

Received on : 05.03.2014
Registered on: 05.03.2014
Decided on : 07.03.2017
Duration : 03 Years 02 Days

Exhibit No.

**IN THE COURT OF SESSIONS JUDGE AT GADCHIROLI DISTRICT
GADCHIROLI.**

(Presided over by : Suryakant S. Shinde)

**SESSIONS CASE NO. 13 OF 2014 &
SESSIONS CASE NO. 130 OF 2015**

State of Maharashtra,
Through Police Station Officer,
Police Station, Aheri
District : Gadchiroli.

Prosecution

Versus

1. Mahesh Kariman Tirki,
Age about 22 years, Occu. Agriculturist,
2. Pandu Pora Narote,
Age about 27 years, Occ. Agriculturist,

Both r/o Murewada, Taluqa Etapalli,
District Gadchiroli.
3. Hem Keshavdatta Mishra,
Age about 32 years, Occu. Education,
R/o Kunjbargal, Post : Nagarkhan,
District Almoda (Uttarkhand)
4. Prashant Rahi Narayan Sanglikar,
Age about 54 years, Occu. Journalist,
R/o 87, Chandrashekhar Nagar, Krushikesh,
Deharadun, Uttarkhand.

5. Vijay Nan Tirki,
Age about : 30 years, Occu. Labour, R/o. Beloda, Post PV.92,
Dharampur Taluqa Pakhanjoor, District Kanker (C.G.)
6. Gokalkonda Naga Saibaba,
Age about 47 years, Occ. Service,
R/o Warden House, Gwair Holl, Delhi
University Road, New Delhi. **Accused**

**Offence punishable u/s 13, 18, 20, 38 and 39 of The Unlawful
Activities (Prevention) Act, 1967 r/w sec.120-B of the Indian
Penal Code.**

Shri. Sathianathan, Special Public Prosecutor for State.
Shri. S.P. Gadling, Advocate for accused No.1 to 4 & 6.
Shri. P.C.Samaddar, Advocate for accused No.5.

J U D G M E N T

(Delivered on this 7th day of March, 2017)

1] Accused No.1 Mahesh Kariman Tirki, No.2 Pandu Pora Narote, No.3 Hem Keshavdatta Mishra, No.4 Prashant Rahi Narayan Sanglikar, No.5 Vijay Nan Tirki and No.6 Gokalkonda Naga Saibaba along with absconding accused have been prosecuted for the offence punishable under sections 13, 18, 20, 38, 39 of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred as UAPA) read with Section 120-B of the Indian Penal Code.

2] The allegations against accused Nos.1 to 6 are that on or before 12.9.2013 within India they hatched criminal conspiracy to wage war against the Government of India and to collect people with the intention of waging war against the Government of India, to overawe by means of criminal force the Government of Maharashtra

and the Government of India, to shake and reduce the faith of the common citizen in its democratic Government by large scale violence destruction of lives and property and thereby destabilize the system of Government established by law and to organize the spread of secessionist and rebellious thoughts by holding covert and secret meetings, to collect money in India for achieving the objects of the said criminal conspiracy by illegal means, to continue unlawful activities of Communist Party of India (Maoist) [hereinafter referred as CPI (Maoist)] and its frontal organization Revolutionary Democratic Front, for achieving the objects of criminal conspiracy, to continue the activities of Terrorist Gang, banned terrorist organization or unlawful association, singly or jointly as a member of the Terrorist Gang & banned organization CPI (Maoist) & its frontal organisation Revolutionary Democratic Front (hereinafter referred as RDF) to conspire, advocate, incite, abet & knowingly facilitate the commission of a terrorist act and unlawful activities by use of violence or other unlawful means, to take part or commit or advocate, abet or incite the commission of unlawful activities, being the members of a banned Terrorist Gang.

3] As such accused No.1 Mahesh Tirki and no.2 Pandu Narote in pursuance of the criminal conspiracy with accused no.3 Hem Mishra and no.6 Saibaba were found in possession of naxal literature, pamphlets, letters, correspondence, audio-video, electronic materials which were to be used for inciting the people to create violence to cause public disorder and they were receiving the members of banned terrorist organization CPI (Maoist) and its frontal organization RDF and were taking them safely and secretly to forest

area within the Gadchiroli district to meet absconding underground naxals. Accused no.3 Hem Mishra was found in possession of 16 GB memory-card of Sandisk company containing letters, correspondence which were addressed to the Comrades of banned terrorist organization CPI (Maoist) and its frontal organization RDF.

4] The accused No.6 Saibaba was found in possession of hard-disks, laptops, pen-drives, CDs, DVDs, booklets, memory-cards containing Maoist literature and letters, correspondence, pamphlets, e-mails, minutes of meetings, report of meetings, audio-video clips conducting and addressing the meetings of banned organisation CPI (Maoist) under UAPA and its frontal organisation RDF and further the accused no.4 Prashant Rahi & no.5 Vijay Tirki in pursuance of criminal conspiracy with accused No.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra & no.6 Saibaba were found in possession of letters and writings regarding banned terrorist organization CPI (Maoist) and its frontal organization RDF and the accused No.1 to 6 being the members of banned terrorist organization CPI (Maoist) and its frontal organization RDF hatched criminal conspiracy and the object of the said conspiracy was to create violence, to cause public disorder and to spread disaffection towards the Central Government and the State Government and in pursuance of the said criminal conspiracy accused nos.1 to 6 were found in possession of printed naxal literature, circulating information which is promotional literature of terrorist organization in the form of booklets, pamphlets, correspondence, writings, reports of the meetings, letters, e-mails, speeches in audio, video and text formats contained in electronic gadgets like CDs, DVDs, pen-drives, hard-disks, memory-cards and

found using the same for circulation amongst the members of banned organisation CPI (Maoist) and its frontal organisation RDF and other persons for creating violence and causing public disorder.

5] The facts of the prosecution case are as under:

The informant Atul Shantaram Awhad (P.W.6), the Assistant Police Inspector attached to Special Branch, Gadchiroli lodged the F.I.R. (Exh.220) at police station, Aheri alleging that in the month of August, 2013 he was attached to Special Branch, Gadchiroli as Assistant Police Inspector and he had received secret information that accused no.1 Mahesh Tirki and accused no.2 Pandu Narote were working for prohibited banned organisation CPI (Maoist) and its frontal organisation RDF and they were active members of the said organisation. He had also information that the above two persons i.e. accused no.1 Mahesh Tirki and no.2 Pandu Narote were providing materials to the underground naxalites and they were giving protection to them and taking them from one place to another place safely and exchanging information regarding the Maoist organisation, therefore, on the basis of this information, he and his officers were keeping watch on accused no.1 Mahesh Tirki and no.2 Pandu Narote in the area of Etapalli, Aheri and Murewada.

6] The informant P.W.6 API Atul Awhad on 22.8.2013 at about 6.00 p.m. alongwith his staff had been to Aheri Bus Stand where accused No.1 Mahesh and accused No.2 Pandu were found standing at a secluded place near the Bus Stand of Aheri and at about 6.15 p.m. one person having white cap on his head came there and they started talking with each other suspiciously. Therefore, the

informant (PW 6) API Atul Awhad along with his staff went towards those three persons and made enquiry with them, however they gave evasive answers. Hence, he called two panchas and in presence of panchas he asked their names. One person told his name as Mahesh Kariman Tirki (accused no.1), second told his name as Pandu Pora Narote (accused no.2) and third person told his name as Hem Keshavdatta Mishra (accused no.3). Informant P.W.6 API Atul Awhad brought accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra to Aheri Police Station where in the presence of panch witnesses, their personal search was taken.

7] The personal search of accused no.1 Mahesh Tirki was taken and from his possession three pamphlets regarding banned organisation CPI (Maoist) and its frontal organisation RDF, one pocket purse containing Rs.60/-, platform ticket dated 28.5.2013 of Ballarshah Railway Station, Identity Card and one mobile phone of Micromax Company were seized. Thereafter, the personal search of accused no.2 Pandu Narote was also taken and from his possession Mobile phone of Samsung Company, one pocket purse containing cash of Rs.1480/-, Platform ticket dated 28.5.2013 of Ballarshah Railway Station, Pan Card, Identity Card etc. were seized and thereafter personal search of accused no.3 Hem Mishra was also taken and from his possession one memory card of 16 GB of Sandisk company wrapped in a paper, one pocket purse containing cash of Rs.7,700/-, travelling ticket of Delhi to Ballarshah dated 19.8.2013, Camera alongwith charger, Pan Card, Identity Card and cloth bag were seized. All these articles found in possession of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were seized

under the panchanama drawn in presence of panchas vide Exh.137. The informant P.W.no.6 API Atul Avhad lodged report against accused No.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra at Exh.219. On the basis of this report (Exh.219), the offence at Crime No. 3017/2013 vide F.I.R. (Exh.220) under section 13, 18, 20, 38, 39 of the Unlawful Activities (Prevention) Act read with Section 120-B of the I.P.C. was registered at Aheri Police Station against accused No.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra. As the offence was registered under UAPA, further investigation was handed-over to the Investigating Officer Sub Divisional Police Officer P.W.11 Suhas Bawche.

8] During interrogation with accused no.1 Mahesh and no.2 Pandu, it was revealed that naxal lady DVC Narmadakka of banned organisation CPI (Maoist) and its frontal organisation RDF had told them that accused no.3 Hem Mishra was coming from Delhi along with important things and he should be brought to Murewada forest safely and for that purpose they were sent to Aheri Bus Stand. During interrogation with accused no.3 Hem Mishra, it was revealed that one person in Delhi i.e. accused no.6 Saibaba who was active member of banned organisation CPI (Maoist) and its frontal organisation RDF had given him one memory card wrapped in a paper and told that he should take it to DVC Narmadakka who was active in Gadchiroli area and therefore, he was sent.

9] During interrogation with accused no.3 Hem Mishra, the involvement of accused no. 4 Prashant Rahi was revealed and as the Investigating Officer P.W.11 Suhas Bawche had information that

accused no.4 Prashant Rahi was coming to Raipur or Devri and hence he passed said information to Police Station, Chichgad and on such information on 1.9.2013 P.W.14 Police Inspector Rajendrakumar Tiwari found accused no.4 Prashant Rahi and no.5 Vijay Tirki at Chichgad T-point, Devri in suspicious condition and thereafter they were brought to Aheri Police Station on 2.9.2013 at 5.00 a.m. Thereafter, Investigating Officer P.W.11 Suhas Bawche arrested accused No.4 Prashant Rahi vide arrest panchanama Exh.239 on 2-9-2013 and from his personal search seized one money purse, cash of Rs.8,800/-, one visiting card, one driving license, one Yatri Card, one Newspaper by name 'Dainik Bhaskar' and eight papers relating to Naxal literature along with type written papers of under-trial prisoner maoist leader Narayan Sanyal under panchanama Exh.179. Investigating Officer also arrested accused No.5 Vijay Tirki on 02.09.2013 under arrest panchanamas at Exh.240 and from his personal search, police seized one mobile phone of silver colour, cash of Rs.5,000/-, four pieces of paper on which phone numbers were written and one Newspaper of 'Dainik Bhaskar' under panchanama at Exh.180.

10] During investigation, it was further revealed that the accused No.5 Vijay Tirki in pursuance of conspiracy with the underground member by name Ramdar of banned organisation CPI (Maoist) and its frontal organisation RDF received the accused No.4 Prashant Rahi who was also a member of banned terrorist organization CPI (Maoist) and its frontal organisation RDF and as per the directions of Ramdar he was attempting to take the accused No.4 Prashant Rahi to Abuzmad forest area for meeting the senior maoist

cadres who were hiding themselves in Abuzmad forest area and the accused No.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba entered into the criminal conspiracy with each other and in pursuance of the said conspiracy, the accused No.6 Saibaba arranged meetings of accused No.3 Hem Mishra and no.4 Prashant Rahi with the underground members of banned terrorist organization CPI (Maoist) and its frontal organisation RDF, who were hiding themselves in Abuzmad forest area and in furtherance of the said criminal conspiracy the accused No.6 Saibaba handed over a micro-chip SD Memory-Card of 16 GB of Sandisk company containing vital maoist communications and other maoist documents to accused no.3 Hem Mishra and accused no.4 Prashant Rahi with intention to further the activities of terrorist organization CPI (Maoist) and its frontal organisation RDF.

11] During investigation, the accused no.3 Hem Mishra expressed his desire to open his facebook account in presence of witness hence Investigating Officer PW.11 Suhas Bawche called panch witness P.W.4 Shrikant Gaddewar in Police Station Aheri on 26.8.2013 and in the presence of panch witness P.W.4 Shrikant Gaddewar and Investigating Officer PW.11 Suhas Bawche, accused no.3 Hem Mishra opened his facebook account by entering his user name and password on the laptop of Aheri Police Station and the screen-shots and their printouts at Arts.A1 to A16 were taken by Investigating Officer PW.11 Suhas Bawche in presence of P.W.4 Shrikant Gaddewar and panchanama to that effect was prepared at Exh.200 and the Videography of the proceeding was done and panchanama to that effect was prepared at Exh.199. The memory card (16 GB) of Sandisk

company seized from the personal search of accused no.3 Hem Mishra was sent to CFSL, Mumbai and Scientific Expert Bhavesh Nikam (P.W.21) examined the same and report of CFSL is filed on record. It is at Exh.266. The certified hard-copies of mirror images of data contained in said 16 GB memory card of Sandisk company are annexed to CFSL report Exh.266 and they are at Art.A-17 to A-21. The sanction for prosecution for offence punishable under UAPA was obtained against accused nos.1 to 5 vide sanction order at Exh.17. On completion of investigation, Charge-Sheet came to be filed against accused No.1 to 5 in the Court of Judicial Magistrate, First Class, Aheri.

12] As the offence under section 13, 18, 20, 38, 39 of the UAPA is exclusively triable by Court of Sessions, learned J.M.F.C., Aheri committed the case to Sessions Court after complying the provisions of Section 207 of Code of Criminal Procedure by passing order below Exh.1 on 26.02.2014. On committal, case is registered as Sessions Case No.13/2014.

13] During interrogation with accused no.3 Hem Mishra and no.4 Prashant Rahi involvement of accused no.6 Saibaba was revealed and hence P.W.11 Suhas Bawche sought permission from JMFC Aheri P.W.12 Nileshwar Vyas on 4-9-2013 for taking the house search of accused no.6 Saibaba and after getting permission on 7-9-2013, he along with Addl. S.P. Mina, PI Badgujar, P.C. Kumbhare, H.C. Dubey and other police staff left for Delhi on 9-9-2013 and had taken entry Exh.275J in the station diary about the same and thereafter on 12-9-2013 he issued letter Exh.252 to in-charge Police Station officer,

Morisnagar for providing police staff, computer expert and Videographer and thereafter the said Police Station provided police staff to them for conducting raid at the house of accused no.6 Saibaba as he was residing in the campus of Delhi University.

14] Thereafter, Investigating Officer P.W.11 Suhas Bawche alongwith his police staff, videographer, panch and police staff of Delhi proceeded to the house of Saibaba and after reaching to the house of accused no.6 Saibaba they found his wife Vasanta was present in the house and she opened the door of house and they gave their introduction and the purpose of their visit at their house and thereafter, she called accused no.6 Saibaba. Thereafter house search of accused no.6 Saibaba was taken and from house search electronic gadgets Arts.1 to 41 i.e. CDs, DVDs, Pen-drives, hard-discs, three mobiles, two SIM cards, books, magazine and some other articles were seized under panchnama (Exh.165) in presence of panchas.

15] After thorough study of seized devices and documents, Investigating Officer P.W.11 Suhas Bawche had been to Delhi for arresting accused no.6 Saibaba but members of banned organization made protest hence Investigating Officer P.W.11 Suhas Bawche could not arrest accused no.6 Saibaba. Thereafter Suhas Bawche (P.W.11) obtained the permission and arrest warrant from JMFC, Aheri on 26.2.2014 to apprehend accused no.6 Saibaba and then accused no.6 came to be arrested vide arrest panchanama at Exh.269 and from his personal search one mobile, RC book of vehicle and cash amount of Rs. 320/- was recovered under panchanama at Exh.270 in presence of panchas. During investigation electronic gadgets i.e. CDs, DVDs, pen-

drives, hard-disks, laptop, memory-card seized from the house search of accused no.6 Saibaba were sent to CFSL, Mumbai and Bhavesh Nikam (P.W.21) examined the same and report CFSL is filed on record. It is at Exh.267. The hard-copies of mirror images of data contained in said electronic gadgets are annexed to CFSL report Exh.267 (Page nos.1 to 247).

