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CRLA.Nos.98, 114 & 116/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 04.10.2023 & 11.10.2023

DELIVERED ON 19.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CRLA.Nos.98, 114 & 116/2023
& CRL.MP.Nos.11595 & 8094/2023

Barakathullah

.. Appellant/A7
in Crl.A.No.98/2023

1.Idris @ M.A.Ahamed Idris
2.Mohamed Abuthahir
3.Khalid Mohammed

.. Appellants / A1, A3 &
A4 in Crl.A.No.114/2023

1.Syed Ishaq
2.Khaja Mohaideen
3.Yasar Arafath
4.Fayaz Ahmed

.. Appellants /
A5, A6, A8
& A9 in Crl.A.No.116/2023

Versus



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Union of India
rep.by the Inspector of Police
National Investigation Agency
Chennai Branch.

.. Respondent in all the
Appeals

Prayer in Crl.A.No.98/2023:- Criminal Appeal filed under Section 21[4] of the National Investigation Agency Act, 2008,`against the impugned order passed by the learned Special Court under the National Investigation Agency Act, 2008, [Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai] in bail application in Crl.MP.No.742/2022 in RC.No.42/2022/NIA/DLI dated 03.01.2023 pending on the file of the respondent.

Common Prayer in Crl.A.Nos.114 & 116/2023:- Criminal Appeal filed under Section 21[4] of the National Investigation Agency Act, 2008,`to set aside the order passed in Crl.MP.No.722/2022 dated 03.01.2023 on the file of the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, Chennai and grant bail to the appellants in Rc.No.42/2022/NIA/DLI pending on the file of the respondent.



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For Appellant in Crl.A.
No.98/2023

: Mr.T.Mohan
Senior Counsel for
Mr.A.Raja Mohamed

For Appellants in Crl.A.
Nos.114 & 116/2023

: Mr.I.Abdul Basith

For Respondent in all the
Appeals

: Mr.Ar.L.Sundaresan
Additional Solicitor General
assisted by Mr.R.Karthikeyan,
Special Public Prosecutor [NIA
cases]

COMMON JUDGMENT

S.S.SUNDAR, J.

(1)All the above three Criminal Appeals are connected and arising out of the proceedings in relation to RC.No.42/2022/NIA/DLI involving common issues and hence, the Appeals are taken up together for hearing and are disposed of by this common judgment.

(2)Totally, there are 13 named accused and other unknown accused in RC.No.42/2022/NIA/DLI.



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(3)Crl.A.No.98/2023 is filed by the appellant who is arrayed as A7 out of 13 named accused, against the order passed by the Special Court under the National Investigation Agency Act, 2008, which is also the Sessions Court for Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, dated 03.01.2023 in Crl.MP.No.742/2022 in RC.No.42/2022/NIA/DLI, dismissing the bail application filed for bail under Section 437 read with 439 of Cr.P.C. and 43[D] of the Unlawful Activities [Prevention] Act, 1967 *[hereinafter referred to as UAPA]*. Crl.A.Nos.114 and 16/2023 are preferred by A1, A3, A4 [Crl.A.No.114/2023], A5, A6, A8 and A9 [Crl.A.No.116/2023] against the order passed in Crl.MP.No.722/2022 dismissing the bail applications filed by them under Section 437 read with 439 of Cr.P.C. and 43[D] of UAPA.

(4)Brief facts that are leading to the above three appeals are as follows:-

(5)It appears that the Central Government has received information that the office bearers, members and cadres of an Organization known as ‘‘Popular Front of India *[hereinafter referred to as PFI]*’ having its registered office at New Delhi and its Unit office all over India, along



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with others are conspiring and collecting funds within India and abroad for committing terrorist act in various parts of India including States of Kerala, Tamil Nadu, Karnataka, Uttar Pradesh etc. The First Information Report was registered in RC.No.14/2022 on 13.04.2022. The complaint was registered against 21 named individuals and other unknown persons by the National Investigation Agency *[hereinafter referred to as NIA]* before the Police Station, NIA, New Delhi, for offences under Sections 120B and 153A of IPC and under Sections 17, 18, 18B, 20, 22B, 38 and 39 of UAPA. Following that, another complaint was also registered vide RC.No.42/2022/NIA/DLI on 19.09.2022 as against 13 named individuals including the appellants herein and other unknown persons for offences under Sections 120B, 153A, 153AA of IPC and Sections 13, 17, 18, 18B, 38 and 39 of UAPA before the Police Station, NIA, New Delhi.

(6)It is seen that the second complaint also was based on the alleged credible information received by the Central Government about the activities of the Organization, namely, PFI, which is described as an extremist Islamic Organization, spreading its extremist ideologies across Tamil Nadu, by establishing State Headquarters at Purasaiwalkkam,



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Chennai. In the FIR itself, serious allegations were made against the Organization and its functionaries, who according to the complaint, hatched a conspiracy to unleash terrorist acts against perceived anti-islamic forces of other religions by deploying its 'hit squads', to attack, assault, maim and murder them with an intention to threaten the unity, integrity, security and sovereignty of India and with an intention to strike terror.

(7)The complaint against the appellants and others in the second FIR in RC.No.42/2022/NIA/DLI discloses further allegations against the accused persons. Even though specific allegations against individuals are not made with reference to any incident, it is seen that a general statement is found to the effect that the activities referred to in the complaint attract Sections 120B, 153A, 153AA of IPC and Sections 13, 17, 18, 18B, 38 and 39 of UAPA.

(8)It is admitted that all the appellants were arrested on 22.09.2022 and there was a search in 12 places on the same day. The appellants in CrlA.Nos.114 and 116/2023, namely, A1, A3, A4, A5, A6, A8 and A9, moved the bail application on 25.11.2022 and the appellant in



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Crl.A.No.98/2023, namely, A7 moved the bail application on 06.12.2022, mainly on the ground that the appellants had not committed any offences as alleged by the respondent and that they had been falsely implicated.

(9) Several grounds were raised pointing out the irregularities about the way in which the appellants were arrested contrary to the well settled principles of the Hon'ble Supreme Court in various decisions, apart from other inherent defects with reference to the settled principles. It is contended by the appellants that they were pre-fixed by the prosecution on the basis of assumption and presumption and that they are innocent as none of them had never indulged in any activities alleged. A specific ground was raised that the version put forth in the FIR against the appellants is nothing but a reiterated version in the previous case registered on 13.04.2022 in RC.No.14/2022/NIA/DLI and that the second FIR on the basis of the same information received by the Investigation Agency, is not sustainable. The appellants specifically denied the allegation of indulging in militant Salafi ideology and other charges under Sections 13, 17, 18, 18B, 38 and 39 of UAPA.



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(10)The respondent filed a detailed counter affidavit explaining the contents of the FIR and denying the specific averments made in the petitions. Apart from pointing out the object of forming the Organization PFI and the activities of PFI, against the appellants, as members of PFI, several allegations are made for actively participating in the activities of PFI and for raising funds by putting illegal pressure to the public. Even though a long and lengthy counter affidavit was filed, even in the counter affidavit, except general allegations against appellants as members of Organization, there is no reference to any single incident pointing out any specific overt act against the individual accused. However, a general statement is found in the counter affidavit about the digital device seized from the accused and the fact that they were sent for forensic examination to know the involvement of the accused. There were reference to video clippings which according to the prosecution/respondent would reveal the main intention of the appellants to promote enmity between two groups on the ground of religion, race, place of birth etc. Stating that the appellants are leaders of PFI Organization, it was contended that there is a possibility of



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tampering the witnesses. Despite the fact that only general allegations were made without reference to any verifiable material, the bail petitions were opposed mainly by referring to Section 43[D][5] of UAPA. The Special Court under NIA Act [Sessions Court for Exclusive Trial for Bomb Blast Cases], Chennai at Poonamallee *[hereinafter referred to as 'the Special Court']*, examined the question whether there is a reasonable ground for believing accusations made against the appellants herein [petitioners in the bail petitions]. The Special Court held that all other allegations with regard to the arrest etc., are not relevant to consider the bail application. It is to be noted that PFI was not a banned movement at the time of registration of FIR, but it was banned by the Government of India on 28.09.2022 under Section 2[1][p] of UAPA for a period of five years. The Special Court relied upon Section 43[D][5] of UAPA and held that on a perusal of Case Diary [CD] File, materials and documents filed before the Court, would show that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true. The Special Court also observed that the accused may hamper the on-going investigation and tamper the evidence. Apparently, the Special Court



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dismissed the bail applications only on the ground that there is prima facie case against the accused under all the provisions referred to in the FIR. Surprisingly, not even a single instance, document or material evidence is relied upon or referred to in the order indicating involvement of any of the appellants in any of the offences under UAPA. Aggrieved by the two orders, rejecting the bail petitions filed by the appellants as stated above, the present Criminal Appeals have been preferred by the appellants/named accused.

(11) Heard Mr.T.Mohan, learned Senior Counsel for MR.A.Raja Mohamed, learned counsel for the appellant in Crl.A.No.98/2023 ; Mr.I.Abdul Masith, learned counsel for the appellants in Crl.A.Nos.114 and 116/2023 and Mr.Ar.L.Sundaresan, learned Additional Solicitor General assisted by Mr.R.Karthikeyan, learned Special Public Prosecutor [NIA Cases] for the respondent in all the Criminal Appeals.

(12) Mr.T.Mohan, learned Senior counsel appearing for the appellant in Crl.A.No.98/2023 submitted that the bail application was rejected only on the ground of a prima facie case to believe the allegations as true without there being a definite accusation against any one of the appellants based



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on any material documents or evidence collected before or after arrest.

Referring to the law that the Court while granting bail, should exercise the discretion in a judicious manner, the learned Senior Counsel submitted that the Special Court failed to notice that there is no *prima facie* accusation against A7 and therefore, there is total non application of judicial mind while passing the impugned order. The learned Senior counsel then submitted that the accused were arrested only for their activities in relation to an Organization which was neither banned nor declared as an unlawful Association at the time of arrest. The learned Senior counsel pointed out that even after collecting all the materials pursuant to the registration of the first case, the Organization, namely, PFI, has been declared as an unlawful Organization and not as a terrorist Organization. By referring to the provisions under Chapter III of UAPA, the learned Senior counsel submitted that in the absence of any material characterising the Organization as a terrorist Organization, the appellant/A7 in Crl.A.No.98/2023 against whom no terrorist act is alleged, the restrictions under Section 43[D][5] of UAPA for grant of bail cannot be invoked.



