



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 468 OF 2023

Gautam P. Navlakha,]
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]
 ...Appellant
 (Orig. Accused No.11)

V/s.

- 1) National Investigating Agency,]
 7th Floor, Cumbala Hill Telephone]
 Exchange, Pedder Road, Mumbai-26.]
 (FIR No.RC 01/2020/NIA/Mum)]
- 2) State of Maharashtra] ...Respondents

Dr. Yug Mohit Chaudhry, Advocate a/w Mr. Anush Shetty & Mr. Nitya Ramakrishnan, Senior Advocate for the Appellant.

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

Ms. A.S. Pai, PP a/w Ms. Mahalakshmi Ganpathy, A.PP for the Respondent No.2-State.

CORAM : A. S. Gadkari And
 Shivkumar Dige, JJ.

RESERVED ON : 7th NOVEMBER, 2023.
 PRONOUNCED ON : 19th DECEMBER, 2023.

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

- 1) Appellant, Accused No.11, has preferred this Appeal under

Section 21(4) of the National Investigation Agency Act, 2008 (for short, '*the NIA Act*') impugning the Order dated 6th April, 2023 passed below Bail Application Exh-648 in NIA Special Case No.414 of 2020. By the impugned Order, the learned Special Judge, Greater Mumbai (for short, '*the trial Court*') has rejected the Application for bail of the Appellant.

2) Heard Dr. Yug Mohit Chaudhry, learned counsel for the Appellant, Mr. Devang Vyas, learned Additional Solicitor General of India for the Respondent No.1-NIA and Smt. Pai, P.P. for the Respondent No.2-State.

3) Appellant is Accused No.11 as per the charge-sheet submitted by Respondent No.1, National Investigation Agency (for short "NIA") in FIR No.RC-01/2020/NIA/MUM registered by it under Sections 120-B, 115, 121, 121-A, 124-A, 505(1)(b) and Section 34 of the Indian Penal Code, 1860 (for short "*the IPC*") and under Sections 13, 16, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (for short "*UAP Act*").

4) Facts which emerged from record and necessary for adjudication of the present Appeal can be summarized as under:-

- i) On 31st December, 2017, Bhima Koregaon Shaurya Din Prerana Abhiyan organized an event called 'Elgaar Parishad' in Shaniwarwada, Pune (for short "Elgar Parishad Program"). It was decided to celebrate 200th anniversary of the historic battle of Bhima Koregaon on 1st January, 2018 by more than 200-250

Social organizations under the banner of '*Bhima Koregaon Shaurya Din Prerana Abhiyan*'. The program was held from 2.30 p.m. to 10.00 p.m.. On 1st January, 2018, mobs bearing saffron flags attacked persons travelling to and returning from Shaniwarwada, Pune. There was large scale violence and one youth lost his life.

- ii) A Zero(0) FIR was registered on 2nd January, 2018 at Pimpri Chinchwad Police Station, Pune by an eye-witness, Ms. Anita Salve, under various provisions of IPC, Arms Act, 1959, Maharashtra Police Act, 1951 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short "*SC & ST Act*") alleging involvement of Sambhaji Bhide, Milind Ekbote and their followers for the attack and violence. A State wide bandh was also called by several Dalit, OBC, Maratha and Muslim organizations against the attacks across Maharashtra State thereafter.
- iii) On 8th January, 2018, first informant Mr. Tushar Damgude, registered FIR No.4 of 2018 under the provisions of Sections 153-A, 505(1)(b), 117 read with Section 34 of IPC stating that, the Elgar Parishad Program organized at Shaniwarwada, Pune on 31st December, 2017 was attended by him at around 2.00 p.m., wherein there were a few speakers, compere, singers and

other performers who performed on stage. That, the speakers gave provocative speeches, their performances were provocative in nature and had the effect of disrupting communal harmony. It is stated that, banned terrorist organization Communist Party of India (Maoist) (for short “CPI(M)”) had an organizational role to play in arranging the said program. CPI(M) wanted to infiltrate, inculcate and permeate its ideology amongst the masses, mostly impoverished classes and misguide them towards violent unconstitutional activities. According to the complainant, Kabir Kala Manch's (for short “KKM”) Sudhir Dhawale, other members and activists had performed provocative street plays in different areas of Maharashtra earlier, made malice speeches and spread false history, made disputable statements and objectionable slogans inciting passion and hatred to disrupt communal harmony, sung songs and participated in road dramas. On 31st December, 2017, these very activists amongst others performed skit/stage plays at the 'Elgar Parsihad Program'. As a direct result of which, on 1st January, 2018 there were incidents of violence, arson, stone pelting and caused death of an innocent person near Bhima Koregaon, Pune.

iv) Houses of Sudhir Dhawale (Accused No.1), Rona Wilson

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

- v) Accused Surendra Gadling, Rona Wilson, Smt. Shoma Sen, Mahesh Raut and Sudhir Dhawale were arrested on 6th June 2018. Residences of Smt. Shoma Sen and Mahesh Raut were searched and Police seized digital devices and other articles. Articles and material seized showed involvement of more accused, viz; Varavara Rao (Accused No.6), Vernon Gonsalves (Accused No.7), Arun Ferreira (Accused No.8), Smt. Sudha

Bharadwaj (Accused No.9), Dr, Anand Teltumbde (Accused No.10), Appellant (Accused No.11) and Stan Swamy (Accused No.16). Their names were added as accused on 23rd August, 2018 in present crime.

