

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 463 of 2021

Hitesh Agrawal S/o Shri Om Prakash Agrawal, Aged About 40 Years R/o Kamthee Line, Rajnandgaon, District Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through Police Station Of Siksodh, Kanker, District Kanker Chhattisgarh, District : Kanker, Chhattisgarh

---- Respondent

CRA No. 302 of 2021

Varun Jain S/o Suresh Chand Jain Aged About 39 Years R/o House No. 78,ridhhi-Siddhi Colony, District- Rajnandgaon, Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station- Siksod, Tehsil- Antagarh, District-Kanker Chhattisgarh

---- Respondent

For Respective Appellants	:	Shri Kshitij Sharma Shri Siddharth Shukla, Advocates
For State	:	Shri Devendra Pratap Singh, Dy. A.G.

D.B. :Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

22/09/2021

Per Manindra Mohan Shrivastava, J.

1. These two appeals are being disposed off by this common order as the

appellants in these two appeals are accused in Crime No.9 of 2020 registered in Police Station – Siksodh, Tehsil- Antagarh, District- Kanker (CG).

2. The prosecution story is that on 24.3.2020, on the basis of a secret information, the police authority searched a vehicle which was being driven by one of the co-accused Tapas Palit. Upon search, large number of pairs of shoes, uniforms, bundles of electric wires, sets of walkie-talkie along with charger, LED lens and other articles found in the possession of Tapas Palit were seized. The offences were registered under Sections 10, 13, 17, 38 (1) (a) (2) and 40 of the Unlawful Activities (Prevention) Act, 1967 (for short “UA(P) Act”) as also under Sections 8 (2) (3) (5) of Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005. When the matter was further investigated, the investigating agency found that number of other persons/accused were found working in coordination to provide materials and also financial support to naxellites. In that connection, the role of the two appellants herein namely Hitesh Agrawal and Varun Jain were also investigated which culminated in filing of charge sheet against aforesaid two appellants and many others for alleged offences wherein it was alleged that the accused are involved in supplying various articles and providing funds to naxellites. The appellants were also arrested. Each of them preferred applications for grant of bail before the trial Court (NIA Act) which were eventually rejected, giving rise to these two appeals under Section 21 (4) of the National Investigation Agency Act, 2008.
3. Learned counsel appearing for appellant- Varun Jain argued that as far as this appellant is concerned, he is a Contractor and Proprietor of M/s. Landmark Royal Engineering (India) Pvt. Ltd., engaged in construction of roads and was awarded number of contracts of construction of roads in naxellite areas by the Govt. agency in the State of Chhattisgarh. He would submit that the work of contractor-ship was sublet to another construction company of one Ajay Jain named as Rudransh Earth Movers Road Constructions Company. The sub-contractor was given authority to carry out the work. Appellant – Varun Jain, as partner of the main construction

company which was awarded works contract, has nothing to do with the naxellite activity as such. This appellant, it is argued, is being involved only because during the course of business transaction, various payments were made to Ajay Jain, the Director of Rudransh Earth Movers Road Const. Company. Only on this basis, without anything more, it cannot be said that the funds which were being provided by the appellant through its company to the company of Ajay Jain were intended to provide financial support to naxellites because Ajay Jain is not directly involved in the financial transaction of appellant Varun Jain with the Govt. Once payments are made by appellant's company to Ajay Jain company, thereafter how Ajay Jain has been dealing with any other person or even naxellites does not in any manner connects the present appellant Varun Jain with the naxellite activity. Learned counsel for the appellant further argued that the call details contained in the CDR of appellant Varun with Ajay are not material to make out any prima facie case of involvement of appellant Varun Jain with other persons said to be associated with naxellite because those calls are in the course of routine business transactions and execution of construction work. Further submission is that even while making search and effecting seizure, the investigating agency did not comply with the mandatory provision contained in Section 25 of the relevant Act as no approval of the competent police authority was taken before effecting seizure. Relying upon the decision of Hon'ble Supreme Court in the case **Sudesh Kedia Vs. Union of India** (CRA No.314-315 of 2021 decided on 9th April 2021), it is argued that cases where financial supports were extracted by the persons involved in unlawful activities and payment allegedly made by way of extortion could not be said to be an act of funding terrorist organization. According to learned counsel for the appellants, in the present case, there is no evidence collected to show a direct financial transaction between the company of appellant- Varun Jain with the naxellites. The material evidence which has been collected by the investigating agency to prima facie establish connection and financial support to naxellites by Ajay Jain misses any such link of the appellant

Varun with the naxellites and he is being involved only because during business transaction, this appellant had dealing with the company of Ajay Jain, the sub-contractor.