16] Thereafter, accused no.6 Saibaba was produced before J.M.F.C., Aheri and he was remanded to M.C.R. The J.M.F.C., Aheri directed the jail authority to produce the accused No.6 Saibaba before this Court and as per the said directions the Jail authority produced accused no.6 Saibaba before this Court, hence, the name of accused No.6 Saibaba was included in this case along with accused No.1 to 5. The sanction for prosecution for offence punishable under UAPA was obtained against accused no.6 Saibaba vide sanction order at Exh.349. Thereafter, supplementary charge sheet came to be filed against the accused No.6 Saibaba in the Court of Sessions Judge, Gadchiroli on 14.12.2015 and it was registered as Sessions Case No. 130/2015.

17] The Sessions Case No.130/2015 and Sessions Case No. 13/2014 are arising out of the said incident and hence my learned predecessor Shri D.R.Shirasao passed order below Exh.1 on 14.12.2015 in Sessions Case No.130/2015 for trying both the Sessions Case No.130/2015 and Sessions Case No.13/2014 together.

18] My predecessor Shri.D.R.Shirasao framed charge against accused Nos.1 to 6 at Exh.66 on 21.10.2015. The contents of the

charge were read over and explained to the accused in vernacular to which, accused pleaded not guilty and claimed for trial. During trial, on behalf of prosecution following witnesses are examined.

<u>P.W.No.</u>	<u>Name of the Witness</u>	<u>Exh.No.</u>
1	Santosh Nanaji Bawne, the panch witness of seizure panchanama and seizure of articles from the possession of the accused Nos.1 to 3 (Exh.137)	136
2	Jagat Bhole, the panch witness on seizure panchanama (Exh.165) of electronic gadgets and other articles from the house search of accused no.6 Saibaba.	164
3	Umaji Kisan Chandankhede, the panch witness on the point of personal search of accused No.4 (Exh.179) and personal search of accused No.5 (Exh.180)	178
4	Shrikant Pochreddy Gaddewar, the panch witness on facebook activities of accused no.3	198
5	Ravindra Manohar Kumbhare, the police constable, who carried and deposited the muddemal to CFSL Mumbai	210
6	Atul Shantaram Avhad, the Police Officer and informant.	218
7	Apeksha Kishor Ramteke, Woman police constable, who brought muddemal property from CFSL Bombay to Aheri Police Station.	222
8	Ramesh Koluji Yede, Police Head Constable, who brought the accused No.4 & 5 to Police Station, Aheri.	223
9	Raju Poriya Atram, the witness on the point of incident.	225
10	Police Inspector Anil Digambar Badgujar.	226
11	S.D.P.O. Suhas Prakash Bawche, the Investigating Officer.	235

12	Nileshwar Gaurishankar Vyas, the J.M.F.C. who recorded confessional statements of accused no.1 Mahesh and no.2 Pandu.	277
13	Ganesh Keshav Rathod, Moharar who deposited the muddemal in Malkhana	297
14	Police Inspector Rajendrakumar Parmanand Tiwari.	307
15	Narendra Shitalprasad Dube, Station Diary Duty Amaldar.	308
16	Ravi Khemraj Pardeshi, Nodal officer.	329
17	Khumaji Devaji Korde, Court Superintendent.	339
18	Kalyaneshwar Prasad Bakshi, Addl.Secretary.	345
19	Dr. Amitabh Rajan S.N.Kishore, Home Secretary.	355
20	Rajneeshkumar Ratiram, Nodal Officer, BSNL	359
21	Bhavesh Neharu Nikam, Scientific Expert, CFSL Mumbai.	371
22	Manoj Manikrao Patil, Circle Nodal officer, Indian Airtel, Dadar, Mumbai.	411
23	SDPO Ramesh Malhari Dhumal	414

19] Besides this, prosecution has relied on following documents :

	<u>Documents</u>	<u>Exh.No.</u>
1]	Sanction order issued by Dr.Amitabh Rajan, Additional Chief Secretary to the Government of Maharashtra Home Department against accused no.1 to 5.	17
2]	Seizure panchanama in respect of property seized from the possession of accused nos.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra.	137
3]	Seizure panchanama in respect of property	165

	seized from the possession of accused no.6 Saibaba.	
4]	Seizure panchanama in respect of seizure of property from the possession of accused no.4 Prashant Rahi.	179
5]	Seizure panchanama in respect of seizure of property from the possession of accused no.5 Vijay Tirki.	180
6]	Panchanama of proceeding in respect of activities of facebook account of accused no.3 Hem Mishra.	199
7]	Panchanama to the effect that CD was taken out from computer and it was put back in same condition and was sealed.	200
8]	Panchanama to the effect that the memory card was sealed with labels and signatures of panchas.	201
9]	Panchanama to the effect that the packets containing laptop, books and mobiles were sealed with labels and signatures of panchas.	202
10]	Panchanama in respect of seizure of mobiles of accused no.6 G.N.Saibaba.	203
11]	Panchanama to the effect that hard-disk was sealed with labels and signatures of panchas.	204
12]	Panchanama to the effect that hard-disks were sealed with labels and signatures of panchas	205
13]	A letter to Forensic Laboratory, Mumbai for examination of memory-card and report.	211
14]	Questionair in regard to the memory card for forensic science lab.	211A
15]	A letter to Forensic Laboratory, Mumbai for examination of electronic gadgets seized from the house search of accused no.6 Saibaba and report.	212
16]	Oral report lodged by the informant P.S.I. Atul Shantaram Awhad (PW.6).	219
17]	F.I.R. lodged by the informant P.S.I. Atul	220

	Shantaram Awhad (P.W.6).	
18]	Arrest panchanamas of accused No.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra.	227 to 229
19]	Special Report of Police Station, Aheri about registration of crime.	236
20]	Letter dated 25.8.2013 issued by P.W.11 Suhas Bawche for getting CDR.	237
21]	Arrest panchanamas of accused No.4 & 5.	239 & 240
22]	Report addressed to P.I. Police Station Devri dated 1.9.2013.	241
23]	Search warrant of house search of accused no.6 Saibaba dated 7.9.2013.	244
24]	Letter to Morisnagar Police Station at Delhi for providing police staff, computer expert and videographer by P.W.11 Suhas Bawche.	252
25]	Notice sent to accused no.6 Saibaba to remain present for investigation by P.W.11 Suhas Bawche	256
26]	Letter dated 17.9.2013 to S.P. Gadchiroli for obtaining CDR.	257
27]	Letter dated 16.1.2014 sent by P.W.11 Suhas Bawche to different mobile companies for CDR.	262
28]	Attested copy of charge-sheet of Nanakmatta Police Station against accused no.4 Prashant Rahi.	264
29]	Scientific analysis report of CFSL, Mumbai annexed with 15 pages in respect of 16 GB memory-card seized from accused no.3 Hem Mishra.	266
30]	Scientific analysis report of CFSL, Mumbai annexed with 247 pages in respect of Ex.1 to 25 i.e. electronic gadgets seized from the house search of accused no.6 Saibaba.	267
31]	Arrest panchanama of accused no.6 Saibaba.	269
32]	Extracts of station diary entries.	275A to 175J

33]	Attested extract copies of muddemal register.	276A to 276E
34]	Memorandum regarding questions and answers put to accused no.2 Pandu Narote.	278
35]	Memorandum regarding questions and answers put to accused no.1 Mahesh Tirki.	279
36]	Confessional statement of accused no.1 Mahesh Tirki.	280
37]	Certificates I, II and III affixed to confessional statement of accused no.1 Mahesh Tirki.	281 to 283
38]	Confessional statement of accused no.2 Pandu Narote.	286
39]	Certificates I, II and III affixed to confessional statement of accused no.2 Pandu Narote.	287 to 289
40]	Complaint made by accused no.1 Mahesh Tirki and no.2 Pandu Narote regarding retraction of confessional statement.	292
41]	The CDR of mobile phone numbers of accused no.3 Hem Mishra and no.4 Prashant Rahi.	330 to 332
42]	Certificate us/65B of the Evidence Act.	333
43]	Customer application form of mobile SIM card of accused no.4 Prashant Rahi.	335
44]	Customer application forms of mobile SIM cards of accused no.3 Hem Mishra.	336 and 337
45]	Certificate dated 15.2.2014 u/s 65B of the Evidence Act.	338
46]	Copy of the property register of Sessions Court, Gadchiroli.	340
47]	Letter dated 26.2.2015 to Director of Public Prosecutor issued by Desk Officer for independent review.	346
48]	Independent review received from Director of Public Prosecutor.	348
49]	Sanction order dated 6.4.2015 for prosecution of accused no.6 Saibaba.	349
50]	Covering letter with sanction.	350
51]	Letter dated 7.2.2014 to Director of Public	356

	Prosecutor issued by Desk Officer for independent review.	
52]	Independent review received from Director of Public Prosecutor.	358
53]	Mirror-images retrieved from 16 GB memory-card of Sandisk company sent alongwith letter dated 30.8.2013.	372
54]	Letters issued by P.W.23 Bhavesh Nikam to SDPO Aheri alongwith mirror-images of hard-disks.	373 & 374
55]	Certificate dated 22.3.2016 by Head of Department Assistant Director of Cyber Crime.	375
56]	16 GB memory-card of Sandisk company.	376
57]	hard-disks.	377, 381 to 384
58]	Pen-drives.	378 to 380
59]	DVDs	387 to 394
60]	CD	395
61]	CDR details of mobile SIM card of accused no.6 Saibaba.	413
62]	Customer application form for mobile SIM card of accused no.6 Saibaba.	418
63]	Telephone bill in the name of accused no.6 Saibaba.	419
64]	Attested copy of ID card of accused no.6 Saibaba.	420

20] Thereafter, prosecution has closed its evidence by filing pursis at Exh.421. Statement under Section 313 of Cr.PC. of accused no.1 Mahesh Tirki was recorded at Exh.426, accused no.2 Pandu Narote at Exh.427, accused no.3 Hem Mishra at Exh.433, accused no.4 Prashant Rahi at Exh.429, accused no.5 Vijay Tirki at Exh.430 and accused no.6 G.N.Saibaba at Exh.437 in which they have denied the allegations. According to accused no.1 Mahesh Tirki and no.2 Pandu Narote, their confessional statements before JMFC Aheri were

recorded under the pressure of police and they retracted their confession by filing application before JMFC Aheri vide Exhibit no.292. According to accused no.3 Hem Mishra, he was arrested at Ballarsha Railway station and nothing was seized from his possession and he has been falsely implicated in this case. According to accused no.4 Prashant Rahi he was not arrested at Devri Chinchgad and nothing was seized from his possession and he has been falsely implicated in this case. According to accused no.5 Vijay Tirki he was not arrested at Devri Chinchgad and nothing was seized from his possession and he has been falsely implicated in this case. According to accused no.6 G.N.Saibaba nothing was seized from his house search at Delhi and he has been falsely implicated in this case.

21] Heard learned Special Public Prosecutor Shri.Sathianathan for the State and learned Advocate Shri.Gadling for the accused Nos.1 to 4 & 6 and learned advocate Shri. P.C.Samaddar for accused No.5 Vijay Tirki. Perused oral and documentary evidence on record. In this backdrop, the following points arise for my determination to which I have recorded my findings as under for the reasons given below :-

Sr.No.	Point	Findings
1	Does prosecution prove that on or prior to 12.9.2013 within India, the accused No.1 to 6 along with absconding accused Narmadakka and Ramdar in pursuance of their criminal conspiracy, were the active members of banned organisation CPI (Maoist) and its frontal organisation RDF under UAPA and found in possession of printed naxal literature and circulated information which is promotional literature of terrorists organization in the	In the affirmative

	<p>form of book-let, pamphlets, correspondence, agenda, audio-video clips of such banned organization of terrorists gang and found arranging meetings of those members with underground naxals and passing money for strengthening their organization and circulating important information whose main objective was to incite the people and to create violence and to spread disaffection towards Government established by law and to commit illegal act with intention to further activities to commit conspiracy or attempt to commit or advocate, abet or incite people to create public disorder with intent to threaten the unity, integrity, security or sovereignty of India and thereby committed an offence punishable under Section 13 of The Unlawful Activities (Prevention) Act, 1967 read with Section 120B of the Indian Penal Code?</p>	
2	<p>Does prosecution prove that on or prior to 12.9.2013 within India, the accused No.1 to 6 along with absconding accused Narmadakka and Ramdar in pursuance of their criminal conspiracy, were the active members of RDE, which is frontal organization of CPI (Maoist) banned organization under UAPA were found in possession of printed naxal literature and circulated information which is promotional literature of terrorists organization in the form of book-let, pamphlets, correspondence, agenda, audio-video clips of such banned organization of terrorists gang and found arranging meetings of those members and passing money and circulating important information whose main objective was to incite the people and to create violence and to spread disaffection towards</p>	In the affirmative

	Government established by law and to commit illegal act or any act preparatory to the commission of a terrorists act with intention to further the activities to commit conspiracy or attempt to commit or advocate, abet and incite people to take to violence and create public disorder with intent to threaten the unity, integrity, security or sovereignty of India and thereby committed an offence punishable under Section 18 of The Unlawful Activities (Prevention) Act, 1967 read with Section 120B of the Indian Penal Code?	
3	Does prosecution prove that on or prior to 12.9.2013 within India, the accused No.1 to 6 along with absconding accused Narmadakka and Ramdar in furtherance of their criminal conspiracy, were the active members of banned terrorists organization CPI (Maoist) and its frontal organization RDF were found involved in terrorists acts and thereby committed an offence punishable under Section 20 of The Unlawful Activities (Prevention) Act, 1967, read with Section 120B of the Indian Penal Code?	In the affirmative
4	Does prosecution prove that on or prior to 12.9.2013 within India, the accused No.1 to 6 along with absconding accused Narmadakka and Ramdar in furtherance of their criminal conspiracy, were the active members of banned terrorists organization CPI (Maoist) and its frontal organization RDF under UAPA were found in possession of printed naxal literature and circulated information which is promotional literature of terrorists organization in the form of book-let, pamphlets, correspondence, agenda, audio-video clips of such banned organization of terrorists	In the affirmative

	<p>gang and all of them associated themselves or professed to be associated, with a terrorist organization with intention to further activities relating to membership of banned terrorists organization CPI (Maoist) and its frontal organization RDF and thereby committed an offence punishable under Section 38 of The Unlawful Activities (Prevention) Act, 1967 read with Section 120B of the Indian Penal Code??</p>	
5	<p>Does prosecution prove that on or prior to 12.9.2013 within India, the accused No.1 to 6 along with absconding accused Narmadakka and Ramdar entered into criminal conspiracy in pursuance of agreement of commission of acts in Gadchiroli district and other places such as Delhi, Hyderabad, Telangana, Chhatisgarh and other places have given support to the banned terrorists organization CPI (Maoist) and its frontal organization RDF with intention to further the activity of such organisation, arranged, managed or assisted in arranging or managing a meeting which they know is (i) to support such banned organisation or (ii) to further the activity of banned organisation or (iii) to be addressed by a person or persons to associate or profess to be associated with such banned organisation and with intention to further the activities of such banned organisation addressed a meeting / meetings, authored or published, distributed books, literature for the purpose of encouraging support for such banned organisation or to further its activity and thereby committed an offence punishable under Section 39 of The Unlawful Activities (Prevention) Act, 1967 read with Section 120B of the Indian Penal Code?</p>	<p>In the affirmative</p>

6	Does prosecution proves that a valid sanction has been granted by the competent authority under Section 45 of the Unlawful Activities (Prevention) Act, 1967 in respect of accused No. 1 to 5 i.e. Mahesh Tirki, Pandu Narote, Hem Mishra, Prashant Rahi & Vijay Tirki in Sessions Case 13/2014 and in respect of accused no. 6 in Sessions Case no. 130/2015 for taking cognizance of the offences punishable under Sections 13, 18, 20, 38, 39 of The Unlawful Activities (Prevention) Act, 1967 r/w 120 of the Indian Penal Code?	In the affirmative.
7	What order ?	As per final order.

Point nos. 1 to 6 :-

22] In the present case, the accused nos.1 to 6 have been charged for the offences punishable under Sections 13, 18, 20, 38, 39 of UAPA read with Section 120B of the Indian Penal Code. The allegations against the accused nos.1 to 6 are that they being active members of CPI (Maoist) and its frontal organisation (RDF), a banned organisation under the UAPA, 1967 hatched criminal conspiracy, the object of the said conspiracy was to create violence, to cause public disorder and to spread disaffection towards the Central Government and the State Government and in pursuance of the said criminal conspiracy accused nos.1 to 6 were found in possession of printed naxal literature, circulating information which is promotional literature of terrorist organization in the form of booklets, pamphlets, correspondence, writings, reports of the meetings, letters, e-mails, speeches in audio, video and text formats contained in electronic gadgets like CDs, DVDs, pen-drives, hard-disks, memory-cards and

found using the same for circulation amongst the members of banned organisation CPI (Maoist) and its frontal organisation RDF and other persons for creating violence and causing public disorder.

23] The prosecution has led evidence in respect of accused nos.1 to 6. The evidence led by the prosecution against accused nos.1 to 6 can be classified under the following circumstances -

- i] Accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were arrested on 22.8.2013 at about 6.00 p.m. at a secluded place near Aheri Bus Stand in suspicious circumstances.
- ii] Personal search of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra was taken. From the possession of accused no.1 Mahesh Tirki three pamphlets containing naxal literature and from the possession of no.2 Pandu Narote the articles like umbrella and newspaper usually used by naxal as identification code to recognise each other were seized. From the possession of accused no.3 Hem Mishra 16 GB memory-card of Sandisk company containing incriminating material in relation to naxal movement of banned organization CPI (Maoist) and its frontal organization RDF in text form and one camera of Kodak company alongwith charger containing photographs of accused no.6 Saibaba and other articles were seized.

- iii] The accused no.1 Mahesh Tirki and No.2 Pandu Narote made confessional statements before Judicial Magistrate First Class, Aheri and they went alongwith P.W.9 Raju Atram in the forest to meet naxal lady Narmadakka and when they had been to Ballarsha with cash amount of Rs.5 lacs, P.W.9 Raju Atram was with them.
- iv] From the house search of accused no.6 Saibaba at Delhi extensive electronic gadgets like CDs, DVDs, pen-drives, hard-disc containing other naxal literature, letters correspondence, writings, reports of meetings, letters, e-mails relating to a banned organisation CPI (Maoist) and its frontal organisation RDF under the UAPA 1967, were seized.
- v] Activities of the facebook account of accused no.3 Hem Mishra.
- vi] Call records of mobile SIM nos.9873877513 & 8860601278 belonging to accused no.3 Hem Mishra, mobile SIM no. 8394875017 belonging to accused no.4 Prashant Rahi and mobile SIM no.8800100490 belonging to accused no.6 Saibaba.
- vii] The accused no.4 Prashant Rahi and no.5 Vijay Tirki were found at Chichgad T-point Devri in suspicious circumstances and accused no.4 Prashant Rahi was found in possession of naxal literature in relation to naxal movement of banned organization CPI (Maoist) and its frontal organization RDF.

viii] Sanction order for prosecution of accused no.1 to 5 in Session case no.13/2014 for offence punishable under Sections 13, 18, 20, 38, 39 of UAPA and against accused no.6 Saibaba for the offence punishable under Sections 13, 18, 20, 38, 39 of UAPA in Session case no.130/2015.

ix] The electronic gadgets i.e. 16 GB memory-card seized from the possession of accused no.3 Hem Mishra and CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba were sent to CFSL, Mumbai for examination and CFSL report to that effect alongwith soft-copies and data found in text form in 16 GB memory-card is at Exh.266 (Arts.A17 to A21) and report regarding electronic data found in audio, video, photograph and text form in CDs, pen-drives, DVD, memory-cards, hard-disks is at Exh.267 (Page nos.1 to 247).

24] As there is a charge of conspiracy against accused nos.1 to 6, it is necessary to discuss evidence led by the prosecution against accused nos.1 to 6 separately and further as the evidence led by the prosecution against accused nos.1 to 6 is interconnected with each other in respect of offences punishable under Sections 13, 18, 20, 38, 39 of UAPA read with Section 120B of IPC in order to avoid repetition of facts and evidence points no.1 to 6 have been answered together.

REASONS**Case against accused no.1 Mahesh Tirki, accused no.2 Pandu Narote and no.3 Hem Mishra**

25] It is the case of the prosecution that informant API Atul Avhad (P.W.6) received information that accused no.2 Pandu Narote and accused no.1 Mahesh Tirki and their unknown associates were providing secret information and some materials to CPI (Maoist) banned organization, hence, they kept watch on their activities at Aheri, Murewada and Etapalli area. On 22-8-2013 at about 6-00 p.m. accused no.1 Mahesh Tirki and accused no.2 Pandu Narote were found standing at a secluded place near bus stand, Aheri and about 6-15 p.m. one person having one cap on his head i.e. accused no.3 Hem Mishra came there. The informant API Atul Avhad (PW 6) asked them what they were doing at that secluded place. They gave evasive answers. Hence, he took accused no.2 Pandu Narote, accused no.1 Mahesh Tirki and accused no.3 Hem Mishra to Aheri Police Station where Police Inspector Anil Badgujar (PW.10) was present. Then, he asked their names in presence of panchas. One person told his name Mahesh Tirki, second told his name Pandu Narote and third person told his name as Hem Keshavdatta Mishra. PI Anil Badgujar (PW.10) also asked them what they were doing at secluded place. They gave unsatisfactory answers about their presence. Hence, their personal search was taken.

26] From the personal search of accused no.1 Mahesh Tirki following articles were found:-

- i] Three pamphlets regarding banned CPI organization,
- ii] One Micromax company mobile,
- iii] One pocket purse containing Rs.60/-,
- iv] Platform ticket dated 28-5-21013 and
- v] Xerox copy of his election identity card.

27] From the possession of accused no.2 Pandu Narote following articles were found.

- i] Pass book of State Bank of India in the name of Pandu Narote,
- ii] Birth certificate in the name of Karishma Pandu,
- iii] Newspaper Lokmat dated 20 August, 2013,
- iv] Xerox copy of ration card,
- v] Residence and caste certificate of Pandu Narote,
- vi] School leaving certificate of Pandu Pora Narote,
- vii] Caste certificate of Pandu Narote,
- viii] Birth certificate in the name of Pandu Pora Narote,
- ix] One umbrella,
- x] Samsung mobile,
- xi] One money purse (wallet),
- xii] Xerox copy of election card of Pandu Pora Narote,
- xiii] Pan Card of Pandu Pora Narote,
- xiv] Driving license of Pandu Pora Narote,
- xv] One platform ticket of Ballarsha station dated 28-5-2013,
- xvi] One laminated coloured Pan card of Pandu Pora Narote and
- xvii] Cash of Rs.1480/-

28] From the possession of accused no.3 Hem Mishra following articles were found:-

- i] 16 GB memory-card of Sandisk Comapny (Art.137)
- ii] One camera with charger (Art.30)
- iii] One Central Library membership card (Art.33),
- iv] One State Bank ATM card with cover in the name of Hem Mishra (Art.34A)
- v] One identity card of Jawaharlal Neharu University in the name of Hem Mishra with his photo (Art.35)
- vi] One travel card of Delhi Metro (Art.36)
- vii] One train ticket from New Delhi to Ballarsha dated 19-8-2013 (Exh.37)
- viii] One xerox copy of election I.D. in the name of Hem Mishra (Art.38)
- ix] One daily newspaper "Sahara" dated 19.8.2013,
- x] Cash amount of Rs.7500/-

29] Thereafter, all those articles were seized under seizure panchanama at Exh.137 and the property seized from accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra was deposited in Malkhana of Aheri Police Station by PI Anil Badgajar (P.W.10) with Muddemal Clerk Ganesh Rathod (P.W.13) and P.W.13 Ganesh Rathod received property of Crime no.3017/2013 in the Malkhana and he gave property no.12/2013 to it and taken note of property in muddemal register and copy of the said register is filed on record at Exh.276-A.

30] Thereafter 16 GB memory card of Sandisk company was sent to CFSL, Mumbai for examination by Investigating Officer P.W.11 Suhas Bawche through carrier Ravindra Kumbhare (P.W.5) for getting soft copies and Bhavesh Nikam (P.W.21), Scientific Expert of CFSL, Mumbai examined the same and soft copies were sent to Police Station Aheri through Ravindra Kumbhare (P.W.5) and the same were deposited in the Malkhana of Aheri Police Station.

31] The Investigating Officer P.W.11 Suhas Bawche opened those soft copies in presence of panch P.W.4 Shrikant with the help of card-reader on the computer of Police Station, Aheri and found incriminating correspondence between members of banned organization CPI (Maoist) and its frontal organization RDF and further they found 10 to 12 PDF files protected by secret password thereafter printouts of five documents were taken out and to that effect panchanama Exh.201 was prepared and thereafter, P.W.11 Suhas Bawche sent the hard-copies to CFSL, Mumbai for certification and CFSL Mumbai certified the same and the hard-copies (Articles A17 to A21) are filed on record alongwith report at Exh.266.

32] During investigation, accused no.3 Hem Mishra opened his facebook account in front of Investigating Officer P.W.11 Suhas Bawche and panch witness P.W.4 Shrikant Gaddewar and screen-shots of all activities on facebook account of accused no.3 Hem were taken and they are at Arts.A1 to A16. The evidence in respect of activities on facebook account of accused no.3 Hem Mishra will be discussed later on.

33] During investigation, accused no.1 Mahesh Tirki and no.2 Pandu Narote made confessional statements before Magistrate which have been recorded by P.W.12 Nileshwar Vyas, J.M.F.C., Aheri at Exh.280 and 286 respectively.

EVIDENCE

34] To prove the above allegations against accused no.1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra prosecution relied on the evidence of following witnesses :

Sr. No.	P.W. No.	Name of Witness	Exh.No.
1	P.W.1	Santosh Bawne, panch witness on seizure panchanama.	136
2	P.W.6	Atul Avhad, informant and Investigating Officer.	218
3	P.W.9	Raju Poriya Atram, the witness who accompanied accused no.1 Mahesh and no.2 Pandu at Ballarsha Railway-station.	225
4	P.W.10	Anil Digambar Badgujar, Police Officer.	226
5	P.W.13	Ganesh Keshav Rathod, Muddemal Clerk of Aheri Police Station.	297
6	P.W.15	Narendra Shitalprasad Dube, Station Diary Duty Amaldar.	308

Besides, this prosecution relied on following documents.

Sr.No.	Particulars of documents	Exhs.
1	Seizure panchanama	137
2	Copy of Muddemal register	276-D
3	Copy of Station Diary	275-A

35] PSI Atul Shantaram Awhad (P.W.6) who is the informant in the present case was attached to Special Branch, Gadchiroli in his examination at Exh.218 has stated that he had received information that accused no.1 Mahesh Tirki and accused no.2 Pandu Narote were working for prohibited banned organization CPI Maoist and they were supplying material to the underground naxalites and were giving protection to them and were taking them from one place to another place safely and exchanging information regarding the Maoist organization and hence, they were keeping watch on them in the area of Etapalli, Aheri and Murewada. He also received secret and reliable information that accused no.2 Pandu Narote and accused no.1

Mahesh Tirki and their unknown associates were providing secret information and some materials to CPI (Maoist) and its frontal organisation RDF. Then on 22-8-2013 at about 6-00 p.m. accused no.1 Mahesh Tirki and accused no.2 Pandu Narote were standing at a secluded place near bus stand Aheri and thereafter, at about 6-15 p.m. one person having one cap on his head came there and they started talking with each other suspiciously. Then he took accused no.2 Pandu Narote, accused no.1 Mahesh Tirki and that third person who is accused no.3 Hem Mishra to Aheri Police Station and asked their names in presence of panchas. During interrogation one person told his name Mahesh Tirki (accused no.1), second told his name Pandu Narote (accused no.2) and third person told his name as Hem Keshavdatta Mishra (accused no.3). Police Inspector Anil Badgujar (P.W.10) who was attached to Aheri Police Station was present at that time in the police station. He asked these accused persons as to what they were doing at secluded place, to which accused gave unsatisfactory answers.

36] Then firstly, personal search of accused no.1 Mahesh Tirki was taken and from his personal search three pamphlets regarding banned CPI (Maoist) organization, one Micromax mobile, one pocket purse containing Rs.60/- and platform ticket dated 28-5-21013 were found.

37] Secondly, personal search of accused no.2 Pandu Narote was also taken and from his personal search, platform ticket of Ballarsha Railway dated 28-5-2013, one mobile of Samsung company and cash of Rs.1400/- and his election identity card and school leaving and birth certificate were found.

38] Thirdly, he took personal search of accused no.3 Hem Mishra and cash of Rs.7,500/-, Kodak Camera, cloth bag, white cap, one spec case of black colour, one newspaper of Sahara, dated 19-8-2013, one red coloured towel, blue coloured napkin, one shirt with lining, one gray half pant, one yellow coloured T-shirt, one dark brown pant, one money purse, pan-card, two identity cards of JNU University, one SBI ATM card, one travel card of Delhi Metro, one Delhi to Ballarsha Railway-ticket dated 19.8.2013 and xerox copy of election identity card i.e. Arts.21 to 38 were found.

39] All above articles were seized in the presence of panchas under seizure panchanama Exh.137 drawn in their presence in Police Station, Aheri and the property was taken into custody by P.W.10 P.I. Anil Badgujar and on enquiry with accused no.1 Mahesh Tirki and no.2 Pandu Narote, they told that naxal lady DVC Narmadakka of CPI Maoist had told them that one person was coming from Delhi alongwith important things and he should be brought to Murewada forest safely and for that purpose, they were sent to Aheri bus stand.

40] This witness identified the articles before the Court which were seized from the personal search of accused no.1 Mahesh Tirki. These articles are as under :-

- i] One platform ticket of Ballarsha (Art.18),
- ii] One xerox copy of identity card (Art. 19),
- iii] One mobile of Macromax company (Art.138)
- iv] Three pamphlets (Art.139 to 141)

41] He further identified the articles before the Court which were seized from the personal search of accused no.2 Pandu Narote. These articles are as under :-

- i] One pass book of State Bank of India in the name of Pandu Narote (Art.1)
- ii] Birth certificate in the name of Karishma Pandu (Art.2)
- iii] Lokmat newspaper dated 20August, 2013 (Art. 3)
- iv] Xerox copy of ration card (Art.4)
- v] Residence and caste certificate of Pandu Narote (Art.5)
- vi] School leaving certificate of Pandu Pora Narote (Art.6)
- vii] Caste certificate of Pandu Narote (Art.7)
- viii] Birth certificate in the name of Pandu Pora Narote (Art.8)
- ix] One umbrella (Art.9)
- x] Samsung mobile (Art.10)
- xi] One money purse (Art.11)
- xii] Xerox copy of election card of Pandu Pora Narote (Art.12)
- xiii] Pan Card of Pandu Pora Narote (Art.13)
- xiv] Driving license of Pandu P. Narote (Art.14)
- xv] One platform ticket of Ballarsha station dated 28-5-2013 (Art.15)
- xvi] One laminated coloured Pan card of Pandu Pora Narote (Art.16)

42] He further identified the articles before the Court which were seized from the personal search of accused no.3 Hem Mishra. These articles are as under :-

- i] Brown coloured envelop having seal of the court, one sealed envelop (Art.39) bearing seal and signature of Scientific Officer Forensic Science Laboratory Government of Maharashtra Mumbai dated 15-2-2014
- ii] White envelop (Exh.138),
- iii] Sandisk memory card of 16 GB (Art.137).

43] He stated that the above articles were seized from the possession of accused no.1 Mahesh Tirki, accused no.2 Pandu Narote and accused no.3 Hem Mishra in presence of panchas and after completing panchanama FIR was lodged by him vide Crime

no.3017/2013 at Police Station, Aheri and further investigation was carried out by P.W.11 SDPO Suhas Bawche.

44] During cross-examination, he admitted that carbon copy of printed FIR might have been prepared and he cannot say whether the entries in Column 3 Sub clause (b) & (c) are in different ink and the writer is also different. He was shown page no.313 of carbon copy of FIR (Exh.221). He stated that the signatures on the carbon copy is original and entry in Column 3(b)(c) are written subsequently. He admitted that in Column 3 clause (c) there are some overwritings and in the carbon copy the year is written with the help of carbon but the entry in general diary is written in handwriting and the said three entries are in different ink. He does not remember whether the entire FIR was scribed and then these three entries were written. He stated that the FIR was scribed by P.W.15 Narendra Dube and he does not remember who was the station diary incharge on the day when present FIR was registered. They did not take entry in station diary in Police Station, Aheri when the accused were giving unsatisfactory answers.

45] He admitted that the information was given through PI Anil Badgujar (P.W.10) to Shitalprasad Dubey (P.W.15). He does not remember whether Dubey (P.W.15) had written something when the information was passed through him. He might have taken 2 to 3 minutes for passing the information and P.W.10 PI. Badgujar gave the same information to Dubey. P.W.10 PI Badgujar said that FIR was to be registered and they simultaneously started making panchanama and he specifically did not give instructions to Dubey to register FIR. He admitted that FIR was typed by writer of P.W.10 PI Badgujar and

he has not stated in FIR that when the personal search of accused was started and by whom it was taken and name of panchas and titles of pamphlets alleged to be seized from accused no.1 Mahesh Tirki and company, make and unique identification mark of Memory card. He admitted that in Maoist groups every party member has alias name and normally they use alias name.

46] He denied that some portion of printed FIR was kept blank and thereafter he signed the same and he stated that as the incident took place before 2 years, he does not remember exactly and the entry in Column 3(b) and time therein and column 3(c) are anti-time and written subsequently on future dates. He denied that on 22-8-2013 he did not arrest accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra near Aheri bus stand and they were not taken to Police Station and accused no.3 Hem Mishra was arrested on Ballarsha Railway Station at about 9-30 p.m. on 20-8-2013 and he was kept in illegal custody for two days and on 23-8-2013 all accused were taken to Aheri Police Station and they were arrested. He denied that nothing was seized from the possession of any of the accused and false panchanama was prepared with the help of habitual panchas and till 23-8-2013 they were not taken to Aheri Police Station and they were not arrested. He denied that as no panchanama was prepared prior to lodging of FIR, hence, it was not mentioned in the FIR and on 22.8.2013 P.W.10 PI Badgujar and P.W.15 Dubey were not present in Aheri Police Station.

47] Shri Anil Digambar Badgujar (P.W.10) is the Police Officer attached to Aheri Police Station who recorded FIR lodged by the

informant Atul Avhad (P.W.6) has stated in his examination at Exh.226 that on 22-8-2013 PSI Atul Avhad (P.W.6) came to Aheri Police Station alongwith three accused persons (Accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra) and PSI Atul Avhad told that accused nos.1 to 3 were having concern with Maoist organization and they were exchanging some important messages and important things between them and they found two persons at Aheri bus stop in secluded place. Hence, he called two panchas and took their personal search. One person told his name as Mahesh Tirki, second told his name as Pandu Narote and third told his name as Hem Mishra. He stated that from the possession of accused no.1 Mahesh Tirki one money purse of brown colour containing cash of Rs.60/-, platform ticket dated 28-5-2013 Art.17, one xerox copy of identity card Art.19, one platform ticket of Ballarsha Art.18, one mobile of Macromax company Art.138 and three naxal pamphlets Arts.139 to 141 were seized under seizure panchanama Exh.137.

48] Thereafter, he took personal search of accused no.2 Pandu Narote and from his possession cash of Rs.1,400/-, election identity card, Art.3 Lokmat newspaper dated 20th August, 2013, Art.4 xerox copy of ration card, Art.5 residence and caste certificate of Pandu Narote, Art.6 School leaving certificate of Pandu Pora Narote, Art.7 caste certificate of Pandu Narote, Art.8 birth certificate in the name of Pandu Pora Narote, Art.2, birth certificate in the name of Ku. Karishma Pandu Narote, one money purse Art.11, xerox copy of election card of Pandu Pora Narote, Pan Card of Pandu Pora Narote Art.13, driving license of Pandu P. Narote Art.14, one platform ticket of Ballarsha station dated 28-5-2013 Art.15, one laminated coloured Pan card of Pandu Pora Narote Art.16, one umbrella Art.9, one pass

book of State Bank of India in the name of Pandu Narote Art.1, the documents, Umbrella and Pass book and one plastic packet of Kaveri Seeds Art.143 were seized.

49] Thereafter, he took personal search of accused no.3 Hem Mishra in presence of panchas and during the personal search, accused no.3 Hem Mishra found in possession of incriminating articles including 16 GB memory-card of Sandisk company and kodak camera alongwith charger those were seized in presence of panch witness P.W.1 Santosh Bawne under seizure panchanama (Exh.137) and seized articles were sealed. He identified the articles i.e. 16 GB memory-card of Sandisk company at Art.137, Pan card of accused no.3 Hem Mishra at Art.32, two Identity cards of JNU University at Art.33 and 35, one ATM card at Art.34A, travel card of Delhi Metro at Art.36, Railway ticket of Delhi to Ballarsha at Art.37 dated 19.8.2013 and xerox copy of election identity card at Art.38 before the Court.

50] He stated that all articles seized from possession of accused no.1 Mahesh Tirki and accused no.2 Pandu Narote were sealed in presence of panchas under panchanama Exh.137 dated 22-8-2013 and after completion of panchanama, FIR was lodged by P.W.6 PSI Avhad vide Crime no. 3017/2013 at Police Station, Aheri.

51] This witness was cross-examined by the learned defence counsel. In his cross-examination he admitted that panchanamas of personal search of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were made by different police officers and panchanamas (Exh.227 to 229) bear the date 23-8-2013 and in panchanamas (Exh.227 to 229) FIR number, date of arrest and time

are written in different handwriting and different pen and it occurred by mistake. He admitted that in the panchanama, it is not written that three pamphlets Art.139 to 141 were seized from the hand of accused no.1 Mahesh Tirki. He admitted that he was incharge of investigation till 25-8-2013 and further investigation was handed over to SDPO Suhas Bawche (P.W.11) and as the offence was registered under UAPA, he had drawn only the panchanama and thereafter investigation was handed over to SDPO Suhas Bawche (P.W.11). He admitted that he did not see the data in the memory card by opening it on computer or laptop and he was not knowing the fact that the data in memory card was protected by password and he came to know about the same when the memory card was sent to CFSL.

52] He denied that on 22-8-2013 he was not present in the Police Station, and hence, on panchanama the date 23-8-2013 was written and till preparation of panchanama, FIR and station diary entries were not taken down and nothing was seized from the possession of any of the accused and false panchanama was prepared with the help of habitual panchas and till 23-8-2013 they were not taken to Aheri P.S. and on 22-8-2013 he alongwith Dubey was not present in Aheri P.S. and he denied that he deposed falsely against the accused at the instance of SDPO P.W.11 Suhas Bawche. He denied that no pamphlets were found in possession of accused no.1 Mahesh and those were brought subsequently to support the panchanama.

53] The evidence of panch witness Santosh Bawne (P.W.1) in whose presence articles were seized from the possession of accused no.1 Mahesh Tirki, No.2 Pandu Narote and no.3 Hem Mishra was recorded on 27.10.2015 and thereafter, prosecution has filed original

sanction order (Exh.349) in respect of accused no.6 Saibaba on record and on 14.12.2015 prosecution filed application for re-examination of this witness vide Exh.151. The defence advocate for accused No.6 gave no objection for re-examination, hence by passing order on Exh.151 on 4.1.2016 the witness Santosh Bawne (PW.1) was re-examined on 5.1.2016 at Exh.136.

54] Santosh Nanaji Bawne (PW.1) is the panch witness on the point of personal search of accused no.1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra. In his examination-in-chief at Exh.136 Santosh (PW.1) has stated that he was called on 22-8-2013 in the Police station, Aheri for the purpose of taking personal search of three accused persons who were arrested by Aheri police and he had gone to Aheri Police Station between 6-00 to 6-30 p.m. in the evening and another panch witness Umaji was present there, accused nos.1 to 3 were present in Police Station and police first asked the name to three accused persons and thereafter took personal search of each accused person in his presence, these persons told their names as Mahesh Tirki, Pandu Narote and Hem Mishra (Accused no.1 Mahesh, no.2 Pandu and no.3 Hem Mishra).

55] He stated that police took personal search of accused no.1 Mahesh Tirki and from his possession three paper pamphlets (Articles 139 to 141), one mobile phone, cash amount Rs.60/-, platform ticket of Ballarsha Railway station and election identity card were seized. Thereafter, police took personal search of accused no.2 Pandu Narote and from his possession, one mobile phone, cash of Rs.1480/- from the backside pocket of his trouser, one bank pass-book, domicile certificate, his birth certificate and birth certificate of his daughter,

one umbrella, one platform ticket of Balarsha station, one duplicate driving license of four wheeler and his election identity card were seized. Thereafter police took personal search of accused No.3 and seizure panchanama to that effect was prepared at Exh.137. He has correctly identified accused no.1 Mahesh Tirki and accused no.2 Pandu Narote and accused No.3 Hem Mishra present before the Court.

56] Santosh Nanaji Bawne (P.W.1) identified all the articles before the Court which were seized from personal search of accused no.2 Pandu Narote. These are as under :-

- i] One pass book of State Bank of India in the name of Pandu Narote (Art.1)
- ii] Birth certificate in the name of Karishma Pandu (Art.2)
- iii] Lokmat newspaper dated 20August, 2013 (Art. 3)
- iv] Xerox copy of ration card (Art.4)
- v] Residence and caste certificate of Pandu Narote (Art.5)
- vi] School leaving certificate of Pandu Pora Narote (Art.6)
- vii] Caste certificate of Pandu Narote (Art.7)
- viii] Birth certificate in the name of Pandu Pora Narote (Art.8)
- ix] One umbrella (Art.9)
- x] Samsung mobile (Art.10)
- xi] One money purse (Art.11)
- xii] Xerox copy of election card of Pandu Pora Narote (Art.12)
- xiii] Pan Card of Pandu Pora Narote (Art.13)
- xiv] Driving license of Pandu P. Narote (Art.14)
- xv] One platform ticket of Ballarsha station dated 28-5-2013 (Art.15)
- xvi] One laminated coloured Pan card of Pandu Pora Narote (Art.16)

57] He further identified all the articles before the Court which were seized from the personal search of accused no.1 Mahesh Tirki. These are as under :-

- i] Micromax company and one brown coloured money purse seized from the trouser of Mahesh Tirki (Art.17)
- ii] One platform ticket of Ballarsha dated 28-5-2013 (Art.18)
- iii] One xerox copy of election card in the name of Mahesh Kariman Tirki (Art.19)

58] Santosh Nanaji Bawne (P.W.1) further identified all the articles before the Court which were seized from the personal search of accused no.3 Hem Mishra. These are as under :-

- i] 16 GB memory-card of Sandisk Comapny (Art.137)
- ii] One camera with charger (Art.30)
- iii] One Central Library membership card (Art.33),
- iv] One State Bank ATM card with cover in the name of Hem Mishra (Art.34A)
- v] One identity card of Jawaharlal Neharu University in the name of Hem Mishram with his photo (Art.35)
- vi] One travel card of Delhi Metro (Art.36)
- vii] One train ticket from New Delhi to Ballarsha dated 19-8-2013 (Exh.37)
- viii] One xerox copy of election I.D. in the name of Hem Mishra (Art.38)

59] Santosh Nanaji Bawne (P.W.1) was cross-examined by the learned defence counsel. In his cross-examination, he admitted that after signing the panchanama he was present in police station for 10 minutes and contents of Exh.138 were written entirely in his presence and thereafter he signed on it. He admitted that he signed on the panchanama i.e. on two papers and that after signing the panchanama, he put his signature on envelop. He admitted that there is road on both sides and there are pan stalls and hotel near Aheri bus stand and P.W.10 PI Anil Badgujar did not personally come to call him but one Major called him. He admitted that in the panchanama it is written that P.W.10 Anil Badgujar had called him in

police station and one Major Dube (P.W.15) told him that he was called by P.W.10 Anil Badgajar and Dube Major (P.W.15) had been to him with the message of Anil Badgajar. He admitted that he did not make any enquiry with police as to which questions were put to accused who were arrested by them and in the panchanama it was written that there were three paper pamphlets in the hand of accused no.1 Mahesh Tirki. He admitted that before recording of his evidence he had no occasion to know police officer Ramesh Dhumal (P.W.23) by face and he did not meet police officer Dhumal on 4-7-2014 in Police Station, Aheri and on 11-7-2014 also he did not meet him. He admitted that he did not go to Aheri Police Station on 4-7-2014 and in July 2014 he had been to Aheri Police Station for one panchanama and he did not remember the name of accused in that case and for what purpose he had been to Aheri Police Station in July, 2014.

60] Santosh Nanaji Bawne (P.W.1) admitted that he was in service of Home-guard at Aheri Police Station for last three years and he is in service of Home-guard on the day of recording of his evidence and he does not have personal knowledge about digital storage media and he does not know difference between card-reader, blue-tooth pen-drive and memory-card and he cannot identify the unique identity storage capacity of the different electronic media appliances. He denied that he had signed on the plain packet and he is habitual panch of police and Dube (P.W.15) had requested him to act as a panch and he was not present in Police Station at the time of preparing panchanama and Major Dube (P.W.15) had taken his signatures on blank papers and nothing was seized in his presence from the possession of any of the accused before the court. The omission regarding the word “hand” is brought on record by the

defence. He denied that nothing was found in the hand of accused no.1 Mahesh Tirki and hence the word 'hand' is not written in the panchanama. He denied that he stated falsely about the contents of panchanama and he had not gone to police station and nothing was seized from the possession of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra. He denied that panchanama (Exh.137) was prepared by Police Officer Kawle and P.W.23 Ramesh Dhumal in his presence. He denied that on 22-8-2013 no panchanama was prepared in his presence and his signatures were also not taken and panchanama Exh.137 does not bear his signature and he was not present at the time of any panchanama and nothing was seized in his presence.

Station House Officer [S.H.O.]

61] ASI Narendra Shitalprasad Dube (P.W.no.15) was attached to Police Station, Aheri as a Station Diary in-charge and in his examination at Exh.308 has stated that on 22-8-2013 he was attached to Police Station, Aheri, District Gadchiroli and he was on station diary duty from 18-00 hours to 22-00 hours and at that time, PSI Avhad (P.W.6) had come in Police Station, Aheri with three suspected persons and took them in chamber of P.W.10 PI Anil Badgujar. PI Badgujar (P.W.10) told him to take entry in the station diary about those three persons and accordingly he took entry no.29/2013 at 18-35 hours vide Exh.275A and thereafter, PI Anil Badgujar (P.W.10) told him that informant PSI Atul Avhad (P.W.6) came to him and lodged report against those persons vide Exh.219 and on the basis of that report, he registered FIR vide Crime no.3017/2013 against the accused persons.

62] This witness was cross-examined by the learned defence counsel. In his cross-examination he admitted that the seal of police station is in the custody of Malkhana Moharir and he does not know whether there is movement register of seal in police station. He denied that report Exh.220 and FIR Exh.221 were prepared on 23-8-2013 at 2-00 p.m. at the instance of his superior he stated that after seizure of the muddemal articles from the personal search of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra those were deposited by Police Inspector Anil Bagujar (P.W.10) with Ganesh Rathod (P.W.13), Muddemal Clerk of Aheri Police Station.

Muddemal Clerk

63] Ganesh Keshav Rathod (P.W.13), who was working as Muddemal Clerk of Aheri Police Station in his examination at Exh.297 stated that in the month of August 2013 he was attached to Police Station, Aheri as Muddemal Moharir (Property Clerk) and on 22-8-2013 Police Inspector Anil Badgujar (P.W.10) of Aheri Police Station deposited property of Crime no.3017/2013 in the Malkhana and he received the same and gave property no.12/2013 to it and taken note of property in muddemal register and copy of the said register is filed on record at Exh.276-A and out of this property three pamphlets were taken out and he had given the same to Mr.Badgujar (P.W.10) for attaching the same with charge-sheet and entry to that effect was taken in muddemal register. Those pamphlets were relating to naxal activities and he has identified the same at Articles no.139, 140 and 141. He stated that he deposited the said muddemal on 13-10-2015 in Sessions Court, Gadchiroli and prepared invoice challan Exh.135

and the same was verified by the Property Clerk of District Court and gave receipt about depositing of property on carbon copy of invoice challan (Exh.302). He brought the original register before the Court and the copies are filed on record, those were verified from original register and found to be correct.

64] On perusal of extract of muddemal register at Exh.276A it reveals that in the entry no.12/2013 dated 22.8.2013 there is description of seized property in crime no.3017/2013 seized from accused no.1 Mahesh Tirki which is as under :-

- i] One pamphlet written in red ink written by CPI (Maoist)
- ii] One pamphlet of heading, "Amar Shahidoko Lal Salam" by Dandakaryanya Zonel Committee CPI (Maoist) I
- iii] Pamphlet in respect of Khairlanji incident of CPI (Maoist) Maharashtra State
- iv] One Micromax mobile
- v] one packet containing cash Rs.60/- and one platform ticket dtd 28.5.2013 of Ballarshah Railway-station, xerox of election voting card.

65] The property seized from accused no.2 Pandu Narote is mentioned as under :-

- i] one Samsung mobile,
- ii] one packet having cash Rs.1480/-, xerox of election card, RC book of vehicle no.MH-33/K-9656, pan card, platform ticket of Ballarshah Railway-station dt 28.5.2013,

- iii] one plastic bag containing pass book, birth certificate, birth certificate of accused Pandu, leaving certificate, domicile certificate, ration card, lokmat paper, umbrella.
- 66] The property seized from accused no.3 Hem Mishra is mentioned as under :-
- i] Amount Rs.7700/-, 16 GB Sandisk memory card, Railway ticket of Ballarshah to Delhi dt.19.8.2013, ATM card of SBI, pan card, election card, I-card of Jawaharlal Neharu University etc.
 - ii] One Kodak company digital camera with charger
 - iii] One bag containing clothes, spec cover, white cap, newspaper dt 19.8.2013 etc. In column no.11, it is mentioned that said properties were deposited on 13.10.2015 in the Court.
- 67] He was cross-examined by the learned defence counsel and in his cross-examination he admitted that he cannot say without seeing the register as to who had deposited the property with him and in which Crime number and he doesn't know whether the name of the officer with Crime number is mentioned and on 12.8.2013 he made last entry prior to the entry in crime no.3017/2013 and from 12.8.2013 to 8.9.2013 there are only two entries regarding two crimes. He admitted that in the invoice challan it is not mentioned that property was sealed and make of the seal was not mentioned and he did not make entry in writing about the fact that the clerk of the District court asked him to open the seal while depositing the property. He admitted that in muddemal register there is no entry about handing over of three pamphlets to Shri Badgujar (P.W.10) and there are some overwritings in the muddemal register and the said

overwritings were made by him at two places and when the property was deposited in Malkhana at that time, it was sealed and make of the seal was not mentioned. He was shown muddemal register and entry dated 26.8.2013 which is in his handwriting and the name of P.W.5 Ravindra Kumbhare was written thereon.

68] He denied that from time to time he did not hand over the property to carrier and received the same and all these entries in Muddemal register were made at the instance of P.W.11 Shri Bawche. He further denied that as the property was not in sealed condition and make of the seal was not mentioned, hence he did not mention the same in muddemal register.

Independent witness

69] Raju Poriya Atram (P.W.9) is a worker in Ballarpur Industries Limited and Paper Mill. In his examination-in-chief at Exh.225 he has stated that he was doing the job of Bamboo cutting and road work and he was Supervisor in Ballarpur Industries Limited and Paper Mill Ltd. In the year 2007 he was transferred from Bhamragad range to Jambiyagatta and in the year 2013 there was a camp at Murewada where he came in contact with accused no.2 Pandu Narote and accused no.1 Mahesh Tirki. He stated that one day accused no.2 Pandu Narote came to him and told that lady naxal Narmadakka had called him and he told accused no.2 Pandu Narote that he would go with him after 2-3 days and after 2-3 days he alongwith accused no.2 Pandu went to forest area of Todalgatta on motor-cycle and reached there at about 7-00 p.m. and after half an

hour, one lady by name Narmadakka came there, he was not knowing her and he could not identify her as it was dark.

70] He stated that accused no.2 Pandu Narote told him that she is Narmadakka and she asked him that whether he would hand over Rs.5 Lakhs to accused no.1 Mahesh Tirki and no.2 Pandu Narote by meeting at Ballarsha Railway Station and Narmadakka handed over money in the packet and he did not count the said money. He stated that on 27th of that month accused no.2 Pandu and accused no.1 Mahesh had come to his house at Alapalli and told him that he should come at Ballarsha Railway Station along with said money which he had received from Narmadakka and on next day left his house. On 29-5-2013 he left by bus at 6-00 a.m. and reached Ballarsha Railway Station at 10-00 a.m., accused no.1 Mahesh and no.2 Pandu were sitting in the hall of Railway Station, he went and sat with them and thereafter two unknown persons came there and accused no.2 Pandu went to them and discussed with them and thereafter, accused no.2 Pandu came to him and took the money packet and gave to one person out of them. Out of those two persons, one person, he himself and accused no.1 Mahesh came back to Alapalli and they came to his house and took some food and accused No.1 left for bus stand. He identified correctly accused no.2 Pandu Narote and accused no.1 Mahesh Tirki amongst the six accused persons who were present before the court.

71] In his cross-examination by the learned defence counsel he admitted that in the month of August, 2013 he was deputed at C.O. Office, Alapalli and on 20-8-2013 police of Aheri Police Station came to him for interrogation and he was taken in Police station in

custody and when he was asked to sit in the Police station, Aheri, P.S.I. told him that Saheb would come and he would interrogate with him. His relative by name Papa telephoned to Dr.Kanna about his detention in Police Station, Aheri and he was taken in Police Station because police came to know from interrogation of accused that he handed over Rs.5 lacks received from Narmadakka at Ballarsha Railway Station. He admitted that when on 21st he was again called in police station, at that time, accused no.2 Pandu Narote and no.1 Mahesh Tirki were not present in the police station and on 21st he himself had gone to police station Aheri on his own as he was told by police at the time of releasing him on 20th that he should come on 21st.

72] He denied that from 20-8-2013 to 25-8-2013 he did not sign muster roll at his office i.e. C.O. Office, Alapalli of Ballarpur Paper Mill and from 20th to 25th he was at police station and he did not attend his duties and accused no.1 Mahesh Tirki and no.2 Pandu Narote did not come to him and did not tell the above facts and he did not go to Ballarsha Railway Station alongwith cash of Rs.5 lacs and did not give it to the person acquainted with accused no.1 Mahesh Tirki and no.2 Pandu Narote as directed by Narmadakka.

Confessional Statements of accused no.1 Mahesh Tirki and accused no.2 Pandu Narote

73] According to prosecution after arrest of accused no.1 Mahesh Tirki and no.2 Pandu Narote, they expressed their desire to make confessional statements before Magistrate and Investigating Officer P.W.11 Suhas Bawche made application to J.M.F.C. Aheri

P.W.12 Nileshwar Vyas for recording the statement of accused no.1 Mahesh Tirki and no.2 Pandu Narote under Section 164 of the Cr.P.C. and thereafter produced both the accused before J.M.F.C., Aheri P.W.12 Vyas for recording their statements on 4.9.2013 and thereafter J.M.F.C., Aheri P.W.12 Nileshwar Vyas recorded confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote after following due procedure of law. To prove this aspect prosecution relied on the evidence of -

Sr. No.	Witness no.	Name of Witness	Exhibit No.
1	P.W.11	Investigating Officer Suhas Prakash Bawche	235
2	P.W.12	J.M.F.C., Aheri Nileshwar Vyas	277

EVIDENCE

74] Investigating Officer Suhas Prakash Bawche (P.W.11) was Sub Divisional Police Officer of Aheri. He in his examination at Exh.235 stated that on 22-8-2013 offence was registered in Crime no.3017/2013 at Aheri Police Station under Sections 13, 20 & 39 of UAPA and under Section 120(B) of I.P.C. and as per directions of S.P Gadchiroli he received investigation of the crime and on 23-8-2013 he took PCR of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra and during interrogation accused no.1 Mahesh Tirki and no.2 Pandu Narote expressed their willingness to confess their guilt, hence on 2-9-2013 he had given letter (Exh.242) to the JMFC Aheri (P.W.12 Nileshwar Vyas) to record statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote under Sec. 164 of Cr.P.C. and on 14-9-

2013 he recorded statement of witness Raju Atram (P.W.9) and thereafter he received sealed envelop from JMFC Aheri about recording of statements u/s 164 of Cr.P.C.

75] This witness was cross-examined by the defence. In his cross-examination he admitted that he did not file say on the application of retraction of confession by accused as he was not asked to file the say. He admitted that DIG Ravindra Kadam had also interrogated the accused in the present case and during investigation accused were taken to office of Superintendent of Police, Gadchiroli, DIG office Gadchiroli and Naxal Cell, Gadchiroli for interrogation purpose. He denied that confession statements of accused were recorded by torture and influence and by threatening them and whenever they were brought to court and confessional statements of both the accused were got recorded under the torture and influence of police and each time when they were produced before the Magistrate, police were pressurizing them for making confessional statements.

76] P.W.12 Nileshwar Gaurishankar Vyas, the Judicial Magistrate, First Class, Aheri recorded the confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote. He in his examination at Exh.277 stated about the procedure followed by him while recording the confessional statement of both accused, in detail. He stated that accused no.1 Mahesh Tirki and no.2 Pandu Pora Narote were produced before him on 23-8-2013. Thereafter they were remanded to MCR on 2-9-2013 and on 2-9-2013 the investigating officer Aheri made application before him for recording the confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu

Narote and hence, he informed both the accused about the same and asked them to think about making of confession. On that day they were willing to make confession but he did not record their statements as he wanted to give them reflection time to think over and he made it known to both accused that if they were to make confessional statements then that could be used against them and after personal verification of both of them, they showed their willingness about the confession of their guilt and hence, he had given them time till 4-9-2013 and hence both the accused were produced before him on 4-9-2013.

77] He stated that on 4-9-2013, both accused i.e. accused nos.1 Mahesh and No.2 Pandu were produced by the police before him who were not connected with investigation of this case at 5-30 p.m. Accused no.2 Pandu Narote was produced at 5-00 p.m. and accused no.1 Mahesh Tirki was produced on 5-30 p.m. by Head Constable Anwar Qureshi B.no.1163 and he has mentioned the time of production of both the accused and after production of accused no.1 Mahesh Tirki and no.2 Pandu Narote he has placed them into witness box one by one and taken precaution that both the accused and police were not audible and visible to each other and appraised both the accused that they were not in police custody or magisterial custody. He asked both the accused one by one whether they had any ill-treatment in police custody and whether they were induced by police to make confessional statements but they replied in negative.

78] He stated that he informed accused no.1 Mahesh Tirki and no.2 Pandu Narote that he is a Magistrate and he has no concern with police and told both of them that they were not in police custody and

asked them whether they have been induced by police or any other persons responsible for their arrest, to which they replied in negative. He asked them that he wanted to examine their personal body and accused replied in affirmative and thereafter he examined personal body of both the accused.

79] He put certain questions to both the accused one by one and prepared their memorandum statements separately and noted down all the questions and answers as stated by them and examined them one by one when the other accused was out of the court. Memorandum regarding questions and answers put to accused no.2 Pandu Narote is at Exh.278 and memorandum regarding questions and answers put to accused no.1 Mahesh Tirki is at Exh.279.

80] He stated that first of all he had asked accused no.1 Mahesh Kariman Tirki when he was arrested by the police and accused replied that before 15 days approximately. He asked him whether he was kept under surveillance by police to which accused no.1 Mahesh replied in negative. He asked accused no.1 Mahesh since when he was in the custody of the police and accused replied that he was in magisterial custody at that time. He asked accused no.1 Mahesh at what places he was kept by police to which accused replied that at police station Aheri. Thereafter he asked accused did he wish to make the confessional statement to which accused replied in affirmative. Then he asked him whether the reflection time of two days was sufficient or not. Accused replied in affirmative. He explained him that he was not bound to make a statement and there was no compulsion that he should make a statement. He explained accused that if he makes a statement then it would be recorded and it would be used as evidence against him. Accused understood the same.

81] Then he explained that even if he would not make a confession, he would not be kept in police custody and also asked whether he was given threat, promise or allurement by police for making confessional statement to which he replied in negative. Thereafter he asked accused Mahesh that whether he was making the statement voluntarily and with his free own will and accused replied in the affirmative. He asked accused no.1 Mahesh that whether he had any complaint, grievance against anybody and accused replied in the negative and after getting satisfactory answers from the accused, he satisfied that accused no.1 Mahesh was going to make statement voluntarily and with his own free will. He recorded the statement given by accused no.1 Mahesh Tirki.

82] In the said confessional statement accused no.1 Mahesh Tirki stated as under :-

a] That, since his birth he has been residing at Murewada, Tah. Etapalli, Dist. Gadchiroli. Earlier his father and mother were residing in Chhattisgarh State and thereafter since 25-30 years they started living at Murewada. In his family there are three brothers, three sisters, father and mother. He studied up to 8th standard. After that he engaged himself in agriculture work. In the year 2007-2008 he along with Rajkumar was doing painting work in the Church situated at Ballarshah and said work lasted for 3 months and thereafter he did the painting work at Mul, Chandrapur, Virur, Awarpur for one year and during that period he used to reside outside the village. Thereafter he returned to his village and thereafter he got married. After marriage for 3 months he went to Turangal

(Karnataka) for doing the work of building construction. Thereafter again he returned to his village and started doing agriculture work.

b] At Murewada naxalites used to come several times in month and they used to tell one person of village to make arrangement for their lunch or dinner. The naxalites used to take meeting in the village and in the said meeting naxalites used to tell villagers not to go outside village for work and if somebody goes for work outside, he would be expelled from village, otherwise whole family of that person would be beaten and they would be expelled from the village. Further they used to tell them not to cut forest wood. Further they were asking whether police were used to come in the village. Further they were asking whether Government wanted to dig mines and directed the villagers to oppose it. Among the said naxalites Narmadakka, Ramko, Bhaskar and Sinnu used to come frequently in the village along with other several naxalites. Every year in July 28 naxalites used to come in their village and used to call 4 to 5 persons from the village and used to have singing and dancing programme.

c] He further stated that he used to give meals to the naxalites in the forest area and naxalites used to put pressure on him to do work told by them. In that year in the month of May during season of Tendupatta Pandu Narote met him and told that Narmadakka had called them at Todgatta. On the next day at about 3.00 p.m. he himself and Pandu went to Todgatta. Thereafter one person met him and they told him that they came there as they were called by naxalites. They went in the direction shown by that person and they found four naxalite persons. Those persons asked them

whether they are from Murewada. Thereafter they took them below the hill in the forest area, there Narmadakka was present. Narmadakka took them at some distance and she asked whether his name is Mahesh and whether he had seen Ballarsha area or Ballarsha Railway Station, then he told her, yes. She asked him to go along with Pandu to Ballarsha Railway Station on 28 May 2013, where two persons were coming and to receive them and to bring them at Todgatta. She told him that for identification of that person these persons would be having hat, spect, bottle of water and newspaper and they should be having banana, bottle of water, Marathi newspaper and those two persons would come to them would ask their name, then they should tell their name as Raju. Thereafter they should ask his name and they would tell his name as Akash. As per her direction on 27 May 2013 he himself along with Pandu proceeded for Ballarsha and they came at Allapalli and halted there in the night.

d] On next day i.e. on 28 May 2013 at about 6.00 a.m. they proceeded to Ballarshah and after reaching Ballarshah they purchased Marathi newspaper, banana and bottle of water and thereafter they went and sat in waiting hall. In the waiting hall of Railway Station at about 10.00 a.m. one person came, he was having hat, specs, bottle of water and newspaper and he asked his name, they told his name as Raju and he told his name as Akash. Out of them one person was having height 5 to 6 ft., long hair up to shoulder, beard and mustache, big nose, big eyes, fair colour, big face, wearing kurta and pajama and having shoes in his legs. Other person was having short height than that of first person, without having beard and mustache, few hair with some white hair, fair colour, big nose, big eyes, well built, wearing shirt and pant and was talking in Hindu language. After

confirmation the identity of that persons at about 11.00 a.m. Pandu took these two persons at Murewada as per the direction of Narmadakka, he halted there as on the next day on 29 May 2013 another two persons were coming at Ballarshah Railway Station and for identification of that Narmadakka had given instruction as above. He was also told that on 29.05.2013 Raju Atram also would come to Ballarshah Railway Station and he would be having Rs.5,00,000/- and he should hand over said money to that person who were coming from Delhi.

e] On 29.05.2013 at about 9.00 a.m. he along with Raju Atram reached at Ballarsha Railway Station and they were sitting in the waiting room of Railway Station, at about 10.00 a.m. two persons came there and after confirmation the identity as one of the said person asked whether he had brought material, he replied yes. Thereafter, he took out Rs.5,00,000/- from the bag of Raju and handed over to that person and the said persons took the money and left the place. He took that another person and he himself and Raju proceeded to Murewada by bus. The said person was having one big bag. He stated the description of that two person, one person was having bag having height 5.2 ft, without having beard and mustache, well built, wearing shirt and talking in Hindi language. Other person was having height of 6 to 6.25 ft., fair colour, without having beard or mustache, short hairs on head, big eyes, big nose, big face, wearing shirt and jeans pant, wearing boot on his leg and was talking in Hindi language. At about 2.00 p.m. they reached at Allapalli and took lunch at the house of Raju, at about 3.00 p.m. he proceeded along with that person at Etapalli and taken him to Etapalli. He stated that Dharma from Gardewada Tola come on motorcycle and they sat on the

motorcycle and reached at Murewada between 7.00 to 8.00 p.m. In the village people were preparing dinner for naxalites. 5 to 6 naxalites were there and said naxalites took dinner along with persons who accompanied with him and after dinner the naxalites took that person and went in forest.

f] Mahesh further stated that on 14 August 2013 Narmadakka came to his village along with 15 to 20 naxalites and Raju Atram, and that one of the villagers told him that Narmadakka had called him and Pandu in the forest situated outside the village. Thereafter they went outside the village and where Narmadakka was present along with armed naxalites. Narmadakka told them that on 20/22 August 2013 two persons were coming to Ballarshah Railway Station and they would come either at 10.00 a.m. or 2.00 p.m. and she asked to take these people at village Lendar and halt at the house of Komati Babu situated at village Lendar and Narmadakka had given one chit for handing over to said persons which would be used for identification purpose. Further identification purpose she told him that they would be having Marathi newspaper, umbrella, banana and those persons would ask their name, and they should tell their name as Raju and those persons would tell their name as Shankar.

g] In the morning at about 9.00 a.m. they went to Ballarshah Railway Station. They purchased one paper, banana, umbrella and thereafter went to Railway Station, stayed in the waiting room. At about 9.45 a.m. person with the same description came there and he stayed at some distance from them and thereafter he came to them and asked his name, he told name as Raju and they asked their name, he told his name as Shankar. As they asked about second person, who

had come along with him, he told that he could not come. Thereafter they took that person to Aheri by S.T. bus and they were talking, by that time police arrested them.

83] He stated that after recording the statement of accused no.1 Mahesh he took his signatures on each page of confessional statement and put his signature below the statement and given Certificate no.I in his own handwriting as per Criminal Manual and thereafter, wrote Certificate no.II in his own handwriting explaining to the accused no.1 Mahesh that he is not bound to make confession and if he does so, any confession, it might be used as evidence against him. The confession was voluntarily made. The said confession was read over and explained to the accused and he admitted it as correct and it contains a full and true account of statements made by him. He had given certificate no.III in his own handwriting on the point that How he satisfied that the confession was genuine.

84] He had given the statement that he has certified the grounds about his satisfaction that accused was making the confession voluntarily without any allurements or inducements by police and same are noted in his certificate. He stated the grounds on which he believed that confession was genuine was -

- i] the accused was appearing to be familiar with the court while recording entire confession.
- ii] Accused 81 was without fear, and no favour either to prosecution or the other accused.
- iii] Accused never hesitated.

85] Further he has taken the following precaution to remove the accused from the influence of police as follows:

i] He told accused that he is independent person not at all concerned with police.

ii] He told accused that he is supposed to record his confession only if accused makes voluntarily.

iii] He told accused that he is not bound to make confession and if he refuse to make he will not be sent to police custody.

He had given the accused two days time for reflection before recording the confession. Thereafter he signed the certificates. The confession of accused is at Exh.280 and his Certificate I, II and III are marked at Exh.281, 282 and 283.

86] He stated that on 8-9-2013 at about 3-30 p.m. accused no.2 Pandu Pora Narote was produced before him for recording his statement and when accused no.2 Pandu was produced before him, he noticed that there were no policemen in the court or in any place and thereafter he asked some questions to the accused as follows and he replied them accordingly.

87] He stated that first of all he had asked accused no.2 Pandu Pora Narote when he was arrested by the police and accused replied that before 18 days approximately. He asked him about the place of arrest and accused no.2 Pandu replied that near bus stand Aheri. He asked him whether he was kept under surveillance by police to which accused no.2 Pandu replied in negative. He asked accused no.2 Pandu since when he was in the custody of the police and accused replied that he was in magisterial custody at that time. He asked accused no.2 Pandu at what places he was kept by police to

which accused replied that at police station Aheri. He obtained consent of accused no.2 Pandu to examine his person. Thereafter he examined accused. There were no external injuries found on the person of accused. Thereafter he asked him, did he wish to make the statement. Accused replied in affirmative. Then he asked him whether the reflection time of two days was sufficient or not. Accused replied in affirmative. He explained him that he was not bound to make a statement and there was no compulsion that he should make a statement. Accused answered in affirmative and understood the same. He explained accused that if he make a statement then it would be recorded and it would be used as evidence against him. Accused understood the same. Then he explained that even if he would not make a confession, he would not be kept in police custody. He understood the same and replied accordingly. He then asked him, had the police or any other person threatened him. Accused replied in negative. He asked him had the police or any other person promised him that lesser punishment would be given or he would be acquitted, if he makes such statement. Accused replied in negative. Then he asked him, had the police or any other person promised him that if he would make such statement, he would be made as a witness for prosecution. Accused replied in negative. Thereafter without administering the oath to accused, he recorded statement of accused Pandu Narote as stated by him. His statement is at Exh.286.

88] In the confessional statement accused no.2 Pandu Narote stated as under :-

a] Since last 20 years he was residing at Murrewada, Tah.Etapalli, District : Gadchiroli. Naxlites used to come for 2 to 3

times in the month in his village and the villagers and he himself used to provide required articles to them. Amongst the said naxlites Bhaskar, Ramko, Manoj and Narmadakka were there. Before two years naxalite Bhaskar came in his village and Bhaskar told him to bring Radio, Torch, Polythene bag from market and he handed over Rs.1,500/- to him and he purchased the articles from the shop and handed over to him, at that time, alongwith Bhaskar 10 to 15 naxlites were there. Before two months of recording of his statement u/s 164 Cr.PC., one person from village Korgatta came in his village and told him that he and Mahesh were called by Narmadakka at Korgatta. Accordingly, he himself and Mahesh went to Korgatta at about 4-00 p.m., where one old person met them and he took him in the forest outside of village.

b] Thereafter they saw Narmadakka and other 15 to 20 naxlites armed with guns. At that time, Narmadakka told him that on 28 May, 2013, two persons were coming from Delhi to Ballarshah by Railway and she asked them to go to receive them. Narmadakka asked them to go to Ballarshah Railway Station and wait for them in waiting room. She further told that in order to identify them by those two people they have to keep Bannana, water bottle and news paper and the same article would be with the said person i.e. the said person would be having article like hat, spect and paper and these person would come to them and they would ask their names and thereafter they should tell their name as Raju. Thereafter they were directed to ask name of these persons and they were to tell his name as Akash and he was asked to take these people at Murrewada and Mahesh was to halt there as on the next day two another persons were to come from Delhi and Mahesh has to hand over Rs.5,00,000/- through Raju Atram, residence of Alapalli.

c] On 27.05.2013 he and Mahesh proceeded to Ballarsha and in that night they halted in the house of Raju Atram and on next day they proceeded to Ballarsha at about 9-00 a.m. At the Railway Station, they purchased Banana, water bottle and news paper and thereafter went in the waiting room of the said Railway Station. At about 10-00 a.m. two persons came there as described by Narmadakka and one person was having big hair up to his shoulder, beard , big face, fair colour, big nose, big eyes, well built, having height 5.5 ft. and he was talking in Hindi and he was wearing Kurta and pant and having shoes in his legs. Second person was of fair colour, without having beard and mustache, few hair, big nose, big eyes, well built and fatty and having height more than 5.5 ft., wearing shoes in his legs and he was talking in Hindi. After confirmation of acquaintance he started with them by bus and went to Murewada in his house at about 4 a.m. In the night 4 naxals came to his house and they asked him whether two persons came from Delhi, he replied in affirmative. Thereafter these 4 naxalites took these two people in forest area. On the next day he remained in his house and on that day Mahesh Tirki came to his house along with one person who came from Delhi between 7.00 to 8.00 p.m. and from Mahesh Tirki he came to know that he handed over Rs.5,00,000/-.

d] One person who came from Delhi was brought by Raju Atram and thereafter that person went back. The person who was brought by Mahesh Tirki at his house was having description was fair colour, slim, short hair and he was wearing shirt, pant and shoes and before arrival of Mahesh Tirki of that persons, naxalites had come to his house to take that person and said naxalite person told villagers to prepare food for them. Thereafter the said naxalites and that person

took dinner in the village. Further the naxalites also told the villagers to send dinner in the forest area for other naxalites and thereafter they left the place.

e] After 5 to 6 days in between 6.00 to 7.00 p.m. some naxalites along with two persons which he had brought from Ballarsha Railway Station, came to his house and asked him to take that two person to Allapalli and thereafter returned to his house.

f] On 14/15 August, 2013 Mahesh Tirki came to his house and told him that he was called by Narmadakka and thereafter he took him to agricultural land near the village where Narmadakka along with 17 to 18 naxalites were present there and Narmadakka told him that on 20 or 22 August two persons were to come from Delhi to Ballarsha Railway Station and they were asked to go to receive these people and she told that said person having specs cover, hat on the head and newspaper in their hand and for their identification they should have banana, newspaper and umbrella with them and those persons would tell their name as Shankar and they should tell their name as Raju. On 20/22 August 2013 in between 9.00 to 10.00 a.m. he along with Mahesh went to Ballarsha and they were having umbrella in their hand and they purchased banana and newspaper and they were sitting in the waiting room at Ballarsha Railway Station. At about 10.00 a.m. one person came there having hat in his head, paper and specs cover in his hand. He was having one black colour bag and he asked their name, they told their name as Raju and thereafter he told his name as Shankar and they confirmed his identity. Thereafter they took that person and started to Aheri in S.T. bus. They reached there and near bus stand they were talking

with each other and at that time police arrested them and took them to Police Station. He stated that naxalites used to pressure them, assault them and they used to do work for them.

89] J.M.F.C. Nileshwar Vyas (P.W.12) stated that at the foot of statement he had given three certificates in his own handwriting. In Certificate I, he certified that the confession was recorded in his presence and hearing and the record contains a full and true account of statement made by accused. In Certificate II, he has written that he explained to the accused Pandu Pora Narote that he was not bound to make confession and that if he would do so any confession made by him might be used as evidence against him. In said certificate he had also written that he had the belief that the confession was voluntarily made. Then he read over to the accused the statement recorded by him, accused understood the same. Thereafter he affixed his signatures below Certificate I & II. Certificate no. III are in his own handwriting. In these certificates he has mentioned the reason as to why he had formed the opinion that the confession was genuine. He stated the grounds on which he formed belief that the statement was genuine. They are as under:

- i] the accused was talking without hesitation through out the statement.
- ii] the accused was talking impartially.
- iii] the accused was familiar with the court.

90] He had taken following precautions to remove the accused from the influence of the police.

i] He told that accused was not bound at all to make confession and he would not be sent to police custody at the behest of refusing to make it.

ii] The accused and police were not visible or audible to each other and he explained to the accused about the same.

iii] He told him that accused was an independent person not at all concern with the police.

iv] He had given him reflection time for 2 days before recording confession.

91] He stated that he had given him reflection time for two days on record, but actually the accused had got four days reflection time. Thereafter he affixed signature below the certificates and remanded the accused to judicial custody. The Certificate I is at Exh.287. Certificate-II is at Exh.288. Certificate III is marked at Exh.289.

92] After recording the same it was read over to the accused no.2 Pandu Narote and he admitted the same to be correct and it contains a full and true account of the statement made by him. He further stated that after recording the statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote, he has kept it in sealed envelop with the custody of Nazir of court to be filed along with charge-sheet and another copy of the statement in sealed condition was given to investigating officer.

93] This witness was cross-examined by the defence counsel. In his cross-examination he admitted that giving an inducement or threat by police officer is a misconduct and also abuse of an authority

as a police officer. None of the accused had made application before him about the ill-treatment by the police during investigation and in the present case accused made written application before him about the ill-treatment meted out by them after recording their statement and he had not taken any action on the basis of their written application. He did not call any report from police officer because he came to know that said confession was voluntarily made and application for ill-treatment was made subsequently. He admitted that the threatening and intimidation is a criminal offence and it also amounts to interference and when there is a complaint disclosing commission of cognizable offence, then the Magistrate has to take cognizance of the offence and in order to assist the investigation, he did not take cognizance of offence in respect of allegations made at Exh.292. He admitted that on 15-9-2013 accused made complaint for removing the handcuff as they were produced before him in handcuffed condition and he passed the order on the said application that unless the accused becomes violent and there are possibilities of escaping from the court of justice he should not be handcuffed and accused were Adiwasis and from arrest forms he came to know that they belonging to Madiya and Gond community.

94] In cross examination, he denied that as the said confession was recorded under the inducement and threat of police, he did not call the say of police. He denied that police had placed before him the confessional statement made by accused before police before recording of confessional statements by him and accused were not knowing his language and he was not knowing their language and he did not record any confessional statements and police had already prepared the same and he signed thereon. He denied that accused

were not conversant with the language in which statements were recorded and accused were not able to talk in Marathi and they were not knowing Hindi and none of the accused made confessional statement before him and he had recorded the same at the instance of police to assist the prosecution.

Argument of Spl. PP. Shri Sathainathan on the point of arrest and seizure in respect of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra

95] Learned Spl. PP. Shri Sathainathan submitted that accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were arrested at secluded place near Aheri bus stand and accused no.1 Mahesh Tirki and no.2 Pandu Narote were knowing accused no.3 Hem Mishra and they were sent by absconding naxal accused Narmadakka to take accused no.3 Hem Mishra to meet her and this fact was corroborated by the evidence of P.W.9 Raju Poriya Atram who in his examination stated that accused no.2 Pandu Narote took him to Narmadakka and thereafter Narmadakka handed over him Rs.5 Lacs in the packet and on 29-5-2013 he reached Ballarsha Railway Station at 10-00 a.m. and thereafter two unknown persons came there and accused no.2 Pandu went to them and discussed with them and thereafter accused no.2 Pandu took the money packet from him and gave to one person out of them.

96] He submitted that it is the defence of accused no.2 Pandu that nothing was seized from his possession, however, this defence of accused no.2 Pandu Narote is false as in personal search of accused no.2 Pandu Narote his personal documents i.e. SBI pass-book, birth certificate and birth certificate of his daughter, bonafide certificate of

his daughter and he himself, caste certificate, domicile certificate, pan card, his election identity card, registration certificate of vehicle bearing No.MH-33/K-9656 were found and further from his possession incriminating articles i.e. Platform ticket of Ballarsha Railway station, Lokmat Marathi newspaper, umbrella were seized. He submitted that the articles i.e. Lokmat newspaper and umbrella are the common articles but these are used by the members of RDF, a frontal organisation of banned CPI (Maoist) organisation to recognize their persons and this fact is clear from the document at page no.90 of Exh.267 titled as, "I am convinced the Naxalites (Maoists) have a lot of support" which is retrieved from the hard-disk (Exh.4) seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165). He further submitted that finding of Railway platform ticket of Ballarsha Railway-station dated 28.5.2013 with accused no.2 Pandu shows that he had been to Ballarsha Railway-station on 28.5.2013 and from the evidence of P.W.9 Raju Atram it is established that on 27th of that month accused no.1 Mahesh and no.2 Pandu had been to him to Alapalli and they told him that he was called by naxal Narmadakka.

97] With respect to accused no.1 Mahesh Tirki, he submitted that from the personal search of accused no.1 Mahesh Tirki three pamphlets of naxals were seized and this fact is revealed from the evidence of PI Anil Badgujar (P.W.10) and the same is corroborated by the evidence of panch witness P.W.1 Santosh Bawne and these pamphlets are at Article Nos.139, 140 and 141.

i] **Art.139** is a pamphlet issued by Bhakapa (Maowadi), (Gadchiroli Division) making allegations against the decision of the Government to destroy the life of Aadiwasis.

ii] **Art.140** is a pamphlet issued by Bhumkal Johar Te Dandakaryanya Special Zonal Committee, Bhakapa (Maowadi), titled as, “Amar Shahidirku Lal Salam”

iii] **Art.141** is a pamphlet issued by Bhartachi Communist Party (Maowadi), Maharashtra Rajya Samiti titled as ‘राख सांभाळुन ठेवा राख झालेल्यांची, संपली नाही लढाई अजुन खैरलांजीची’ and at the end it is mentioned that ‘खैरलांजी हत्याकांडाच्या सुत्रधारांना पाठीशी घालणारे, पोलिसांद्वारे दलितांच्या हत्या करणारे, दलितांत दहशत पसरविणारे महाराष्ट्र शासन मुर्दाबाद !.. नवजनवादी क्रांति जिंदाबाद’

98] He submitted that “Navjanvadi Kranti Jindabad” is a slogan used in many videos of RDF conference found in hard-disks, CDs, DVDs, pen-drives which were seized from house search of accused no.6 Saibaba which shows that he is also active member of RDF, a frontal organization of banned organization CPI (Maoist).

99] He submitted that further finding of xerox copy of his election ID card (Art.19) from the personal search of accused no.1 Mahesh Tirki shows that personal search of accused no.1 Mahesh was taken and incriminating articles were found with him. Hence, he submitted that prosecution has proved that accused no.1 Mahesh Tirki and no.2 Pandu Narote were arrested alongwith accused no.3 Hem Mishra on 22.8.2013 at Aheri Bus Stand and personal search of accused no.1 Mahesh Tirki and no.2 Pandu Narote was taken and from their possession their personal and incriminating documents relating to CPI (Maoist) were seized.

100] In respect of accused no.3 Hem Mishra, Spl. P.P. Shri Sathainathan submitted that after taking personal search of accused no.3 Hem Mishra, cash amount of Rs.7,700/-, Railway-ticket from Delhi to Ballarsha dated 19.8.2013, 16 GB memory-card of scandisc company, ATM card of SBI, his pan card, election identity card, membership card of Jawaharlal Nehru University, Delhi, Identity-card, Yatri card, camera of Kodak company with charger and sack in which clothes, cover of spect, white cap, newspaper of Rashtriya Sahara publication of New Delhi dated 19th August, 2013 were found. He submitted that finding of the cap, case cover of spect, newspaper at Article Nos.21 to 30 in possession of accused no.3 Hem Mishra, clearly shows that these things are used by naxal people as identification code to recognize their identity and this fact is also clear from document at page no.90 of Exh.267 filed on record. Further, finding of personal identification documents i.e. election identity card, membership card of Jawaharlal Nehru University, Delhi, PAN card, bank ATM card shows that the personal search of accused no.3 Hem Mishra was conducted and the defence of the accused that nothing was seized from his possession is after thought.

