



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 232 OF 2022

Mahesh Sitaram Raut	]	
Aged 33 Years, Occ. Researcher and Teacher	]	
R/o. Lakahpur, Post : Morshi,	]	
Tal : Brahmapuri, Dist.: Chandrapur	]	
Presently lodged in	]	
Taloja Central Prison, Raigad	]	... Appellant

V/s.

1. The National Investigation Agency	]	
Through its Superintendent	]	
Having his Office At :	]	
Cumballa Hills, Peddar Road,	]	
Mumbai – 400 026.	]	
2. The State of Maharashtra	]	
Office of Learned Public Prosecutor	]	
High Court at Bombay.	]	... Respondents

Mr.Mihir Desai, Senior Advocate a/w. Ms.Pritha Paul, Ms.Devyani Kulkarni & Mr.Swaroop Nair i/b. Mr.Vijay Hiremath for Appellant.

Mr.Devang Vyas, Additional Solicitor General of India a/w. Mr.Sandesh Patil, Mr.Chintan Shah, Mrs.Anusha Amin & Mr.Shrikant Sonkawade for Respondent No.1-NIA.

Mrs.A.S. Pai, PP a/w. Mrs.S.D. Shinde, A.PP for Respondent No.2-State.

**CORAM : A. S. GADKARI AND
SHARMILA U. DESHMUKH, JJ.**

Reserved On : 12th September 2023.

Pronounced On : 21st September 2023.

JUDGMENT (Per : A.S. Gadkari, J.)

1) Appellant, original accused No.5, has impugned Order dated 23rd November 2021 passed below Exhibit-507 in Special Case No. 414 of 2020 alongwith Special Case No. 871 of 2020, by the learned Special Judge (N.I.A.), City Civil & Sessions Court, Greater Mumbai, rejecting his application for bail under Section 439 of Criminal Procedure Code (*for short, "Cr.PC."*), by preferring present Appeal under Section 21 (4) of The National Investigation Agency Act, 2008 (*for short "N.I.A. Act"*).

2) Heard Mr.Mihir Desai, learned senior counsel for Appellant, Mr.Devang Vyas, learned Additional Solicitor General of India for Respondent No.1-NIA and Mrs.Pai, learned P.P. with Mrs.S.D. Shinde, learned A.P.P. for Respondent No.2-State. Perused entire record produced before us.

3) Appellant is arraigned as accused No.5 in FIR No. RC-01/2020/NIA/MUM registered by National Investigation Agency (*for short "NIA"*) under Sections 120-B, 115, 121, 121-A, 124-A, 153, 201, 505(1)(b) along with 34 of the Indian Penal Code, 1860 (*for short "IPC"*) and under Sections 13, 16, 17, 18, 18B, 20, 38 and 39 of The Unlawful Activities (Prevention) Act, 1967 (*for short "UAP Act"*).

4) The facts which are necessary to decide present Appeal can briefly be stated as under :

- (i) On 31.12.2017, Bhima Koregaon Shaurya Din Prerana Abhiyan, organised an event called 'Elgaar Parishad' in Shaniwarwada, Pune (for short "Elgar Parishad Program"). It was decided to celebrate 200th anniversary of the historic battle of Bhima Koregaon on 01.01.2018 by more than 200-250 Social organisations under the banner of '*Bhima Koregaon Shaurya Din Prerana Abhiyan*'. The program was held from 2:30 p.m. to 10:00 p.m. On 01.01.2018, mobs bearing saffron flags attacked persons travelling to and returning from Shaniwarwada Pune. There was large scale violence and one youth lost his life.
- (ii) A Zero(0) FIR was registered on 02.01.2018 at Pimpri Chinchwad Police Station, Pune by an eye-witness, Ms. Anita Salve under various provisions of IPC, Arms Act, 1959, Maharashtra Police Act, 1951 and Scheduled Castes and Scheduled Tribes (Previsions of Atrocities) Act, 1989) (*for short "SC & ST Act"*) alleging involvement of Sambhaji Bhide, Milind Ekbote and their followers for the attack and violence. A State wide bandh was also called by several Dalit, OBC, Maratha and Muslim organisations against the attacks across Maharashtra State thereafter.