- vi) On 28th August, 2018, the Appellant was arrested from his residence in Delhi in FIR No.4 of 2018 registered at Vishrambaug Police Station, Pune. Further, the Appellant's house was searched and 3 hard disks, 1 memory card, 5 pen drives, 1 phone with sim card, 1 iPad, 1 iPad charger, 3 floppy disks, Bharat Gas connection card, email ID and password, photographer's 2 memory cards of videography of the house search were seized vide seizure panchanama dated 28th August, 2018.
- vii) On 28th August, 2018 itself the Hon'ble Delhi High Court in Gautam Navlakha V/s. State (Writ Petition (Crl) No.2559 of 2018, stayed the Appellant's transit remand proceedings and directed him to be placed under house arrest.
- viii) The Hon'ble Supreme Court by way of interim Orders passed in Romila Thapar V/s. Union of India, (Writ Petition (Crl) 260 of 2018) extended the Appellant's house arrest from 28th August, 2018 till 28th September, 2018.

The Hon'ble Supreme Court delivered Judgment in

Romila Thapar & Ors. V/s. Union of India & Ors. (2018) 10 SCC 753 on 28th September, 2018 and extended the house arrest of the Appellant and co-accused and granted liberty to the accused persons to pursue appropriate legal remedies.

- ix) On 1st October, 2018, the Hon'ble High Court of Delhi in *Gautam Navlakha Vs. State (NCT of Delhi) & Ors. (Writ Petition (Crl) No.2559 of 2018)* quashed the Petitioner's arrest. At this point, the Petitioner had already spent 34 days in house arrest i.e. from 28th August, 2018 to 1st October, 2018.
- x) On 5th October, 2018, the Appellant filed Criminal Writ Petition No.4425 of 2018 before this Court seeking quashing of the FIR *qua* him. Throughout the duration of this Petition, the Appellant was protected from arrest by this Court.
- xi) On 14th November, 2018, the Competent Authority granted sanction for prosecution under the U.A.P. Act.
- xii) On 15th November, 2018, charge-sheet under Sections 121, 121-A, 124-A, 153-A, 505(1)(b), 117, 120-B, 23 of the IPC and under Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the UAP Act was filed against Accused Nos.1 to 5 by Vishrambaug Police, Pune.
- xiii) On 21st February, 2019, Supplementary charge-sheet under Sections 153-A, 505(1)(b), 117, 120-B, 121, 121-A, 124-A and

34 of the IPC and under Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the UAP Act was filed against Accused Nos.6 to 9 by Vishrambaug Police, Pune.

- xiv) On 13th September, 2019, this Court dismissed Writ Petition No.4425 of 2018 preferred by the Appellant. However, granted further three weeks interim protection to the Appellant.
- xv) The said Judgment dated 13th September, 2019 was challenged by the Appellant, before the Hon'ble Supreme Court.
- xvi) The Hon'ble Supreme Court by its Order dated 15th October, 2019 disposed off the SLP (Crl). 8862 of 2019 filed by the Appellant and granted four weeks protection from arrest to the Appellant and also granted liberty to apply for regular/pre-arrest bail.
- xvii) On 24th January, 2020, the Under Secretary to the Government, Ministry of Home Affairs, New Delhi passed an Order under Section 6(5) r/w 8 of NIA Act directing the Respondent, NIA to take up the investigation of FIR No.4 of 2018 registered with Vishrambaug Police Station. The NIA registered FIR No. RC-01/2020/NIA/Mum under Sections 153-A, 505(1)(b) and 117 and Section 34 of IPC and Sections 13, 16, 17, 18, 18B, 20, and 39 of the UAP Act.
- xviii) On 14th April, 2020, the Appellant surrendered to NIA Delhi as

per the Orders of the Hon'ble Supreme Court in Gautam Navlakha V/s. State of Maharashtra (M.A. No.914 of 2020 in SLP (CrI.) 1842 of 2020).

- xix) On 18th April, 2020, the house of Appellant was searched and 1 Laptop with charger, 7 CD's, Miscellaneous papers, 1 notebook, 1 book, 1 bank book were seized. The Appellant's partner Ms. Sahba Hussain, produced 2 mobiles with sim cards, 1 laptop, pan card of the Appellant on a Notice issued by the Respondent under Sections 91 and 160 of the Cr.PC.
- xx) On 26th May, 2020, the Appellant was transferred to Mumbai and produced before NIA Special Court, which remanded him to judicial custody.
- xxi) On 11th June, 2020, the Appellant filed an Application before the trial Court for statutory bail as his total custody period had exceeded 90 days. Learned Special Judge rejected the Application for statutory bail of the Appellant on 12th July, 2020.
- xxii) On 9th October, 2020, the Respondent No.1-NIA filed supplementary charge-sheet before the Special Court against the Appellant and co-accused under Sections 120-B, 115, 121, 121-A, 124-A, 505(1)(b) read with Section 34 of IPC and under Sections 13, 16, 18, 20, 38 and 39 of UAP Act.

- xxiii) This Court on 8th February, 2021, rejected the prayer of the Appellant for statutory bail in his Appeal (Stamp) No.1707 of 2020.
- xxiv) On 12th May, 2021, the Hon'ble Supreme Court dismissed SLP (Crl) No.1796 of 2021, filed by the Appellant for statutory bail (*Gautam Navlakha Vs. National Investigation Agency, reported in 2021 SCC OnLine SC 382*).
- xxv) On 26th April, 2022, this Court rejected the Criminal Writ Petition No.3116 of 2021 filed by the Appellant for keeping him under house arrest till the completion of trial.
- xxvi) On 5th September, 2022, trial Court rejected Bail Application of the Appellant.
- xxvii) Appellant filed Criminal Appeal No.33 of 2023, challenging Order dated 5th September, 2022 of the learned Special Judge. By an Order dated 2nd March, 2023, this Court observed that, the Order passed by the trial Court was cryptic and there is no analysis of evidence relied on by the prosecution. Hence, the Bail Application of the Appellant (Exh-648) was restored back before the trial Court for fresh consideration.
- xxviii) The Application for bail of Appellant filed below Exh-648 was rejected by the trial Court by its impugned Order dated 6th April, 2023.

