

**COMMON ORDER ON CRI. BAIL APPLICATION NOS.
3170/18, 4552/18, 4554/18, 4555/18 & 5414/18 AND
BELOW EXH.107 IN SPECIAL A.T.S. NO.1/2018**

1. These are applications for bail filed by accused No.1 Sudhir Dhavale, No.2. Rona Wilson, No.3 Surendra Gadling, No.4 Shoma Sen, No.5 Mahesh Raut and accused No.6 P. Varavara Rao, as per Section 439 of Cr.P.C. They have been charge-sheeted for commission of offences punishable under Sections 121, 121A, 124A, 153A, 505(1)(b), 117, 120B read with 34 of the Indian Penal Code, 1872 (hereinafter referred to as 'I.P.C.') and under Sections 13, 16, 17, 18, 18B, 20, 38, 39, 40 of the Unlawful Activities (Prevention) Act, 1967, as amended in 2008 and 2012 (hereinafter referred to as 'UAPA').

2. The facts of the case are inter-linked in respect of the applicants/accused, therefore, it would be proper to consider and decide bail applications of all the accused by common order.

3. The accused Nos.1 to 5 were arrested on 6/6/2018 and accused No.6 was arrested on 28/8/2018. They have been interrogated by police and remanded to judicial custody. At present, all the applicants/accused are in judicial custody.

BRIEF FACTS OF THE CASE OF PROSECUTION :

4. The FIR was lodged on 8.1.2018 at Vishrambaug Police Station by one Tushar Ramesh Damgude. It was registered for commission of offences punishable under Sections 153A, 505(1)(b) and 117 read with 34 of IPC. According to the first informant, he was in the business of construction. There was a programme at Shaniwar Wada, Pune on 31.12.2017 organised by Elgar Parishad. He attended that programme at around 2:00 p.m. on 31.12.2017. It is further

stated in the FIR that there were few speakers, comperes, singers and other performers present on the stage. The informant was knowing Kabir Kala Manch and its members. He had read about them on social media and in the newspapers. It is further stated that some of the 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 contention in the FIR that a banned organization-Communist Party of India (Maoist) (hereinafter referred to as 'CPI(Maoist)') was inciting violence by creating communal disharmony.

5. 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, FIR was lodged naming six members of Kabir Kala Manch. The investigation progressed and based on the material gathered during investigation, Section 120B of IPC was added on 6.3.2018.

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

7. It is the case of prosecution 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 short, 'FSL') for analysis. The cloned copies were received. On the analysis of those cloned copies, aforementioned Sections of UAPA were applied on 17.5.2018.

8. 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 including the applicant. Those other accused were (1) P.Varavara Rao, R/o. Hyderabad, (2) Arun Ferreira, R/o. Thane, (3) Sudha Bharadwaj, R/o. Faridabad, (4) Gautam Navlakha, R/o. Delhi and (5) Warnan Gonsalves R/o. Mumbai. They were arrested and were initially put under house-arrest on 28.8.2018. The recovered devices were sent to FSL for analysis. The final analysis reports are still awaited.

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

10. Thus, the scope of investigation was not restricted to find out the object and effect of the programme organised 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.

11. After arrest of the applicants and others, a petition was filed before the Hon'ble Supreme Court vide Writ Petition (Criminal) No.260/2018, Romila Thaper and others Vs. Union of India and others. It was decided vide judgment dated 28.9.2018. It consisted of majority and minority views.

12. While dealing with the question of release of the arrested accused from custody, the Hon'ble Supreme Court, in the majority view, expressed that the accused must pursue that relief before the appropriate Court which would be considered by the concerned Court on its own merits in accordance with law. It was further observed that all questions were required to be considered by the concerned Court in accordance with law and that Their Lordships had refrained from dealing with the factual issues raised by the parties; as any such observation might cause serious prejudice to the parties or their co-accused and even to the prosecution case.

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

“Accused Rona Wilson, R/o. Delhi and accused Surendra Gadling, R/o.Nagpur, were members of CPI(Maoist). They contacted accused Sudhir Dhavale who was working through the medium of Kabir Kala Manch. Rona Wilson, absconding accused Com. M @

Dipak @ Milind Teltumbade and another absconding accused Prakash @ Navin @ Ritupan Goswami were active members of CPI(Maoist). They had conspired to mobilize masses and to spread hatred against the Government, through provocative speeches, songs, plays etc. They incited feeling of hatred among the communities resulting in wide spread violence from 1.1.2018 onwards. The acts of the accused were not restricted to creating disharmony between the two communities, but, they were actually indulging in activities which were against the Nation. The incidents at Bhima-Koregaon were only a part of their larger conspiracy. The investigation revealed that funds were provided by the banned organization through their members. Students from eminent educational institutes were taken to forest area occupied by Maoist guerrilla and were given training for terrorist activities.”