(iii) On 08.01.2018, first informant Mr. Tushar Damgude, registered FIR No. 4 of 2018 under the provisions of Sections 153-A, 505(1)(b), 117 read with 34 of IPC stating that, the Elgar Parishad Program organised at Shaniwarwada, Pune on 31.12.2017 was attended by him at around 2:00 p.m., wherein there were a few speakers, compere, singers and other performers who performed on stage. That the speakers gave provocative speeches, their performances were provocative in nature and had the effect of disrupting communal harmony. It is stated that, banned terrorist organisation Communist Party of India (Maoist) (*for short* “CPI(M)”) had an organisational role to play in arranging the said program. CPI(M) wanted to infiltrate, inculcate and permeate its ideology amongst the masses, mostly impoverished classes and misguide them towards violent unconstitutional activities. According to the complainant Kabir Kala Manch's (*for short* “KKM”) Sudhir Dhawale, other members and activists had performed provocative street plays in different areas of Maharashtra earlier, made malice speeches and spread false history, made disputable statements and objectionable slogans inciting passion and hatred to disrupt communal harmony, sung songs and participated in road dramas. On 31.12.2017, these very activists amongst others performed skit / stage plays at the 'Elgar

Parsihad Program'. As a direct result of which, on 01.01.2018 there were incidents of violence, arson, stone pelting and caused death of an innocent person near Bhima Koregaon, Pune.

- (iv) Houses of Rona Wilson (A. No. 2), Surendra Gadling (A. No.3), Sudhir Dhawale (A. No.1), Harshali Potdar, Sagar Gorkhe (A. No.13), Deepak Dhengale, Ramesh Gaichor (A. No.14) and Jyoti Jagtap (A. No.15) were searched by the police. Articles and incriminating material seized during search was sent to the Forensic Science Laboratory, Pune. Analysis of the seized electronic / digital articles confirmed that accused Surendra Gadling, Rona Wilson, Shoma Sen (A. No.4), **Appellant** (A. No.5), Comrade M. @ Milind Teltumbade (WA-1 - now deceased), Comrade Prakash @ Navin @ Rituprn Goswami (WA-2 - absconding), Comrade Manglu (WA-3 -absconding), Comrade Deepu (WA-4 - absconding) are involved in the crime. During investigation, the investigating officer invoked provisions of Sections 13, 16, 17, 18, 18(B), 20, 38, 39, and 40 of the UAP Act.

- (v) Accused Surendra Gadling, Rona Wilson, Smt. Shoma Sen, **Appellant** (A. No.5) and Sudhir Dhawale were arrested on 06.06.2018. Residences of Smt. Shoma Sen and **Appellant** (A. No.5) were searched, and Police seized digital devices and other articles. The articles and material seized showed involvement of

more accused, viz; Varavara Rao (A. No.6), Arun Ferreira (A. No.8), Smt. Sudha Bharadwaj (A. No.9), Vernon Gonsalves (A. No.7), Stan Swamy (A. No.16), Gautam Navlakha (A. No.11) and Dr.Teltumbde (A. No.10). Their names were added as accused on 23.08.2018 in present crime.

(vi) Searches were conducted on 28.08.2018 at the residences/workplaces of Varavara Rao, Smt. Sudha Bharadwaj, Arun Ferreira, Gautam Navlakha, Stan Swamy and Vernon Gonsalves. Police arrested Varavara Rao, Smt. Sudha Bharadwaj, Gautam Navlakha, Arun Ferreira and Vernon Gonsalves and put them under house arrest. On 15.11.2018, Pune Police filed chargesheet under Sections 153-A, 505(1)(b), 117, 120-B, 121, 121-A, 124-A and 34 IPC and Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the UAP Act against Sudhir Dhawale, Surendra Gadling, Shoma Sen, **Appellant** (A. No.5), Rona Wilson and five absconding accused persons namely Kishan da @ Prashanto Bose (WA-5), Milind Teltumbde, Prakash @ Rituparn Goswami, Deepu and Manglu.