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(13)The learned Senior counsel referred to Section 2[k][15] and the provisions under which the appellant is charged under UAPA. The learned Senior counsel relied upon several judgments of the Hon'ble Supreme Court and more particularly, the judgment of a Division Bench of this Court *dated 01.08.2023* in **Crl.A.No.678/2023 [M.Mohamed Abbas Vs. Union of India rep.by The Chief Investigating Officer, The Inspector of Police,NIA, Chennai Branch, Chennai]** in relation to the same offences against one of the accused in relation to the same Crime Number in RC.No.42/2022/NIA/DLI. Since there is no allegation pointing out the commission of any act within the meaning of 'terrorist act'' in terms of Section 15 of UAPA, the learned Senior counsel for the appellant in Crl.A.No.98/2023 submitted that in the absence of any allegation of offence under Section 15 of UAPA, the provisions under Chapter IV and Chapter VI of UAPA are not attracted and the appellant cannot be held guilty of any offence falling under Chapters IV and VI of the Act. He also pointed out that the Special Court failed to consider the case of the appellant and their specific plea both legal and factual. Pointing out that the respondent have not referred to any material



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documents or evidence collected by the respondent so far, in the counter affidavit, the learned Senior Counsel also referred to the fact that the appellant/A7 in Crl.A.NO.98/2023 is facing health issues and submitted that A7 needs medical attention and personal care. He also pleaded that taking into account the period of incarceration, the learned Senior counsel submitted that the appellant is deprived of the right guaranteed under Article 21 of the Constitution based on unsubstantiated allegations which would not stand for the Court's scrutiny.

(14)The learned counsel appearing for the appellants in Crl.A.Nos.114 & 116/2023 also relied upon several judgments and pointed out that the counter affidavit filed before the Special Court and before this Court would not disclose any material evidence against the appellants in Crl.A.Nos.114 & 116/2023. He also adopted the arguments of the learned Senior counsel appearing for the appellant in Crl.A.No.98/2023 in all other aspects.

(15)Detailed counter affidavits have also been filed by the respondent in all the three Criminal Appeals. The counter affidavits appear to be prepared in February, 2023 and it is noted that no counter affidavit is filed after the



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Charge Sheet is filed. The counter affidavits filed before this Court indicate the overt act and the role attributed to the appellants in the above

Appeals as seen from the following table:-

<i>Crl.A.No.</i>	<i>Name of the Accused</i>	<i>Rank</i>	<i>Overt Act</i>
98/2023	Barakathullah	A7	He is the then President of PFI Ramanathapuram District, and actively indulged in the unlawful activities of PFI. He organized camps for PFI cadres and new recruits to train them to use lethal weapons to use them in the terrorist activity thereby making them as hit squads to attack, assault, maim and murder prominent persons belonging to a particular religious group with intention to threaten the unity, integrity, security and sovereignty of India, with intention to strike terror in India.
114/2023	Idris @ M.A.Ahmed Idris	A1	He is the State Level spaker of PFI Tamil Nadu and one of the media team in charge of PFI, further earlier he was the Secretary of PFI Madurai District. He as a State Level speaker gave instigating speeches which disclaims questions and disrupts the sovereignty of India in the Meetings, camps and protests organized by PFI. Further, he by his instigating speeches recruited youths for the PFI army to establish Islamic state. Further, as a media team in charge his role is to collect the new from other members of media team and segregate news which creates enmity between people of different religious groups



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Crl.A.No.	Name of the Accused	Rank	Overt Act
			prejudicial to maintenance of social harmony and disrupt public tranquility, this media team shares such news and organize protests thereby attracting gullible Muslim youths and using them to the unlawful activities of PFI.
	Mohamed Abuthahir	A3	He as a President of PFI Madurai District, organized camps for PFI cadres and new recruits to train them to use lethal weapons to use them in the terrorist activity. He also approached prominent Muslim leaders to give their consent for the PFI's agenda called Mahalla Committee through which Muslims youths were trained with weapons thereby making them as hit squads to attack, assault, maim and murder prominent persons belonging to a particular religious group with intention to threaten the unity, integrity, security and sovereignty of India, with intention to strike terror in India. Further, he organized demonstration of lethal weapons in the PFI public meetings there by causing fear among the public.
	Khalid Mohamed	A4	He is the Vice President of PFI Tamil Nadu, he coordinates instigating speeches which disclaims questions and disrupts the sovereignty of India in the meetings, camps and protests organised by PFI. Further, he by his instigating speeches recruited youths for teh PFI army to establish Islamic state. In the state level he coordinates and monitors the weapon training



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Crl.A.No.	Name of the Accused	Rank	Overt Act
			given to PFI cadres in the name of the PE Classes.
116/2023	Syed Ishaq	A5	He as the District Secretary Madurai Organized camps for PFI cadres and new recruits to train them to use lethal weapons to use them in the terrorist activity. He also approached prominent Muslim leaders to give their consent for the PFI's agenda called Mahalla Committee through which Muslim youths were trained with weapons thereby making them as hit squads to attack, assault, maim and murder prominent persons belonging to a particular religious group with intention to threaten the unity, integrity, security and sovereignty of India with intention to strike terror in India.
	Khaja Mohaideen	A6	He is a State level speaker and in charge for mass mobilization. He used to take classes in the beginners camp conducted for new recruits. He also take classes in camps conducted for PFI cadres in that he used to give speeches with the articles published by ISIS to radicalize the participants further as a incharge for mass mobilization he used to arrange Muslim community people to the protests organized by PFI.
	Yasar Arafath	A8	He as the Zonal Secretary for the PFI Madurai zone which consists of six Districts, earlier he was the District President of PFI Theni District. He coordinated and organized various camps including PE camps conducted for PFI cadres and used to collect the



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Crl.A.No.	Name of the Accused	Rank	Overt Act
			reports from the Districts and forward the same to state level. Further he organized the Reece the businesses establishment of Hindu religion leaders to attack the same for the purpose he organized petrol bomb throwing practice to the members of PFI attack teams.
	Fayaz Ahmed	A9	He as the District President of PFI Cuddalore organized camps for PFI cadres and new recruits to train them to use lethal weapons to use them in the terrorist activity and recruited hit squads to attack, assault, maim and murder prominent persons belonging to a particular religious group with intention to threaten the unity, integrity, security and sovereignty of India, with intention to strike terror in India. Further, he organized demonstration of lethal weapons in the PFI public meetings there by causing fear among the public.

(16)Mr.Ar.L.Sundaresan, learned Additional Solicitor General assisted by Mr.R.Karthikeyan, learned Special Public Prosecutor appearing for NIA Cases, produced before this Court, two typed sets of documents as Annexures to the Charge Sheet containing the documents and statements obtained from the Listed Witnesses. Referring to some of the documents that were collected during the course of investigation and the statements



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obtained from the Listed Witnesses, the Additional Solicitor General contended that the judgments relied upon by the learned Senior counsel appearing for the appellant in Crl.A.No.98/2023 can be distinguished in the present case where the materials that are produced before this Court along with the Charge Sheet, would certainly prove the charges against the accused persons including the appellants in all the three appeals. The Additional Solicitor General submitted that the leaders/cadres of PFI have formed the Organization only to achieve a dangerous goal of 'Vision India 2047', that is to make this Country ruled by Muslims. Since none of the appellants have denied their participation in the activities of PFI, learned Additional Solicitor General contended that the activities of all the appellants have been spoken by the Listed Witnesses and therefore, there are strong circumstances now available as against the appellants involving them in the commission of offences under the provisions of UAPA. Learned Additional Solicitor General further submitted that PFI has been banned by the Central Government on 28.09.2022 under Section 2[1][p] of UAPA for a period of five years. He also referred to the relevant portions of the judgments cited by the appellants and a few more



precedents to support his arguments.

(17) This Court has carefully considered the submissions made on either side and also perused the materials placed before it.

(18) Before considering the respective arguments of the learned counsels appearing on either side, it would be useful to refer to the statements made by the Listed Witnesses against the accused, annexed to the Charge Sheet.

(19) Almost against all the appellants, the statements of the Listed Witnesses would only reveal their acts or conduct as members or office bearers of PFI an Organization banned after the arrest of all the appellants. The statement of witnesses only reveal how the appellants have conducted several training programmes in martial arts and their instructions to raise funds for PFI through its cadres and the training in physical education, using weapons like knives, swords etc. Several Listed Witnesses have uniformly stated that the appellants have arranged for conducting physical education classes to PFI cadres. It is to be noted that some witnesses have referred to physical education and the training or the weapon training in the same context. A few witnesses have also spoken



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about the training given to PFI cadres to throw beer bottles filled with water to hit targets. Against some of the appellants, the witnesses have spoken about their speeches in meetings about how the Muslims are attacked by others and the duty of the Organization to strengthen PFI to do good to Muslim community. The statement about the speeches delivered by some of the appellants also shows that the appellants wanted recruitment of new youngsters of Muslim community to PFI to spread ideologies of PFI and to protect the Muslim population by their activities. Many of the witnesses have spoken about the training provided by the appellant/A7 and about the importance of getting trained in physical education to face any situation. One of the Listed Witnesses has spoken about the remarks in one of the speeches by A6 connecting the Organization with an Extremist Organization ISIS. The statements recorded from all the Listed Witnesses would certainly indicate that the appellants have done efforts to recruit new members to the Organization, to give training to members of PFI, to raise funds for the Organization. Except A6, no other accused is charged for an offence as a member of any other terrorist Organizations.