101] He further submitted that both accused no.1 Mahesh and no.2 Pandu in their confessional statement stated that they alongwith accused no.3 Hem Mishra came to Aheri and they were arrested by police. This shows that accused no.3 Hem Mishra was arrested at Aheri bus stand and hence defence of the accused no.3 Hem Mishra that he was arrested on 20-08-2013 at Ballarsha Railway-station is totally falsified and nothing has been brought on record from the cross-examination of P.W.1 Santosh Bawne, P.W.2 Jagat Bhole, P.W.5

Ravindra Kumbhare, P.W.6 Atul Avhad, P.W.7 Apeksha Ramteke, P.W.9 Anil Badgujar, P.W.11 Suhas Bawche, P.W.15 Narendra Dube and P.W.21 Bhavesh Nikam to disbelieve their evidence.

Argument of Advocate Shri Gadling on the point of arrest and seizure in respect of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra

102] Per contra, the learned Advocate Shri Gadling for the accused submitted that the prosecution case is that accused no.1 Mahesh Tirki, accused no.2 Pandu Narote and no.3 Hem Mishra were arrested at Aheri Bus Stand on 22.8.2013 at about 6.00 p.m. However, according to defence accused no.1 Mahesh Tirki, accused no.2 Pandu Narote and no.3 Hem Mishra were arrested on 20.8.2013 at Ballarsha Railway-station. To substantiate the said contention the defence has relied on following circumstances :-

i] P.W.1 Santosh Bawne in his examination stated that police took personal search of accused no.1 Mahesh Tirki, accused no.2 Pandu Narote and no.3 Hem Mishra and from the possession of accused no.1 Mahesh Tirki and accused no. 2 Pandu Narote police seized mobile phones with SIM cards and Investigating Officer P.W.11 Suhas Bawche in his cross-examination also admitted that he had taken out the mobile SIM card of mobile handsets seized from accused no.1 Mahesh Tirki and no.2 Pandu Narote and he applied for the CDR and SDR of the same and received the same but the prosecution has not filed on record CDR and SDR of the mobile SIM card of mobile handsets seized from accused no.1 Mahesh Tirki and

no.2 Pandu Narote inspite of the application filed by the defence at Exh.237 for getting those CDR and SDR. Had the said CDR and SDR of the SIM of the SIM cards of mobile handsets of accused no.1 Mahesh Tirki and no.2 Pandu Narote filed on record by the prosecution, from the said CDR and SDR the defence would have been able to substantiate the case of the defence that accused no.1 Mahesh Tirki and no.2 Pandu Narote were arrested from Ballarsha Railway-station on 20.8.2013 hence adverse inference can be drawn against the prosecution for non-production of CDR and SDR of mobile SIM cards of accused no.1 Mahesh Tirki and no.2 Pandu Narote. In support of his submission he placed reliance on the judgment in case of Tomaso Bruno vs. State of U.P. reported in 2015 (1) Crimes 105 (SC), wherein it is held that -

(b) Criminal trial – Circumstantial evidence – Non-production of CCTV foot-age, non-collection of call record (details) and SIM details of mobile phones seized from the accused – Not mere faulty investigation – Amounts to withholding of best evidence – Section 114(g) – Indian Evidence Act, 1972 – Adverse inference may be drawn against prosecution for not producing the aforesaid details particularly CCTV footage while it could – Prosecution neither examining the doctor declaring the deceased 'brought dead' nor producing the report that was prepared in the emergency ward of the hospital – Not producing death intimation sent to the police. (Para 27, 29, 30)

ii] Panch witness P.W.1 Santosh Bawne in his cross-examination admitted that in July 2014 he had been to Aheri P.S. for one panchanama and he does remember the name of accused in that

case and for what purpose he had been to Aheri Police Station in July, 2014 but this witness had stated the incident which occurred in the year 2013 with exact date and time and name of accused persons. This version is utterly false and cannot be believed.

iii] According to the prosecution in the possession of accused no.3 Hem Mishra Railway ticket from Delhi to Ballarsha dated 19.8.2013 and newspaper Sahara dated 19.8.2013 were found and accused no.2 Pandu Narote was found in possession of Lokmat newspaper dated 20.8.2013. This itself shows that accused no.3 Hem Mishra alongwith accused no.1 Mahesh Tirki and no.2 Pandu Narote were arrested on Ballarsha Railway-station on 20.8.2013 and not on 22.8.2013 at Aheri Bus Stand as alleged by the prosecution. According to the prosecution from the personal search of accused no.1 Mahesh Tirki and no.2 Pandu Narote platform ticket of Ballarsha Railway-station dated 28.5.2013 was found. It is the case of the prosecution that on 22.8.2013 accused nos.1 to 3 were arrested at Aheri Bus stand and accused came there from Ballarsha by S.T. bus but they could not find bus ticket from Ballarsha to Aheri with accused persons, however, they found platform ticket of Ballarsha Railway station dated 28.5.2013. This story is not worth to be relied on.

iv] He submitted that PW.1 Santosh Bawne in his cross-examination admitted that he had no personal knowledge about digital storage media and does not know difference between card-reader, blue-tooth, pen-drive and memory card and he cannot identify the unique identity storage capacity of the different electronic media

appliances but in his examination P.W.1 Santosh Bawne stated that from the possession of accused No.3 Hem Mishra, 16 GB memory card was seized. This shows that he is a tutored witness.

v] He submitted that according to the prosecution offence was registered against accused No.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra at 9-30 p.m. on 22-08-2013 and panchanama Exh.137 was completed before 7-55 p.m., but the F.I.R. number was appearing in panchanama Exh.137 that is before registration of offence. He submitted that on the seized articles the labels bearing crime number is appearing. This shows that panchanama (Exh.137) was prepared after drawing of FIR and panch witness was not present at the time of drawing panchanama at about 6.00 p.m. as alleged by the prosecution.

vi] He submitted that P.W.1 Santosh Bawne in his cross-examination admitted that near Aheri Bus Stand, there is road on both sides and there are pan stalls, tea stalls and hotels near Aheri Bus Stand but inspite of this fact prosecution has not examined independent witnesses and chosen P.W.1 Santosh Bawne who is a stock witness to act as panch as panch P.W.1 Santosh Bawne in his examination stated that he acted as a panch for two times and he is home-guard in Aheri Police Station since last three years and hence he was acting under the thumb of police.

vii] He further submitted that P.W.1 Santosh Bawne panch witness in his examination stated that another panch Umaji was present at the time of panchanama but in the present case on perusal

of panchanama Exh.137 it is clear that the another panch was Narendra Aadkuji Yempalwar and not Umaji. This shows that P.W.1 Santosh Bawne was not present at the time of drawing panchanama Exh.137.

viii] It is the defence of the accused that accused no.1 Mahesh Tirki and no.2 Pandu Narote were arrested at Ballarsha Railway-station and not at Aheri bus stand. According to their defence on 21.8.2013 accused no.1 Mahesh Tirki and no.2 Pandu Narote were not present in Aheri Police Station and police falsely implicated them in this case. In this respect the learned defence Advocate Shri Gadling submitted that according to prosecution from the interrogation with accused no.1 Mahesh Tirki and no.2 Pandu Narote police came to know that accused no.1 Mahesh Tirki and no.2 Pandu Narote handed-over amount of Rs.5 lakhs through P.W.9 Raju Poriya Aram to the member of banned organisation CPI (Maoist) and its frontal organisation RDF at Ballarsha Railway-station at the instance of lady naxal Narmadakka. He submitted that P.W.9 Raju Atram in his cross-examination admitted that when he was called at Aheri Police Station on 21st August 2013, accused no.1 Mahesh Tirki and no.2 Pandu Narote were not present in Police Station, Aheri and the arrest panchanamas of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were alleged to be effected on 22.8.2013. It was argued, this shows that accused no.1 Mahesh Tirki and no.2 Pandu Narote were arrested on earlier date and false arrest panchanamas were prepared showing that accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were arrested on 22.8.2013.

ix] On the point of seizure of 16 GB memory-card allegedly seized from the possession of accused no.3 Hem Mishra he submitted that from the evidence of P.W.4 Shrikant Gaddewar it shows that said memory card was opened by investigating officer P.W.11 Suhas Bawche on 22.8.2013 in his presence. This shows that it was tampered by the prosecution and hence no value can be attached to the report of CFSL Mumbai Exh.266.

103] He submitted that according to P.W.1 Santosh Bawne and no.6 Atul Avhad, P.W.10 Anil Badgujar were present at Aheri Police Station on 22.8.2013, however, on that day P.W.10 Anil Badgujar was not present at the Aheri Police Station though he himself alleged to be present at police station. He invited attention of the Court on para no.7 of cross-examination of P.W.10 Anil Badgujar on this point in which he admitted that the panchanama of personal search of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra show that it was made by different police officers. However, on perusal of panchanama (Exh.227 to 229) in respect of arrest of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra bear the date 23.8.2013 below his signature. This shows that he was not present on 22.8.2013 at Aheri Police Station and he put his signature on 23.8.2013. The explanation given by him that by mistake the date 23.8.2013 was written below his signature but this explanation cannot be accepted as it is not possible that the same mistake would occur for three times. Hence, his explanation is not worth to be relied upon.

104] He submitted that in para 7 of Exh.226 of cross-examination P.W.10 Anil Badgujar admitted that he was the in-charge of Police Station, Aheri till 25.8.2013 and entire investigation of this case was done by him till 25.8.2013 and further investigation was handed over to P.W.11 Suhas Bawche. Not only this, this witness stated that he came to know that 16 GB memory-card was protected by password only when it was sent to CFSL and 16 GB memory-card sent to CFSL on 25.8.2013, that means till 25.8.2013 this witness was not knowing that the 16 GB memory-card was password protected. In PCR dated 23.8.2013 in para no.2 it is mentioned that some files in 16 GB memory card were password protected. It seems that memory-card was opened before sending it to CFSL. Hence adverse inference can be drawn that police manipulated or planted 16 GB memory-card. Once the memory-card was played on the computer the importance of CFSL report has become valueless.

105] He submitted that P.W.5 Ravindra Kumbhare in his examination at Exh.210 has stated that on 31.8.2013 he came to Police Station, Aheri alongwith mirror images of 16 GB memory-card, however, in the cross-examination he stated that he came to Aheri Police Station on 1.9.2013. He submitted that 16 GB memory-card was deposited by P.W.5 Ravindra Kumbhare on 1.9.2013 and P.W.11 Suhas Bawche stated in his examination at para no.4 of Exh.235 that after opening the 16 GB memory-card they copied the file that is why panchanama in respect of 16 GB memory-card was prepared on 31.8.2013. He argued that this shows that all files in 16 GB Memory-Card are tampered.

106] He submitted that P.W.11 Suhas Bawche in his examination at Exh.235 stated that as per oral directions of the then Superintendent of Police, Gadchiroli he received investigation in this crime on 23.8.2013 and this oral testimony of P.W.11 Suhas Bawche is contradictory to the testimony of P.W.10 Anil Badgujar who in his cross-examination admitted that he was incharge of investigation of this crime till 25.8.2013 but letter of Superintendent of Police dated 25.8.2013 Exh.238 shows that P.W.11 Suhas Bawche was directed to investigate this crime on 25.8.2013 and as per P.W.11 Suhas Bawche he received investigation on 23.8.2013. Hence, testimony of P.W.11 Suhas Bawche is not believable.

Conclusion on the point of arrest and seizure in respect of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra

107] Main defence of the accused no.1 Mahesh Tirki, accused no.2 Pandu Narote and no.3 Hem Mishra were arrested from Ballarsha railway-station on 20.8.2013 and not on 22.8.2013 as alleged by the prosecution and nothing was seized from their possession and everything was planted. On this point, firstly, defence has drawn attention of the Court to the testimony of panch witness P.W.1 Santosh Bawne. According to defence this witness is Home-Guard at Aheri Police Station since last three years, hence, he is acting under the thumb of police. Further, this witness is a tutored witness and he is not remembering the incident occurred in July 2014 but he is exactly stated the date of panchanama, name of the accused, when he had been to Aheri Police Station in the year 2013. Further, this witness in his cross-examination admitted that there are pan stalls,

tea stalls and hotels near Aheri Bus Stand but inspite of this fact prosecution has not examined independent witnesses and chosen P.W.1 Santosh Bawne who is a stock witness to act as panch as panch P.W.1 Santosh Bawne in his examination stated that he acted as a panch for two times. Further, this witness in his cross-examination admitted that he had no personal knowledge about the digital storage media and does not know difference between card-ride, blue-tooth, pen-drive and memory card and he cannot identify the unique identity storage capacity of the different electronic media appliances but in his examination P.W.1 Santosh Bawne stated that from the possession of accused No.3 Hem Mishra, 16 GB memory card was seized. This shows that he is a tutored witness.

108] It is well settled that merely because independent witnesses though available not chosen and examined is not a ground to disbelieve the evidence of stock witness as P.W.1 Santosh Bawne in his cross-examination admitted that he has acted as a panch for 2 to 3 times. At this juncture, it is necessary to consider ratio laid down by the Bombay High Court in Criminal Appeal No.742 of 1988, decided on 3.12.2001 in the case of Chandbi w/o Mustaq Shaikh vs. State of Maharashtra, in which it is observed that -

B. Evidence Act, 1872, Section 3 – Criminal trial – Appreciation of evidence – Habitual panch – He had acted as a panch in 3/4 cases – Acting as panch in two earlier cases, would not amount to acting as professional panch or habitual panch of police – Since he could not termed as habitual witness of police nor could be termed as professional panch.

109] Further, the Apex Court in case of **Gian Chand and others .v. State of Haryana** reported in **(2013) 14 Supreme Court Cases 420** observed that non-examination of independent witness is not fatal to the prosecution case if case is proved otherwise and it was further observed that evidence of police officer can be relied if it is found to be reliable and does not suffer from infirmities.

110] It is well settled that minor contradictions and omissions cannot go to the root of the case. Even the prosecution witness makes false statement on particular part but the statement on other part is reliable then he can be believed on that other part and conviction can be based. The principle of “falsus in uno falsus in omnibus” is not applicable in India. At this juncture it is necessary to consider the ratio laid down by the Apex Court in the case of **Gunnana Pentayya vs. State of A.P. Reported in 2008 BHCCO 1910 in Criminal Appeal No.292 of 2006, decided on 20th August, 2008,** in para 15 the Apex Court observed that -

E. Maxim “falsus in uno falsus in omnibus” – It has no application in India—Even if major portion of evidence found to be deficient, residue if found sufficient to prove guilt, conviction can be sustained.

111] It is to be noted that panch witness P.W.1 Santosh Bawne in his examination-in-chief stated that three naxal pamphlets were seized from the possession of accused no.1 Mahesh Tirki and this fact is also mentioned in the panchanama Exh.137. The omission regarding the fact that those pamphlets were found in the '**hand**' of accused no.1 Mahesh Tirki was brought on record. The omission is in respect of word '**hand**' only. This fact is also deposed by the

informant P.W.no.6 Atul Avhad and P.W.10 Anil Badgular and there is a evidence of muddemal Clerk of Aheri Police Station P.W.13 Ganesh Rathod who in his examination stated that these three pamphlets were brought in Aheri Police Station for depositing the same in Malkhana of Police Station by P.W.10 Anil Badgular, however, those were returned by P.W.13 Ganesh Rathod Muddemal Clerk to P.W.10 Anil Badgular for attaching the same alongwith Charge-Sheet and this fact is reflected in the extract copy of Muddemal register at Exh.276A. The Muddemal Clerk P.W.13 Ganesh Rathod admitted at one stage that it is mentioned in the register but at another stage he admitted that it is not mentioned in the register. However, on perusal of entry in Muddemal register at Exh.276A it reveals that there is an Entry no.12/2013 dated 22.8.2013 that the Muddemal i.e. three pamphlets were deposited in the Crime no.3017/2013 and from this entry it is reflected that three pamphlets were handed-over by Muddemal Clerk P.W.13 Ganesh Rathod to P.W.10 Anil Badgular for filing alongwith Charge-Sheet. In view of this as there is clear evidence about the seizure of three naxal pamphlets from the possession of accused no.1 Mahesh Tirki, the said three naxal pamphlets can be read in evidence.