14. Thereafter supplementary charge-sheet was filed, in which, it was mentioned that, accused Vernon Golsalves along with accused Arun Ferreira and accused Sudha Bharadwaj had enrolled members for the banned organization CPI(Maoist). It is the case of the prosecuting agency that an organization known as Indian Association of Peoples Lawyers (for short, 'IAPL') is a frontal organization of CPI(Maoist) and accused Vernon Golsalves and accused Surendra Gadling were working through this frontal organization to accomplish the objects of the banned organization CPI(Maoist) i.e. destabilizing the country. The charge-sheet mentions few more organizations, viz., Anuradha Ghandy Memorial Committee (AGMC), Kabir Kala Manch, Persecuted Prisoners

Solidarity Committee (PPSC) as the frontal organizations of CPI(Maoist). It was alleged that the members of CPI(Maoist) were using these organizations to further their purpose.

SUBMISSIONS ON BEHALF OF THE APPLICANTS

15. **Ld. Advocate Mr. S.D. Patil for accused No.1 Sudhir Dhavale has argued that** the allegations of CPI(Maoist) funding Elgar Parishad are false and without any basis, that the funds for the programme were raised by contribution before and during the programme itself, which can be gathered from the statements of the witnesses recorded during investigation.

16. It is further argued that the prosecution is putting reliance on hearsay evidence to connect the accused, which is inadmissible, that the accused No.1 is a respectable person of the Society, he is editor of publication 'Vidrohi' and he is working for the down trodden society, particularly for Dalit Victimization. It is pointed out that the programme of Elgar Parishad was organised by eminent persons of the Society and only because the accused raised voice against the Government, he has been falsely implicated in the case.

17. It is further argued that no incriminating material has been seized from the custody of the accused No.1 and the accused No.1 is not involved in any anti-national activity. It is further argued that the case is registered against the accused No.1 is of political nature, one case which was registered under UAPA at Nagpur has been disposed of and the accused No.1 has been acquitted from the said case, and hence it cannot be said that he has criminal background or antecedents.

18. Ld. Advocate Mr. Patil has brought to my notice that accused No.1 has been acquitted from a similar case tried before Ld. Additional Sessions Judge, Gondiya bearing S.C.No.14/2012 by judgment and order dated 15/5/2014. It is argued that during investigation of the said case also similar documents and literature were seized and it's authenticity was considered by the Court, that the appeal filed by the State against the said acquittal has also been dismissed. Therefore, according to the learned Advocate, accused No.1 deserves to be released on bail.

19. **Ld. Advocate Mr. R.V. Nahar for accused No.2 Mr. Rona Wilson and accused No.6 P.Varavara Rao has 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 Shaniwarwada, Pune, that as per the FIR filed against Milind Ekbote and Sambhaji Bhide, they were responsible for the riot took place at Bhima Koregaon and not the accused in this case.

20. It is further argued that there is no evidence of sedition against any of the accused, that there is no proof of the letters seized from the electronic devices allegedly found with the accused persons, that there is no evidence that the letters were sent or received by any of the accused, that the type 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 accused persons based on short names/alphabets used denoting sender and recipient.

21. It is further argued that there is no evidence of collection or distribution of funds by CPI (Maoist) either for Elgar Parishad or for any other purpose, that the electronic data produced before the Court has no evidentiary value and there was no nexus

between the accused No.2 and 6, and the organizers of Elgar Parishad.

22. The ld. Advocate has further alleged that the prosecution is based on colourable exercise and planting of evidence by the Investigating Officer. It is argued that the organizations Kabir Kala Manch, IAPA and others mentioned above except CPI (Maoist) are not banned by the Government and those cannot be said to be frontal organizations of CPI (Maoist). The ld. Advocate has argued that UAPA is country's anti-terror law, called for a higher vigil in grant of bail and, hence, the scrutiny of evidence too needed to be on high pedestal. According to him, the aspect of admissibility of evidence has to be considered by the Court at this stage also.

23. Ld. Advocate Mr. Nahar has submitted that accused Nos.2 and 6 are human right activist and even if it is said that they are members of banned organization, that itself is not a crime, having regard to the observations of Hon'ble Apex Court in the case of *Arun Bhuyan Vs. State of Assam (AIR 2011 SC 957)* and on *Shri. Indra Das Vs. State of Assam (2011 Cri.L.J. 1646)*.