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(20)LW92 who is shown as one of the protected witnesses, has made a statement in the following lines:-

"நான் சில சமயங்களில் PFIன் மதுரை மாவட்ட அலுவலகத்தில் நடைபெறும் PFIன் செயல்வீரர்களுக்கான பிரத்தியேகமான தர்பியா வகுப்புகளில் கலந்து கொண்டு உள்ளேன். அவற்றில் காஜா மொய்தீன் அவர்கள் சில வகுப்புகள் எடுப்பார்கள். அதில் அவர் வாய்ஸ் ஆப் உறிந்த மற்றும் வாய்ஸ் ஒப் குரேசான் போன்ற பத்திரிக்கைகளின் பிரிண்ட் அவுட்டை வாசித்து காண்பிப்பார். அதில் உள்ளவைகளை தமிழில் விளக்கி கூறுவார். அவர் ISIS முஸ்லிம்களுக்காக இஸ்லாமிய கலிபட் அமைக்க உழைப்பதாகவும் நாம் அனைவரும் வாய்ப்பு கிடைத்ததால் கட்டாயம் ISISல் இணைந்து ஆயுத பயிற்சி எடுத்து ISISன் சார்பாக போர் புரிய வேண்டும் என்றும் இதன் மூலம் நாம் முஜாகிதீன்கள் ஆவோம் என்றும் இந்தியாவில் ஆயுத போராடத்திற்க்கான நேரம் வரும்போது ISISல் இருந்து திரும்பிவந்து PFIயுடன் இணைந்து இந்திய அரசை எதிர்த்து போரிட்டு இங்கும் PFIன் இலட்சியமான இஸ்லாமிய அரசை நிறுவ வேண்டும் என்றும் வகுப்பில் காஜா



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மொய்தீன் கூறினார்...."

(21) From the above statement of LW92, one thing definite is that A6 has no other connection with ISIS so far and the witness has just referred to the fact that A6 had indicated while taking classes to PFI cadres that in future, if an opportunity comes, they will also join with ISIS to take weapon training and to fight for the said Organization and later, they can come back and join PFI when they have to fight against the Indian Government to achieve their goal. The counter affidavits are prepared in February 2023. Therefore, there is no reference to the Charge Sheet and the statements obtained from the Listed Witnesses or the documents to show the involvement of any of appellants connecting them to any of the offences under UAPA. However, there are general allegations against the appellants for their connection with the terrorist Organizations and the involvement of PFI in recruitment of members to various prescribed terrorist Organizations stating that the ideology of those terrorist Organizations are also subscribed by PFI. It is admitted in the counter affidavits that the appellants have given clear statements disputing the allegations against them in relation to any terrorist act or terrorist



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Organizations. Though it is repeatedly stated in the counter affidavits that the appellants have committed offence under the provisions of UAPA as seen from the seized materials like the digital devices and other documents, particularly, their speeches in social media, the learned Additional Solicitor General has not demonstrated any video or audio records or documents showing the direct involvement of any of the appellants in any other terrorist Organizations included in Ist Schedule of UAPA. Though it is alleged that some of the appellants have links/connections with the banned terrorist Organizations like ISIS, ISHP and Jaish-e-Mohamed, absolutely there is no whisper even in the counter affidavits about the nature of evidence or document collected by them to make them believe or come to the conclusion about their links with the terrorist Organizations.

(22) Though the respondents have stated that in the course of investigation, the Bank accounts of the appellants were freezed, there is nothing to suggest that the funds were either utilised by them to further any terrorist activities or to transfer the money to any of the terrorist Organizations referred to in the counter affidavits. Except repeated allegations against



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the appellants involving them in activities encouraging terrorism, recruiting persons to their Organization and raising funds and extending hatred speeches and videos, absolutely there is no specific allegations or reference to any incident involving any of the appellants in the commission of offences under Section 15 of UAPA.

(23)The learned Additional Solicitor General, however referring to the statements of some of the Listed Witnesses submitted broadly that the evidence would reveal that PFI, the banned Organization has indulged in several terrorist activities to fulfill their vision to bring the Muslim rule in the country by 2047 by their planned terrorist activities and that the Organization is involved in several offences for the assassination of several RSS leaders, sympathizers and to unleash attacks against Police Stations, public offices. Referring to the utilisation of the funds raised by the Organization to commit terrorist activities and to recruit members for furthering their extremist ideology. It was pointed from the counter that PFI Organization is conducting mass drills, parades to exhibit their strength with the sole intention to pose a threat to the security and integrity of the Nation. The learned Additional Solicitor General mainly



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relied upon Section 18 of UAPA and submitted that the commission of terrorist act or any act preparatory to the commission of terrorist act attract Section 18 of UAPA and therefore, Section 43[D][5] of the Act can very well be invoked and that the bail plea of the accused in this case cannot be accepted as there are materials in the form of statements to show that accusations against the appellants are *prima facie* true.

(24) This Court earlier reserved orders on 04.10.2023. Thereafter, the learned Additional Solicitor General mentioned before us with a request to list the matter for further hearing as the learned Additional Solicitor General wants to produce some more documents seized from the appellants. Hence, the appeals were again listed on 11.10.2023 for further arguments.

(25) On 11.10.2023, learned Additional Solicitor General produced a typed set of papers containing several Forms filled by new members of PFI who had given their feed back about their experience / knowledge gained or their comments about the physical training given to them when they attended the training camp. In the additional typed set, the respondents have also produced several pictures and photos of several Islamic leaders,



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including the picture of Osama Bin Laden and a few leaders and cadres of terrorist Organization like ISIS, Al-Quida and Reports and videos. Though, no additional counter affidavit is filed, learned Additional Solicitor General submitted that the photos, pictures, reports and Forms are stored in the hardware devises seized from A6. Some of the video file contains the demonstration by teachers to show it to learners of martial arts. Some of the photographs are photographs of several popular leaders of Hindu community. Learned Additional Solicitor General referred to these photographs and submitted that a few individuals in group photographs are marked and interpreted that they may be the hit list of the Organization.

(26) We have gone through the file carefully.

(27) On 11.10.2023, Mr. Ajmal Khan, learned Senior Counsel appeared on behalf of all the appellants and made his submissions explaining the documents produced by way of additional typed set.

(28) The learned Senior counsel has made the following two legal submissions:-

(a) In view of the previous FIR in RC.No.14/2022/NIA/DLI



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dated 13.04.2022, registration of subsequent FIR in RC.No.42/2022/NIA/DLI dated 19.09.2022 on the same set of allegations against / involving another set of accused with verbatim reproduction of same offences, is invalid and liable to be quashed.

(b)Investigation by NIA directly by registering the FIR is without jurisdiction without a report from the State Government in terms of sub-section [2] of Section 6 of National Investigation Agency Act, 2008 [*hereinafter referred to as NIA Act*].

(29)Since the submissions of the learned Senior counsel are about the validity of FIR in RC.No.42/2022/NIA/DLI and the jurisdiction and competency of NIA, these issues are considered as legal issues.

Whether the second FIR vide RC.No.42/2022/NIA/DLI dated 19.09.2022 is valid?

(30)Mr.Ajmal Khan, learned Senior counsel relied upon the judgment of the Hon'ble Supreme Court in the case of *T.T.Antony Vs. State of Kerala and Others* reported *2001 [6] SCC 181*, wherein it is held as follows:-



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"18. An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report — FIR postulated by Section 154 CrPC. All other



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informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR



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against H — the real offender — who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to



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forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC."

(31) For proper understanding of the legal issue decided by Hon'ble Supreme Court, it is necessary to go into the facts of the case. The Youth Wing [DYFI] of CPI[M] protested the visit of a Minister in the UDF Government in Kerala to Kannur District. When the Minister visited a place to inaugurate a Cooperative Urban Bank, violence broke which led to lathi charge and police firing resulting death of five persons and injury to six persons. Earlier, due to lathi charge, more than 100 people were injured. Police open fired at two places. In respect of the occurrence near Town Hall before police firing, the Additional Superintendent of Police of Thalassery registered Crime No.353/1994 for offences under Sections 143, 307 read with Section 149 of IPC and Section 3[2][e] of PDPP Act and Sections 3 and 5 of the Explosives Substances Act against eight named and many unidentified persons belonging to CPI[M] and with regard to the occurrence in the vicinity of Police Station, the Superintendent of Police registered Crime No.354/1994 for similar offences. Both the crimes were registered on 25.11.1994. Since public demanded a judicial



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enquiry, the Kerala Government appointed the learned District and Sessions Judge, Thalassery as Commission of enquiry to enquire into the circumstances which led to the police firing and resulted in the death of persons and to find out whether the police firing was justified and the persons responsible for the firing. The Commission submitted a report finding the police firing as unjustified and fixing responsibility on the Deputy Superintendent of Police, former Deputy Collector and the former Minister for the police firing. The Government of Kerala, accepting the report of Commission, directed legal action to be taken against persons responsible. Thereafter, a fresh case was registered in Crime No.268/1997 under Section 302 of IPC against three persons, for the commission of murder of five persons who died in police firing. It is the registration of the FIR in Crime No.268/1997 which is the subject matter of appeal before Hon'ble Supreme Court.

(32) It is in the said context, the Hon'ble Supreme Court, has observed that every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences does not require filing of fresh FIR. The police firing and lathi



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charge was considered as connected offences found to have been committed in the course of the same transaction or the same occurrence.

The Hon'ble Supreme Court distinguished the judgment of Co-equal Bench in *Ram Lal Narang and Others Vs. State [Delhi Admin]* reported in *1979 [2] SCC 322*, where several exceptions were carved out. In the present case, the FIR in RC.No.14/2022/NIA/DLI dated 13.04.2022 and RC.No.42/2022/NIA/DLI dated 19.09.2022 are registered for same or similar offences. But the accused named are different individuals for their involvement in similar acts in different places. Though the two FIRs contain general allegations connecting the accused in both cases as office bearers/members/cadres of PFI, the FIRs need not be or cannot be presumed to be in relation to the same occurrence. An FIR in RC.No.42/2022/NIA/DLI speaks about credible information received about the office bearers and members of PFI for their association and support to terrorist Organizations. Since allegations are made against individuals about their activities in different but specified places for offences under Sections 17, 18, 18A, 18B of UAPA, they are distinct and cannot be treated or referable to a single occurrence. The appellants themselves have stated



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that similar FIRs have been registered in Kerala, Hyderabad, Delhi and Rajasthan. In such circumstances, we find that each FIR is independent and in connection with similar occurrences and not same occurrence.

(33)The learned Senior Counsel relied upon another judgment of Hon'ble Supreme Court in the case of *Amitbhai Anilchandra Shah Vs. CBI* reported in *2013 [6] SCC 348*. The Hon'ble Supreme Court found on facts that the second FIR was nothing but a consequence of further investigation of same offence. For the above reasons, we are unable to agree with the submission of Mr.Ajmal Khan, learned Senior Counsel on this point.

