

ORDER BELOW EXH.1 IN CRI. BAIL APPLICATION
NO.5420/2019

1. This is an application for anticipatory bail filed by accused Gautam Navlakha, as per Section 438 of Cr.P.C. He has 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'), alongwith other accused.

BRIEF FACTS OF THE CASE OF PROSECUTION :

2. 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.

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, 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.

4. 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.

5. 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.

6. 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.

7. 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, for 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.

8. 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.

9. After arrest of the applicant and other accused, 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.

10. 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.

11. The applicant had challenged his arrest by filing W.P.No.2559/2018 before the Hon'ble Delhi High Court. Initially interim relief was granted and by order dated 1/10/2018 Hon'ble Delhi High Court quashed the arrest of the applicant. Said order was challenged by the State before Hon'ble Supreme Court on 3/10/2018. Thereafter, the Hon'ble Apex Court in the case of Romila Thaper (cited supra) directed the applicant and other accused to pursuing appropriate remedies, for quashing FIR before Hon'ble Bombay High Court. The Hon'ble Bombay High Court then granted the applicant protection.

12. The Hon'ble Bombay High Court then rejected the petition of the applicant and directed him to approach this Court. The order came to be challenged before Hon'ble Apex Court. However, it has not been interfered with in SLP (Cri.) No.8862/2019. The Hon'ble Apex Court granted protection from arrest for the period of four weeks so as to approach this Court for filing application for regular/pre-arrest bail. Accordingly, present application has been filed claiming anticipatory bail.

13. In the meanwhile, 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.

15. It is alleged against the applicant that he is one of the conspirator in the larger conspiracy, that he is occupying key position in the banned organisation, in its recruitment, funding and in planning the terrorist and anti-national activities.

SUBMISSIONS ON BEHALF OF THE APPLICANT :

16. **Ld. Advocate Mrs.Ragini Ahuja for the applicant has argued that** there is absolutely no material with the prosecution to connect the accused with commission of offence as alleged, either in the FIR or in the charge-sheet, that the seized electronic data is inadmissible in evidence, that the applicant is a renowned journalist and a writer by profession, that he studied the Maoist ideology and was in fact against the Naxlist activities undertaken by the organization. The Ld. Advocate has pointed out that the applicant was appointed as interlocutor by the Government and it is her submission that he is a peace activist.

17. The Ld. Advocate has further argued that even if the material produced by prosecution is taken into account, what can be gathered is that the applicant is a member of CPI (Maoist) and a human rights activist, 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)*.

18. It is further argued that there is absolutely no material on record to show that the applicant aided or abated the other accused in commission of any offence.

19. It is further argued that Pune police have no jurisdiction to make inquiry or investigation in respect of that activities of the applicant as there are no allegations that he had any role to play either in Elgar Parishad or in Bhima Koregaon incident.

20. The Ld. Advocate has further argued that from the letters referred to by prosecution during proceeding of quashing of FIR before Hon'ble High Court, what can be gathered is that responsibility of 'fact finding' was given by the organisation which is absolutely a legal activity. She referred to the exercise of fact finding usually undertaken by the Planning Commissions and argued that the role of the applicant in the organisation was anti-violence. Thus, according to the Ld. Advocate the applicant is innocent, that in last one and half years the applicant was all the while available for interrogation however the police did not even question him, that there is no *prima facie* case against him and therefore, relying upon the observations in the case of *Siddharam Mhetre Vs. State of Maharashtra [(2011) 1 SCC 694]* she has prayed for grant of pre-arrest bail to the applicant.

SUBMISSIONS ON BEHALF OF STATE :

21. Ld. D.G.P. Mrs. Pawar opposed bail application on the ground that no anticipatory bail can be granted as per Section 43-D(4) of the UAPA Act. She has further 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.

22. D.G.P. Mrs. Pawar further submitted that present applicant and other 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 participation of the applicant the Id. D.G.P. relied on certain documents recovered from the devices of different accused during house-search conducted at their respective houses.

23. D.G.P. Mrs. Pawar further submitted that the applicant was not merely a passive but active member of the banned organization. There is sufficient material against him to show his involvement in the larger conspiracy. She has referred to certain letters seized from the computers and electronic devices of other accused during search to show how the present accused was and is involved in functioning of the banned organization and the severity of the conspiracy. Some of those documents are referred in the text in the reasoning part.

24. According to Ld. D.G.P, concept of '*fact finding*' of the banned organisation cannot be equated with that of the Planning Commission. According to her, this concept has been used by the banned organisation to make false propaganda so as to mislead the people and to create unrest in the country. It is argued that the applicant is having objectionable and serious connections with banned terrorist organisation '*Hijbul Mujahiddin*' of Kashmir, she has referred some letters which were produced at the time of hearing in a sealed cover and argued that custody of applicant is necessary to excavate different activities he was doing and the connections he was having with different terrorist organisations.

REASONS :

MAINTAINABILITY :

25. As per Sub Section 4 of Section 43-D of the UAPA, no anticipatory bail can be granted in case of offences under UAPA. The provision reads as follows :

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

.....

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

On plain reading of the provisions what can be gathered is that when there are allegations of commission of any offence under UAPA, no anticipatory bail can be granted. Similar are the provisions in the Scheduled Castes and the Scheduled Tribes Act, 1989. However, there are catena of judgments to the effect that if no *prima facie* case is made out of any offence punishable under the said Act, the Court is empower to grant pre-arrest bail. Applying the same analogy, it can be said that if from the charge-sheet no offence

is *prima facie* made out against the applicant under UAPA, anticipatory bail can be granted. Hence, this Court has entertained the application and has proceeded on deciding it on merits.

MERITS OF THE CASE :

26. In the case of *National Investigation Agency Vs. Zahoor Ahmad Shah Watali [(2019) 5 SCC 1]* the Hon'ble Supreme Court laid 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. 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."

27. 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.

28. These guiding principles direct the Court 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'.

29. 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.

30. 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.

31. 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."

32. 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.

33. It is further discussed that enemy's armed forces should be destroyed bit by bit through guerrilla methods of warfare when sufficient arms are 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.

34. 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 and then capturing the urban areas.

35. In Chapter-3 there is a discussion about the Party building and the discussion mentions that the best elements emerge through the struggles, that they 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.

36. 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.

37. 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. There are documents to show that the applicant was also an active member of the banned organisation

and he was managing the affairs of the organisation.

38. Ld. Advocate Mrs. Rohini Ahuja filed on record copies of different books written by the applicant and certain material of CPI (Maoist) which is available on internet. According to her, the applicant, being a writer by profession, has studied the ideology and structure of the banned organisation, had undertaken the task of fact finding, which is nothing but finding out the truth and therefore it cannot be said that he was any way involved in any conspiracy to commit any crime.

39. The submissions as above are attractive but cannot be accepted for the reason that apart from above mentioned literature there is other material on record which *prima facie* show that the applicant was not only actively involved but was managing the affairs of the banned organization, particularly in respect of recruitment, funding and policy making.

40. 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'.

41. It is necessary to note that the said statement of Kumarsai 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 played by the applicant and the other accused persons.

42. 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 and the applicant was a party to the said conspiracy. 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 role played by the applicant/accused in the conspiracy while executing the object of the banned organization.

43. From house search of accused, a letter sent by Sudarshan to the applicant has been recovered (page No.733 of applicant compilation). It reads as follows:

***Dear Comrade Gautam J I,
Red Salutes:***

*First of all, the CPI (Maoist) Central Committee pays
humble tribute to dear martyrs of the revolutionary*

People's war. All party committees, state, regional, and local will celebrate the martyrs week with great enthusiasm and fervor. Let us taken this opportunity to re-double our efforts against Mission 2017. **We must intensify campaigns both in struggle areas and in the open work to resist each and every tactic used by the remorseless paramilitary forces with an aim to crush the revolutionary movement.** Chattisgarh state and central forces have declared an all-out war on its own people, adivasis, civil rights activists, lawyers and anyone who dares to speak against the inhuman atrocities, mass rapes, torture and fake encounters. We must not bow before the gross-misuse of power or pressure tactics employed by the state police. Fact finding surveys have played a critical role in exposing the barbaic face of the enemy. It has proven effective to make the state forces accountable for their brutal crimes against the defenseless tribals and party activists. FF surveys led by comrade Nandini have greatly helped tame the hard-core criminal of Bastar SRP Kalluri. The intensity of fake encounters has increases many folds following the glorious Sukma ambush by the PLGS this year. The CC is well aware of the ground realities and difficulties faced by our comrades and party activists from CLC, PUDR, CDRO and other civil rights organisations while they are on FF missions in Bastar. The CC leadership reiterates its commitment in providing all forms of support (moral, financial, ideological) to our party comrades and activists who participate in and coordinate various FF missions across the country including J & K. The CC encourages all open work cadres to resist and refuse to bow before the enemy tactics Regular surveys must be conducted across various districts that have recently witnessed numerous fake encounters. Please constitute a team to expose the mass murders committed by the state and paramilitary forces within Sukma and Bijapur in the last few months. One or more members of village committees will also participate and help the activists to bring out the true facts of all claimed encounters. The teams may reach at the designated locations between 10-28 august. **Please coordinate with Comrade Raghunath and**

Comrade Surendra to finalise the agenda and financial arrangements for organising this FF mission. Dear Comrade, these are very critical times, the great People's war is increasingly facing brutal repression from all fronts therefore, we must do everything in our power to stand united and defeat the fascist forces both politically and otherwise. We are hopeful of positive and consistent effort from you side and all our intellectual friends and comrades among the masses. Please take care of yourself.

*Your friend,
Sudarshan
30 July 2017.*

On perusal of the abovesaid letter, the status of the applicant in the organization and the role played by him can be noted. There is specific reference of raising of funds and to instigate and provoke villagers to participate in the activities of the organisation.

44. There is a report prepared on the applicant which was found in the laptop of accused Rona Wilson (Page 830 of applicant compilation). This report gives an idea as to how the applicant is involved in the activities of the banned organisation and as to how he coordinates with different terrorist groups and organisations. There is specific reference of his contacts with the separatist leaders of Kashmir and office bearers of 'Hijbul Mujahiddin (HM)' which is a Kashmiri terrorist organisation. It would be proper to quote the contents of the report so as to understand the *modus operandi*.

"Report on Gautam Navlakha (GN)"

In this report we present certain facts related to GN and our assessment of him. This has become necessary in the context of conflicting political assessments about him

within our MOs which had erupted as open debates on some occasions. In such a situation, we believe that all the facts in our knowledge pertaining to his activities and role should be presented before you so that you can come to your own assessment about him and to see to it that there is sufficient alertness and precaution from our side in dealing with him.

Gautum Navlakha (GN) helped to form and has been closely coordinating with a funded NGO called Coalition of Civil Society which is led by Parvez Imroz, Khurram Parvez and other civil society activists in Kashmir. Before this Coalition came into existence, a trust was formed by the liberation movement in 1992-93 with Parvez Imroz and Khurram Parvez as members to look after the widows but also to help the movement in different ways. This trust therefore had a crucial complimentary role in the armed struggle. For instance, money was sent to this trust from the Kashmiri diaspora which was also channelized to the liberation struggle. Our friends in the Kashmir movement tell us that GN in connivance with Parvez Imroz and Khurram Parvez wrecked and destroyed this trust. Parvez Imroz was shot in his feet by the underground movement as a warning because these people embezzled Rs. 40 lakh meant for the movement channelized through this trust. It was after this that they formed the Coalition of Civil Society.

GN had close working relations with Tapan Bose in Kashmir. Bose and his wife Rita are known to have CIA connections. GN and Bose fell out subsequently.

In mid-2000s GN met Shakil Baskhi, chairman of Islamic Student's league in Srinagar, and told him that the Maoist party wants to establish contact and a working relationship with the HM. Bakshi is a senior activist in the movement. GN introduced himself to Bakshi as a Maoist representative even though there was no such instruction to GN from any of the leaders of our movement. GN asked Bakshi to arrange a meeting with the HM leadership because he wanted to convey the message from the Maoists. When SAR met Bakshi in Srinagar and came to know of GN's proposal,

he asked Bakshi to stop GN's meeting with HM. Though this meeting did not take place, GN came back from Srinagar and told us that he has been sent by the Sheikh Salahuddin, the leader of HM, with a message to the Maoist party. He said that HM wants to establish relationship with our party, and that someone should go and meet Shakil Bakshi for this as he is the contact person. At that time, we had informed SUCOMO about GN's message without knowing that GN is actually lying to both the sides. We realised this only later when our team went to Kashmir on a fact-finding visit and talked to Shakil Bakshi. It was clear that he acted as the representative of the Maoists to the HM and of the HM to the Maoists without any of the organisation's knowledge or approval.

In Afzal Guru's case, when there was a campaign for the justice for Afzal, GN was doing a counter-campaign in Delhi and his colleagues were doing the same in a different way in Kashmir. They first propagated that Afzal is an IB man, and thereby tried to diffuse the campaign for his release. Later when this propaganda was countered, they propagated that his cousin was in the govt. forces. When Society for the Protection of Democratic and Political Rights (SPDPR) was initiated by SAR and us, Afzal's cousin Yasin and others were mobilised by GN and his men in Kashmir to counter SPDPR through a platform called Parents and Relatives of Prisoners.

The report disclosed that the applicant was in contact with Kashmiri separatists and was intending to have working relationship with *Hijbul Mujahiddin*. It shows that he was acting in the capacity of a Maoist leader. If really the applicant is only a journalist or a writer, there was no reason for him to establish such hidden contacts with the anti-national terrorist organisations. In fact, it is a grave nature of felony. The report also depicts the concept of 'fact finding' of the banned organisation i.e. to make false propaganda so as to malign the image of Government in the eyes of

people at large or to divert the attention of the administration. It cannot be said to be a plain fact finding inquiry, which is usually undertaken by Planning Commissions for policy decisions. Both cannot be equated and therefore the arguments advanced by Ld. Advocate on this point are not acceptable.

45. There are certain other letters found with other accused which show that the applicant had attended meetings of frontal organisations viz. UAPA, that he was involved in the recruitment process and for that purpose he was in contact with separatists from Jammu and Kashmir. If his activities are taken into account in the light of the document '*strategy and tactics*' what can be *prima facie* conceived is that he is an urban Maoist, who in furtherance of the objectives of the banned organisation discharging his responsibilities.

46. Ld. Advocate for the applicant has highlighted some portions from the above mentioned letters to show that there is conflict of opinion between the applicant and the members of the Central Committee of the banned organisation, that at one point of time he had also blamed the organisation as criminal organisation and therefore, it cannot be said that he is a party to any conspiracy of criminal nature.

47. I have carefully gone through the documents referred by Ld. Advocate. What is noted is that on some subjects the applicant was having different opinion than the members of Central Committee. At times, some decisions taken by the applicant were not accepted by the Central Committee. Nevertheless he continued to be one of the main leaders of the banned organisation who was managing the affairs in urban area, who was busy in making propaganda of fact finding, who was raising funds and doing recruitments for the organisation and coordinating with other

terrorist and anti-national groups and organisations of Kashmir. Therefore, the difference of opinion on some subjects does not lead an inference that he is not a party to the larger conspiracy of the organisation.

48. At the time of hearing of bail application, the Investigating Officer has produced a sealed cover containing some letters which were seized from the electronic data of the house-search of accused persons. A request is made on behalf of the prosecution that those letters may not be referred to or published till the applicant is interrogated. Ld. Advocate for applicant has raised objection for keeping the letters a secret.

49. Although charge-sheet has been filed in the case, the present applicant is yet to be arrested. The part of investigation in his respect is still pending. As per Section 173(8) of Cr.P.C. the Investigating Officer is still able to carry out further investigation. Considering the scope of interrogation of the applicant and investigation in the case, it would be proper that the letters in the sealed cover are not made public. The applicant cannot claim prejudice for non-supply of copies of those letters because those can be supplied to him after interrogation, and certainly for trial. With a little departure from established practice of supplying of copy of incriminating material to the accused, it is to be noted that those letters *prima facie* support the claim of prosecution that the applicant is seriously involved in anti-national activities.

50. From the observations recorded as above, it is clear that there is *prima facie* sufficient material to show that the applicant is not only a member of banned organisation but an active leader as noted above. *Prima facie* it can be noted that organisation of Elgar Parishad at Pune was a part of larger conspiracy of the banned

organisation and Bhima Koregaon episode is one of the instance of execution of the said conspiracy. Therefore, the question of jurisdiction either of Pune police or of this Court cannot be said to have merits, at least at this stage.

51. The investigating machinery is making efforts to arrest the applicant for custodial interrogation since August 2018. However, the applicant was getting protection from higher courts either in the matter of quashing for FIR or in the matter of challenging the legality of his previous arrest. It is the fact that the investigating machinery could not interrogate him effectively till this day. From the above facts, what is transpired is that unless the applicant is taken in custody and interrogated thoroughly it is not possible to go to the root of the case and to trace out the different links which have been traced in the letter communication of the members of the banned organisation.

52. In view of the above observations, I found that custodial interrogation of the applicant is necessary and hence no anticipatory bail can be granted at this stage. Hence, I pass the following order.

ORDER

Application is hereby rejected.

Sd/-

Pune
Date : 12/11/2019

(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 : 12.11.2019

Order transcribed on : 12.11.2019

Order checked and
signed by P. O. : 12.11.2019

Order uploaded on : 12.11.2019