24. **Accused No.3 Surendra Gadling, who himself is an Advocate, has argued that** this case is nothing but a conspiracy of police officers against innocent social activists. He has argued that the FIR in the case is itself an evidence of conspiracy which shows as to how the police acted upon hearsay information. He 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. On this point, he has relied upon the observations of Hon'ble Delhi High Court in the case of *Zahoor Ahmad Vs. National Investigating Agency (Crl. A. 768/2018 decided on 13/9/2018)*.

25. He has further argued that in the case of **Romila Thaper** (W.P.No.260/2018), in dissenting judgment, the Hon'ble Supreme Court has vividly discussed as to how the electronic data collected in the present case cannot be relied upon, that in the majority judgment the Bench has not taken into account this aspect and therefore the observations in the dissenting judgment is a precedent. On this point, he has relied upon judgment in the case of *Mahendra Thakar Vs. S.P. Pande (MANU/MH/0035/1964)* and also the judgment in case of *Prem Gupta Vs. Union of India and others (MANU/UP/0131/1977)*.

26. According to accused No.3, he has been falsely implicated in the case only because he had represented some Maoist accused in other cases. He has also argued that the Investigating Officer has not recorded statements of important witnesses and fabricated false evidence so as to frame the accused.

27. He has further argued that the investigation in this case is tainted and the Investigating Officer has fabricated documents, that the house search panchanamas of different accused are forged and unreliable and hence he has prayed for grant of bail.

28. **Ld. Advocate Mr. R.T. Deshmukh for accused No.4 Mrs. Shoma Sen has argued that** role of accused No.4 is different than other accused, that nothing is seized from her house search, that four letters seized from the electronic devices of other accused

has reference of her name and thereby it can at the most be said that she was a member of a banned organization. According to him, there is absolutely no material to show that accused No.4 was involved in any terrorist activity either of the banned organization or of any other association.

29. Ld. Advocate Mr. Deshmukh has referred statement of witness Kumarsai and pointed out that accused No.4 is working for destitute ladies and as such she is a social worker. She is a treasurer of a registered Trust and there is no material to show that said Trust is frontal association of the banned organization.

30. It is further argued that the letters in electronic form seized by the Investigating Agency are neither confessions nor those are admissible in evidence. He has also referred to the judgment in the case of *Indra Das* (Cited supra) and claimed that accused No.4 is innocent. According to him, she is reputed lady and represented the country to UNESCO and he has prayed for grant of bail.

31. **Ld. Advocate Mr. Shahid Akhtar for accused No.5 Mr.Mahesh Raut has argued that** there is absolutely no material to connect the accused with commission of offence, that in house search no incriminating material was found with accused No.5, that he was under fellowship of the PMRDA Scheme of Government and as such a sincere social activist working for tribal and the down trodden society. He has also explored possibility of mistaken identity of the accused.

32. It is argued that the eye witnesses of Elgar Parishad have categorically stated as to how the funds were collected for the said Parishad and therefore the allegations of funding the Parishad by CPI(Maoist) are baseless and false.

33. According to Ld. Advocate Mr. Akthar the investigation was done beyond the scope of FIR and therefore cognizance of the same is impermissible under Law. It is argued that there is no material to show that accused No.5 had actively participated in any activity of the banned organization and therefore there is no *prima facie* case made out against him. The Ld. Advocate referred to the judgment in the case of ***Jyoti Chorge Vs. State of Maharashtra [2013 (1) (Bom.C.R. (Cri) 186]*** for following observations in para no.30 of the judgment :

“30. That the possession of certain literature having a particular social or political philosophy would amount to an offence, though such literature is not expressly or specifically banned under any provision of law, is a shocking proposition in a democratic country like ours. A feeble attempt to put forth such a proposition was made by the Learned SPP in the oral arguments. Such a proposition runs counter to the freedoms and rights guaranteed by Article 19 of the Constitution. In this regard, a reference may also be made to a decision of the Gujarat High Court, on which reliance has been placed by Shri Mihir Desai. (Criminal Miscellaneous Application Nos.12435 to 12437 and other connected applications, decided on 18.11.2010). The applicants therein had been alleged to be in contact with a person involved in Naxal movement and serious charges of offences punishable under 5 Decided on 3.10.2012 in Criminal Bail Application No.1020/2012 a/w Criminal Bail Application No.1066/2012 (Bombay High Court). Section 121-A, 124-A, 153-A, 120-B etc. of the IPC were leveled against them along with offences punishable under Sections 38, 39 and 40 of the UAP Act (as it stood then). Certain documents such as agenda of a meeting, in which one of the items was to pay homage to a dead Naxalvadi who was killed in encounter and some literature about revolution and lessons of Communist Party of India (Maoists / Leninists) containing, inter alia, features of Guerrilla Warfare etc. was seized from the applicants. While releasing the applicants on bail, the High court observed that the seizure of the so called incriminating material, by itself, cannot show participation in an activity prohibited by law. It was held that mere possession of such literature, without actual execution of the ideas contained therein,

would not amount to any offence.”