Whether investigation by NIA in the present case is vitiated in the absence of report from State?

(34)Section 6 of NIA Act deals with investigation of scheduled offences by NIA. Learned Senior Counsel submitted that without the report of State Government, the NIA cannot independently investigate the offences scheduled under the NIA Act. We are unable to accept this point on a plain reading of section 6 of NIA Act, which reads as follows:-

"6.Investigation of Scheduled Offences.—



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(1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-incharge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion



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that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

(6)Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7)For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

(8)Where the Central Government is of the opinion that a Scheduled Offence has been committed at any place outside India to which this Act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.

(9)For the purposes of sub-section (8), the Special Court at New Delhi shall have the jurisdiction."

(35)Whenever an information is received and recorded by an officer



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incharge of Police Station in relation to scheduled offences, he has no option but to report the offence to State Government. Similarly, it is mandatory for the State Government to forward the report to the Central Government. It is for the Central Government to determine whether the offence reported, is a scheduled offence and whether it is a fit case to be investigated by NIA. Only when the Central Government is satisfied that the offences reported by the State Government is a scheduled offence, and it has to be investigated by NIA, the Central Government will direct NIA to investigate. However, sub-section 5 of Section 6 confers power on the Central Government to direct investigation by NIA on its own when Central Government forms the opinion that a scheduled offence has been committed. Section 6 (5) of the National Investigation Agency Act, 2008, begins with a “non obstante clause”. The power of the Central Government to *suo motu* direct the National Investigation Agency to investigate the offence under the Act, notwithstanding anything contained in Section 6 of the National Investigation Agency Act, 2008, is preserved by this Sub Section. Therefore, the registration of the FIR by an officer in charge of the Police Station is not a *Sine Qua Non* for the



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Central Government to direct the National Investigation Agency, to investigate the offence. Further, the wordings of the Sub Section make it clear that where the Central Government is of the opinion that a schedule offence has been committed which is required to be investigated by the National Investigation Agency Act, 2008, it can direct an investigation/ If an FIR is required to be registered for the Central Government to direct the National Investigation Agency to investigate, then, the words, “if the Central Government is of the opinion that a Schedule offence has been committed which is required to be investigated under this Act” in the sub section would be redundant. Therefore, the Central Government has powers to direct investigation even if there is no FIR registered by the officer-in-charge of the police station. Further, it is seen from Section 3 (3) of the National Investigation Agency Act, 2008, that an officer of the National Investigation Agency, has all the powers of an officer-in-charge of the Police Station and shall be deemed to be an officer-in-charge of the Police Station discharging the functions of such an officer within the limits of the Police Station. Section 3 (3) of National Investigation Agency Act, 2008, reads as follows:



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“3.(3) Any officer of the Agency or, or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise throughout India, any of the Powers of the officer –in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.”

Since an officer of the National Investigation Agency has been conferred with the powers of officer-in-charge of the Police Station, the power to register an FIR under Section 154 of Cr.P.C. is deemed to be conferred.

(36) For the above reasons, this Court is of the view that in view of the “non obstante clause” in sub section 5 of Section 6 of the Act coupled with the powers conferred on an officer of the National Investigation Agency under Section 3 (3) of the National Investigation Agency Act, 2008, it cannot be said that the Central Government cannot direct the National Investigation Agency without an FIR already



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registered and that the National Investigation Agency has no power to register an FIR. Of course, an officer of the National Investigation Agency can register an FIR only on the directions of the Central Government. The language employed leads to the only conclusion without any ambiguity and hence, the arguments of the learned Senior Counsel cannot be accepted.

(37)After hearing the lengthy arguments and referring to several judgments on both sides, this Court is of the view that in cases like this, this Court has to balance between the Constitutional value of liberty and the social interest. Following the principles reiterated by the Hon'ble Supreme Court in several cases, particularly, the judgments of the Hon'ble Supreme Court in the case in *Arnab Manoranjan Goswami Vs. State of Maharashtra* reported in **2021 [2] SCC 427** and in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation* reported in **2022 [10] SCC 51**, the role of this Court in a case of this nature is to ensure due enforcement of criminal law without any obstruction to pave way for a fair investigation of a crime and at the same time, to see that the criminal law does not become a weapon for selective harassment of citizens. In



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other words, as held by the Hon'ble Supreme Court in *Arnab Manoranjan Goswami's case [cited supra]*, the Court should be alive to both ends of the spectra that is, the need to ensure proper enforcement of criminal law on the one end and the need to ensure that the law does not become a ruse for targeted harassment. In the present case, the appellants were arrested on the next day of registration of the second complaint on 19.09.2022 on the basis of the alleged reliable information received by the Central Government. The source of reliable information is not seen in the F.I.R.. The Organization PFI is in existence for a long time from the year 2006, in the State of Kerala. From the two volumes of typed set of documents submitted by the respondent containing that the Charge Sheet and the documents connected therewith, collected so far pursuant to the investigation in relation to the FIR in RC.No.42/2022/NIA/DLI, no document or statement of witnesses is obtained connecting the Organization with any terrorist act or a terrorist Organization even though the materials will lead to an inference for describing PFI as an unlawful Organization which may become in future a terrorist Organization to cause potential threat to commit offences attracting the



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provisions of UAPA. Interestingly, several materials collected by the respondent as against the appellants and the Organization PFI would also indicate that the formation of PFI and its main objectives are to provide any uncivilized violence unleashed against Muslim community and to involve the members of the Organization to protect Muslim community as a whole. Though the ultimate objective of PFI is stated to be, as seen from a document, ‘2047 Vision Document’, there is nothing to connect the appellants to the said document. Based on the Vision Document referred to in the Charge Sheet, several allegations are made against PFI as an Organization to gain political power and to work towards establishment of Islamic Government in India in the year 2047. When the Organization as such is only banned as an unlawful Association under Section 3 of UAPA, this Court cannot take a decision on the basis of any general allegations accusing PFI and its members and cadres without any material.

(38) One of the main question that arise for consideration is whether Section 43[D][5] of UAPA can be relied upon to deny bail to the appellants in the present case?



(39)Section 2[1][k] of UAPA defines ‘terrorist act’ as an act which has the meaning assigned to it in Section 15. Therefore, the expression "terrorism" and ‘terrorist act’, has to be understood with due regard to Section 15 of UAPA.

(40)For the purpose of this case, the following are the relevant Sections:-

13.Punishment for unlawful activities.—

(1) Whoever— (a) takes part in or commits, or (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

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

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



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on by any person authorised in this behalf by the Government of India.

15.Terrorist Act.

Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country-

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause-?

(i)death of, or injuries to, any person or persons; or

(ii)loss of, or damage to, or destruction of, property; or

(iii)disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia)damage to, the monetary stability of



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India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.

[Explanation.-*For the purpose of this sub-section,-*

(a) 'public functionary' means the constitutional authorities or any other functionary notified in the Official Gazette by the Central



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Government as public functionary;

(b)'high quality counterfeit Indian currency' means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.]

[(2)The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.]

17.Punishment for raising funds for terrorist act -

Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used



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or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Explanation : *For the purpose of this section, -*

(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;

(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and

(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 shall also be construed as an offence.

18.Punishment for conspiracy, etc.

Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directs or knowingly facilitates] the commission of, a terrorist act or any preparatory to the commission of a terrorist act,



shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18A. Punishment for organising of terrorist camps.—

Whoever organises or causes to be organised any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18B.Punishment for recruiting of any person or persons for terrorist act-

Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

38.Offence relating to membership of a terrorist organisation

(1)A person, who associates himself, or



professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

PROVIDED *that this sub~section shall not apply where the person charged is able to prove?*

(a)that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b)that he has not taken part in the activities of the organisation at any time during its inclusion in the [First Schedule] as a terrorist organisation.

(2)A person, who commits the offence relating to membership of a terrorist organisation under sub~section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

39.Offence relating to support given to a terrorist organisation

(1)A person commits the offence relating to support given to a terrorist organisation,?

(a)who, with intention to further the activity of a terrorist organisation,?



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(i)invites support for the terrorist organization; and

(ii)the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b)who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is?

(i)to support the terrorist organization; or

(ii)to further the activity of the terrorist organization; or

(iii)to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c)who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2)A person, who commits the offence relating to support given to a terrorist organisation under sub~section (1) shall be punishable with imprisonment for a term not exceeding ten years, or



with fine, or with both.

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

(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.

(41)This Court carefully considered the statements of the Listed Witnesses and the materials collected against the appellants. We are unable to find commission of any offence by any of the appellants to attract Section 15 of UAPA. This fact is not disputed by the respondent. Even the learned Additional Solicitor General has conceded that the materials collected so far, will not reveal the involvement of any of the appellants for



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commission of any act within the meaning of Section 15 of UAPA.

However, the learned Additional Solicitor General submits that the appellants have committed an offence under Section 18 of UAPA as the statements of the Listed Witnesses would certainly indicate the commission of an act preparatory to the commission of a terrorist act. The learned Additional Solicitor General relied upon the statements made by several Listed Witnesses who repeatedly stated that some of the appellants have either trained or organised or facilitated training to use weapons such as knives, swords and bottles etc., as part of physical education training. Referring to the statements of some of the witnesses that training was given to throw beer bottles filled with water on specified targets, the learned Additional Solicitor General submitted that the training was given to the cadres only to throw bombs on targets and therefore, the involvement of the appellants in doing something to impart weapon training and to throw bottles is an act preparatory to the commission of terrorist act. Similarly, the learned Additional Solicitor General referred to the statements of one of the witnesses who has given statement to the effect that one of the accused namely A6 wanted to



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recruit several youngsters belonging to Muslim community and that members of PFI when opportunity comes in future, should join with ISIS to get weapon training and to fight for the said Organization and later, they should come back and join PFI to execute their future plans. This Court is unable to countenance the submission of the learned Additional Solicitor General for the following reason. First of all, the prosecution in the present case, has failed to establish through any material, the real objectives of the Organization or the motive behind the establishment of PFI so as to describe the Organization as a terrorist Organization. When the Organization as such, has been declared to be an unlawful Association, this Court cannot now presume that the existence of the Organization was with an intention to commit acts of terrorism within the meaning of Section 15 of UAPA especially when no terrorist act organized by PFI is reported. From some of the materials, as found in the typed set of documents, this Court at best, without any contradiction, may infer that the intention of the Organization was to protect the members of Muslim community from the oppression or violence like mass lynching by the majority community.



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(42)The word ‘prepare’ gives an ordinary dictionary meaning "to make ready or fit or to bring into a suitable state or to train, learn or to make a preliminary study to make oneself ready and to make preparation". The word ‘preparatory’ used in Section 18 of UAPA, at best, may mean any act which is just a step in aid or to prepare for commission of a terrorist act. When an unlawful Association is charged for any preparatory work, one can only presume, preparation for an unlawful act. In other words, any act which was intended by the appellants as members or office bearers of PFI, cannot be presumed to be an act covered under Section 15 of UAPA. Section 15, of course, refers to a terrorist act by using bombs. The term ‘preparation’ is often used to indicate a process of being prepared or to make anyone ready. None of the witnesses have spoken about any statements by any of the appellants about the training for using petrol bombs. It is not the statement of any of the Listed Witnesses that the training was to make the cadres to make petrol bombs or to throw

such petrol bombs with an intention to strike terror or to pose a threat to unity, integrity and security or the sovereignty of India. In the overall



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context, the intention for giving training was to protect Muslim community from violence as seen from the literatures circulated and found in the typed set. The word 'preparatory' should be understood in the context. It is also relevant to point out here that under the general penal law preparation is not punishable barring a few exceptions. Section 18 of the Unlawful Activities (Prevention) Act, 1967, makes any Act preparatory to the commission of Terrorist Act punishable. It is trite that Penal Law should be construed strictly. To bring an Act within the meaning of preparatory it must be proximate to the Act which is intended to be committed out of that preparation. Any remote Acts, from which it cannot be definitely concluded that it was for the preparation of the terrorist act, cannot be called as preparatory acts within the meaning of Section 18 of the Unlawful Activities (Prevention) Act, 1967. In the instant case, it is the allegation of the prosecution that training was given by the accused to various persons to throw beer bottles filled with water and to aim at objects. From this, the prosecution draws an inference that this training was imparted only to make petrol bombs later and use those



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petrol bombs for achieving the object of the accused. It is not the case of the prosecution that the accused was found in possession of any petrol bombs, in which case, it may be a proximate act and may be a preparatory act for the commission of terrorist act. Therefore, in order to bring any act as preparatory act to commit terrorist act, as stated earlier, it must be proximate to the intended result. In other words, an act which is in the nature of preparatory, without an intention to commit a terrorist act attracting Section 15, will not be construed as an act to attract Section 18 of UAPA. Learned counsel for the appellants in Crl.A.Nos.114 & 116/2023 relied upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India Vs. K.A.Najeeb*** reported in **2021 [1] SCR 443**, for the proposition that the statutory limitations under Section 43[D][5] of UAPA, *per se* does not oust the power of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. This Court is not inclined to rest this judgment solely on that principle as there are factual issues which would make the judgment distinguishable in this case where the bail plea is considered within a period of one year and the disposal of the main proceedings can be predicted. In this case, the



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Charge Sheet had already been filed. This Court has taken note of the broad guidelines of the Hon'ble Supreme Court in *Najeeb's case*. In *K.A.Najeeb's case*, it is to be noted that the Hon'ble Supreme Court dealt with a case which is more serious than the present case. In the said case, the accused who belonged to a group of people, attacked a Professor and chopped off his right palm with choppers. During the pendency of the criminal case where the accused were prosecuted for offences under various Sections of the Indian Penal Code along with Sections 16, 18, 18B, 19 and 20 of UAPA, the Hon'ble Supreme Court was unable to uphold the view of the High Court of Kerala that the statutory restriction for grant of bail under Section 43[D][5] of UAPA was attracted.

(43)The Hon'ble Supreme Court in *Thwaha Fasal Vs. Union of India* reported in **2021 [8] SCR 797** has considered the scope of a few provisions of UAPA. That was a case where the FIR was registered against the appellants therein for offences punishable under Sections 20, 38 and 39 of UAPA. Though the Division Bench of the High Court of Kerala dismissed the appeal as against the order refusing to grant bail, the Hon'ble Supreme Court owing to the factual aspects of that particular



case, found that there is no material connecting the accused to any terrorist Organization. Even after marking the slogans uttered by one of the accused, the Hon'ble Supreme Court has held as follows:-

"36.Taking the charge sheet as correct, at the highest, it can be said that the material prima facie establishes association of the accused with a terrorist organisation CPI (Maoist) and their support to the organisation.

37.Thus, as far as the accused no. 1 is concerned, it can be said he was found in possession of soft and hard copies of various materials concerning CPI (Maoist). He was seen present in a gathering which was a part of the protest arranged by an organisation which is allegedly having link with CPI (Maoist). As regards the accused no. 2, minutes of the meeting of various committees of CPI (Maoist) were found. Certain banners/posters were found in the custody of the accused no. 2 for which the offence under Section 13 has been applied of indulging in unlawful activities. As stated earlier, sub-section (5) of Section 43D is not applicable to the offence under Section 13.



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38. Now the question is whether on the basis of the materials forming part of the charge sheet, there are reasonable grounds for believing that accusation of commission of offences under Sections 38 and 39 against the accused nos. 1 and 2 is true. As held earlier, mere association with a terrorist organisation is not sufficient to attract Section 38 and mere support given to a terrorist organisation is not sufficient to attract Section 39. The association and the support have to be with intention of furthering the activities of a terrorist organisation. In a given case, such intention can be inferred from the overt acts or acts of active participation of the accused in the activities of a terrorist organization which are borne out from the materials forming a part of charge sheet. At formative young age, the accused nos. 1 and 2 might have been fascinated by what is propagated by CPI (Maoist). Therefore, they may be in possession of various documents/books concerning CPI (Maoist) in soft or hard form. Apart from the allegation that certain photographs showing that the accused participated in a protest/gathering organised by an organisation allegedly linked with CPI (Maoist), prima facie there is



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no material in the charge sheet to project active participation of the accused nos. 1 and 2 in the activities of CPI (Maoist) from which even an inference can be drawn that there was an intention on their part of furthering the activities or terrorist acts of the terrorist organisation. An allegation is made that they were found in the company of the accused no. 3 on 30th November, 2019. That itself may not be sufficient to infer the presence of intention. But that is not sufficient at this stage to draw an inference of presence of intention on their part which is an ingredient of Sections 38 and 39 of the 1967 Act. Apart from the fact that overt acts on their part for showing the presence of the required intention or state of mind are not borne out from the charge sheet, prima facie, their constant association or support of the organization for a long period of time is not borne out from the charge sheet."

(44)Learned Senior Counsel appearing for the appellant/A7 in Crl.A.No.98/2023 relied upon a judgment of a Division Bench of this Court in the case of ***M.Mohamed Abbas Vs. State rep. by the Superintendent of Police, NIA, New Delhi, and Others*** reported in 2023 [2] LW [Cri] 169, in relation to the same FIR in



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Rc.No.42/2022/NIA/DLI. The bail petition was filed one Mohamed Abbas who was later arrayed as 17th accused after further investigation and he moved the Special Court for bail. Against dismissal of the bail petition by the Special Court rejecting the said petition on similar ground by referring to Section 43[D][5] of UAPA, this Court set aside the order of the Special Court refusing to grant bail and granted bail to the 17th accused subject to conditions, in the Criminal Appeal in Crl.A.No.678/2023 filed by him. He had also filed Crl.OP.No.12229/2023 to quash the FIR in RC.No.42/2022/NIA/DLI dated 19.09.2022. This Court, however, dismissed Crl.OP.No.12229/2023, leaving it open to the Trial Court to decide all the issues on merits. It is seen that the appellant in Crl.A.No.678/2023 is an Advocate and the plea of mala fide was buttressed by the appellant therein. This Court did not go into the mala fides alleged by the Advocate who was also defending the other accused and portrayed as a team leader. After referring to the lengthy allegations against the appellant therein and the relevant provisions of UAPA, particularly, Sections 2[1][k], 15, 17, 18, 18B, 38 and 39 of UAPA, the Division Bench has observed as



follows:-

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"38.The definition of -terrorist organisation- has already been set out supra and PFI does not find place in the First Schedule of UAPA. There is no disputation or disagreement on this. Further more, the FIR itself is prior to even this notification as unlawful association. Absent accusations with specificity qua petitioner pertaining to terrorist act or terrorist organisation, Sections 17, 18, 18B, 38 and 39 of UAPA get shorn of. Except broad averments in the nature of suspicion of involvement of what is described as other members of -banned terrorist organisation of PFI- in further investigation application there is no accusation with specificity qua petitioner and as already alluded to supra, PFI has not been listed as -terrorist organisation- in the First Schedule but has been declared vide Government of India notification as -unlawful association-. This means that there are effectively no Chapter IV and Chapter VI accusations with specificity qua petitioner. The sequitur, is Section 43D(5) and proviso thereat does not operate or come into play at all....."

(45)Learned counsel appearing for the appellants in Crl.A.Nos.114 &



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116/2023 also relied upon yet another unreported judgment of the same Bench in the case of ***Kannan Vs. State*** dated **22.08.2023** in ***Crl.A.No.823/2023***. The Division Bench has, while dealing with similar case, held that Section 43[D][5] of UAPA will not apply to a case where there is no material or evidence to suggest commission of an offence attracting Section 15 of the Act.