5) Dr. Chaudhry, learned senior counsel for the Appellant submitted that, the Appellant is a reputed scholar and recognized authority on the subject of Maoism and has written many articles and books on the subject. As part of his research, he has visited Maoist Camps and interviewed senior leaders as well as other cadres and has also published those interviews. That, his contacts with Maoist party members have been for academic purposes and not to further their terrorist activities. The Appellant is a writer, peace and civil rights activist and journalist of long standing, associated with the economic and political weekly and other well regarded publications. That, the Appellant has an unblemished record and has lived a life dedicated to the service of society. He submitted that, the Appellant belongs to and associated with the People's Union of Democratic Rights (PUDR) whose many Petitions have laid to landmark judgments. That, the Appellant was called upon by the State in the year 2011, to assist in securing the release of Officials abducted by left-wing extremists.

5.1) He submitted that, there is absolutely no evidence to support the Prosecution's allegation that, the Appellant was involved in any terrorist activities or any activity relating to advocating, perpetrating or conspiring to commit acts of violence. That, there is no material at all in the entire charge-sheet to show any act allegedly committed by the Appellant as contemplated under Section 15 of the UAP Act, either in the form of conspiracy or advocacy or commission of any offence thereof. He submitted

that, even if the prosecution case is taken as it is, then also no offence as contemplated under Chapter IV of the UAP Act is made out.

5.2) He submitted that, the documents relied upon by the prosecution itself shows that, the Appellant was publicly critical of the CPI (M) leading the CPI (M) leadership to believe that, he was working for the Government of India. That, there is no allegation against the Appellant of raising funds, sourced or procure weapons or in any manner associated with the terrorist activities of the CPI (M).

5.3) He submitted that, even if every word of the charge-sheet is believed to be true, there is no evidence suggesting the Appellant's involvement in any conspiracy, planning, advocacy or commission of violence and therefore none of the alleged offences against the Appellant are made out.

5.4) Dr. Chaudhry submitted that, the observations made and findings recorded by the Hon'ble Supreme Court in the case of *Vernon Vs. State of Maharashtra & Anr., reported in 2023 SCC OnLine SC 885*, with respect to the documents and the other evidence therein are also squarely applicable to the Appellant. The Appellant is similarly situated with co-accused namely Arun Ferreira, Vernon Gonsalves, Dr. Anand Teltumbde and Mahesh Raut, against whom similar allegations are made. The said co-accused have been released on bail either by the Hon'ble Supreme Court or by this Court and therefore the Appellant is also entitled to be released on

bail on the ground of parity with them.

5.5) He submitted that, the Appellant is in custody since 14th April, 2020 i.e. for more than three years and seven months. That, the trial Court has not framed charge till date. That, on the Application for discharge (Exh-870) preferred by the Appellant, the trial Court is yet to pass Order. That, various discharge Applications are filed by the accused persons are pending for adjudication. That, the learned Judge of the trial Court has submitted a report dated 18th November, 2022 stating that, it will require about a year to frame charge. That, the charge-sheet consists of about 20,000 pages in 54 volumes. The prosecution has cited 370 witnesses in the charge-sheet and there are thousands of documents on which the prosecution is relying. The trial of the present case will go on for decades by the speed by which it is being conducted by the prosecution.

5.6) He submitted that, the Appellant is more than 70 years of age as of today. There are no criminal antecedents. That, the Appellant is neither a flight risk nor threat to witnesses or evidence and thus fulfills the triple test requirements. He therefore prayed that, the Appellant may be released on bail during the pendency of trial.

5.7) In support of his submissions, Mr. Chaudhry relied on the following decisions:-

- i) *National Investigation Agency V/s. Zahoor Ahmad Shah Watali, reported in (2019) 5 SCC 1 : (2019) 2 SCC (Cri)*

383;

- ii) *Dhan Singh V/s. Union of India Through National Investigation Agency & Ors., reported in 2019 SCC OnLine Bom 5721;*
- iii) *Vernon V/s. State of Maharashtra & Ors., reported in 2023 SCC OnLine SC 885,;*
- iv) *Thwaha Fasal V/s. Union of India, reported in 2021 SCC OnLine SC 1000;*
- v) *Konnath Muralidharan V/s. State of Maharashtra, reported in 2019 SCC OnLine Bom 6954;*
- vi) *Saidulu Narsimha Singapanga V/s. State of Maharashtra, Order passed by this Court in Criminal Bail Application No.3456 of 2019 dated 5th May, 2021;*
- vii) *M. Londhoni Devi V/s. National Investigation Agency, reported in 2011 SCC OnLine Gau 278;*
- viii) *Emperor V/s. H. L. Hutchinson, reported in AIR 1931 Allahabad 356;*
- ix) *Union of India V/s. K.A. Najeeb, reported in (2021) 3 SCC 713;*
- x) *Sagar Tatyaram Gorkhe & Anr. V/s.State of Maharashtra, reported in (20121) 3 SCC 725;*
- xi) *Vikram Vinay Bhave V/s. State of Maharashtra, through*