Subsequently, on 21.02.2019, Police filed Supplementary Chargesheet under Sections 153-A, 505(1)(b), 117, 120-B, 121, 121-A, 124-A & 34 IPC and Sections 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the UAP Act against Varavara Rao, Arun Ferreira,

Vernon Gonsalves and Sudha Bharadwaj and one absconding accused namely Ganapathy @ Mupalla Laxman Rao (WA-6).

- (vii) On 14.11.2018, the Competent Authority granted sanction for prosecution under the U.A.P. Act.
- (viii) On 15.11.2018, chargesheet was filed against the first five accused including **Appellant** in the above case under various provisions of IPC and UAP Act.
- (ix) On 21.02.2019 a further supplementary Chargesheet was filed against four more accused persons in the above case.
- (x) Appellant filed an application for bail under Section 439 of CrPC before the learned Additional Sessions Judge at Pune, which was rejected by an Order dated 06.11.2019.
- (xi) On 24.01.2020, the Under Secretary to the Government, Ministry of Home Affairs, New Delhi, directed the Respondent No. 1 - NIA to take up the investigation of FIR No. 4/2018 of Vishrambaug Police Station. NIA re-registered FIR RC-01/2020/NIA/Mum u/s. Sections 153-A, 505(1)(b), 117, 34 IPC and Sections 13, 16, 18, 18B, 20 and 39 of UAP Act on 24.01.2020.
- (xii) On 09.10.2020, Respondent No.1-NIA filed Chargesheet in the present crime against five accused including Appellant as Accused No.5.

(xiii) Appellant thereafter preferred an application for bail below Exhibit-507. Learned Special Judge (NIA) for Greater Mumbai by its impugned Order dated 23.11.2021 has rejected the said application.

(xiv) Appellant filed this Appeal on 23.02.2022. The Respondent No.1-NIA filed its Affidavit-in-Reply dated 14.03.2023 to the Appeal.

5) Mr.Desai, learned senior counsel for Appellant submitted that, the Appellant is a highly educated person, has done his M.A. in Social Work from Tata Institute of Social Sciences (TISS), Mumbai and M.A. in Political Science from the Rashtra Sant Tukdoji Maharaj University (RTMU), Nagpur. That, upon completing his MA from TISS, he received a Special Fellowship from the said institute to conduct research on 'Conflict and Development Concerns in Central India'. After completing the said Fellowship, Appellant was selected for the prestigious Prime Minister Rural Development Fellowship Programme and was allocated to work with the District Collector, Gadchiroli. That, during his said Fellowship, Appellant in coordination with the District Collector was successful in liaising between the locals and the Government. That, the Appellant has written several articles in local media on issues concerning indigenous people and their rights. He was selected to attend an International Youth Development and Education Programme in July-August 2017 conducted at Brazil.

5.1) He submitted that, the Appellant stands on a better footing than the co-accused, namely, Dr. Anand Teltumbde (A. No.10), who has been granted bail by this Court by its Order dated 18th November 2022. That, the Petition for Special Leave to Appeal (Crl.) No. 11345 of 2022 preferred by the Respondent No.1-NIA against the said Order, has not been entertained by the Hon'ble Supreme Court and by its Order dated 25th November 2022 has dismissed it.

5.2) Mr.Desai submitted that, the allegations against the Appellant are three fold i.e. (i) Membership of the banned organization, (ii) He was given task of recruitment of persons in the said organization and (iii) handling of funds of the organization.

5.3) He submitted that, there is no material at all on record to substantiate the said allegations and to indict him in the present crime. He submitted that, the documents relied upon by the Respondent No.1-NIA (page 117/350 and 118/351) are recovered from the computers of co-accused Rona Wilson and Surendra Gadling respectively. That the document at page No.118 only refers the name of the Appellant as 'Mahesh'. That the statement of witness Ms.Sakhrani also do not indict the Appellant in commission of any offence as contemplated under Sections 13, 15 or 20 of the UAP Act. That there is no material at all to indicate that, the Appellant in fact recruited any person in the said party/organization.

5.4) In support of his submissions Mr.Desai relied on the decisions, namely, (i) Vernon Vs. State of Maharashtra & Anr., reported in 2023 SCC OnLine SC 885 and (ii) Dr.Anand Teltumbde Vs. National Investigation Agency & Anr., reported in 2022 SCC OnLine Bom 5174.

5.5) He submitted that, the prosecution has cited about 336 witnesses in the chargesheet. The Trial Court has not yet framed charge. No *prima-facie* case is made out by the Respondent-NIA against the Appellant. There are no antecedents at the discredit of Appellant. That, the Appellant is in jail for about five years and three months and therefore also, by applying the principles of law enunciated by the Supreme Court in the case of Union of India Vs. K.A. Najeeb, reported in (2021) 3 SCC 731, the Appellant may be released on bail.

6) Mr.Devang Vyas, learned Additional Solicitor General of India for Respondent No.1-NIA submitted that, the material relied upon by the NIA clearly indicates the activities of the banned Organization of which Appellant is an active member. The said material in undeniable and unequivocal terms establishes that, the Appellant is a member of the Communist Party of India (Maoist). He submitted that, the violence which took place at Bhima Koregaon wherein one person has died was a part of larger conspiracy. The Appellant had received certain funds from co-accused and he utilized it for the party work. He submitted that, testing the veracity of documents referred to and relied upon by the Appellant (page 117/350 and 118/351) at this

stage is not permissible. Its veracity and/or truthfulness has to be tested at the time of trial only and not at the stage of bail. By referring to statement of KW-4 dated 24.08.2020, Mr.Vyas submitted that, perusal of said statement also clearly indicates that, the Appellant was in continuous contact with other co-accused.

6.1) Mr.Vyas submitted that, during the investigation it was revealed that the Appellant is an active member of CPI (M) and also member of Central Convener Committee of the frontal organization i.e. Visthapan Virodhi Jan Vikas Andolan (VVJVA) and he took active part in furthering the unlawful activities of the banned organization with recruitment, funding and providing support to the CPI (M).

6.2) He submitted that, the whole network of the Maoist Cadre of CPI (M) systematically infiltrated in to Kabir Kala Manch and some of the members of Kabir Kala Manch were recruited in the Moist Party. He submitted that, during the course of investigation of present crime it is revealed that, the strategy and tactics of the CPI (M), a banned organization that, Dalit, Adiwasi and religious minorities are most important for the social section to be taken cognizance by the party of the proletariat leading the revolution. That the banned organization is intending to overturn the democratically elected Government by its activities being carried out by the persons like Appellant.

6.3) Mr.Vyas submitted that, upon analysis of hard-disc seized from accused Nirmala Kumari @ Narmadakka, in NIA RC-02/2019/NIA/MUM, Original CR No. 19/2019 registered at Purada Police Station, Gadchiroli on 02.05.2019 in connection with IED blast/landmine blast and killing of 15 Police QRT personnel and one private driver at Jambhulkheda village, Kurkheda, Maharashtra on 01.05.2019 at 11.40 – 12.00 hrs by Naxals of CPI (M), a proscribed terrorist organization, it is found that, images/videos of Appellant Mahesh Raut @ Rohit Verma delivering lecture in Gramsabha in 2017, letters of VVJVA etc are saved in her hard-disk which shows the links of Appellant with CPI (M). That the Appellant is also known by nick name 'Rohit Verma'.

6.4) He submitted that, the house searches of co-accused Shoma Sen and Appellant were conducted and electronic material in the computers, laptop, pendrive, memory cards were seized and was sent for analysis. That the analysis of the electronic material seized from co-accused clearly reveals that the Appellant and other co-accused are active members of CPI (M).