4. Learned counsel appearing for other appellant- Hitesh Agrawal would submit that Hitesh is merely a supplier of articles which are openly sold in the market. Walkie-talkie is the article of supply in the open market and like any other purchaser of walkie-talkie, certain purchases are allegedly made by Ajay Jain from Hitesh. After purchase of walkie-talkies, how Ajay used those walkie-talkies and if at all, he has supplied these walkie-talkies to the naxellites, only on the basis of he selling walkie-talkie to Ajay, could not be said to be involved in the naxellites activity. According to learned counsel for appellant -Hitesh, if such an analogy and only on such material of sale and purchase to intermediaries is made a basis then perhaps in all cases where various articles are purchased by intermediaries who are said to be supplying those purchased articles to naxellites, traders in the open market would be involved and nobody would be left. Unless there is material to prima facie show that the traders in the open market knowing fully well that articles which are being sold by him are to be used by the naxellites and such sale transactions are intended to provide articles to be used in naxellite activities, no prima facie case can be said to be established. In support of his submissions, learned counsel for the appellant- Hitesh Agrawal would also rely upon the Supreme Court decision in the case of **Sudesh Kedia** (supra) as also decision in the case of **Faizan Khan Vs. State NCT of Delhi** (Bail Appln. 2725/2020, decided by the Delhi High Court).
5. On the other hand, learned counsel for the respondent- NIA would submit that the appellants are those who are involved in the network of supply of various articles and providing financial support to naxellites activities. He would submit that the matter was investigated in detail after seizure was made from Tapas Palit. Memoranda of Tapas and other accused were also recorded and in their memoranda, they have disclosed the *modus operandi* and networking for support to naxellite activity by providing

various articles used in a naxellite activity as also design and conspiracy to siphon public fund in the name of construction of roads to reach ultimately in the hands of naxellites. The two appellants are found to be closely associated with Ajay, the other co-accused, who in turn is alleged to be in close contacts of naxellites and arranging various supply to them including financial support. Referring to details of the prosecution case as contained in the charge sheet which is an elaborate document, it is argued that the network and the *modus operandi* of support and supply system to naxellite was unearthed after a detail investigation, close contact, supply of material, chain of supply, persons involved in sale and purchase as also the manner in which in the name of construction company the entire work was given to Ajay and all the payments made from public fund towards construction of road and other construction activities were being siphoned and supplied and provided to naxelites.

6. We have heard learned counsel for the parties and perused the voluminous records contained in the charge sheet which includes memoranda/disclosure statement, various articles seized, article like shoes, uniforms, walkie-talkies, bundles of wires and other articles as also various papers of transaction between the appellant on one side and other co accused particularly Ajay Jain.
7. Before proceeding further, we consider it apposite to refer to the scheme of the NIA Act in the matter of grant of bail. The UA(P) Act, makes for special provision with regard to grant of bail, as contained in Section 43-D thereof, providing for modified application of certain provisions of the Code. Section 43-D being relevant are reproduced herein-below-

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

(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section

2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in subsection (2),—

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.”.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under

this Act subject to the modification that—

(a) the reference in sub-section (1) thereof

(i) to “the State Government” shall be construed as a reference to “the Central Government or the State Government”,

(ii) to “order of the State Government” shall be construed as a reference to “order of the Central Government or the State Government, as the case may be”; and

(b) the reference in sub-section (2) thereof, to “the State Government” shall be construed as a reference to “the Central Government or the State Government, as the case may be”.

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(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.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

8. The aforesaid provisions were considered by Hon'ble Supreme Court in the case of **National Investigating Agency Vs. Zahoor Ahmad Shah Watali** (2019) 5 SCC 1.

While re-stating the settled legal position about matters to be considered for deciding an application for bail, Their Lordships in the Supreme Court examined the aforesaid statutory scheme contained in Section 43-D of the UA(P) Act. Their Lordships delineated the approach required to be adopted by the Court while considering applications for grant of bail, keeping in view the provision contained in proviso to sub-section (5) of Section 43-D of the UA(P) Act. The provision of other special enactments like TADA and MOCOCA which also contained special provision were also taken into consideration to point out 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 of such offence on one hand and the satisfaction to be recorded for the purpose of UA(P) Act that

there are reasonable grounds for believing that accusation against accused is "prima facie true". Their Lordships held:-

"23. By virtue of the proviso to subsection (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 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 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 concerned accused 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 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.".....