- Public Prosecutor & Anr., reported in 2021 SCC OnLine Bom 680 : (2021) 2 Bom CR (Cri) 564;*
- xii) *Iqbal Ahmed Kabir Ahmed V/s. State of Maharashtra, reported in 2021 SCC OnLine Bom 1805 : (2022) 1 AIR Bom R (Cri) 340;*
- xiii) *Mohd. Muslim alias Hussain V/s. State (NCT of Delhi), reported in 2023 SCC OnLine SC 352;*
- xiv) *Rabi Prakash V/s. The State of Odisha, reported in 2023 LiveLaw (SC) 533;*
- xv) *Lt. Col. Prasad Shrikant Purohit V/s. State of Maharashtra, reported in (2018) 11 SCC 458;*
- xvi) *Hanumant, Son of Govind Nargundkar V/s. State of Madhya Pradesh, reported in 1952 SCR 1091 : AIR 1052 SC 343 : Cri LJ 129; and*
- xvii) *P. Gopalkrishnan Alias Dileep Vs. State of Kerala & Anr., reported in (2020) 9 SCC 161.*
- 6) Mr. Vyas, learned Additional Solicitor General of India appearing for the Respondent No.1-NIA, painstakingly and meticulously pointed out all the relevant material against the Appellant from the charge-sheet.
- 6.1) He submitted that, Sections 120-B and 34 of the IPC are also applied along with the provisions of UAP Act to the present crime and

therefore the larger conspiracy behind commission of the crime has to be considered, even at the stage of grant or rejection of bail of an accused.

6.2) Mr. Vyas, learned A.S.G. submitted that, the draft charges mentioned in paragraph Nos. 18.1, 18.2 to 18.5 are to be read in conjuncture and not in isolation *qua* each accused. He submitted that, the larger conspiracy to overthrow a democratically elected Government behind the commission of present crime has to be taken into consideration. That, the theory of 'exclusivity' cannot be applied to verify the role of Appellant.

6.3) He submitted that, the Supreme Court's observations in the case of Vernon (*supra*) regarding inadmissibility of document/s as hearsay is *qua* the said Appellants/accused in the said case only and cannot be applied to all the accused uniformly. He submitted that, in para. No.29 of the said Judgment, the Supreme Court has held that, those documents were not recovered from the Appellants therein and therefore those communications or contents thereof have weak probative value or quality. That, the said finding is *qua* the said Appellants therein and cannot be applied to the case in hand.

6.4) He submitted that, to camouflage or to put forth in the front only to show his dissociation with the violent acts undertaken by the CPI (M), the Appellant has consciously adopted a stand that, he is critic of its violent activity. It is only to show or to perceive a perception in the public at large that he is a neutral person and a scholar of a particular subject, the

said stand that, he always criticized the violence of party is adopted. That, it was a conscious strategy adopted by the Appellant.

6.5) He submitted that, during the course of arguments Mr. Chaudhry has admitted that, the name 'Gautam' mentioned in the communication at page 851 is the same person i.e. Appellant and therefore a safe inference can be drawn that the Appellant is the member of CPI (M).

6.6) By referring to the letters/communications at page Nos.867 and 868 of the compilation, he submitted that, it was the common agenda of the CPI (M) to create division in the society to further their strategy and to cause terrorist act to overthrow the Government. By referring to Annex. R-9, Mr. Vyas submitted that, it discloses that the Appellant had visited to the guerrilla zone of the banned organization and was connected with arms training.

6.7) He submitted that the Appellant had preserved the Party Constitution of CPI (M), a banned organization in his computer, to propagate the agenda of the party. That, there is more than sufficient material to clearly infer that the Appellant was/is an active member of the banned organization and had hatched a conspiracy to topple the democratically elected Government of our country. He submitted that, perusal of the communication/letter (at Annex. R-16) discloses the mind set of the Appellant's party, to target politically influential persons who are in the Government.

6.8) Mr. Vyas, learned A.S.G. submitted that, the Appellant will be a flight risk if released on bail. As of today he is in custody and therefore there is no question of influencing or tampering with the witnesses. That, age of an accused itself is not relevant factor to release him on bail. He submitted that, considering the complicity of the Appellant in the larger conspiracy, this is not a case for grant of bail. He therefore submitted that the Appeal may be dismissed.

7) The law relating to interpretation and application of Section 43-D(5), by now is well enunciated and crystallized by the Hon'ble Supreme Court by its various decisions.

At the stage of considering the application for bail of an accused under this Section, the Court has to see the material available against the Appellant from the charge-sheet to form an opinion that there exists reasonable grounds for believing that, the accusation against such person is *prima facie* true. At this stage, the Court is not supposed to weigh the evidence meticulously but to arrive at a finding based on broad probabilities. If a charge-sheet is already filed, the Court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is *prima facie* true. While doing so, the Court has to take the material in the charge-sheet as it is. But in view of the restrictive provisions of Section 43-D of UAP Act, some element of evidence analysis becomes

inevitable. Reliance is placed on the decisions of the Hon'ble Supreme Court in the cases of (i) *National Investigation Agency V/s. Zahoor Ahmad Shah Watali*, reported in (2019) 5 SCC 1; (ii) *Thwaha Fasal V/s. Union of India*, reported in (2021) 4 SCC 240 and (iii) *Vernon V/s. State of Maharashtra & Ors.*, reported in 2023 SCC OnLine SC 885.

7.1) In the case of *Kekhriesatuo Tep etc. Vs. National Investigation Agency*, reported in 2023 SCC OnLine SC 445, in para. No.15, the Hon'ble Supreme Court has held that, insofar as the second requirement with regard to Court arriving at a satisfaction that the accusation against such persons is *prima facie* true is concerned, it would not like to go into the elaborate discussion of the evidence, inasmuch as that may hamper the rights of the parties at the stage of trial.

8) In view of the above settled legal position, we have to consider the material placed before us against the Appellant to form an opinion that, there are reasonable grounds for believing that the accusation against the Appellant is *prima facie* true.

9) The page numbers referred to hereinafter are mentioned as given to the pages in the compilations of Appeal and other record produced before us.

10) Perusal of record indicates that, the concise allegations against the Appellant along with other accused have been stated in paragraph Nos.17.28, 17.39 to 17.45 and 17.64 of the charge-sheet. The draft charges

against the Appellant along with other accused persons as submitted by the Respondent No.1-NIA before the trial Court are stated in paragraph Nos.18.1, 18.2, 18.4 of the charge-sheet. Para. No.18.6 (2) thereof, mentions the various Sections applied to the Appellant in the present crime.