6.5) The communication/letter (page 117/350) seized from the co-accused reveals that, the Appellant was provided with Rs. Five Lakhs by the said organization for further providing it to the co-accused Surendra Gadling and Sudhir Dhawale for the work of Bhima Koregaon. He submitted that, therefore there is *prima-facie* material to indicate that, the Appellant is a member of the said organization, received funds from it and onward

transmitted it to co-accused for the Party work. That the Appellant was also instrumental in recruitment of persons in the said organization.

6.6) Mr.Vyas submitted that, the decisions relied upon by the Appellant in the cases of Dr.Anand Teltumbde (supra) and Vernon (supra) are not applicable to the Appellant. He relied upon the decisions of Hon'ble Supreme Court and this Court namely, (i) National Investigating Agency Vs. Zahoor Ahmad Shah Watali, reported in (2019) 5 SCC 1, (ii) Hany Babu Vs. National Investigation Agency, Criminal Appeal No. 351 of 2022, dated 19th September 2022, (iii) Jyoti Jagtap Vs. National Investigating Agency & Anr., Criminal Appeal No. 289 of 2022 dated 17th October 2022 & (iv) Dr.Anand Teltumbde Vs. National Investigation Agency & Anr., Criminal Appeal No.676 of 2021, dated 18th November 2022 : 2022 SCC OnLine Bom 5174. He submitted that, the parameters applied to the case of Hany Babu (supra) and Jyoti Jagtap (supra) while rejecting their bail applications be applied in the case of Appellant too. He submitted that, taking into consideration the role of Appellant and the material on record, *prima-facie* case against Appellant is made out and therefore his appeal may be dismissed.

7) The law relating to interpretation and application of Section 45-D(5) is well enunciated and crystallized by the Hon'ble Supreme Court by its various decisions.

7.1) The Hon'ble Supreme Court in the case of National Investigating Agency Vs. Zahoor Ahmad Shah Watali (supra) in para Nos.24 & 27 has held

as under:-

“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.

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”

7.2) In the case of Thwaha Fasal Vs. Union of India, reported in (2011) 4 SCC 240, the Hon’ble Supreme Court in para No.23 has held as under:-

“23. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied after examining the material on record that there are no

reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the Court while examining the issue of prima facie case as required by sub-section (5) of Section 43D is not expected to hold a mini trial. The Court is not supposed to examine the merits and demerits of the evidence. If a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is.”

7.3) In a recent decision, in the case of Vernon Vs. State of Maharashtra & Ors., reported in 2023 SCC OnLine SC 885, the Hon’ble Supreme Court in para No.15 has held that,

“15. Under ordinary circumstances in a petition for bail, we must point out, this exercise of analysis of evidence would not have been necessary. But in view of the restrictive provisions of Section 43D of the 1967 Act, some element of evidence-analysis becomes inevitable.”

8) Perusal of chargesheet indicates that, the concise allegations (draft Charge) against the Appellant along with other co-accused have been

stated in paragraph Nos. 17.8; 17.8.1; 17.10.1; 17.11 & 17.12 of the chargesheet. The said allegations can be broadly categorized under three heads, namely, (i) Membership of the banned organization, (ii) Recruitment of persons in the said organization & (iii) Handling/transfer of funds of organization to co-accused.

8.1) To support the said allegations, Respondent No.1-NIA has relied on the material in the form of statements of witnesses and communications seized from the computers of co-accused i.e. statement of Ms.Monika R. Sakhrani, statement of KW-4, a communication addressed by Com. Prakash to Com. Rona (page 117/350) seized from the computer of co-accused Mr.Rona Wilson and a letter seized from the computer of accused No.3 Surendra Gadling (page 118/351).

8.2) Perusal of statement of Ms.Monika Sakhrani discloses that, on being asked about the Appellant she has stated that, she knew him as he was a student of TISS. She also remembered him due to Gadchiroli issue. She had read in paper that Harshali and Appellant were found in Gadchiroli Jungle (forest).

As far as statement of Ms.Monika Sakhrani is concerned, it indicates the fact that, the Appellant was a student of TISS and as per the newspaper report, he along with Harshali were found in the Gadchiroli forest and nothing else.

8.3) The statement of KW-4 indicates that, the Appellant along with co-accused and other persons were working for CPI (M) being Urban Naxal Members.

Statement of KW-4 reveals that, the Appellant was working for CPI (M) as its Urban Naxal Member along with co-accused and other persons.

8.4) Perusal of communication (page 117/350) reveals that, the same is allegedly addressed by Com. Prakash to Com. Rona. Apart from the other facts mentioned in the said communication in its third paragraph it is stated that, as per the rules of the party in a meeting arranged at a Grampanchayat, the Appellant was handed over Rs. Five Lakhs for its onward transmission to Com. Surendra and Com. Sudhir and it was informed to them that the agitation of Bhima Koregaon appears to have been losing its intensity. It is also mentioned therein that, two comrades sent by Appellant (TISS Institute) have reached gorilla region safely.

8.4.1) As far as communication at page No.117/350 is concerned, though it refers to the name of Appellant and that he was handed over Rs. Five Lakhs for its onward transmission to other co-accused is concerned, the same is recovered from the computer of co-accused Mr.Rona Wilson. The other communication at page No.118/351 is seized from the computer of co-accused Surendra Gadling. These documents have not been recovered from the Appellant and therefore, as has held by the Supreme Court in the case of

Vernon (supra) these communications or contents thereof have weak probative value or quality. The contents of these letters through which the Appellant is sought to be implicated are in the form of hearsay evidence, recovered from co-accused.

8.4.2) Assuming for the sake of arguments, Com. Prakash had handed over Rs. Five Lakhs to the Appellant for its onward transmission or handing it over to Com. Surendra and Com. Sudhir, then there is no corroboration at all to it, that the Appellant in fact received the money and handed it over to co-accused. Merely because Com. Prakash says that he handed over the said amount to Appellant, it *ipso-facto* does not make Appellant recipient of it, for want of basic corroboration for it.

8.5) The letter at page 118/351 seized from the computer of Surendra Gadling (A-3) is addressed to the said co-accused by an unknown person. The author of the said letter refers only that, Mahesh and Nandu have reached to them safely on 3rd Jan..

As far as letter at page No.118 is concerned, in para No.43 of Dr.Teltumbde's decision (supra) it has been observed that, in the list of central committee members of CPI (M) Group at Sr.No.4 one Katkam Sudarshan @ Anand @ Mahesh @ Bhaskar appears as Central Committee and Polit Bureau Member of CPI (M). *Prima-facie* therefore it can be said that, the name 'Mahesh' in the said letter is a disputed identity of the said person.

9) No evidence of any of the persons who are alleged to have been recruited or have joined the organization through the Appellant has been produced on record and brought before us and therefore we are unable to *prima-facie* accept the contention of Respondent-NIA that, the Appellant has committed the offence relating to recruitment of persons into the said organization.

10) From the material on record it appears to us that, no covert or overt terrorist act has been attributed to the Appellant. The communications (page 117 & 118) seized from the computers of co-accused are in the nature of hearsay, as far as Appellant is concerned.

11) We are unable to accept submission of Mr.Vyas regarding application of parameters in the cases of Hany Babu (supra) and Jyoti Jagtap (supra) to the present case and we respectfully disagree with him on the said point. In those two cases, the considerations which weighed with us while rejecting their bail pleas were entirely different. For the sake of brevity, we are not repeating the same here, as it is not necessary. We therefore do not agree with the submissions of Respondent-NIA that, the Appellant's case can be equated with Hany Babu (supra) or Jyoti Jagtap (supra) and deserves to be dismissed.

12) In the present case, the incriminating material as adverted to herein above does not in any manner *prima-facie* leads to draw an inference

that, Appellant has committed or indulge in a 'terrorist act' as contemplated under Section 15 of UAP Act.

12.1) After taking into consideration the totality of entire material and evidence on record against the Appellant as noted herein above, this Court is of the view that, at the most it can be said that the Appellant is a member of CPI (M) and therefore it would attract provisions of Sections 13 and 38 of UAP Act. According to us, there is no material on record to indicate that, there are reasonable grounds for believing that the accusations against the Appellant under Sections 16, 17, 18, 20 and 39 of UAP Act are *prima-facie* true.

13) Section 13 of UAP Act provides for maximum punishment of imprisonment of 7 years. Section 38 of UAP Act provides for maximum punishment of imprisonment for a term not exceeding 10 years. The Hon'ble Supreme Court in the case of Vernon (supra) in para 42 has held that, as far as offence under Section 13 of UAP Act and the offences under IPC are concerned, the yardstick for justifying the Appellant's plea for bail is lighter in this context. That, in the cases of K.A. Najeeb (supra) and Angela Harish Sontakke Vs. State of Maharashtra, reported in (2021) 3 SCC 723, delay of trial was considered to be relevant factor while examining the plea for bail of the accused.

14) In view of the above discussion, we are of the *prima-facie* opinion that on the basis of the material placed before us by the NIA, it

cannot be said that there are reasonable grounds for believing that the accusations against the Appellant is *prima-facie* true to attract Sections 16, 17, 18, 20 and 39 of UAP Act.

15) The Appellant is in pre-trial incarceration for more than five years and three months. There are no criminal antecedents at the discredit of Appellant. Therefore in our opinion a case for grant of bail to the Appellant has been made out.

15.1) Hence, the following Order:-

- (i) The impugned Order dated 23rd November 2021 passed below Exhibit-507 in Special Case No. 414 of 2020 alongwith Special Case No. 871 of 2020 is quashed and set-aside;
- (ii) Appellant be released on bail in Special Case No.414 alongwith Special Case No.871 of 2020 arising out of RC-01/2020/NIA/MUM under Sections 120B, 115, 121, 121A, 124A, 153, 201, 505(1)(B) read with 34 of IPC and Sections 13, 16, 17, 18, 18B, 20, 38 and 39 of the UAP Act on his executing PR bond of Rs.1,00,000/- with one or more solvent local sureties in the like amount;
- (iii) Appellant is permitted to furnish cash bail for a period of 8 weeks from today and during the said period, Appellant shall comply with the condition of furnishing solvent local sureties as mentioned in para No.15.1(ii);

- (iv) Appellant shall not tamper with the evidence of prosecution nor influence the prosecution witnesses;
- (v) Before his actual release from jail Appellant shall furnish his contact numbers, both-mobile and landline and permanent residential address to the Investigating Officer and the learned Special Court before which the case of Appellant is pending;
- (vi) Appellant shall attend the concerned police station where he intends to reside after his release from jail, initially for a period of one year, once in a fortnight i.e. on every 1st and 16th of each English Calendar month and thereafter on every first Monday of the month between 10:00 a.m. and 12:00 noon, till conclusion of trial;
- (vii) Appellant shall not leave the jurisdiction of this Court without prior permission from the learned Special Judge (NIA), Greater Mumbai / Trial Court, if he desires to travel outside the jurisdiction of this Court;
- (viii) Appellant shall deposit his passport held by him before his actual release from jail, with the designated Special Court.

16) Appeal is accordingly allowed in the aforesaid terms.

17) After pronouncement of the present Judgment, Mr. Patil, learned Special P.P. appearing for the NIA requested this Court for stay of its

operation and implementation to enable NIA to challenge it before the Hon'ble Supreme Court. Though opposed by the learned Senior Advocate for Appellant, considering the fact that Appellant is in jail for more than five years and three months, effect of present Judgment and Order granting bail to the Appellant will remain stayed for a period of one week from today.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)