Their Lordship also referred to its earlier decision in the case of *Ranjitsingh Brahmajeetsingh Sharma Vs. State of Maharashtra (2005) 5 SCC 294* wherein the scope of power of the Court to grant bail was considered. It was held "-

"23.....Nevertheless, we may take guidance from the exposition in the case of *Ranjitsing Brahmajeetsing Sharma (supra)*, wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paragraphs 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 paragraphs 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 subsection (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*, this Court observed: (SCC pp. 53738, para 18)

‘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*¹⁴ : (SCC p. 344, para 8)

“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 dutybound 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 nonconsideration 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.*, this Court observed: (SCC pp. 2122, para 16)

'16. ... The considerations which normally weigh with the court in granting bail in nonbailable offences have been explained by this Court in *State v. Capt. Jagjit Singh* and *Gurcharan Singh v. State (Delhi Admn.)* 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. As to what would be the ambit and scope of exercise required to be

undertaken by the Court at this stage was also propounded as below:-

“24. A priori, the exercise to be undertaken by the Court at this stage of giving reasons for grant or nongrant 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 (2005) 2 SCC 13 (1962) 3 SCR 622 (1978) 1 SCC 118 probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise. ”

9. In the case in hand, as is seen from the prosecution case, memoranda of various accused, articles seized, papers relating to financial transaction, CDR what is prima facie revealed is that under ingenious design/ network of functioning, as is alleged, appellant Hitesh was engaged in purchasing walkie-talkies from another company placed at Delhi and then these walkie-talkies were being sold to co-accused Ajay. Though learned counsel for the appellants argued that such walkie-talkies are openly sold in the market and anybody can purchase, at this stage, there is substance in the submission of learned counsel for the respondent that the material on record prima facie reveal that the walkie-talkies were being purchased by Hitesh and in turn given to Ajay knowing that they were to be supplied to naxallites and for that purpose, sales were made on rate higher than that prevalent in the market. Further, the walkie-talkie sets which have been purchased also includes sophisticated sets of wider range which could not be sold without proper licence. It has also been alleged on the basis of material contained in the charge sheet that other co-accused Dayashankar Mishra also contacted appellant Hitesh and he was also provided walkie-talkie of high frequency. When the investigating agency carried out search and seized transactions details, it was found that though there were document available with regard to sale and purchase between accused-

Hitesh with the supplier company, there were no receipts or bills regarding sale to Ajay and Dayashankar Mishra, the co-accused. According to prosecution, the name of the appellant Hitesh has been mentioned as one involved in the entire activity and networking.

10. As far as other appellant -Varun is concerned, prosecution case is founded mainly on a close-knit connection between Varun and other co-accused Ajay as contractor and sub-contractor and it is prima facie revealed from the material contained in the charge sheet that huge payments were being continuously made by the present appellant Varun to Ajay in the name of payment towards construction work. It has been found that appellant Varun, for all practical purposes, had handed over the work of construction in various area, completely in the hands of Ajay Jain. He used to receive payments from concerned Division where the work was going on and made those payments to Ajay. Ajay has been found to be closely associated with providing financial support to naxellites. Moreover, in the memorandum statement of accused Mukesh Salam, Rajendra Salam, Arun Thakur and others, it has been stated that supply of various articles and financial support used to be made after due permission and consent of appellant Varun Jain. CDR reveal large number of calls made between Varun and Ajay Jain, one as the Director of M/s. Landmark Royal Engineering Private Ltd. Rajnandgaon and the other as the Director of Rudransh Earth Movers Road Construction company operating in the naxellite area.

11. The totality of the material which has been collected by the investigating agency with regard to role of appellant Hitesh and Varun, prima facie reveal close contact and association of these appellants with the other co-accused who are said to be involved with the naxellites by providing various articles for their support including financial support.

12. Applying the principles embodied under proviso to Section 43-D (5) of UA(P) Act, adopting the approach as for the guidelines of the Supreme Court in the case of **Zahoor Ahmad Shah** (supra), we are of the opinion that there are reasonable grounds for believing that the accusation against the

appellants are prima facie true. We have formed this opinion keeping in view the test laid down by the Hon'ble Supreme Court as to whether a prima facie case is made out because, it has been held that the expression "prima facie true" would mean that the material/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 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.