11) Perusal of charge-sheet indicates that, the material relied upon by the Respondent No.1-NIA against the Appellant is in the form of documents/communications alleged to have been seized/recovered from the electronic devices either from the Appellant or from co-accused and the statements of witnesses.

12) Record reveals that in the list of Central Committee Members of CPI (M) (page 1076-1077) at serial No.11 there is a person by name Kosa @ Gautam @ Gopanna @ Sadha @ Buchhanna @ Vinod @ Kadri Satyanarayan Reddy S/o. Krishna Reddy. He is member of Central Committee of CPI (Maoist) Group.

12.1) KW-3 in his statement has stated that, generally actual names are not used in party. Everybody uses alias name for their communication. The said fact is admitted by the NIA in para. No.44 of its Affidavit-in-reply. It is stated therein that, during searches at premises of accused Hany Babu it revealed the code/alias names used by CPI (M) cadres for communication like, Gautam Navlakha as Darbar/G/G.N., Amit Bhattacharya as Ankush/Kanahi, Hany Babu as H.B./Venkat, Arun as Rupesh/A., Surendra as Vijay/S.G., Varavara Rao as V.V./Chief/Manyam Pituri, Sudha as Kaveri/s,

Rona as Kuppu/R/RW, Shoma as Ajita/S/Shoma, Vernon as Shoom/Ashok/V, Malem as Sunit, Saibaba as S, Degreee Prasad as Sushil.

13) Let us first consider the documents seized either from the Appellant or from co-accused allegedly indicting him in the crime.

13.1) A letter / communication at Annex. R-12 (page 855/993) is recovered from the laptop of co-accused Surendra Gadling. It is addressed to Com. Surendra by Com. Darsu. It refers to a meeting which was to be held at Hyderabad on 2nd or 3rd September. It is stated that, in the said meeting/conference, Com. Soni, Bela, Gautam, Anand, Hargopal etc. comrades would be participating whose acceptance has been received from Com. Varvar.

13.2) The next document seized from the computer of co-accused Rona Wilson (page 862) is the Agenda of the Party. On the last page of it, it is mentioned that, a reply to the series of articles by Gautam Navlakha (Appellant) that has appeared in the various publications and websites in the recent times should come in the first issue of People's Resistance. That, Prakash and Vilas will jointly right this article.

13.3) Document at page No.867 is seized from the computer of co-accused Rona Wilson. The said document is addressed to Com. Prakash by one 'R'. As per the Respondent No.1 and as has been stated by KW-3, the 'R' is or may be co-accused Rona Wilson. It is stated therein that, the Hindu fascist regime is bulldozing its way into the lives of indigenous adivasis. It

has successfully established its government in more than 15 States. That, Com. Kisan and few other senior comrades have proposed concrete steps to end it. That, they were thinking along the lines of another Rajiv Gandhi type incident. That, it sounds suicidal and there is a good chance that they might fail, but they feel that the party PB/CC must deliberate over there proposal. They collectively believed that, survival of the party is supreme to all sacrifices.

13.4) The letter at page No.868 is addressed by Com. M to Com. Rona. It refers to the efforts put in by other comrades in consolidating many *dalit* struggles across the country within few years. That, the Bhima Koregaon agitation has been very effective. The unfortunate death of a youth must be exploited to prepare future agitations and propaganda material. That, *dalit* sentiments are clearly against the Brahmin-centered agenda of BJP/RSS and this should be converted into large scale mobilization and chaos.

The Respondent No.1 has relied on this document to demonstrate that, the Appellant along with co-accused being members of the said banned Organization to further their role, were intending to create division in the Society.

13.5) The document/letter at Annex. R-1 (page 954) is recovered from the laptop of Appellant and also from the laptop of co-accused Rona Wilson. The said letter dated 30th July, 2017 is alleged to have been

addressed to Appellant by Sudarshan. It is mentioned therein that, all the party members must not bow before the gross misuse of power of pressure tactics employed by the State police. That, fact finding surveys have played a critical role in exposing the barbaric face of the enemy. The intensity of fake encounters has increased many folds following the glorious Sukma Ambush by the PLGA this year. That, 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 co-ordinate various fact finding missions across the country including J. & K.. The author of the said letter requested Appellant to please co-ordinate with Com. Raghunath and Com. Surendra to finalize the agenda and financial arrangements for organizing fact finding mission. The author expressed its hope of positive and consistent efforts from the Appellant side and all their intellectual friends and comrades among the masses.

The prosecution has relied upon this letter to support its contention that, it was the intention and mission of the Appellant and other co-accused in furtherance of their larger conspiracy to destabilize the Government.

13.6) The letter at Annex. R-2 (page 955) is written by Anantwa to Com. Mainibai. It mentions that, as per the directions of the party, fact finding committee has been formed and in it from Delhi Com. Gautam and Varunda have been appointed for it. They have been informed with the

decision of the party.

13.7) The document at Annex. R-6 (page 975) is recovered from the computer of co-accused Surendra Gadling. It is addressed to Com. R by SS. As per the prosecution, this is regarding Persecuted Prisoners Solidarity Committee (PPSC) work in Chhattisgarh, allotment of Professional Revolutionaries (PR's) for various urban fronts etc. The author of this letter refers to the name of Com. Gautam and other comrades, as they will be useful for their know how to the CC and other senior party members, when they will attend another meeting.

It is to be noted here that, here the author only mentions Com. Gautam and according to us, this document is a hearsay piece of evidence, *qua* the Appellant as has been held by the Hon'ble Supreme Court in the case of Vernon (*supra*).

13.8) Document at Annex. R-7 (page 976) is addressed by Com. Sudha to Com. Prakash. In para Nos.4 & 6 thereof, it is mentioned by the author that, the Appellant and others are in contact with the separatist from Jammu and Kashmir. That, a symposium is organized at Delhi against the UAP Act, 1967 on 23rd April, 2017, wherein Com. Arun Ferreira and Appellant were going to take part.

13.9) Document at Annex. R-8 (page No.979) is recovered from the laptop of the Appellant. It is alleged that, it is the Work report of C-1 prepared by the Appellant. The letter mentions about certain encounters

carried out by the police and other militant movement against automation organized by their comrades in one jute mill. It also mentions about new entrants in the party and active strong SF units.

13.10) Document at Annex. R-9 (page No.980) is recovered from the computer of the Appellant. It is written by Akhila to Comrades John Myrdal, Gautam and Anil. It states about the alleged visit of Appellant to *Dandakaranya*, an advancing guerrilla zone of their revolution. It indicates that, the Appellant along with other persons had visited the said place.

13.11) Document at Annex. R-10 (page No.981) is seized from the Appellant's computer having File Name- '*Gautam-18.08.17*'. It is addressed to Com. Sudarshan and authored by Appellant. As per the prosecution, it is in response to the letter (page 954) addressed by Sudarshan to Appellant. In the said letter the Appellant has informed Com. Sudarshan that, he was quiet concerned about the situation of being detained by Chhattisgarh police without any charges. That, the activists were being implicated in false cases to simply putting obstructions in their programs and investigations.

13.12) The next document is the party Constitution of CPI (M) recovered from the Appellant. It is the allegation against the Appellant that, he preserved it in his computer to propagate the agenda of party which is a banned organization.

13.13) The document at Annex. R-13 (page 994) is recovered from the laptop of Appellant. This document speaks about the Guidelines For International Work passed by the CC-2 Meeting held in December 2007.

13.13.1) According to us, this document is of no avail to the prosecution, as the CIP (M) has been declared as Terrorist Organization with effect from 22nd June, 2009. The aforementioned letter appears to be of the year 2007 i.e. prior to declaring the CIP (M) as a banned organization.

13.14) Letters at Annex. R-14 & R-15 are the *inter se* correspondence between Mr. Gaurav, In-charge, International Bureau, Communist Party of Nepal (M) and the Appellant along with Anand Swaroop Varma.

13.14.1) Perusal of said letters indicate that, at the most the Appellant was in contact with Mr. Gaurav of the CPN (M) at Nepal, however according to us, the said letters do not in any way connect the Appellant with the present crime or any terrorist act as alleged against him.

13.15) The next letter at Annex. R-16 (page 999) is written by co-accused Varavara Rao to the comrades of his party. In the said letter, the author has told his party members to have survey at the places where the public meetings of politically influential persons were to be conducted or fixed. In this letter the author uses the word 'enemies' which according to prosecution is referred to the law enforcing agencies or the persons from elected Government. It is the case of the prosecution that, to target politically influential persons the said directions were given by co-accused

Varavara Rao to the party members.

13.16) The document at Annex. R-17 (page 1001) is addressed to Com. Prakash by 'R'. It is stated therein that, Surendra and VV feel that there is pressing need to inflict heavy damage on the enemy forces something that they had not been able to do since 2013 Darbha ambush. That, Vishnu was still negotiating the required quantity/amount and had given an upward limit as advised by the CC. That, most of the equipments can be transported via two separate routes from Nepal through Kolkata (Panihati).

13.16.1) This document is relied upon by the prosecution to contend that, to overthrow the democratically elected Government, the accused persons and members of their party were trying to indulge into armed struggle.

13.17) The document at Annex. R-18 (page 1002-1015) is downloaded by the Respondent-NIA from the internet/YouTube. These are videos of criticism by the Appellant and co-accused against the Government Acts and Legislation. It is the allegation of Respondent No.1 that, the said were part of party agenda.

Dr. Chaudhry, during the course of his arguments has admitted that, the list of videos mentioned on page No.1004 are the public lectures delivered by the Appellant and therefore it cannot be construed as an act under the provisions of UAP Act.

14) The second set of material/evidence relied upon by the Respondent No.1-NIA against the Appellant for his alleged role in the present crime is in the form of statements of witnesses.

14.1) Witness Nos. KW-2, KW-3 and KW-5 have not named the Appellant in any manner, however the prosecution has relied upon the said statements to corroborate the fact of alleged terrorist activities of accused persons in the present crime.

14.2) Witness KW-3 (page No.897/1030) in his statement dated 16th August, 2020 recorded under Section 161 of Cr.PC. has stated about funding to CPI(M). He has stated that, the said Organization collect funds from contractors of Tendu Patta, Bamboo (about 7%) as jungle tax, from road contractors as jungle tax. That, shopkeepers in the town area provide funds to CPI(M) as party help. That, party members collect voluntary funds from villagers once in a year. He has also stated that, generally actual names are not used in party. Everybody uses alias name for their communication.

The statement of this witness under Section 164 of Cr.PC. (page 1038) is also recorded wherein he has reiterated his earlier version.