(46)The Hon'ble Supreme Court again in its judgment reported in **2023 SCC Online SC 885** [***Vernon Vs. The State of Maharashtra***], had occasion to deal with the provisions of UAPA. After filing of Charge Sheet containing charges for offences committed under Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of UAPA on the allegation that the accused were found involved with the Communist Party of India [Maoist] which is an Organization placed in the I Schedule to the Act as a Terrorist Organization by a Notification in the year 2009, the case of the prosecution in that case was that the accused played an active role in recruitment and training of cadres of terrorist Organization. After referring to the position that none of the materials relied upon by the prosecution suggests involvement of the appellant/s therein in any acts



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specified in Section 15 of UAPA, the Hon'ble Supreme Court considered the issue whether mere membership of a banned Organization constitutes an offence or not. The Hon'ble Supreme Court accepted the view that the same would not be sufficient to constitute an offence under 1967 Act unless it is accompanied with some overt offending act. Like in the present case, several letters and statements, literatures, pen drives etc., had been relied upon by the prosecution. However, the Hon'ble Supreme Court found that no evidence had been cited to implicate the accused in terrorists Acts. Finally, the Hon'ble Supreme Court has held as follows:-

"26.In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any allegation against them which would attract sub-clause (c) of Section 15(1) of the said statute. As regards the acts specified in Section 15(1) (b) thereof, some of the literature alleged to have been recovered from the appellants, by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had



indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. Mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act. Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants under Section 15(1)(b) of 1967 Act can be held to be true.

27. Section 17 of the 1967 Act deals with punishment for raising funds for terrorist acts. Here also the funds, dealing with which has been attributed to AF, cannot be connected to any terrorist act. In the case of Dr. Anand Teltumbde (supra) the same account statement was referred to. In respect of such allegations against Dr. Anand Teltumbde the Bombay High Court came to the following finding:—

“42. Mr. Patil has vehemently argued that this statement from the earlier letter supports receipt of



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monies i.e. Rs. 90,000/- by Anand T. (Appellant) from Surendra (accused No. 3) who was authorized to provide funds for future programmes. On careful reading of the earlier letter dated 02.01.2018 and the aforementioned statement of account it is seen that there is a fallacy in the argument of NIA. Assuming that Anand T. is the Appellant himself and he received Rs. 90,000/- from Surendra through Milind, firstly it cannot be linked to the statement in the earlier letter dated 02.01.2018 since this account statement pertains to the year 2016 and or 2017. The document has a heading; viz; Party fund received in last year from C.C. Last year would invariably mean the account of 2016 as the title of this document is “Accounts2K17” which would mean Accounts for 2017”. That apart requiring us to presume that Anand T. is the Appellant would require further corroboration and evidence. prima facie it appears that, the same has not been brought on record. This document is unsigned and has been recovered from the laptop one of the co-accused. Hence, at this prima facie stage we cannot presume that Anand T. i.e. the Appellant received Rs. 90,000/- from Surendra Gadling as argued by NIA. We are afraid to state that we cannot agree with NIA's



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contention.”

(emphasis added)

28. Here we must point out that there is also a request made to Surendra from an unnamed person to ask AF to manage the financial expenses of “these cases”. The name of another Arun, with the surname Bhelke has surfaced in Annexure “R-19” to the NIA's counter-affidavit in AF's case. This is a copy of a witness statement. In absence of any form of corroboration at the prima facie stage it cannot be presumed that it was the same Arun (i.e., AF) who had received money from Darsu. The prosecution has also not produced any material to show that actual money was transmitted. The communication dated 5th November 2017 (“R-5”), purportedly addressed by Surendra to Prakash does not speak of any payment being made to AF. The rationale applied by the Bombay High Court in the above-quoted passage of the judgment in the case of Dr. Anand Teltumbde (supra), which has been sustained by this Court, ought to apply in the case of AF as well.

29. We have already observed that it is not possible for us to form an opinion that there are reasonable grounds for believing that the accusation



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against the appellant of committing or conspiring to commit terrorist act is prima facie true. The witness statements do not refer to any terrorist act alleged to have been committed by the appellants. The copies of the letters in which the appellants or any one of them have been referred, record only third-party response or reaction of the appellants' activities contained in communications among different individuals. These have not been recovered from the appellants. Hence, these communications or content thereof have weak probative value or quality. That being the position, neither the provisions of Section 18 nor 18B can be invoked against the appellants, prima facie, at this stage. The association of the appellants with the activities of the designated terrorist organisation is sought to be established through third party communications. Moreover, actual involvement of the appellants in any terrorist act has not surfaced from any of these communications. Nor there is any credible case of conspiracy to commit offences enumerated under chapters IV and VI of the 1967 Act. Mere participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act, with which they have been charged.



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37. In the case of Zahoor Ahmad Shah Watali (supra), it has been held that 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 chargesheet must prevail, unless overcome or disproved by other evidence, and on the face of it, materials must show complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the accused ought to prevail. In our opinion, however, it would not satisfy the prima facie “test” unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth. In the case of the appellants, contents of the letters through which the appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-accused. Moreover, no covert or overt terrorist act has been attributed to the appellants in these letters, or any other material forming part of



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records of these two appeals. Reference to the activities of the accused are in the nature of ideological propagation and allegations of recruitment. No evidence of any of the persons who are alleged to have been recruited or have joined this “struggle” inspired by the appellants has been brought before us. Thus, we are unable to accept NIA's contention that the appellants have committed the offence relating to support given to a terrorist organisation.”

(47)The Hon’ble Supreme Court in the case reported in **2011 [1] SCC 784** **[State of Kerala v. Raneef]** considered the applicability of Sections 3, 10, 13 of UAPA in respect of a person who was stated to be a member of PFI. In the context of applicability of the act as against an individual, against whom allegation was made that he was found involved in certain activities of PFI Organization which was doing some unlawful acts, the Hon’ble Supreme Court has held as follows:-

“10.As regards the allegation that the respondent belongs to PFI, it is true that it has been held in Redaul Hussain Khan v. National Investigation Agency [(2010) 1 SCC 521 : (2010) 1 SCC (Cri) 822] that merely because an organisation has not been



declared as an “unlawful association” it cannot be said that the said organisation could not have indulged in terrorist activities. However, in our opinion the said decision is distinguishable as in that case the accused was sending money to an extremist organisation for purchasing arms and ammunition. That is not the allegation in the present case. The decision in State of Maharashtra v. Dhanendra Shriram Bhurle [(2009) 11 SCC 541 : (2009) 3 SCC (Cri) 1480] is also distinguishable because good reasons have been given in the present case by the High Court for granting bail to the respondent. In the present case there is no evidence as yet to prove that PFI is a terrorist organisation, and hence the respondent cannot be penalised merely for belonging to PFI. Moreover, even assuming that PFI is an illegal organisation, we have yet to consider whether all members of the organisation can be automatically held to be guilty.

11. In Scales v. United States [6 L Ed 2d 782 : 367 US 203 (1960)] Harlan, J. of the US Supreme Court while dealing with the membership clause in the McCarran Act, 1950 distinguished between active “knowing” membership and passive, merely nominal



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membership in a subversive organisation, and observed:

“The clause does not make criminal all association with an organization which has been shown to engage in illegal activity. A person may be foolish, deluded, or perhaps mere optimistic, but he is not by this statute made a criminal. There must be clear proof that the defendant specifically intends to accomplish the aims of the organization by resort to violence.”

12. In Elfbrandt v. Russell [16 L Ed 2d 321 : 384 US 11 (1965)] US at pp. 17 & 19 Douglas, J. of the US Supreme Court speaking for the majority observed: (L Ed pp. 325-26)-

“Those who join an organization but do not share its unlawful purpose and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. ... A law which applies to membership without the ‘specific intent’ to further the illegal aims of the organization infringes



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unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here."

13. In Joint Anti-Fascist Refugee Committee v. McGrath [95 L Ed 817 : 341 US 123 (1950)] US at p. 174 Mr Douglas, J. of the US Supreme Court observed: (L Ed p. 855)

"In days of great tension when feelings run high, it is a temptation to take shortcuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within."

14. We respectfully agree with the above decisions of the US Supreme Court, and are of the opinion that they apply in our country too. We are living in a democracy, and the above observations apply to all democracies.

15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who



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will restore so many years of his life spent in custody?

Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille"

(48)Learned counsel for the appellants in Crl.A.Nos.114 & 116/2023 relied upon the judgment of another Division Bench of this Court wherein the accused therein was charged for offences under Section 16 of UAPA. This Court held that the provisions of UAPA had been included only to deny/delay the accused from getting bail from the Court and found that Section 43[D][5] of UAPA has no application to the said case.

(49)Yet another judgment of a Division Bench of Karnataka High Court is also relied upon by the learned counsel for the appellants in



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Crl.A.Nos.114 & 116/2023 in the case of **Saleem Khan and Another Vs.**

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State of Karnataka, after referring to the facts, has held as follows:-

22.A careful examination of the materials forming part of the chargesheet clearly depicts that the allegations against accused No.11 are that he is a member of Al-Hind Group and attended several criminal conspiracy meetings as well as jihadi meetings and underwent pistol and bow and arrows training classes, purchased training materials such as tents, sleeping bag, knives and organized shelters for Al-Hind Group members at Gujarat. Mere attending meetings and becoming Member of Al-Hind Group, which is not a banned organization as contemplated under the Schedule of UA(P) Act and attending jihadi meetings, purchasing training materials and organizing shelters for co-members is not an offence as contemplated under the provisions of section 2(k) or section 2(m) of UA(P) Act. Admittedly, in the present case, in order to attract section 2(k), in the absence of any allegation of the offences under section 15 of the UA(P) Act, section 18 of the UA(P) Act would not arise. Section 18A deals with imparting training in terrorism and section 20 deals with punishment for



being member of terrorist gang or organization. In the present case, the prosecution has not produced any material, as could be seen on examination of the chargesheet, against accused No.11 about his involvement in terrorist act or being member of terrorist gang or organization or training terrorism. Admittedly, Al-Hind Group is not a terrorist organization as contemplated under section 39 of the UA(P) Act, thereby the prosecution has failed to prove the prima facie case for rejection of bail against accused No.11. Therefore, the trial Court is not justified in rejecting the bail application filed by accused No.11.

23.It is well settled that, in view of the provision of section 43D of the UA(P) Act, it is necessary to strove to strike a balance between the mandate under Section 43D on the hand and the rights of the accused on the other. To decide as to whether the accusation in such cases is prima facie true, the following circumstances would provide adequate guidance for the Court to form an opinion, which read as under:-

- 1. Whether the accused is/are associated with any organization, which is prohibited through*



an order passed under the provisions of the act?

2. Whether the accused was convicted of the offences involving such crimes, or terrorist activities, or though acquitted on technical grounds; was held to be associated with terrorist activities?

3. Whether any explosive material, of the category used in the commission of the crime, which gave rise to the prosecution; was recovered from, or at the instance of the accused?

4. Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the accused, at or around the scene of occurrence? and

5. Whether the accused was/were arrested, soon after the occurrence, on the basis of the information, or clues available with the enforcement or investigating agencies?

24. Admittedly, in the present case, the prosecution has not proved that accused No.11 has associated himself with any organization which is prohibited or barred under the provisions of the UA(P) Act. Admittedly, he is a Member of Al-Hind Group. It is not a prohibited organization under the Schedule of the UA(P) Act, 1967 and the chargesheet material does not depict that he was convicted for the offences involved



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or crimes or terrorist activities and the prosecution has also not proved whether the accused has used any explosive material of the category used in the commission of the crime or recovered from him nor the chargesheet depicts any eyewitness or mechanical device such as CCTV, camera indicating the involvement of accused No.11, let alone scene of occurrence as shown in the chargesheet. On careful examination of the material forming part of the chargesheet, there are no reasonable grounds for believing the accusation against the accused No.11 prima facie true. In the absence of any prima facie case, restrictions imposed by sub-section (5) of section 43-D per se do not prevent a Constitutional Court from granting bail on the grounds of violation of part III of the Constitution. Our view is fortified by the dictum of the Hon'ble Supreme Court, in an identical case i.e., in the case of THWAHA FASAL vs. UNION OF INDIA reported in+ 2021 SCC OnLine SC 1000 in paras 27, 42, 43, the Hon'ble Supreme Court has held as under:-

27. "Now we turn to the material against the accused nos.1 and 2 in the charge sheet. In paragraph 18 of the charge sheet, the charges against accused



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nos.1 and 2 have been set out. Paragraph 18.1 to 18.17 reads thus:

"18.1 That, accused A-1, A-2 and A-3 had, knowingly and intentionally, associated themselves and acted as members of Communist Party of India (Maoist) in short CPI (Maoist), proscribed as a terrorist organisation by the Government of India under section 35 of the Unlawful Activities (Prevention) Act, 1967 and included in the 1st Schedule to the Act.

18.2 That, accused A-1, A-2 and A-3 knowingly and intentionally attended various conspiracy meetings along with other underground part-time and professional members of CPI (Maoist). They had also attended various programmes organized by the frontal organisations of the proscribed terrorist organisation, for furthering the objectives of CPI (Maoist).

18.3 That, the accused A-1, A-2 and A-3 had, knowingly and intentionally conducted meeting and conspired in front of Medicare Laboratory, Kottayithazham, Kozhikode City, at around 06:45 PM on 01.11.2019 for furthering the activities of the proscribed terrorist organisation CPI (Maoist).

18.4 That, the accused A-1 had knowingly possessed documents supporting and published by CPI (Maoist) with the intention of supporting the proscribed terrorist organisation and propagating its violent extremist ideology.

18.5 That, the accused A-2 had knowingly possessed documents supporting and published by CPI (Maoist) with the intention of supporting the proscribed terrorist



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organisation and propagating its violent extremist ideology.

18.6 That, the accused A-3, on seeing the Police party, had fled from the scene and managed to escape owing to his membership in the proscribed terrorist organisation CPI (Maoist). He is still absconding.

18.7 That, A-1 had knowingly and with the intention of aiding CPI (Maoist) possessed on his digital devices, materials supporting the proscribed terrorist organisation and its violent extremist ideology, for the purpose of spreading such ideology.

18.8 That, the materials found during the house search of A-2 such as notices, pamphlets, books, hand written notes, banners besides digital devices and publications were knowingly and intentionally possessed by A-2 for supporting the proscribed terrorist organisation CPI (Maoist) 18.9 That, in pursuance of the conspiracy to further the activities of CPI (Maoist), during the house search of A-2, he had, intentionally and knowingly, raised slogans, supporting the ideology of the proscribed terrorist organisation.

18.10 That, in furtherance of the conspiracies with co-accused and others, A-2 had knowingly and intentionally prepared cloth banners supporting secession of Kashmir from the Indian Union, for displaying at public places on behalf of CPI (Maoist) and thus committed unlawful activity as defined under the Unlawful Activities (Prevention) Act.

18.11 That A-1, knowingly and intentionally participated in the meetings of the proscribed terrorist organisation CPI (Maoist) with professional members including A-3 and had prepared notes that were maintained by A-1.



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18.12 That, A-1 and A-3 knowingly and intentionally conspired and conducted secret meetings at the rented accommodation of A-1 in Kannur district, for furthering the objectives of the proscribed terrorist organisation CPI (Maoist).

18.13 That, the accused A-1, had knowingly and intentionally propagated the Maoist ideology amongst his close friends with the intention of radicalizing and recruiting them in to the proscribed terrorist organisation CPI (Maoist).

18.14 That, the accused had knowingly and intentionally conducted several conspiracy meetings (APTs) in Kozhikode and Kannur districts of Kerala for furthering the objectives of the proscribed terrorist organisation CPI (Maoist).

18.15 That, the accused A-3 and other underground professional members of CPI (Maoist) had radicalised and recruited A-1 and A-2, besides others, into the proscribed terrorist organisation, with the intention of furthering the activities of CPI (Maoist).

18.16 Therefore, Allan Shuaib @ Mamu @ Mammu @ Vivek (A-1) committed offences punishable under Section 120B of the Indian Penal Code besides sections 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

18.17 Therefore, Thwaha Fasal @ Thaha @ Fasal @ Kishan (A-2) committed offences punishable under section 120B of the Indian Penal Code besides sections 13, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

.....



42. As held in the case of K.A. Najeeb (*supra*), the stringent restrictions imposed by sub-section(5) of Section 43D, do not negate the power of Constitutional Court to grant bail keeping in mind violation of Part III of the Constitution. It is not disputed that the accused no.1 is taking treatment for a psychological disorder. The accused no.1 is a student of law. Moreover, 92 witnesses have been cited by the prosecution. Even assuming that some of the witnesses may be dropped at the time of trial, there is no possibility of the trial being concluded in a reasonable time as even charges have not been framed. There is no minimum punishment prescribed for the offences under Sections 38 and 39 of the 1967 Act and the punishment can extend to 10 years or only fine or with both. Hence, depending upon the evidence on record and after consideration of relevant factors, the accused can be let off even on fine. As regards the offence under Section 13 alleged against accused no.2, the maximum punishment is of imprisonment of 5 years or with fine or with both. The accused no.2 has been in custody for more than 570 days.

43. It is true that without recording a satisfaction as contemplated by sub-section (5) of Section 43D, the order granting bail to the accused no.1 could not have been confirmed by the High Court. However, we have examined the material against both the accused in the context of sub-section (5) of Section 43D. Taking the materials forming part of the charge sheet as it is, the accusation against both the accused of the commission of offences punishable under Sections 38 and 39 does



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not appear to be prima facie true." The said material fact has not been considered by the trial Court while rejecting the bail application, filed by accused No.11, under section 439 Cr.P.C., thereby accused No.11 is entitled to bail."

(50) In the case of ***Abdul Azeez and 21 Others Vs. State of Kerala*** reported in ***2016 SCC Online Ker 40231***, the High Court of Kerala had occasion to consider the scope of Sections 18 and 18 A of UAPA. The accused therein are again the active members of PFI or Social Democratic Population of India [SDPI]. The accused therein were punished by the Special Court for offences under a few provisions of IPC, Arms Act and Explosives Substances Act, 1908 and Sections 18 and 18A of UAPA. With regard to the offences under Sections 18 and 18A of UAPA, the Division Bench has held as follows:-

"14.A more important and crucial issue on which the appellants and the respondent are in great controversy is regarding sustainability of the conviction and sentence imposed for offences punishable under the Unlawful Activities (Prevention) Act, 1967 (for short 'the UA(P) Act'). The court below had imposed conviction against accused Nos. 1 to 21



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under Sections 18 and 18A of the UA(P) Act. Learned counsel for the appellants contended that, the accused Nos. 1 to 21 had not committed any terrorist act nor any act preparatory for commission of a terrorist act. He further argued that the accused Nos. 1 to 21 have not organised or caused to be organised any camp for imparting training in terrorism. While examining the question, it would be beneficial to have a scanning of the relevant provision in the UA(P) Act, defining the terms, 'Terrorism' as well as 'Terrorist act'. Section 2(k) of UA(P) Act provides that "terrorist act" has the same meaning assigned to it in Section 15, and the expressions 'terrorism' and 'terrorist' shall be construed accordingly. Section 15 of the UA(P) Act envisages punishment for Terrorist activities. It provides that, whoever does any act with the intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with the intent to strike terror or likely to strike terror in people or any section of the people in India or in any country by using explosive substances and arms mentioned under Sub Section (a) or by any other means to cause or likely to cause death or injuries to any person or persons or loss or damage or destruction to property,



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is punishable under the said provision. Therefore, the ingredients to constitute a 'terrorist act' are mainly that there should be an act committed with an intention to cause threat or likely to cause threat to the unity, integrity, security or sovereignty of the India or with an intent to strike terror or likely to strike terror in people or any section of people in the country. Secondly, there should be usage of the explosives or arms with the above said intent in order to cause or likely to cause death or injury to person or loss or damage or destruction to property. Sub Clause (b) and (c) to Section 15 are not relevant in this context. The question to be analysed is as to whether the unlawful assembly of accused Nos. 1 to 21 and their possession and having control over the arms and explosive substances was with any intention to commit a 'terrorist act' or was in any manner preparatory to the commission of a 'terrorist act'. Learned Special Prosecutor argued that the intention with respect to the unlawful assembly and their possession and control over the substances need to be inferred as one intended to strike terror among people, even assuming that there is no evidence to prove that it is intended to threaten the unity, integrity, security or sovereignty of the country. He further



contended that, use of such explosive substances for the purposes of demonstration would satisfy the ingredients of the usage, contemplated under clause (a) of Section 15. It is also contended that such usage, when it becomes likely to cause death or injury, can be considered as usage coming within the purview of that sub clause, dehorse whether any death or injury has sustained to any person or any damage or destruction had caused to any property. As we already discussed, the prosecution has not established through any convincing evidence the aims and the objectives or the activities of the organizations or regarding the motives and objectives in convening the alleged camp and in imparting training in manufacture and usage of the arms and the explosive substances. Despite the specific allegation that the accused were seen engaged in imparting training in manufacture of Bombs and in usage of arms, no cogent or convincing evidence is forthcoming with respect to any training being conducted at the premises, apart from the possession and control over the incriminating substances. Further, the prosecution has not succeeded in proving through any credible evidence their specific case that, the assembly and the alleged training was with a declared



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intention to protect members of the particular community from the alleged torture of the other community, especially from hindus. Under such context, this court is of the view that the conviction imposed under Section 18A of UA(P) Act cannot be sustained in any manner.

15.A further question mooted for consideration is as to whether there was any usage of the Bombs or the Sword for any purposes as contemplated under Section 15 of the UA(P) Act or as to whether the demonstration of those materials can be considered as one to strike terror among the people or as one likely to strike terror among the people."

(51) From the analysis of the judgments above referred to, this Court keeping in mind, the broad principles, has no difficulty in holding that the order of the Special Court is vitiated for total non-application of mind. Except the FIR, no material evidence was produced before the Special Court to convince the Court, regarding the possible involvement of any of the accused in the commission of offence under the provisions of UAPA



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as alleged to attract Part IV or VI. The Special Court appears to be convinced that mere allegations would be sufficient to reject bail by invoking Section 43[D][5] of UAPA.

(52) This Court has already seen that except the statements of the Listed Witnesses to show that some of the appellants organized weapon training using knives and swords and to train the members to throw beer bottles filled with water on targets, there is no other material to suggest commission of any offence which falls under Section 15 of UAPA. The prosecution is unable to produce any material even before this Court about the involvement of any one of the appellants in any terrorist act or as a member of a terrorist gang or Organization or training terrorism. Section 18 of UAPA, as pointed out above, can come into play only when an act is construed as an act preparatory to the commission of a terrorist act. As pointed out earlier, when PFI is only declared as an unlawful Association and not a terrorist Organization so far, any preparatory act in the context, should be construed as one in defence and not to perpetrate any terrorist act. In the context of the present case, where the literature and other things indicate that the Organization as such was established at



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least in paper that the training they wanted to give, was to protect the community as such when communal violence is unleashed against them, this Court cannot interpret the act as spoken by the Listed Witnesses as an act which is in the nature of preparatory to commission of terrorist act.

As regards the documents found in Additional typed set produced on 11.10.2023 by the learned Additional Solicitor General:-

(53)The first set of documents are forms filled by new members of PFI who had given their feedback about their experience/knowledge they gained or their general remarks about the physical training given to them when they attended training camp organized by PFI. The feed back forms indicate the appreciation of participants for learning about Islamic principles, the changes they felt in their body. Some of the participants mention about their enemies who are to be opposed. One member has mentioned that he learnt about facing police case. Learned Additional Solicitor General relied on reference to weapon as defence. One of the participant refers to RSS and Sangh Pariwar as enemies. The next set of documents are pictures and literatures captured from the digital devices seized from A6, one of the appellants in Crl.A.No.116/2023. Some of the pictures are



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photographs of Binladan or some persons believed to be the members of terrorist Organizations like ISIS. Details of RSS, police, Dargah, Church, mandir are found. Issues of Sanat AI Hindu Newspaper cuttings about Babri Masjid, the photos of the front page of a Taliban magazine "voice of Hind", photo of unknown persons with A.K.47 rifle or with other Arms and several other pictures. Literatures of PFI are also seen. Another set of video performing martial arts to demonstrate self defence, contents according to prosecution are "incriminating", but do not show the involvement of any appellant in any terrorists act. Some of the photographs of activists and leaders of RSS or other Hindu Organizations are also captured with specific marking. The interpretation was that the marking will indicate that persons marked are targeted as if they are in 'Hit List' of PFI. When the contents are allowed to be interpreted by one's vivid imagination, one may tend to believe that A6 may pose a potential threat. However, the involvement of A6 in any terrorist act or his association with terrorist Organization cannot be inferred from any of these documents. This Court has already seen that the statement in the Final Report to the effect that the object of PFI is to establish Islamic



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Government in India in 2047 by referring to a document "India:2047 Vision Document" is not based on any document seized from the appellants. There is no material to connect any of the appellants to the said document. It is in the said background, every activity of PFI is suspected to be an of unlawful Association. When the activities of appellants are seen with a jaundiced eye, probably, the respondents seems to believe appellants as activists of unlawful Organization. In the absence of any material connecting appellants to the "vision document", every serious accusations appears to be based on probabilities, by assumption. In other words, the opinion formed is without any direct evidence or proof.

(54)In the factual context, this Court finds no material for believing that the accusations against the appellants for alleged commission of offences under UAPA, are prima facie true. It is also brought to the notice of this Court that against the judgment of the Division Bench of this Court in ***M.Mohamed Abbas's case***, the Hon'ble Supreme Court declined to grant leave and the Special Leave Petition filed in SLP [Cri] No.9384/2023



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preferred by the Union of India, had been dismissed on 03.10.2023 with an observation that the respondent/accused therein will have to scrupulously comply with the conditions imposed while granting bail and any violation thereof, will lead to the cancellation of bail on the application of the Union of India. The Hon'ble Supreme Court in ***National Investigation Agency Vs. Zahoor Ahmad Shah Watali*** reported in **2019 [5] SCC 1**, has considered the scope of proviso to sub-section 5 of Section 43 [D] of UAPA in the light of the view expressed by Hon'ble Supreme Court by a Three Member Bench in ***Ranjithsing Brahmajeetsing Sharma Vs. State of Maharashtra*** reported in **2005 [5] SCC 294** on the scope of power of Court to grant bail while dealing with similar situation under MCOCA. The scope of proviso to sub-section 5 of Section 43D requires the Court to express its opinion that there are reasonable grounds for believing that accusation against such person is *prima facie* true. As observed in ***Zahoor Ahmad Shah Watali's case [cited supra]*** reported in **2019 [5] SCC 1**, there must be good and sufficient materials, on the face of which the commission of offence can be inferred. Question is whether the documents collected so far and



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relied upon to frame charges are sufficient for believing that the accusation against the appellants are *prima facie* true. As pointed out earlier, the case of prosecution is based on some materials which are not linked to appellants and hence, the opinion formed by respondents before investigation and the documents collected so far as formed along with charges sheet do not justify a finding that the accusations against the appellants including A6 are *prima facie* true. Hence, this Court is inclined to allow the Criminal Appeals and to grant bail to the appellants herein.

(55) Accordingly, **Crl.A.Nos.98, 114 and 116/2023** are **allowed** and the impugned orders passed by the Special Court under the National Investigation Agency Act, 2008 [Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai] in bail applications in Crl.MP.Nos.742/2022 and 722/2022 in RC.No.42/2022/NIA/DLI dated 03.01.2023 are hereby set aside.

(56) The appellants/A7, A1, A3, A4, A5, A6, A8 and A9 are granted bail on the following conditions:-

(a) Each of the appellants shall execute a bond and furnish two sureties



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for a likesum of Rs.1,00,000/- [Rupees One Lakh only] each and one of the sureties should be a blood relative to the satisfaction of the learned Special Court under the National Investigation Agency Act, 2008 [Sessions Court for Exclusive Trial of Bomb Blast Cases], Chennai at Poonamallee, Chennai-600 056 [hereinafter referred to as Special Court] ;

(b) After coming out from jail, the appellants shall stay at Chennai and shall not leave the Chennai City without the permission of the Special Court ;

(c) The appellants shall appear and sign before the Special Court everyday at 10.00 a.m. until further orders;

(d) The appellants shall surrender their Passports if they possess, with NIA and if any of the appellants does not hold a passport, then he/they shall file an affidavit to that effect in the form that may be prescribed by the Trial Court. In the latter case, the Trial Court will if has reason to doubt the accuracy of the statement, write to the



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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 period, the Trial Court will be entitled to act on the statement of the those appellants;

- (e) The appellants shall cooperate with the investigation ;
- (f) he appellants shall not tamper with evidence and indulgence in any other activities which are in the nature of preventing the investigation process ;
- (g)The appellants shall inform the Trial Court as well as the Investigating Officer of NIA, the address where they reside and if there is any change in the address, it should be informed to the Trial Court as well as the Investigating Officer of NIA ;
- (h) The appellants shall use only one mobile phone during the time they remain on bail and shall inform the Trial Court, their mobile numbers;
- (i) The appellants shall also ensure that their mobile phones remain active and charged at all times so that they remain accessible over phone throughout the period they remain on bail ; and



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(j) The Trial Court 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.

Consequently, connected miscellaneous petitions are closed.

[SSSRJ] [SMJ]
19.10.2023

AP

Internet	:	Yes
Index	:	Yes / No
Neutral Citation	:	Yes/No



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To

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- 1.The Special Court under the National Investigation Agency Act, 2008,
[Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee,
Chennai]
- 2.The Inspector of Police
National Investigation Agency
Chennai Branch.
- 3.The Special Public Prosecutor
NIA Cases, Chennai.



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CRLA.Nos.98, 114 & 116/2023

S.S.SUNDAR, J.,

AND

SUNDER MOHAN, J.

AP

Common Judgment in
CrI.A.Nos.98, 114, 116/2023

19.10.2023



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S.S.SUNDAR, J.
AND
SUNDER MOHAN, J.

[Order of the Court was made by S.S.SUNDAR, J.]

After pronouncement of the judgment in the above Appeals, it is represented by Mr.T.Mohan, learned Senior counsel that on account of ensuing Pooja Holidays, the Special Court may be directed to accept sureties on the basis of the web copy of the judgment made in the above appeals.

2.Mr.R.Karthikeyan, learned Special Public Prosecutor appearing for NIA Cases made a request that the original Case Diary/Records produced before this Court for the disposal of the appeals, may be returned back to him.

3.Registry is directed to return back all the original Case Records/Diary furnished by the learned Special Public Prosecutor [NIA Cases] at the time of hearing of the appeals, after getting due verification and endorsement forthwith.

4.It is made clear that the Special Court under the National Investigation Agency Act, 2008, [Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai], shall accept the sureties on the basis of the web copy to be produced by the Advocates/parties.

[S.S.S.R., J] [S.M., J]
19.10.2023

AP