

**IN THE COURT OF SPECIAL COURT NIA FOR GR.BOMBAY
AT BOMBAY
ORDER BELOW EXH.04
IN
SPECIAL CASE NO. 414 OF 2020
ALONGWITH
SPECIAL CASE NO. 871 OF 2020**

Fr.Stan Swamy

.... Accused No.16

Versus

The State of Maharashtra
(Through NIA)

..... Complainant

Learned Advocate Mr. Sharif Shaikh for accused No.16.
Learned S.P.P. Mr. Shetty for NIA

**CORAM : HIS HONOUR THE SPECIAL JUDGE
SHRI. Dinesh E. KOTHALIKAR (C.R.NO.25)**

DATED : 22nd March, 2021.

INDIAN LEGAL NEWS

(DICTATED AND PRONOUNCED IN OPEN COURT)

ORAL ORDER

. This is an application for bail under Section 439 of Cr.P.Code, by the applicant, who has been arrested on the accusation for commission of offences punishable under Sections 121, 121-A, 124-A, 153-A, 505(1)(b), 115, 120-B, 201 read with 34 of the Indian Penal Code, 1872 and Sections 13, 16, 17, 18, 18-A, 18-B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

2. The route map of the case, as revealed from the report, can be summarized as under;

That a report under Section 154 of the Code of Criminal Procedure, was lodged on 8.1.2018 at Vishrambaug Police Station by Mr. Tushar Ramesh Damgude. According to the informant, he was in the business of construction. He has claimed that a program was organized at Shaniwar Wada, Pune on 31.12.2017 by an Elgar Parishad. The informant had attended said program at around 2:00 p.m. It has further been alleged that few speakers, compere, singers and other performers were present on the stage. The informant knew Kabir Kala Manch and it's members. He had read about them on social media and in the newspapers. It has been further stated that some performers enacted short plays, performed dances and sang songs. According to him, the performances were provocative in nature and had effect of creating communal disharmony. At that time, some provocative speeches were delivered. Few objectionable and provocative books were kept for sale at the venue. It is his further contention that a banned organisation Communist Party of India (Maoist) was inciting violence by creating communal disharmony.

3. The members of Kabir Kala Manch spread hatred through their songs, plays and speeches causing enmity between different communities. As a result, there were incidents of violence, arson and stone pelting near Bhima-Koregaon. Accordingly, he had lodged report against six members of Kabir Kala Manch. The investigation had proceeded further and based on the material gathered during investigation, Section 120B of IPC was added on 6.3.2018.

4. On 17.4.2018 and 06.06.2018 houses of some of the suspects were searched. The prosecution has come with the case that

during the search; documents were recovered from various computers, laptops, pen drives, memory cards. The seized articles were sent to Forensic Science Laboratory for analysis. The cloned copies were received. On the analysis of those cloned copies, offence under the provisions of UAP Act were invoked on 17.5.2018.

5. It is the case of prosecution that from the seized and recovered material, it was revealed that few more persons were part of the criminal conspiracy and their role was not merely peripheral but was very vital. Therefore, search was conducted at the residences or workplaces of other accused persons. The prosecution recovered the document titled "*Strategy and Tactics of The Indian Revolution*", from the computer of accused No.6 P. Varavara Rao. In the said document, the motive of the banned terrorist organisation i.e. CPI (Maoist) is mentioned. According to prosecution, in view of achieving the task, the CPI (Maoist) is waging not a conventional war, but, a people's war by mobilizing people on a massive scale both militarily and politically. It is the case of the investigating agency that the banned organisation is trying to create disharmony between different castes with the objective to overthrow the democratically elected Government and to seize the political power through armed revolution.

6. Thus, the scope of investigation was not restricted to find out the object and effect of the program organized on 31.12.2017 by Elgar Parishad or to carry out investigation into the violence that followed the said event; but, the investigation was expanded to unearth a much larger conspiracy of seizing the political power

through armed revolution by mobilizing masses.

7. On 28.08.2018 and in the month of June 2019 house of the applicant was searched for, house of the applicant was searched for at Bagaicha. On 24.01.2020, the case was transferred to National Investigation Agency. Thereafter, on 25.07.2020, the team of NIA had visited the residence of the applicant and interrogated him for almost 15 hours between 27.07.2020 to 07.08.2020. Thereafter, on 08.10.2020, the applicant was arrested and since then he is in custody.

8. The applicant claims that he is a catholic priest and that he was the founder of Bagaicha, an organisation dedicated to empower Adivasis and Moolvasis and that he is one of the leading tribal activists in Jharkhand and has written and researched on the issues of caste, religion, land rights and struggle of people. He has further come with the contention that on 01.01.2018, it was 100th anniversary of Historic Battle of Bhima Koregaon and more than 250 Social organisations have organized a programeme under the banner of “Bhima Koregaon Shaurya Din Prerana Abhiyan” and that on 31.12.2017, an event called 'The Elgaar Parishad' was also organized at Shanivar Wada, Pune. It is his contention that a mob holding saffron flags attacked the persons travelling to and from, the Vijaystambh. In respect of said incident an offence was registered at Pimpri Police Station, Pune.

9. The applicant has further claimed that in the report submitted by the Committee of 10 members headed by the Deputy Mayor, Pune Milind Ekbote, Sambhaji Bhide and others were named as

main conspirators for the violence dated 01.01.2018. Therefore, according to the applicant the report dated 08.08.2018 is an afterthought report. The applicant claims that apprehending arrest, he had filed a Writ Petition for quashing the FIR. In the said petition, the then investigation officer, had made a statement that he did not have intention to arrest the applicant and therefore the petition was disposed of with the observations that there were no proceedings against the applicant.

10. The applicant has claimed bail on the ground of his old age and physical health. It is further claimed that there is no prima facie material for implicating the applicant in this crime. There is delay in lodging the report and the same has not been explained. The applicant has not played role in 'Elgaar Parishad', even he was not present at the time of said meeting. He has not been named in the FIR and that his name was revealed for the first time in the remand report dated 21.08.2018. The seizure panchanama, which was drawn at the house of the applicant, was drawn in Marathi, and signature of the applicant was obtained on it forcibly, in presence of the panchas, who were brought from Maharashtra.

11. According to the applicant, the documents/letters relied upon by the prosecution do not establish that they were actually sent and that it is uncertain as to their authors. The letters cannot be used to deny bail to the applicant. The FM Transceiver Manual, relied upon by the prosecution, is a document of the year 2000 and mere possession of said document is not illegal. According to the applicant,

an article published by The Caravan, a journal, has claimed that the Hard Disk of accused Rona Wilson, was infected with a malware Win32: Trojan-gen.

12. The applicant has further claimed that the role of PPSC has been established as an organisation providing legal aid and that the act of providing legal aid to the Maoist is not an offence. The material placed on record is an inadmissible evidence, which cannot be converted into evidence and used to deny bail. According to the applicant, it will take time for conclusion of the trial and that the same will result, in acquittal. On the aforesaid and other usual grounds the applicant has prayed to release him on bail.

13. The application has been contested by the prosecution by filing reply Exh.15. It has been claimed that considering the gravity of the offence and its inter State link and implications on National Security, the Central Government has suo motu directed the National Investigation Agency to take up the investigation of the aforesaid case. The applicant was arrested on 08.10.2020 and since then he is in custody. Thereafter, charge-sheet has been submitted against the applicant. The prosecution claims that there are more than 140 e-mail communication between the applicant and co-accused, as a part of the group e-mail, wherein the applicant has shared his views on different issues including 'Operation Green Hunt', which was initiated by the Government of India to eradicate the Naxalites, which was protested by the applicant. He had further appealed to oppose it and accordingly a committee was formed.

14. The prosecution has further claimed that the applicant is staunch supporter of the activities of organisations like Visthapan Virodhi Jan Vikas Andolan (VVJVA), PUCL etc., which were the frontal organisation of CPI (Maoist). The Visthapan Virodhi Jan Vikas Andolan had organized a National Conference at Hyderabad, in the month of February 2016. A document in respect of the conference was seized from the digital data of the co-accused Surendra, and the list of invitees was recovered from the co-accused Mahesh. Further, compliance report of said conference was given to the Central Regional Bureau of CPI (M), which was recovered from the DKSZC Chief and CC Member Narmadakka. There is material on record indicating that the applicant had attended a meeting at Kolkata.

15. According to the prosecution, the accusation made by the journal Caravan, is a direct attack on the administration of Criminal Justice System. It is claimed that the Caravan without knowing the ground realities about the case has made an imputation against the investigation agency with guilty intention to mislead the general public and discredit the investigation agency and to hamper the investigation.

16. The prosecution has further claimed that there is sufficient evidence on record which authenticates the factum that the PPSC is the frontal organisation, which is being used for the furtherance of CPI (M) agenda. The applicant is the founder of the organisation called 'Bagaicha' is involved in Visthapan Virodhi Jan Vikas Andolan, which is a frontal organisation of CPI (M), which they used to further their agendas. The prosecution has further claimed that during investigation

it has been revealed that the applicant is the member of the CPI (M) and actively involved in its activities. Further, it is also revealed that the applicant was in contact with some of the conspirators for the furtherance of its activities.

17. It has been claimed by the prosecution that the investigation regarding funds and the financial transaction is in progress as it is revealed that the accused have received a large amount of money and number of persons were indulged in disbursing and receiving the same. Thus, it is prayed to reject the application.

18. I have heard the submissions advanced by learned advocate Mr. Sharif Shaikh for the applicant and learned SPP Mr. Prakash Shetty.

19. On the basis of the submissions made before me following points arise before me and I have recorded findings against them for the reasons stated hereinafter;

<u>POINT</u>	<u>FINDINGS</u>
1. Whether the applicant has made out a case for grant of bail?	No
2. What order?	As per final order

REASONS

AS TO POINT No.1:

20. Considering the fact that the applicant is involved in an offence punishable under the provision of UAP Act, for deciding the

bail application, the provision incorporated under Section 43-D sub section (5) of the UAPA is required to be taken into account. It reads as follows;

“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 then 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.”

21. On the point of consideration for grant of bail to the applicant involved in the offence punishable under the UAP Act, both the parties have relied upon the judgment of Hon’ble Supreme Court in the case of *National Investigation Agency Vs. Zahoor Ahmad Shah Watali in (2019) 5 SCC 1*. This judgment lays down as to what should be the approach of the Court in deciding bail applications involving offences under Chapters IV and VI of the UAPA.

22. The Hon’ble Supreme Court, in this case, was considering the question of grant of bail to the accused who was charged with various Sections, mainly under Chapters IV and VI of the UAPA as well as Sections 120-B, 121 and 121-A of I.P. Code.

23. In the said judgment Hon'ble Supreme Court stated the settled position about the matters to be considered for deciding an application for bail. Those principles provided for deciding whether there is *prima facie* or reasonable ground to believe that the accused had committed the offence; nature and gravity of the charge; severity of the possible punishment in the event of conviction; danger of the accused not being available for trial; character, behaviour, means, position and standing of the accused; likelihood of repetition of the offence; possibility of tampering with the evidence; and possibility of justice being thwarted by grant of bail.

24. It is observed that, when it came to offences punishable under special enactments, something more was required to be kept in mind in view of Section 43-D of the UAPA. The Hon'ble Apex Court has further discussed the guiding principles in deciding bail applications for the offences under Chapter IV and VI of the UAPA. It would be appropriate to quote the observations from para No.23 and 27 of the judgment. Those are as follows :

23. By virtue of the proviso to subsection (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and

Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows them complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

"27. For that, the totality of the material gathered by the investigating agency and

presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.”

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

26. The learned advocate for the applicant has further relied upon the judgment of Hon'ble Apex Court in the case of Union of India Vs K.A. Najeeb in Criminal Appeal No.98 of 20121 decided on 01.02.2021 to state that Section 43-D of the Act is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS where the competent court needs to be satisfied that *prima facie* the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre-condition under the UAP Act. Instead, Section 43-D (5) of UAP Act, merely provides another possible ground for the competent court to refuse bail, in addition to the well settled considerations. It is to be noted that in the said case the Hon'ble Apex Court has observed that the presence of statutory restrictions like Section 43-D (5) of the Act, per-se does not oust the ability of Constitutional Courts to grant bail.

27. On the point of considerations for grant of bail, the learned SPP has relied upon number of judgments. However, in my view, it would be sufficient to make reference to the judgment of Hon'ble Apex Court in the case of **Virupakshappa Gouda Vs State of Karnataka (2017) 5 SCC 406**, wherein the Hon'ble Apex Court has considered earlier judgments and held that;

“17. In Central Bureau of Investigation vs. V. Vijay Sai Reddy, the Court had reiterated the principle by observing thus:- “While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words reasonable grounds for believing instead of the evidence which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

28. Bearing in mind the observations of Hon'ble Apex Court, I am required to consider the totality of the material produced along with the charge sheet for deciding present application.

29. Main thrust of argument of the learned advocate for the applicant on admissibility of the documents filed on record. According to him, the electronic data and documents placed on record by the prosecution being inadmissible cannot be considered. The learned advocate for the applicant has argued that the prosecution is putting reliance on hearsay evidence to connect the applicant, which is inadmissible. In this regard, in the case of Zahoor Ahmad Shah Watali (cited supra) the Hon'ble Apex Court has ruled that the question of admissibility of those documents will have to be decided at trial. Therefore, I do not find merit in the objection raised by the learned advocate for the applicant.

30. It has been further argued that no incriminating material has been seized from the custody of the applicant and that the applicant is not involved in any anti national activity. He has further argued that there is no material before the Court to show that incident occurred at Bhima-Koregaon has any nexus with Elgar Parishad held at Shaniwar Wada, Pune and that as per the report lodged against Milind Ekbote and Sambhaji Bhide, they were responsible for the riot that took place at Bhima-Koregaon and not the applicant.

31. It is further argued that there is no evidence of sedition against any of the accused and that there is no proof of the letters seized from the electronic devices allegedly found with the accused persons and that there is no evidence that the letters were sent or received by any of the accused and that the typed written letters/e-mails suffer from many legal shortcomings, their senders and recipient

are unknown and that the prosecution has no evidence to connect them with the applicant based on short names/alphabets used denoting sender and recipient.

32. Learned Advocate Mr. Shaikh has submitted that the applicant is human right activist and even if it is said that he is member of banned organisation, that itself is not a crime. He has relied upon following judgments to substantiate his contention;

1. *Arup Bhuyan Vs. State of Assam AIR 2011 SC 957.*
2. *Yasir Sayyed Anis Sayyed @ Hujefa Vs. State of Maharashtra in Cri. B.A. No.1007 of 2014.*
3. *Jyoti Babasaheb Chorge Vs State of Maharashtra in Cri. B.A. No.1020 of 2012.*
4. *State of Kerala Vs Raneef (2011) 1 SCC 784.*

33. The common thread running through the aforementioned judgments is that Mere membership of a banned organisation will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence.

34. He has further referred to the provisions of Section 85-B of the Evidence Act which provides for presumption of electronic records and argued that the electronic data collected by Investigating Machinery in the present case has no evidentiary value. It is argued that the Investigating Officer conveniently deviated from the practice of taking hash value of seized electronic record, to fabricate evidence.

Therefore, according to him, the collected electronic data cannot be taken into account by the Court even at the stage of deciding bail application.

35. The learned S.P.P. Mr. Shetty has opposed the bail application stating that the Central Government by passing an order to add the Communist Party of India (Maoist) and all its formations and frontal organisations as terrorist organisation in the Schedule to the UAP Act by making corresponding amendment. According to the case of the investigating agency, the banned organisation was operating through its members in different fields. Some operations were recruiting cadres, procuring weapons etc.

36. He would further submit the applicant was actively involved in the activities of banned organisation CPI (Maoist) and that he was taking steps in furtherance of the objectives of the party by recruiting cadres, by raising funds, by creating chaos in the Society and by making attempts to overthrow the Government and to establish a parallel Government with military operations. He has invited my attention to the documents recovered from the devices of the applicant and the co-accused during the raid conducted at their houses.

37. The learned SPP Mr. Shetty has further submitted that there is sufficient material against the applicant and the co-accused to show that they were involved in the activities of banned organisation. He has further submitted that the applicant and the co-accused were

not merely passive but active members of the banned organisation. There is sufficient material against them to show their involvement in the larger conspiracy. He has referred to certain letters seized from the computers and electronic devices of the applicant and the co-accused during search to show how they were involved in the functioning of the banned organisation and the severity of the conspiracy.

38. Mr. Shetty, the learned S.P.P. has submitted that it has also been revealed that the applicant was in communication with Arun, the Cadre Com. Of CPI (M), in which it was communicated that after arrest of urban CPI (M) cadres from different parts of country, particularly in Maharashtra, huge irrevocable damage has been caused to the party and in the future, they were required to avoid such mistakes. This, according to Mr. Shetty would establish link between the applicant and the unlawful activities.

39. The learned SPP has argued that the material collected from the accused persons is sufficient to show their involvement and their activities in relation to the banned organisation and the attempts to create unrest in the country.

40. Upon perusal of the record, it would reveal that the prosecution has placed on record the document titled as “***Strategy and Tactics of the Indian Revolution***”. This document has been allegedly recovered from the pen drive of accused P. Varavara Rao. It is dated 27.1.2007 and the foreword shows that it was issued by the Central

Committee of Communist Party of India (Maoist). This document is divided into different Parts and Chapters. The first Part refers to 'Strategy'. There is a discussion about the Political Strategy and Military Strategy. The discussion on Military Strategy mentions that the military strategy had to be formulated basing on the specific characteristics of the revolutionary war in India. It was mentioned that the revolutionary based areas in the countryside where the enemy was relatively weak should be targeted first and then gradually the cities should be encircled and captured because they were the bastions of the enemy forces.

41. Chapter-6 speaks about seizure of political power through protracted people's war. The relevant discussion on the topic reads thus:

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

42. Chapter-10 of the document speaks about building the People's Army. This Chapter refers to PLGA, which according to the prosecution, means "*People's Liberation Guerrilla Army*". The Central

Committee provides politico-military leadership to the PLGA. The Central Committee decides the general plans while the lower level commands draw the corresponding operational plans. It is mentioned in the discussion that the People's Guerrilla Army was weak on that point and was confronting strong enemy forces and, therefore, there was need to protect the leadership, forces, people's support and arms & ammunition in view of the Party's final objective of defeating the enemy forces.

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

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44. The prosecution has further claimed that another document was recovered from the pen drive of accused P. Varavara Rao, which deals with the work in urban areas. This is also a literature of the banned organisation. The first chapter mentions that the urban movement was one of the main sources which provided cadres and leadership having various types of capabilities essential for the people's war and for the establishment of liberated areas. It is mentioned that the Party must have a comprehensive line of revolutionary struggle, including armed struggle, for the urban areas also in conformity with the line of protracted people's war, i.e., the line of liberating the countryside and encircling urban areas from the countryside first, and then capturing the urban areas.

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

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

47. In Chapter 12, it has been mentioned that it is only by remaining loyal to the politics of the proletariat and the ideology of Maxism-Leninism-Maoism and maintaining its own political and organisational independence that the working class can give leadership and liberate the people from the sectarian nationalism and arouse them and bring them into the path of revolutionary national struggle in its true sense (as part and parcel of the new democratic revolution). One can find similar contention under the head of “Intensify and Expand our People's War Based on Our Strategy and Tactics”.

48. Upon perusal of the documents relating to strategy and tactics, it would reveal that the banned organisation was operating in different ways to achieve its objects. Different members were entrusted with different activities, which was part of the larger conspiracy.

49. So far as the applicant is concerned the prosecution claims that the hard disk was seized from the applicant under panchanama dated 12.06.2019 in presence of Cyber Expert and that the same was forwarded to FSL for analysis which contained 40 documents, 140 e-mails which were exchanged with the accused and that they were found in the computers of the co-accused. Upon perusal of the aforementioned documents it would reveal that these documents relate to the literature of 50 years of Naxalbari, CPI (M) press releases, circulars issued by the Central Committee, literature on how to struggle things, letters, guide of encrypted data communication on GSM Network, message on the celebration of 13th Anniversary of CPI (M), an essential underground handbook, mini manual of urban guerrilla, the constitution of CPI (M), documents related to the status of PLGA in excel sheet form, document on strategy and tactics of Indian Revolution.

50. On the point of seizure of aforementioned material, the learned advocate for the applicant has vehemently submitted that mere recovery of the aforementioned documents is not sufficient to fasten the liability upon the applicant. In this regard, he has relied upon the judgment of Hon'ble Bombay High Court, in the case of *Jyoti Babasaheb Chorge Vs State of Maharashtra (cited supra)*. It is true that the mere possession of the articles relating to the banned organisation, cannot be said to be the prima facie material against the member of a banned organisation. However, the matter did not end here. Upon perusal of the record, it would reveal that certain material has been collected by the investigation agency showing that the applicant was the active member of the banned

organisation.

51. The letter addressed by Prashant, the convicted accused, to the applicant states that certain money transactions have taken place. Not only this, he has informed the applicant that a press conference and such other propaganda work will be required once the PIL gets admitted and that the applicant was asked to invite eminent speakers to support PPSC venture. The names of Sudha and Gautam i.e. the co-accused are also found in the letter. In reply to the said letter, the applicant has informed that he would follow the suggestions given by said Prashant. Further, he has appreciated the efforts made by said Prashant for the PPSC. Further the letters dated 19.07.2017 and 05.10.2017, addressed to Vijayan dada by the applicant state that there was discussion on the point of functioning of PPSC.

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52. The letter issued by Comrade Arun to the applicant starts with the regards in the name of 'Lal Johar'. The learned SPP would submit that the words Comrade and Lal Johar are generally used by the members of the CPI (M). On careful scrutiny of the letter it would reveal that in the letter it was mentioned that after the arrest of urban CPI (M) Cadres from different parts of country including Maharashtra, huge irrevocable damage has been caused to the Party and that the directions issued by the party were not followed properly and that due to the same heavy damage has been caused to the Party and that in future they need to avoid such mistakes. It further speaks that said Deepak had asked the applicant to submit progress report in respect of the work assigned to him. Considering

the aforesaid communication, it can be easily said that there is prima facie material against the applicant, that he was involved in carrying out activities further in the objective of the organisation.

53. In addition to this a letter has been placed on record which was addressed to Co. Prakash by Co. Sudha. The first part of said letter speaks about the meeting that had taken place on 19.03.2017 at Nagpur and that said meeting was attended by Co. Suresh, Dasharath from Hyderabad, Mahararukh and Ankit from Maharashtra. It further states about the co-operation given by Co.Surendra and Co.Shoma Sen. It further states that Co. Surendra had apprised about the operations conducted in interior parts of Maharashtra and Chattisgadh and that it was informed that they were doing great work against the enemies at the ground level.

54. The letter further proceeds to state that it was resolved in the said meeting to give appropriate packages to the urban and interior comrades as per their work likewise the packages being given by the Kashmir separatists to the extremists organisations, with a view to reduce the deterrence which was caused after the conviction of Pro. Sai Baba, so that the interior comrades would be ready to give full devotion and face any kind of untoward incident and legal action.

55. Said letter further states that Co. Ankit and Co. Gautam Navlakha would be in contact with the Kashmir separatists. It further states that on 12.03.2017 an amount of Rs.50,000/- was paid to Adv. Pankaj Tyagi, who was the member of Anti Operation

Green Hunt Democratic Front and his associates for arranging a meeting to protest the conviction of Pro. Saibaba and Workers of Maruti.

56. On the point of the applicant, there is reference in the letter, which states that said Co. Sudha has averred that the applicant was appointed for looking after the work of PPS and that she had talked with the applicant for financial help, but he did not assure. It states that the applicant was well aware about the activities which were being taken further by the co-accused. It is worthy to be noted that the applicant did not refuse to pay the amount, but he did not give assurance.

57. It is to be noted that the prosecution has relied upon the statement of KW-7, to establish involvement of the applicant. His statement proceeds to state that he had attended the meeting dated 10.06.2019 at Kolkata. According to him, said meeting was organized by Dr.Partho Sarthi Roy, Association for protection of democratic right (APDR) under the banner 'Pratiwad Convention', Bhima Koregaon Sajano Mamlai Desh Jude Manwadhikar Karni Daldar Girafare Ek Bachor (Protest convention for arrest of human rights activities in Bhima Koregaon over one year). He has added that said meeting was attended by around 200-250 people including the applicant. He would further add that the applicant and the others who were present on the stage have delivered speech on arrest of human rights activist in Bhima Koregaon case by police. He had added that the speech delivered by the applicant was in English, whereas the others have given speech on

human rights and political prisoners, etc. in Bengali. According to him, Dr.Partho Roy had raised protest against the arrest of human right activist and appealed public to gather and protest for their immediate release. The witness has further added that upon hearing the speeches, he had realized that (APDR) projects that it works for democratic rights but particularly works for the release of arrested persons in Maoist cases and said meeting was specifically held for the release of the Bhima Koregaon case prisoners.

58. The Learned advocate for the applicant Mr.Shaikh has submitted that the statement of the witness states that he knows Hindi. Therefore, according to Mr.Shaikh a question is arose as to how the witness could understand the speech given by the applicant in English. Therefore, according to Mr.Shaikh the contention of the witness as to the contents of the speech allegedly made by the applicant can not be relied upon. Upon perusal of the statement of the witness, it would reveal that the statement was recorded in English but it was explained and read over to him in Hindi. The fact did not end there. According to the witness, the speakers who were sharing the dias have given speeches out of them some have spoken in Bengali, the regional language. Considering this aspect and the tenor of the speeches given by the speakers, one can understand the speech given by other persons though it is not in the same language which is known to such persons. Be that as it may, the fact remains that the applicant had shared the dias and given speech goes to suggest that he was actively involved in the activities in respect of release of the accused persons who were involved in Maoist cases.

59. The document titled as 'Visthapan Virodhi Jan Vikas Andolan (VVJVA) declared a 'Maoist-Front Organization' by Indian Home Ministry. - a statement of facts, by Stan Swamy- a founder-member of the Movement, states that the applicant was associated with said front organisation of the banned organisation. It is true that the document states that the applicant has tried to give clarification. However, the fact remains that the applicant is the member of the Movement, which was declared as Maoist front organisation.

60. The document titled as 'Pidit Bandi Sahyog Samiti (PPSC) Bagaicha, Namkum, Ranchi' press release dated 14.03.2017 states that the applicant, Sudha Bhardwaj, Partho Sarathi Reay, Megha Bahal and other members of the PPSC have condemned the decision dated 07.03.2017 given by Gadchiroli Sessions Court, by which the court had convicted G.N. Saibaba and others for the offence under UAP Act. This also speaks volume.

61. From the house search of accused persons, some incriminating letters have been seized, from which it can *prima facie* be gathered that there was deep rooted conspiracy of extremely serious repercussions. The Court is mindful of the fact that this is pre-trial stage and therefore detail scrutiny of record is not expected. Still it would be proper to refer some of those letters which would give an idea of the roles played by the applicants/accused in the conspiracy while executing the object of the banned organisation.

62. The learned SPP has submitted that the prosecution has also collected a letter, where in coded names of addressee and the scribe were mentioned. It was addressed by S/S to Comrade R. The letter states that CC means Central Committee to delegate more revolutionary members from the struggling areas to strengthen the PR. This goes to prima facie indicate that there is substance in the submissions of the learned SPP that every thing was done by the applicant and the co-accused secretly. It further speaks that after the arrest of Com. Prashat the movement was in dormant mode and that Com. Stan i.e. the applicant, Sudha had tried their best, but they need to consolidate and focus on the question of the release of political prisoners alongwith their senior party leaders by any means whatsoever. It further states that the addresser and other members of the Central Committee have spoken with the co-accused Com. Surendra, Com. Rona Com. Gautam.

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63. The material collected during the investigating would further state that the applicant had received Rs.8 lacs through Co. Mohan, for furtherance of the CPI (M) activities. The references made in the aforementioned letters to the members being Comrade goes to suggest that there is force in the submissions made by the learned SPP that the word Comrade was being used while addressing to the member of the CPI (M).

64. The Learned SPP Mr.Shetty has submitted that after the submission of the charge sheet against present applicant, during the course of further investigation under Section 173 (8) of the Cr.P.Code,

certain additional material showing the involvement of the applicant has surfaced and accordingly one of the assistant investigation officer had submitted the report to the Superintendent of Police, National Investigation Officer i.e. the investigation officer of present case. Upon perusal of the statement, it would reveal that the Asst. Investigation Officer has scrutinized the documents and concluded that the material placed on record, before him showed that the applicant and the organization 'Bagaicha' was deeply involved in facilitating the interest/furtherance of CPI (M) activities by it's deep rooted association with V.V.J.V.A., P.P.S.C., I.A.P.L., M.S.S. (Majdoor Sanghatan Samity). Further, it is concluded that the V.V.J.V.A. is directly linked with Dandkaranya Special Zonal Committee, Chief Narmada Akka, who is accused in more than 60 Naxal cases. He has further added that analysis of the audit report, bank book, cash book and bank transactions of Bagaicha as well as foreign/Lokmanch funds received by Bagaicha from some organizations is still in process.

65. In this regard, the Learned Advocate Mr.Sharif Shaikh for the accused has submitted that once the charge sheet is submitted, while deciding the bail application, the Court is not required to consider the contents of the case diary. I am afraid to accept the submissions made by the Learned advocate for the applicant for the simple reason that the further investigation in the crime is in progress. Therefore, if the Court is not supposed to take into consideration contents of the case diary, in that case, there is no point to grant permission for conducting further investigation. In addition to this, I would like to make reference to the judgment of Hon'ble Supreme

Court in the case of Zahoor Ahmed Shah Watali (Cited Supra) wherein the Hon'ble Apex Court has specifically observed that while deciding the bail application, the Court can consider the documents collected during investigation as well as the case diary. In this view of the matter, I do not find merit in the submission made by the Learned advocate for the applicant.

66. The record further discloses that there is exchange of around 140 e-mails between the applicant and co-accused. Without making reference to each and every e-mail, suffice it to say that there was exchange of e-mails between the applicant and the co-accused. This goes to suggest that the applicant was also in touch with the co-accused. This can be said to be additional link to connect the applicant with the co-accused.

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67. From the aforesaid letters and documents placed on record, prima facie it can be gathered that the applicant alongwith other members of the banned organisation hatched a serious conspiracy to create unrest in the entire country and to overpower the Government, politically and by using muscle power. The material placed on record thus *prima facie* denote that the applicant was not only the member of banned organisation CPI (Maoist) but he was carrying out activities further in the objective of the organisation which is nothing but to overthrow the democracy of the nation. Therefore, I do not find merit in the submissions made by the learned advocate for the applicant that only because of membership of banned organisation the applicant cannot be detained in jail, is not acceptable. Ultimately, the

authorities relied upon by the learned advocate for the applicant cannot be said to be applicable to the present case.

68. In the background of the material available on record, the mere fact that the applicant was not present in Pune at the time of the Elgaar Parishad and that he has not been named in the FIR would not take his defence further. Considering the nature of allegations made against the applicant that he was the active member of the Terrorist Organisation, the aforementioned facts cannot be said to be sufficient to tilt the discretion in favour of the applicant.

69. The learned advocate for the applicant, strangely has tried to rely upon an extraneous material on record i.e. the article published in caravanmagazines.in under the head of 'Bhima Koregaon case : Prison rights activist Rona Wilson's hard disk contained malware that allowed remote access dated 12.03.2020.' On perusal of the reply filed by the investigation officer, it would reveal that the investigation officer has tried to take strong exception to the material which has been placed on record. There appears to be substance in the objection raised by the prosecuting agency. It is well known that present proceeding is subjudice. Therefore, making any comments as to the evidence to be placed before the Court would amount to interference in the administration of justice. In fact, such act is required to be deprecated.

70. As far as the prayer made by the prosecution for initiating proceeding for contempt of Court against the author and publisher is concerned, this Court refrain from taking such action at this initial

stage. Be that as it may, at the cost of repetition, I would say that such extraneous material is not required to be considered while deciding the application for bail.

71. The net result of the above discussion, is that, there is sufficient material available against the applicant and the co-accused. There are reasonable grounds for believing that the accusation of commission of the offences punishable under Chapters IV and VI of the UAPA against the applicant is *prima facie* true. Considering the express bar imposed by Section 43D(5) of the UAPA, the applicant cannot be released on bail.

72. The learned advocate for the applicant has submitted that the applicant is old aged person and that he is suffering from various diseases. Therefore, he would claim that the applicant on humanitarian grounds is entitled to be released on bail. In this regard, the learned SPP has submitted that this court has already rejected the previous application for bail, submitted by the applicant. In addition to this, the learned SPP has submitted that the court is required to give precedence to the interest of the community or society over the right of liberty. In support of the submissions he has relied upon the judgment of Hon'ble Apex Court in the case of **Masroor Vs State of Uttar Pradesh (2009) 14 SCC 286**, wherein it has been held that;

"There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the Courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the

interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.”

In view of the aforementioned law laid down by the Hon'ble Apex Court, if seriousness of the allegations made against the applicant are considered in proper perspective, in that case there will be no hesitation to conclude that the collective interest of the community would outweigh the right of personal liberty of the applicant and as such the old age and or alleged sickness, of the applicant would not go in his favour, so that the discretion to release the applicant can be exercised in his favour.

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74. Upon cumulative consideration of all the aforesaid circumstances as well as law on the subject, I conclude that the applicant has failed to make out a case for grant of bail. Thus, I answer point No.1 in the negative.

AS TO POINT No.2:

Up shot of above discussion, leads me to conclude that the application sans merit, deserves to be rejected. Thus, consequently, I pass the following order :

ORDER

Bail Application (Exh.04) in Special Case No.871 of 2020
stands rejected.

(Dinesh E. Kothalikar)
Special Judge, NIA
City Civil & Sessions Court,
For Greater Bombay

Date : 22.03.2021.

Dictated on : 22.03.2021.

Typed on : 22.03.2021.

Signed on : 22.03.2021.

Bar and
Bench

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: 34 :

“ CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME : 22.03.2021. AT 05.48 pm
NAME OF STENOGRAPHER : Mrs. Prajakta K. More

NAME OF THE JUDGE	HHJ SHRI.D.E.KOTHALIKAR (C.R.No.25)
Date of Pronouncement of Order	22.03.2021.
Order signed by the P.O. On	22.03.2021.
Order uploaded on	22.03.2021.

**Bar and
Bench**
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