Further more, the test applied is that the decree 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.

13.The appellants also raised another ground for seeking bail that one year has elapsed. Though appellant Varun has been arrested on 2.7.2020 and appellant Hitesh Agrwal was arrested on 8.6.2020, the criminal case is at its nascent stage and there are large number of witnesses, more than hundred, which are to be examined which has not even begun. Learned counsel for the appellant prayed for grant of bail by relying heavily upon this ground on the submission that even if the principle of "jail not bail" is applicable in view of the nature of accusation under the special provision contained in UA(P) Act, the accused are nevertheless entitled to expeditious trial which is essential concomitant of Article 21 of the Constitution of India and in the name of serious accusation and prima facie material, they could not be continued under pre-trial detention when the trial is unduly delayed and not likely to be concluded early, the appellant ought to be released on bail by imposing appropriate onerous conditions to ensure their presence during trial.

14.It is true that the appellants have remained in jail for last more than one year but there is no material progress in the trial as such, owing to many

extraordinary situations including pandemic situation and but for that the trial would have certainly advanced, bail may not be granted unless the Court finds that the delay in trial is so much so that it becomes imperative for the Court to release the accused on bail only on that ground. In the case of **Supreme Court Legal Aid Committee Representing Under-trial Prisoners Vs. Union of India & Ors.** (1994) 6 SCC 731, an issue arose for consideration as to whether in view of bar created under Section 37 of NDPS, undertrial prisoners should be admitted to bail only on the ground of delay in trial. The Supreme Court had an occasion to deal with the situation where the accused charged of commission of offence under NDPS Act, were in jail and trial was being inordinately delayed. It was observed as below :-

“15.We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *A.R. Antulay v. R.S.Nayak*, (1992) 1 SCC 225, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the

demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he

contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us.” A series of directions were issued by the Supreme Court as to how the accused of undertrial prisoners who were charged of commission of offence under the NDPS Act have to be dealt with in the matter of bail, depending upon the gravity of offence and period of undertrial detention as below -

- (i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.
- (ii) Where the undertrial accused is charged with an offence(s) under the Act

providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer

concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the

Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code."

Their Lordships in the Supreme Court, however, clarified that those directions intend to operate as one-time direction for cases in which accused are in jail and trials are delayed and they are not intended to interfere with the Special Court's power to grant bail under Section 37 of the NDPS Act in following words -

"16. We may state that the above are intended to operate as one-time directions for cases in which the accused persons are in jail and their trials are delayed. They are not intended to interfere with the Special Court's power to grant bail under Section 37 of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we

grant liberty to apply in case of any difficulty in the implementation of this order.”

15. A Division Bench of the Calcutta High Court in the case of *In Re : Sanawar Ali Vs. Union of India* (AIR Online 2020 Cal. 561) considered the aforesaid directives of the Supreme Court in the case of **Supreme Court Legal Aid Committee** (supra). The argument that such directions were intended to operate as “one time measure” was also dealt with and it was noted that subsequently, those very directions were extended to the State of West Bengal and other States vide order dated 17/04/1995 in the case of **Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India and another**, (1995) 4 SCC 695. It was further held that the directives given by the Supreme Court is applicable to achieve universal equality and directives may be extended to all undertrials who are similarly situated and are suffering protracted detention through out the length and breadth of the country.
16. Keeping in view of the aforesaid considerations, in our view, at this stage, we are of the opinion that the period of under trial detention is not so long as to grant bail to the appellant only on this ground, notwithstanding the statutory scheme engrafted under Section 43-D (5) of the UA(P) Act.
17. In the result, we do not find good ground to interfere with the order passed by the trial Court which has rejected the bail application taking into consideration the material contained in the charge sheet and satisfaction of prima facie case against the appellants in the matter of accusation under UA(P) Act.
18. At the same time, taking into consideration that the appellants are in jail for last more than one year, we are inclined to direct the trial Court to expeditiously proceed with the trial of the case in all stages without granting unnecessary adjournment to any of the parties unless it becomes absolutely imperative and ensuring presence of the witnesses on all dates of examination of witnesses, if necessary, by adopting coercive means as

are available under the law where the witnesses fail to appear despite issuance of summons.

19. In the result, subject to the aforesaid observations, both the appeals are dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge