ Pahad Singh's statement show that the Central Committee of the Party was communicating with these senior members through this Prakash. Incidentally, Prakash is shown as one of the absconding accused.

65. Apart from this witness, the investigating agency has recorded statement of one Sudarshan Satyadev Ramteke @ Maqbool @ Harsha @ Atul on 21.1.2019. His statement makes no reference to the applicant.

66. The investigating agency is relying on the house search

panchnama conducted on 28.8.2018 during which different CDs and literature were seized. Mrs. Pai submitted that the final FSL report about the contents of the CDs is still awaited. However, she specifically relied on a pamphlet, having twelve pages, mentioning 'Radical Study Circle – radicalstudycircle@gmail.com', a booklet on 'S.Shridhar' and a book about struggle of Dandkaranya Adivasi Women.

67. Document No.1 speaks of the satisfaction of the Party in respect of the radical student initiative by Arun and Vernon. The document found in the house-search of the applicant was a literature in respect of 'TISS Student's Union's call' and it mentions the name 'Radical Study Circle – radicalstudycircle@gmail.com'. Thus, that particular document had direct nexus with the radical study circle. Mr. Mihir Desai tried to distinguish the name 'Radical Study Circle' from the reference 'Radical Student Union initiative' mentioned in document No.1 above. However, this distinction hardly makes any difference. Document No.1 expresses satisfaction of the Party regarding the Radical Student Union initiative by Arun and Vernon. Mrs. Pai rightly pointed out that the applicant was not

a member of the faculty of 'TISS' and there was no reason for him to keep this document in his possession. According to her, this document lends strong corroboration to the banned organization's reference to the applicant as having taken such initiative involving students. Though, Mr. Mihir Desai tried to contend that the applicant was invited to 'TISS' for delivering lecture, still this fact by itself does not take away from the corroborative value of this document in respect of the prosecution case that the Party had entrusted the work of recruiting cadres to the applicant. The same document No.1 mentions that 2-3 PRs from TISS were expected to join the Party lines. Mahesh and Nandu had already joined the Party and both of them were inspired by the applicant and Arun's struggle. Thus, these facts sufficiently establish *prima facie* the fact that the applicant, on instructions of the banned organization, was recruiting cadres from the institutions like TISS.

68. Document No.2 shows that the higher members of the Party were concerned about the two-line struggle within the Party. At this stage, the investigating agency is alleging that the two-line struggle meant the differences between the two units of the Party.

The applicant was equally concerned as high ranked members about the trouble within the Party. This shows that he was an important and active member of the banned organization. His concern was taken into consideration by the higher members of the Party.

69. Document No.3 mentions that an important member of the banned organization Comrade 'G' had sought APT with the applicant. This fact also shows that the applicant was a senior and important Party member. The same letter mentions about launching of further attacks and the armed forces of the State are described as 'enemy forces'. This document shows that there was a meeting in Hyderabad on 9th and 10th. The C.D.R. of the applicant shows that he was in Hyderabad at that time.

70. The reference to the applicant's name in all these documents cannot be read in isolation. These documents will have to be read in their entirety. These documents reflect the objectives of the banned organization, various steps taken by different members and what was expected of different members in achieving those objectives.

71. The above discussion shows that the investigating agency has sufficient material to show that the name 'Vernon' referred to in the above documents is in respect of the present applicant himself.

72. The statement of witness Kumarsai @ Pahad Singh shows that he had personal knowledge that Arun Ferreira was sending cadres to the jungle by infiltrating the students organizations. The allegations against the applicant are similar. In these documents, mentioned above, the applicant's name is taken along with his co-accused Arun Ferreira. Therefore, their association assumes importance. The Call Data Records (CDR) of the applicant's mobile phone shows that he was regularly in touch with Arun Ferreira. This is one more circumstance supporting the case of the prosecution.

73. The investigating agency has carried out house-search panchnama of the applicant. Out of which, the document relating to radical study circle is already discussed. The other document relied on by the investigating agency from that house search is about a booklet on one 'S.Shridhar'. He was the co-accused of the

applicant in the case in which the applicant was convicted. There is one article written by the applicant in that book. There are other articles written by other writers. One such article is written by Arun Ferreira where it is mentioned that after Shridhar's death in 2015, the CPI(Maoist) in its statement mentioned that his death was a major blow to the movement.

74. Apart from these two documents, the investigating agency is relying on a booklet mentioning 'Struggle of Dandkaranya Adivasi Women'. However, there is nothing in the charge-sheet to show that it was a booklet of a frontal organization of the banned organization.

75. The investigating agency, at this stage, is not relying on any other literature found from his residence to establish the *prima facie* case against the applicant. The ratio of Gujarat High Court's decision in **Vishvanath @ Vishnu Vardhraj Aaiyar's** case (supra), which is followed by this Court in **Jyoti Babasaheb Chorge's** case (supra) lays down that the possession of any literature by itself is not an offence unless any other act or actual execution of the ideas of the banned organization is attributed to the accused.

76. With the result, following points emerge from the above discussion:

- (i) The Party CPI(Maoist) is included in the Schedule of the UAPA vide notification dated 22.6.2009.
- (ii) The literature of the banned organization mentions its objectives and possible methods to achieve these objectives. Two of the important methods are recruiting cadres from urban masses through Student Unions and providing military training to such cadres.
- (iii) Important Party members were entrusted with the responsibility of recruiting cadres.
- (iv) One of the objectives of the banned organization was defeating 'enemy forces' with the use of weapons and by forming people's army.
- (v) There is a reference to Darbhanga ambush and Sukma ambush. Thus, the banned organization was using firearms and lethal weapons for causing heavy damage.
- (vi) The State armed forces were treated as 'enemy forces'.

- (vii) One of the important tasks was recruiting cadres and there is material in the charge-sheet to show that *prima facie* the applicant had actively worked towards fulfilling that responsibility.
- (viii) The investigating agency has material to show *prima facie* that the applicant is a senior active member of the banned organization.
- (ix) Learned Special Judge, Pune under UAPA has rightly considered the material before him while rejecting the applicant's bail application.

77. The main offences under Sections 121, 124A, 153 etc. of IPC as well as under Sections 13, 16 of the UAPA are alleged against the banned organization. The investigating agency has material which *prima facie* shows that the applicant was part of the larger conspiracy and had abetted it attracting Section 121A, 117 and 120B of I.P.C. as well as Section 18 of the UAPA against him. The applicant's specific act of recruiting members for banned organization is punishable under Section 18B of the UAPA. The applicant being an active member of the banned organization

attracts Section 20 of the UAPA against him. Similarly, Sections 38 and 39 of the UAPA are also attracted against the present applicant.

78. As a result of the above discussion, I find that, there is sufficient material in the charge-sheet against the applicant. There are reasonable grounds for believing that the accusation of commission of the offences punishable under Chapters IV and VI of the UAPA against the applicant is *prima facie* true. Considering the express bar imposed by Section 43D(5) of the UAPA, the applicant cannot be released on bail. The other argument regarding his achievements in the field of academics and his continued detention in jail for a long period cannot be taken into consideration. Hence, I pass the following order :

O R D E R

- (i) Criminal Bail Application No.3007/2018 is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)