14.3) Witness KW-4 (page 1016) in his statement dated 24th August, 2020 recorded under Section 161 of Cr.PC. has stated that, during meetings Milind @ Deepak used to discuss about expanding a naxal movement of Maoist in urban area with his brother Anand Teltumbde on international

level and guidance to Urban Naxal Members. Milind @ Deepak had inspired by his brother Anand for CPI (M) Moist Movement. This witness has next stated that, other Urban naxal members were Smt. Manju w/o. Late Vijay @ Vishnu (CCM in Mumbai) & Arun Ferreira for Mumbai area, Angella w/o. Milind Teltumbde for Pune area, Members of *Kabir Kala Manch* namely Ramesh Gaychor @ Yogesh, Sagar Gorkhe @ Aakash, Jyoti Jagtap @ Vaishali, Sheetal Sathe @ Janki, Sachin Mali, Rupali Jadhav @ Priya, Harshali Potdar, Surendra Gadling, Jagdish Meshram, Vernon Gonsalvis, Gautam Navlakha, Vara Vara Rao, Prof. Shoma Sen, Rona Wilson, Prof. Sai Baba, Sudha Bhardwaj, Vira Satidar, Sudhir Dhawale, Mahesh Raut etc. He has stated that, the said persons were working as urban naxal members for CPI (M). That, the CPI (M) used to collect tax from Tendu leaves contractors and villagers towards its use for maoist activities in Maharashtra and adjoining States.

The statement of this witness under Section 164 of Cr.P.C. has also been recorded. KW-4 in his said statement has stated that, Appellant used to work for the maoist party being a member of Janwadi Front Organization.

14.4) Witness Shri. Probir Purkaystha, in his statement dated 19th April, 2020 (page 874) has stated that, he is running a News Click Web Portal since 2009 and is Chief Editor of it. On being asked he has stated that, he know the Appellant since 1985 as the Appellant was working in

Economic and Political Weekly and publishing his articles in the magazine. The main work of Appellant was giving opinion on the reports of newspapers. The Appellant joined News Click Web Portal in August, 2017 and continued till July, 2018. Thereafter, he continued his service as a consultant. That, Appellant was not using any Desktop in the office. His own Laptop was seized by Pune police in the year 2018.

14.5) Witness Advocate Ms. Monica R. Sakhrani (page 885/1042) in her statement dated 11th August, 2020, on being asked about Appellant has stated that, she knew him because he was a member of PUDR, which is part of CDRO. That, Appellant attended CDRO meetings, at that time she met him. In CDRO Mumbai meeting held in May 2008, she met Appellant for the first time as she was member of CPDR.

14.6) Witness Shri. Rakesh Ranjan (page 891/1048), in his statement has stated that, he know Appellant, resident of Delhi. This witness had called Appellant in a public meeting for protest against the arrest of Arun Ferreira, Vernon Gonsolves, Sudha Bharadwaj etc. and at that time, he had met Appellant.

14.7) Witness Shri. Prem Kumar Vijayan (page 894/1051), in his statement has stated that, he know Appellant, resident of Delhi and had met him couple of times in campaign against war on people.

14.8) Witness Shri. K. K. Kumanath (page 908) is the son-in-law of co-accused Varavara Rao. In his statement dated 9th September, 2020 he

has stated that, he has heard that Varavara Rao was having relationship with Milind Teltumbde, Rona Wilson, Vernon, Anand Teltumbde, Soma Sen Gautam Navalkha, Arun Ferreira, Surendra Gadling, Sudha Bharadwaj, Hany Baby are good friends of him.

15) It be noted here that, the documents referred to herein above as Annex. R-2, R-7, R-12 have been considered by the Hon'ble Supreme Court in the case of Vernon (supra). The Supreme Court in the case of Vernon (supra) in para. No.26 has held that, mere holding of certain literature through which violent acts may be propagated would not *ipso facto* attract the provisions of Section 15(1)(b) of the UAP Act. That, thus *prima facie* in the opinion of their Lordships, they could not reasonably come to a finding that, any case against the Appellant therein under the said Section can be held to be true. It is further observed in para No.37 that, mere possession of literature, even if the content thereof inspires or propagates violence by itself cannot constitute any of the offences within Chapter IV and VI of the UAP Act. Therefore in the present case, the said documents which have been recovered from the Appellant such as Agenda or Constitution of the Party or the other related documents, which allegedly propagated violence would not attract the provisions of Section 15 of the UAP Act.

16) As far as the documents wherein the name simply referred to as 'Gautam' are concerned, as noted in foregoing paragraph No.12, there is

another person by name Gautam @ Kosa @ Gopanna @ Sadha, who is the Central Committee Member of the CPI (M) and therefore it cannot be safely inferred that, it is the Appellant only who has been referred to in those documents. According to us, the identity of the Appellant being the same person 'Gautam' is in doubt as far as those documents are concerned. At this stage *prima facie* we cannot presume that, 'Gautam' is the same person as the identity of the said 'Gautam' is yet to be established beyond reasonable doubt by the prosecution.

17) As far as the documents mentioned above which have not been recovered from the Appellant, however mentions his name are concerned, as held by the Hon'ble Supreme Court in the case of Vernon (supra) these communications or contents thereof have weak probative value or quality. The content of these letters/documents through which the Appellant is sought to be implicated are in the form of hearsay evidence, as they are recovered from co-accused. The association of the Appellant with the activities of the designated terrorist organization is sought to be established through those communications. The actual involvement of the Appellant in any terrorist act cannot be even inferred from any of the communications and or statements of the witnesses. According to us, there is no material to infer conspiracy to commit an offence as contemplated under Chapter IV of the UAP Act. It being the fact on record, neither the provisions of Sections 15, 18 or 20 of the UAP Act can be *prima facie* applied to the Appellant at

this stage. As observed by the Hon'ble Supreme Court in the case of Vernon, mere participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act, which he has been charged.

18) The documents at page No.867, 868 and 999 (R-16) are seized/recovered from the co-accused and are in the nature of hearsay, as far as Appellant is concerned. Even though in the said documents, the authors of it have expressed their intention to cause fatality to the politically influential persons or to cause tremendous disturbance in the Society at large, the Appellant only being a member of the party cannot be *prima facie* held to be a co-conspirator to it. From the material on record, it appears to us that, no covert or overt terrorist act has been attributed to the Appellant.

19) In the present case, the incriminating material as adverted herein above does not in any manner *prima facie* leads to draw an inference that, Appellant has committed or indulged in a 'terrorist act' as contemplated under Section 15 of UAP Act.

According to us, the record *prima facie* indicate that, it was at the most the intention of the Appellant to commit the alleged crime and not more than it. The said intention has not been further transformed into preparation or attempt to commit a terrorist act, to attract Section 15 of the UAP Act.

20) As far as the document at Annex. R-5 (page 962) and the allegation of Respondent No.1 that, the Appellant had written a letter to the Hon'ble Judge of U.S. Court requesting to consider clemency to Ghulam Fai is concerned, it appears to us that, it has no correlation with the present crime alleged against Appellant. It appears that, the said letter was written by Appellant in his individual capacity and at the most it can be said, being a member of his party and nothing more.

21) Perusal of statement of witnesses at the most indicate that, the Appellant is a member of CPI (M) and therefore it would attract provisions of Sections 13 and 38 of UAP Act.

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

22) Section 13 of UAP Act provides for maximum punishment of imprisonment of 7 years. Section 38 of UAP Act provides for maximum punishment of imprisonment for a term not exceeding 10 years. The Hon'ble Supreme Court in the case of Vernon (supra) in para 41 has held

that, as far as offence under Section 13 of UAP Act and the offences under IPC are concerned, the yardstick for justifying the Appellant's plea for bail is lighter in this context. That, in the cases of *K.A. Najeeb (supra)* and *Angela Harish Sontakke Vs. State of Maharashtra*, reported in *(2021) 3 SCC 723*, delay of trial has been considered to be a relevant factor while examining the plea for bail of the accused.

23) In view of the above discussion, we are of the *prima facie* opinion that on the basis of the material placed before us by the NIA, it cannot be said that there are reasonable grounds for believing that the accusation against the Appellant is *prima facie* true to attract Sections 16, 18, 20 and 39 of UAP Act.

24) Apart from the findings recorded herein above, after perusing the entire record placed before us, we are in agreement with the submission of the learned counsel for the Appellant that, the Appellant is entitled to have parity with co-accused Arun Ferreira, Vernon Gonsalves, Anand Teltumbde and Mahesh Raut, who have been granted bail either by the Hon'ble Supreme Court or by this Court. It is pointed out to us, that the Order dated 12th September, 2023 granting bail to co-accused Mahesh Raut has been stayed by the Hon'ble Supreme Court and therefore we have only considered the material qua him while considering the plea of parity by the Appellant.

25) In the case of *Union of India Vs. K.A. Najeeb, reported in (2021) 3 SCC 713 : 2021 SCC OnLine SC 50*, the Hon'ble Supreme Court in paragraph No.17 has held as under:-

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per-se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

26) As noted earlier, the Appellant is in pre-trial incarceration for more than three years and eight months. The charge-sheet consists of about 20,000 pages in 54 Volumes and the prosecution has cited 370

witnesses in it. The learned Judge of the trial Court has submitted a report dated 18th September, 2022 stating that, it will require more than a year to frame charge. As a matter of fact, till date the trial Court has not framed charge. The possibility of trial of the Appellant being concluded in near future is very bleak.

26.1) In view of the above discussion and taking into consideration the aforementioned facts, in our opinion a case for grant of bail to the Appellant has been made out.

Hence, the following Order:-

- (i) The impugned Order dated 6th April, 2023 passed below Bail Application Exh-648 in NIA Special Case No.414 of 2020 is quashed and set-aside;
- (ii) Appellant be released on bail in Special Case No.414 alongwith Special Case No.871 of 2020 arising out of RC-01/2020/NIA/MUM under Sections 120B, 115, 121, 121A, 124A, 153, 201, 505(1)(B) read with 34 of IPC and Sections 13, 16, 17, 18, 18B, 20, 38 and 39 of the UAP Act on his executing PR bond of Rs.1,00,000/- with one or more solvent local sureties in the like amount;
- (iii) Appellant is permitted to furnish cash bail for a period of 8 weeks from today and during the said period, Appellant shall comply with the condition of furnishing solvent local sureties

- as mentioned in para No.26.1(ii);
- (iv) Appellant shall not tamper with the evidence of prosecution nor influence the prosecution witnesses;
 - (v) Before his actual release from jail Appellant shall furnish his contact numbers, both-mobile and landline and permanent residential address to the Investigating Officer and the learned Special Court before which the case of Appellant is pending;
 - (vi) Appellant shall attend the concerned police station where he intends to reside after his release from jail, initially for a period of one year, once in a fortnight i.e. on every 1st and 16th of each English Calendar month and thereafter on every first Monday of the month between 10:00 a.m. and 12:00 noon, till conclusion of trial;
 - (vii) Appellant shall not leave the jurisdiction of this Court without prior permission from the learned Special Judge (NIA), Greater Mumbai/Trial Court, if he desires to travel outside the jurisdiction of this Court;
 - (viii) Appellant shall deposit his passport held by him before his actual release from jail, with the designated Special Court.
- 27) Appeal is accordingly allowed in the aforesaid terms.

(SHIVKUMAR DIGE, J.)

(A. S. GADKARI, J.)

28) After pronouncement of the present Judgment, Mr. Patil, learned Special P.P. appearing for the NIA requested this Court for stay of its operation and implementation to enable NIA to challenge it before the Hon'ble Supreme Court. Though opposed by the learned counsel for Appellant, considering the fact that Appellant is in jail for more than three years and eight months, effect and operation of present Judgment and Order granting bail to the Appellant will remain stayed for a period of three weeks from today.

(SHIVKUMAR DIGE, J.)

(A. S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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MASHALKAR
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