Thus, according to Id. Advocate Mr. Akthar the prosecution has no *prima facie* case against accused No.5 and hence he be released on bail, as bail is rule and jail is exception.

34. The line of arguments of the defence is mainly on admissibility of the documents filed on record. It has been argued on behalf of all the accused that there is no material on record to show that the accused were actively involved in the activities of banned organization, raising of fund for the said organization or utilizing the fund of said banned organization for any programme including the one which was held at Shaniwarwada, Pune by Elgar Parishad.

SUBMISSIONS ON BEHALF OF STATE :

35. D.G.P. Mrs. Pawar opposed all bail applications. She invited my attention to the notification dated 22.6.2009 whereby in exercise of the powers conferred by sub-section 1 of Section 35 of the UAPA, the Central Government made an order to add the Communist Party of India (Maoist) and all its formations and front organizations as terrorist organization in the Schedule to the UAPA by making corresponding amendment. According to the case of the investigating agency, the banned organization was operating through its members in different fields. Some of the operations were recruiting cadres, procuring weapons etc.

36. D.G.P. Mrs. Pawar further submitted that all applicants/accused were actively involved in the activities of banned organization CPI (Maoist), they were 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. To establish their participation at this stage, the Id. D.G.P. relied on certain documents recovered from the devices of the accused persons during the raid conducted at their houses.

37. D.G.P. Mrs. Pawar further submitted that C.D.R.'s of the mobile phones of accused show that they were constantly in touch with each-other.

38. D.G.P. Mrs. Pawar submitted that there is sufficient material against all the applicants/accused to show that they were involved in the activities of banned organization. She further submitted that the applicants/accused were not merely passive but active members of the banned organization. There is sufficient material against them to show their involvement in the larger conspiracy. She has referred to certain letters seized from the computers and electronic devices of accused during search to show how the accused are involved in the functioning of the banned organization and the severity of the conspiracy. Some of those documents are referred in the text in the reasoning part.

39. The Id. D.G.P. has argued that the investigation in the case is impartial and every care is taken by the Investigating Officer to retrieve and secure the data collected electronic devices of the accused. It is argued that the material collected from the accused persons is sufficient to show their involvement and their activities in relation to the banned organization and the attempts to create unrest in the country.

REASONS :

40. For deciding the bail applications, Section 43D sub-section (5) of the UAPA has 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.”

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

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

.....

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

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

42. However, there is a vital difference between the language of Section 21(4) of MCOCA and Section 43D(5) of the

UAPA. This difference is explained by the Hon'ble Supreme Court in the case of *National Investigation Agency Vs. Zahoor Ahmad Shah Watali [(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.

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

44. In paragraph-21, the Hon'ble Supreme Court stated the settled position about the matters to be considered for deciding an application for bail. Those principles provided for deciding whether there was any *prima facie* or reasonable ground to believe that the accused had committed the offence; nature and gravity of the charge; severity of the possible punishment in the event of conviction; danger of the accused not being available for trial; character, behaviour, means, position and standing of the accused; likelihood of repetition of the offence; possibility of tampering with the evidence; and possibility of justice being thwarted by grant of bail.

45. Paragraph-22 of the judgment reproduced Section 43-D of the UAPA. It is observed that, when it came to offences punishable under special enactments, something more was required to be kept in mind in view of Section 43-D of the UAPA. 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 sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows 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.”

46. 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.

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

48. At this stage, it is necessary to note that the judgment of Hon'ble Delhi High Court in the case of *Zahoor Ahmad Vs. NIA (Cited supra)*, relied by accused No.3, has been overruled by the above referred judgment of Hon'ble Apex Court, in the case of the same parties.

49. Having regard to the observations of Hon'ble Apex Court, I am considering the totality of the material produced alongwith the charge-sheet for deciding bail applications of the accused. The electronic data and documents filed by the prosecution have to be considered and the question of admissibility of those documents will be decided at trial.

50. At first, it would be proper to refer to the document titled as "**Strategy and Tactics of the Indian Revolution**". This document was 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.

51. 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.”

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

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

54. 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 organization. The first chapter mentions that the urban movement was one of the main sources which provided cadres and leadership having various types of capabilities essential for the people’s war and for the establishment of liberated areas. It is mentioned that the Party must have a comprehensive line of revolutionary struggle, including armed struggle, for the urban areas also in conformity with the line of

protracted people's war, i.e., the line of liberating the countryside and encircling urban areas from the countryside first, and then capturing the urban areas.

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

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

57. Thus, it appears from the documents that the banned organization was operating in different ways to achieve its objects. Different members were entrusted with different activities, which was part of the larger conspiracy.

58. Ld. Advocate Mr. Patil for accused No.1 has filed on record On-line copy of the above referred literature on CPI (Maoist) and argued that when the above material is easily available to everyone on internet, it's custody with the accused cannot be taken with objection, and that thereby no inference can be drawn that accused No.1 is actively involved in the activities of banned organization.

59. The submissions as above are attractive but cannot be accepted for the simple reason that apart from custody of above

literature there is other material on record to show that accused No.1 was not only actively involved but was managing the affairs of the banned organization.

60. In the statement witness Kumarsai (Page-285 of compilation submitted by prosecution) has given details of role played by the accused persons in the activities of the banned organization. It is necessary to note that till August 2018 he was a member of the organization i.e. CPI (Maoist). He has specifically stated that accused P.Varavara Rao is a leader of high rank of the organization, accused Milind Teltumbade is Secretary of Maharashtra Committee. Arun Ferreira was recruiting students in the organization and sending them for training in general, accused Varnon Gonsalves was working for the organization in intellectual class, accused Sudhir Dhavale, Rona Wilson, Gautam Navlakha, Anant Teltumbade, Sudha Bharadwaj, Harshali Potdar are said to be active members of the organization and working in the upper class of the society. It is mentioned that accused Sudhir Dhavale does writing work for Dalits while accused Shoma Sen does work for problems of women and students. Giving more information, he has stated that a member of central committee of organization used to issue directions/instructions in the name of 'Prakash'.

61. In the same statement, Kumarsai has given details of the activities and role played by accused Surendra Gadling, who was dealing with the funds of the organization including its collection and distribution.

62. The statement of Kumarsai has been attacked by the accused persons claiming that it is fabricated and non specific. However, it is necessary to note that the said statement contains minute details of the role of accused persons in the organization

which is not possible for Investigating Officer to fabricate or concoct. It is necessary to note that said witness was holding post of Secretary of Gondiya-Rajnandgaon and Balaghat Division of the organization. At this stage of the litigation, the statement has to be taken into account to understand the strategy of the organization and role of the accused persons.

63. 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 organization.

64. From house search of accused Rona Wilson, a letter sent to him by Comrade Prakash has been recovered from her electronic device (page No.318 of prosecution compilation). It reads as follows:

काँ. रोना लाल सलाम!

आपकी ओर से भेजे हुअे संदेश (पी.जी.पी.) काँ. कानन के हातों प्राप्त हुआ। पार्टी ने आपको काँ. नविन बाबु के पुण्यस्मरण के उपलक्ष में ५ वी वार्षिक परिसंवादा का आयोजन जेएनयु में आयोजित करने के लिये कहा था जिसके संबंध में मेमोरी कार्ड में भेजी गयी जानकारी मिली इस कार्यक्रम को आयोजित करने के लिये पार्टी ने संमती दी है और पार्टी के नुसार यह कार्यक्रम २४ एप्रिल को आयोजित किया जाये जिससे हमारे पार्टी के कुछ काँ. आपको वहाँ मिलके ए.पी.टी. का सामान दे सके। काँ. सुरेंद्र को बतलाईयेगा की इस कार्यक्रम को संबोधित करने हेतु वे काँ. साथीदार से वार्तालाप करे और उन्हे बुलाये।

विगत कुछ दिनों पहले काँ. अँड उपेंद्र नायक इन्हे

बनावटी केस में परालाखेमुंडी पुलिस ने अरेस्ट किया यह बहुत चिंता की बात है पार्टी के वरिष्ठ कॉमरेड्स इन्होंने काँ. सुरेद्र और काँ. सुधा इन्हे बारबार पत्रों के माध्यम से दुसरे राज्यों में आयपीएल के कार्यरत कॉमरेड्स इन्हें सुचना और पार्टी संदेश इनके हातों भेजवाया था किंतु इसका परिणाम कुछ ठीक नहीं हुआ इससे हमारे न्यायीक क्षेत्र में कार्यरत और हमारे संघटन को समर्थन करने वाले कॉमरेड्स पर विपरीत प्रभाव पडा है। गडचिरोली सुरजागड में एफ.एफ. कब भेजने का तय हुआ है आप काँ. सुरेद्र से वार्तालाप करके हमें अवगत करे अस नुसार हम कॉमरेड्स (पी.जी.पी.) मटेरीयल के साथ भेजवा देंगे।

काँ. महेश राउत को कुछ दिन पहले पार्टी ने पेसा कायदेनुसार ग्राम पंचायत में आयोजित बैठक में ५ लाख रुपये काँ. सुरेद्र, काँ. सुधीर, इन्हें देने के लिये दिये थे व उन्हे यह भी बतलाया था भिमा कोरेगांव का आंदोलन शांत पडत दिख रहा है ऐसे में वे हमारे विभिन्न राज्यों में कार्यरत कॉमरेड्स इन्हें कार्यन्वीत करके बी.जे.पी. और आर.एस.एस. शाशीत राज्यों में आंदोलन को और उग्र करे जिससे २०१९ में बीजेपी और आ.एस.एस. इनका चुनाव जितने का सपना धरा रह जाये। इस संबंध में पार्टी को समय समय पर जानकारी आप देते रहे। काँ. महेश के द्वारा भेजे गये २ कॉमरेड्स (टीस्स इंस्टीटयुट) के गुरील्ला क्षेत्र में सकुशल पहुंच गये हैं उन्हें ऑगस्ट या ऑक्टोबर माहे में वापस भेजा जायेगा जिसकी जानकारी अगले पत्र में दी जायेगी।

पत्र मिलने के बाद और आपके पढने के बाद उसे अच्छी तरह से नष्ट कर दे इसका ध्यान रहें की यह दुशामन के हातो ना लगे।

क्रांतीकारी अभिवादन के साथ
काँ. प्रकाश

65. On bare perusal of the abovesaid letter, the horizon of the banned organization and the role played by accused in activities of the organization can easily be noted. There is reference of accused Surendra Gadling, Sudha Bharadwaj, Mahesh Raut and Sudhir Dhavale. What is more important to note is that there is clear reference of Bhima Koregaon incident and the addressee i.e. accused Rona Wilson was instructed to instigate and provoke the activists to aggravate agitations and processions. There is also reference of

recruitment of students for training purpose. There is reference of terrorist activities in Gadchiroli and Surjagad. The letter gives an idea of the objective of banned organization to spread unrest amongst the people and to achieve the goal of political revolution by overthrowing the Government, which has been established by democratic process. It is nothing but a serious threat to the democracy of the nation.

66. Another document recovered from the laptop of accused Rona Wilson (P-329 prosecution compilation) shows how the party funds were distributed amongst the members by central committee of the organization. It shows that accused No.1,2,3,4 and accused No.6 alongwith Anant Teltumbade, Amit and Arun had received funds within the range of Rs.90,000/- to Rs.2.5 lakh from the party. The document is specific and it can only be related to the unlawful activities undertaken by the members of the organization.

67. There are some more letters found in the laptop of accused Rona Wilson which were sent to Anant Teltumbade by Prakash and to Prakash from accused Rona Wilson (P-288 and 297 of prosecution compilation). From these letters, it can be gathered that the Dalit leaders in Maharashtra including Anant Teltumbade were instigated for exploring more opportunities viz. Bhima Koregaon, frequent protest and chaos, which would gradually lead to breakdown of law and order leading to political ramifications. The intellectual comrades were directed to keep the fire ablaze. In the letter at page No.297 accused Rona Wilson even disclosed the strategy of Rajiv Gandhi type suicidal incident by targeting road shows of the Prime Minister. It also includes the supply of arms and ammunitions for waging war against Government. The letters have reference of convict of death penalty, Sai Baba and need of efforts

for his release. 71. The letter of Rona Wilson (Page-297 referred above) was replied by Comrade Prakash. There is reference of accused Surendra and Varavara Rao in the said reply letter. The need of military action and inflicting heavy damage to the enemy forces i.e. police and military of country has been emphasized in the said letter. The catalogue of weapons to be purchased was annexed to the abovesaid reply letter.

68. From this letter communication, what can be gathered is that the applicants/accused alongwith other members of the banned organization hatched a serious conspiracy to create unrest in the entire country and to overpower the Government, politically and by using muscle power. This is a very serious form of sedition which can be noted at this *prima facie* stage.

69. It is necessary also to refer to the documents seized from the custody of accused No.3. One of said letter is at page No.304 of prosecution compilation, which reads as follows :

प्रिय कॉ. वरवरराव
मैंने कॉ. साईबाबा के केस में संघटन को दिये आश्वासन को पुरा करने का प्रयास किया लेकिन ज्युडिशियलीने दुश्मनों से हात मिलाने की वजह से हमे कामयाबी नही मिली।

आपको बताना चाहता हूँ की नोटबंदी के बाद जगह जगह दुश्मनों द्वारा सडक तथा रेल मार्ग की जारही चेकिंग के चलते हम गडचिरोली और छत्तीसगढ के कामरेडो को समय पर फंड उपलब्ध नही करा पाये इसमें मेरा कोई और गलत इरादा नहीं है अभी पिछले ७-८ दिनों से मैंने उन्हे फंडीग भेजना शुरु कर दिया है।

मैं गडचिरोली तथा बस्तर के वरिष्ठ सी.सी.कॉमरेड्स से विगत माह से संपर्क में हूँ आपके द्वारा बताये गये ऑपरेशनों की रुपरेखा उन तक पहुचाई गयी है। कॉ. साईबाबा के केस में हुअे निर्णय के बाद हुई क्षती को कंट्रोल करने के लिए गडचिरोली तथा बस्तर में भेजे फंडीग के साथ ही आपका संदेश फिर से भेजा

गया है उसका प्रभाव भी देखने को मिल रहा है।

गडचिरोली के कामरेडोने हॅन्डबिल बाटकर अपना अस्तीत्व वहा पर दुश्मनों को दिखा दिया है तथा बस्तर में हुअे जबरदस्त हमले से देशभर में हमारी ताकत का सबुत दिया है।

इन घटनाओं से केंद्र सरकार तक हिल गयी है आशा करता हु की हमारे कॉमरेड्स ऐसे ही बडे आपरेशन आपके मार्गदर्शन में करेंगे। बस्तर में जहाँ दुश्मनों की सेंट्रल फोर्स कम है उस जगह की पहचान करके बडे हमले करने के लिये आप के निर्देश को उन तक पहुचा दिया गया है। आशा करते है यह ऑपरेशन वहाँ के कॉमरेड्स सफलतापूर्वक करेंगे। जिससे दुश्मन बॅकफुट पर जायें। मुझे कुछ कॉमरेड्स कि द्वारा मिली जानकारी के मुताबीक उसुर, पामेद, एमलागुण्डा, पालाचलमा, भेजी, केरलापाल इन जगह दुश्मन फोर्स का डिप्लायमेंट कम है जिससे हमें एम्बुश लगाने में आसानी हो सकती है।

काँ. साईबाबा के केस में हायकोर्ट की तयारी जोरो पर है तथा अॅडव्होकेट रामजेठमलानी से बात हो गयी है आशा है जल्द ही हमे वहा सफलता मिलेंगी और हम अपने कामरेडो को जेल से बाहर निकलवाने में सफल होंगे।

क्रांतीकारी अभिवादन के साथ
सुरेंद्र

70. Accused Surendra is an Advocate. Representing a Naxalist, terrorist or Maoist in any criminal case is certainly not an offence. However, what appears from the documents is that accused Surendra was an active member of banned organization and he was managing the affairs of the organization to achieve its objective i.e. destruction and creating unrest in the country. The above cited letter gives an idea that he was utilizing funds of the organization for terrorist activities and particularly for arranging attacks on police force. Ld. D.G.P. Mrs. Pawar has pointed out that in the relevant period many attacks were made on the police stations of village Bheji, Pamel, Yemlagunda etc. as mentioned in the abovesaid letter. Copies of the relevant FIR's about such attacks are filed with the charge-sheet. This material *prima facie* makes it clear that accused

No.3 and accused No.6 were managing the affairs of the banned organization for creating havoc in the country.

71. There is another letter with similar contents found with accused No.3 which he had sent to Comrade Prakash (Page 307 prosecution compilation). This letter has reference of transfer of funds via 'Hawala'. It speaks about 'fact finding' strategy i.e. to make false propoganda. It has reference of recruitment of Comrades for military operations and strengthening the organization. What is more important to note is that the accused No.3 forwarded maps of the places of deployment of police and CRPF camps. Said letter has a reference of accused Rona Wilson.

72. Accused No.3 is office bearer of IAPL. He had represented CPI (Maoist) leader Saibaba in the case filed against him under UAPA. In the letter sent by accused No.3 to Comrade Prakash (Page-307 in prosecution compilation) he has given a strategy of propoganda to be made in Saibaba case, in the exhibition proposed on 30/4/2017 at Jantar-Mantar, Delhi. In the said letter, he congratulated Comrades for killing 25 enemies (policemen). In the letter referred above (page-304 of prosecution compilation), he has specifically dealt with the strategy in Comrade Saibaba case and also a political and military operations of the banned organisation. He was and is Secretary of IAPL. If really the accused No.3 was only representing CPI (Maoist) members as an Advocate, there was no reason for him to have such communication with the members of central committee of the organisation. This shows the connection between banned organisation, accused No.3 and IAPL. *Prima facie* what appears is that IAPL is a frontal organisation of banned organisation of CPI (Maoist).

73. There is letter communication of like nature between the accused persons which has been recovered from the electronic devices seized during house search. The documents were encrypted and saved. Those have been retrieved by the experts in Forensic Science Laboratory. The cadre-wise details of the organization were also recovered during investigation. The prosecution has also collected call data records of mobile phones of accused persons which show their inter-se communication, with frequency and locations. The places referred in letter, the meetings of the members held at different places can be counter checked from the call data records (Page No.334 to 429 of prosecution compilation). A chart showing inter-se calls amongst accused is at page No.380 of prosecution compilation. All these details clearly denote serious involvement of all the applicants/accused in the banned organization.

74. The material placed on record thus *prima facie* denote that accused persons were not only the members of banned organization CPI (Maoist) but they were carrying out activities further in the objective of the organization which is nothing but to overthrow the democracy of the nation. The argument advanced on behalf of the accused that only because of membership of banned organisation they cannot be detained in jail, is not acceptable.

75. Ld. D.G.P. Mrs. Pawar has pointed out certain documents in respect of recruitment of Kashmiri students for training purpose. There are documents to show links between Kashmiri terrorist and the banned organization. It would not be proper to quote or reproduce all the material collected by the prosecution at this stage. Suffice it to say that the material on record certainly makes out strong *prima facie* case against all the applicants/accused.

76. With the progress of investigation the deep rooted conspiracy came to be revealed. The informant cannot be expected to have knowledge of all these facts. Considering the secrecy maintained in conspiracy, a common man of the country is not expected to know or even have an idea of the destructive activities planned as such. It is the settled principle of Law that the scope of investigation cannot be restricted to the allegations made in the FIR. On the other hand, it is for investigating agency to dig out the true facts in the interest of the society. Therefore, the arguments advanced on behalf of the accused in respect of scope of investigation cannot be accepted.

77. Thus, from the material on record, what can be *prima facie* gathered is that accused Nos.1 to 4 and 6 were in the management of the banned organisation and they were managing affairs of funds, recruitments and deciding policies, which were anti-government or more particularly dangerous to the democracy of the country. Accused No.5 was actively involved and dealing with the funds of the banned organisation. *Prima facie* it is seen that all the applicants/accused were instrumental in organizing Elgar Parishad and further in carrying out riots and attacks at different places, including at Bhima Koregaon.

78. The accused No.1 has relied upon the judgment of acquittal in Session Trial No.14/2012 delivered by Ld. Additional Sessions Judge, Gondia. However, that judgment is not relevant for deciding these bail applications, and certainly it is not a precedent for this Court on any point discussed in this order.

79. The offences under Sections 121, 124A, 153 etc. of IPC as well as under Sections 13, 16 of the UAPA are alleged against the banned organization. The charge-sheet *prima facie* shows that the

applicants/accused were part of the larger conspiracy and had abetted it, attracting Section 121A, 117 and 120B of I.P.C. as well as Section 18 and 18-B to D of the UAPA against them. The applicants being active members of the banned organization attracts Section 20 of the UAPA against them. Similarly, Sections 38 and 39 of the UAPA are also attracted against the applicants/accused.

80. As a result of the above discussion, I find that, there is sufficient material in the charge-sheet against the applicants/accused. The arguments of accused about fabrication of evidence by prosecution has no sound basis. It is hardly possible for an Investigating Officer to manipulate the facts or forged the documents as noted above. 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 applicants is *prima facie* true. Considering the express bar imposed by Section 43D(5) of the UAPA, the applicants cannot be released on bail. The other arguments regarding the social status of the accused persons, their achievements in different fields and their continued detention in jail for a long period cannot be a ground to release them on bail considering the danger to the democratic set-up of the country and to the safety of the citizens. Hence, I pass the following order :

ORDER

Criminal Bail Application Nos.3170/18, 4552/18, 4554/18, 4555/18 & 5414/18 and bail application of accused Shoma Sen (Exh.107) in Special A.T.S. No.1/2018 are hereby rejected.

Pune
Date : 06/11/2019

(S. R. Navander)
Additional Sessions Judge, Pune.

Certificate

I affirm that the contents of PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Smt. R.A. Shimpi, Steno (I)

Court name : Shri. S. R. Navandar
Additional Sessions Judge, Pune.

Order dictated on : 06.11.2019

Order transcribed on : 06.11.2019

Order checked and
signed by P. O. : 06.11.2019

Order uploaded on : 06.11.2019