112] At this juncture, it is necessary to consider the ratio laid down in the case of **Ashish C. Shah v. M/s. Sheth Developers Pvt. Ltd. and Ors** reported in **2011 Cr.L.J. 3565** wherein it is observed in para 12 that -

(E) Evidence Act (1 of 1872) , S.135 - Examination of witnesses - Prosecution can never ask accused to enter into witness box as witness of prosecution - It is against basic principles of criminal jurisprudence.
(Para 12)

“Para 12. The learned Counsel for the petitioner vehemently contended that the document could not be admitted in evidence unless author of the same was examined before the Court and in support of this contention, he relied upon Vishwanath Rai v. Sachhidamand Singh, AIR 1971 SC 1949. In that case, witness of one party deposed that a letter written by one S to him had been received by him. The Supreme Court held that burden lies on other side to prove its allegation that the letter was not written by S or that it was written in collusion with S and the witness. However, the Supreme Court also held that the letter is relevant and admissible to the extent of the fact that S wrote such a letter to the witness with its contents. However, correctness of the contents of the letter would be proved only by examining S as a witness because he was the author. In the present case, the author and signatories of the above referred two letters are accused Nos. 1 and 2. The letters purporting to have been signed and sent by them were received by the Managing Director of the complainant and this fact is deposed to by witness Sharad Doshi. In view of this, if the accused persons allege that the said letters were not signed and sent by the accused persons, burden lies on them to prove the same. The contention of the learned Counsel that the contents of this document and the truth for the same cannot be proved without examining the author of the same is against the basic principles of criminal jurisprudence, because prosecution can never ask the accused to enter into witness box as a witness of prosecution. In fact, the accused cannot be called in the witness box even as defence witness unless he makes a written request for the same. Not only this, even in the statement under Sec. 313, Cr.P.C. wherein the incriminating circumstances are required to be put to the accused to enable him to explain the same, the accused is not bound to answer those questions, though the Court may draw adverse inference against him if he keeps quiet. In such circumstances, to suggest that the document written by and signed by the accused

could not be proved without examining the accused as witness of the prosecution is against the settled position of law and therefore this contention of the learned Counsel for the petitioner is liable to be rejected.

113] The accused No.1 Mahesh Tirki has not given plausible explanation about the possession of three pamphlets with him in his statement under section 313 of Code of Criminal Procedure and in view of judgment of **Bombay High Court in the case of Ashish C. Shah v. M/s. Sheth Developers Pvt.Ltd. And Ors, reported in 2011 Cr.L.J.3563** cited supra those 3 naxal pamphlets found in possession of accused no.1 Mahesh Tirki can be read in evidence.

114] From the possession of accused no.1 Mahesh Tirki, three pamphlets (Arts.139 to 141) were seized. On perusal of those pamphlets, it reveals that -

i] **Art.139** is a pamphlet issued by Bhakapa (Maowadi), (Gadchiroli Division) making allegations against the decision of the Government to destroy the life of Aadiwasis and shows that there was oppose to the Government policies implemented in the Gadchiroli district i.e. implementation of Surjagad Project and Green Hunt Operation showing hatred towards the Government.

ii] **Art.140** is a pamphlet issued by Bhumkal Johar Te Dandakaryanya Special Zonal Committee, Bhakapa (Maowadi), titled as, "Amar Shahidirku Lal Salam"

iii] **Art.141** is a pamphlet issued by Bhartachi Communist Party (Maowadi), Maharashtra Rajya Samiti titled as 'राख सांभाळून ठेवा राख झालेल्यांची, संपली नाही लढाई अजुन खैरलांजीची' and at the end it is mentioned that 'खैरलांजी हत्याकांडाच्या सुत्रधारांना पाठीशी घालणारे, पोलिसांद्वारे दलितांच्या हत्या करणारे, दलितांत दहशत पसरविणारे महाराष्ट्र शासन मुर्दाबाद !.. नवजनवादी क्रांति जिंदाबाद'

115] On perusal of **Art.139** issued by Bha.Ka.Pa. (Maowadi), (Gadchiroli Division) it reveals that there was oppose to the Government policies implemented in the Gadchiroli district i.e. implementation of Surjagad Project and Green Hunt Operation showing hatred towards the Government. **Art.140** issued by Bhumkal Johar Dandakarnya Special Zonal Committee, CPI (Maoist) offered condolence in favour of naxals who died at the hands of police and further from the pamphlet **Art.141** of CPI (Maoist), Maharashtra Rajya Samiti, it reveals that it has opposed the Maharashtra Government on the issue of Khairlanji matter and at the end of this pamphlet the slogan "Navajanwadi Kranti Jindabad" is seen and the name of Krantikari Janwadi Morcha (RDF) is in Hindi which is a document of Revolutionary Democratic Front (RDF) in English as mentioned in the Article No.159 which is a Manifesto retrieved from the hard-disk seized from the house search of accused no.6 Saibaba which appears to be used by the members of banned organization CPI (Maoist) and its frontal organization RDF in many videos of RDF conference and documents found in electronic gadgets like hard-disks, CDs, DVDs, pen-drives which were seized from house search of accused no.6 Saibaba which shows that accused no.1 Mahesh Tirki and accused no.2 Pandu Narote are the active members of CPI

(Maoist) and its frontal organization RDF and they handed over amount of Rs.5 lacs through P.W.9 Raju Atram to the member of banned organisation CPI (Maoist) and its frontal organization RDF at Ballarsha Railway-station at the instance of lady naxal Narmadakka.

116] Defence has attacked on the ground that P.W.1 Santosh Bawne is a stock witness who stated exact date and time of the panchanama Exh.137 and the fact that 16 GB memory-card was seized from the possession of accused no.3 Hem Mishra and he was not having knowledge about the digital storage media but he stated that 16 GB memory-card was seized from the possession of accused no.3 Hem Mishra. It is important to note that in the panchanama at Exh.137 it is specifically mentioned that 16 GB memory-card of Sandisk Company was seized from the possession of accused no.3 Hem Mishra and P.W.1 Santosh Bawne has stated about the contents of panchanama. Hence this can not be a ground to disbelieve the evidence of P.W.1 Santosh Bawne on this point.

117] According to defence this witness was not present at the time of panchanama as the accused were arrested at Aheri bus stand at 5.45 p.m. and thereafter they were taken to Aheri Police Station and panchanama was prepared at 6.00 p.m. and the FIR was registered at 9.30 p.m. and on the seized articles labels bearing crime number is appearing. It is to be noted that it is the case of the prosecution that after the arrest of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra at Aheri bus stand they were taken to Aheri Police Station and initially panchanama of seizure was prepared and thereafter FIR was registered. Merely because the

crime number was put on the labels affixed on the seized articles is not a ground to draw inference that panchanama was drawn after registration of offence.

118] The defence tried to bring some inconsistencies in the evidence of PI P.W.10 Anil Badgajar, P.W.1 Santosh Bawne and P.W.6 Atul Avhad on the ground that they were not present in Aheri Police Station. These are the minor contradictions in the testimony of this witness and those do not go to the root of the case. Hence, their testimonies cannot be disbelieved on this point. Further, P.W.10 Anil Badgajar has given explanation about the fact that by mistake he has written the date 23.8.2013 in the FIR. Hence, the defence cannot make use of it.

119] According to the defence, P.W.9 Raju Atram in his cross-examination admitted that on 21st when he had been to the Aheri Police Station accused no.1 Mahesh Tirki and no.2 Pandu Narote were not present there and he was taken in Police Station as police came to know from interrogation of accused no.1 Mahesh Tirki and no.2 Pandu Narote that he handed-over Rs.5 lacs received from Narmadakka at Ballarsha railway-station. This shows that accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were arrested before 22.8.2013 from Ballarsha railway-station and not from Aheri bus stand as alleged by the prosecution.

It is necessary to reproduce the portion of cross-examination of P.W.9 Raju Atram as under :

“I was taken in P.S. as police came to know from interrogation of accused that I handed over Rs. 5 lack received from Narmadakka at Ballarsha Railway

Station. Thereafter, I was released from P.S. On the next day I was again called for recording my statement. My statement was recorded by SDPO Bawche. Thereafter again on 14-9-2013 I was called at Police Station. When on 21st I was again called in P.S. at that time, Pandu and Mahesh were not present in the Police Station.”

120] On going through the relevant portion of cross-examination of P.W.9 Raju Atram it is clear that this witness has not specifically stated the date when police came to know from interrogation of accused that he handed over Rs.5,00,000/- from Narmaddakka at Ballarsha Railway-station. He has not given the date when he came to know this fact and he specifically denied that when on 21st he was again called in police station at that time accused no.1 Mahesh Tirki and no.2 Pandu Narote were not present in police station which shows that till 21st he was not knowing this fact. From this it reveals that accused no.1 Mahesh Tirki, no.2 Pandu Narote and no. 3 Hem Mishra were arrested on 22.08.2013 and apart from the evidence of prosecution witnesses i.e. the informant P.W.6 Atul Avhad and Police Inspector P.W.10 Anil Badgugjar, it gets corroboration from the confessional statement of accused no.1 Mahesh Tirki and no.2 Pandu Narote at Exh.280 and 286, wherein they stated that they alongwith accused no.3 arrested at secluded place near Aheri Bus Stand on 22.08.2013 and hence, the version of defence that the accused no.1 to 3 were arrersted on 20.08.2013 at Ballarsha Railway-station is not acceptable.

121] According to defence 16 GB memory-card of Sandisk company allegedly seized from the possession of accused no.3 Hem Mishra was tampered by the police but Investigating Officer P.W.11

Suhas Bawche in his cross-examination stated that he did not see the data in the memory-card by opening it on computer or laptop and he was not knowing the fact that the data in memory-card was protected by password and he came to know about the same when the memory-card was sent to CFSL. Further, P.W.11 Suhas Bawche in his examination-in-chief stated that while interrogating with accused no.3 Hem Mishra he came to know that some files were protected with unique password and P.W.10 Anil Badgujar stated that he did not see the data in the memory card by opening it on computer or laptop and he was not knowing the fact that the data in memory card was protected by password and he came to know about the same when the memory card was sent to CFSL. Hence, the contention of the defence that 16 GB memory-card was tampered cannot be accepted.

122] It is not disputed by the defence that accused no.3 Hem Mishra had been to Ballarsha Railway Station. Further seizure of 16 GB memory-card under seizure panchanama Exh.137 the same was deposited with Muddemal Clerk P.W.13 Ganesh Rathod of Aheri Police Station and to that effect there is entry in muddemal register at Exh.276A wherein it is mentioned that 16 GB memory-card of Sandisk company alongwith other property seized from accused no.3 Hem Mishra was deposited in Malkhana of Aheri Police Station on 22.8.2013. Hence, this was carried out promptly. Further on examination of 16 GB memory-card done by CFSL, Mumbai it was found that data contained in some folders and files in 16 GB memory-card was password protected. Had the Investigating Officer wanted to manipulate or fabricate the data contained in 16 GB memory-card he would not have inserted password protected files in that 16 GB

memory-card. In cross-examination suggestion was given by the defence to Investigating Officer P.W.11 Suhas Bawche and he admitted that he did not see the data in the memory card by opening it on computer or laptop and he was not knowing the fact that the data in memory card was protected by password and he came to know about the same when the memory card was sent to CFSL. Hence, it is clear that he did not open the memory-card on the computer and therefore he does not know the fact the memory-card was protected by password and therefore it can be said that there is no manipulation and fabrication in the 16 GB memory-card.

123] According to the defence CDR and SDR of mobile SIM cards of accused no.1 Mahesh Tirki and no.2 Pandu Narote were taken and this fact is admitted by the Investigating Officer P.W.11 Suhas Bawche and inspite of the application filed by the defence at Exh.237 for getting those CDR and SDR the prosecution has not produced the same on record and hence adverse inference can be drawn against the prosecution. In support of his submission he placed reliance on the judgment in case of **Tomaso Bruno vs. State of U.P reported in 2015 (1) Crimes 105 (SC)**, wherein it is held that -

(b) Criminal trial – Circumstantial evidence – Non-production of CCTV foot-age, non-collection of call record (details) and sim details of mobile phones seized from the accused – Not mere faulty investigation – Amounts to withholding of best evidence – Section 114(g) – Indian Evidence Act, 1972 – Adverse inference may be drawn against prosecution for not producing the aforesaid details particularly CCTV footage while it could – Prosecution neither examining the doctor declaring the deceased 'brought dead' nor producing the

report that was prepared in the emergency ward of the hospital – Not producing death intimation sent to the police. (Para 27, 29, 30)

124] It is important to note that the mobile phones having SIM cards were belonging to accused no.1 Mahesh Tirki and no.2 Pandu Narote and they must be having knowledge about the company of which SIM card they are using alongwith their numbers. Hence, they could have applied for the CDR and SDR of said SIM cards belonging to them and produced the same on record but this was not done by the accused and merely because the prosecution has not produced the CDR and SDR of mobile SIM cards of accused no.1 Mahesh Tirki and accused no.2 Pandu Narote, the adverse inference cannot be drawn against the prosecution.

125] According to the defence, the newspaper Sahara dated 19-8-2013 was found in possession of accused no.3 Hem Mishra and newspaper Lokmat dated 20-8-2013 was found in possession of accused no.2 Pandu Narote. This shows that accused were arrested on 20.8.2013. However, merely because the accused persons were found in possession of newspapers dated 19-8-2013 does not mean that they were arrested on 20-8-2013. According to the prosecution, newspaper is used as identification code by the members of banned organization and this fact is very clear from the document at page no.90 of Exh.267 wherein it is mentioned that bananas and newspapers are used as identification code by the members of CPI(Maoist). Hence, the version of the prosecution appears to be more probable than the defence.

126] According to defence API Atul Avhad (P.W.6) in para no.10 of cross-examination admitted that some portion of printed FIR was kept blank and he signed on that thereafter and the carbon copy of printed FIR might have been prepared and he cannot say whether the entries in Column 3 Sub clause (b) & (c) are in different ink and the writer is also different and the entry in Column 3(b)(c) are written subsequently and in Column 3 clause (c) there are some overwriting and in the carbon copy the year is written by carbon but in general diary entry is written in handwriting and the said three entries are of different ink and he does not remember whether the entire FIR was scribed and then these three entries were written. From this it has brought on record that he left some spaces blank in the FIR which shows that FIR was anti-time and he wanted to fill-up those blank spaces lateron. Hence, there is fabrication in respect of the same.

127] On perusal of evidence of confessional statements of accused no.1 Mahesh and no.2 Pandu which is corroborated by the evidence of P.W.9 Raju Atram, it reveals that accused no.1 Mahesh and no.2 Pandu received accused no.3 Hem Mishra who came from Delhi at Ballarsha Railway Station and brought him to Aheri by bus and then accused no.1 Mahesh and no.2 Pandu alongwith accused no.3 Hem Mishra were arrested near the bus stand at Aheri on 22.08.2013 and not 20.08.2013 and thereafter they were brought to Police Station, Aheri and in presence of panch witness Santosh Bawne (P.W.1) personal search of accused no.3 Hem Mishra was conducted and from his possession cash amount of Rs.7,700/-, Railway-ticket from Delhi to Ballarsha dated 19.8.2013, 16 GB memory-card of scandisc company, ATM card of SBI, his pan card, election identity

card, membership card of Jawaharlal Nehru University, Delhi, Identity-card, Yatri card, camera of Kodak company with charger and sack in which clothes, cover of spect, white cap, newspaper of Rashtriya Sahara publication of New Delhi dated 19th August, 2013 were found and seized and whatever the corrections were made in FIR was because of oversight or by mistake and not intentional and hence FIR is not anti-time. Though the minor contradictions and discrepancies are brought on record in the evidence of P.W.10 Anil Badgujar, they are not material in view of judgment of Apex Court in the case of **Rohtash Kumar vs. State of Haryana reported in 2013 Cri.L.J. 3183.**

128] It is important to note that from the personal search of accused no.1 Mahesh Tirki incriminating articles like mobile, three pamphlets regarding the naxal literature, platform ticket of Ballarsha railway-station dtd.28-05-2013 alongwith his personal documents like his election identity card were seized and from the possession of accused no.2 Pandu Narote incriminating articles like platform ticket of Ballarsha railway station, Lokmat Marathi newspaper, umbrella were seized alongwith his personal documents like his SBI pass-book, his birth certificate and birth certificate of his daughter, bonafide certificate of his daughter and he himself, caste certificate, domicile certificate, pan card, his election identity card, registration certificate of vehicle bearing No.MH-33/K-9656 were seized.

129] It is to be seen that whether the prosecution has established the fact that accused no.3 Hem Mishra was found alongwith accused no.1 Mahesh Tirki and no.2 Pandu Narote and

from his personal search the articles 16 GB memory-card of Sandisk company, cash of Rs.7,500/-, Kodak Camera alongwith charger, cloth bag, white cap, one spec case of black colour, one newspaper of Sahara, dated 19-8-2013, clothes, pan-card, two identity cards of JNU University, one SBI ATM card, one travel card of Delhi Metro, one Delhi to Ballarsha Railway-ticket dated 19.8.2013 and xerox copy of election identity card i.e. Arts.21 to 38 were seized. All these articles were identified by the panch witness P.W.1 Santosh Bawne, P.W.6 Atul Avhad and P.W.10 Anil Badgujar. Finding of the articles cap, case cover of spec, newspaper at Article Nos.21 to 30 in possession of accused no.3 Hem Mishra, clearly shows that these things are used by the members of banned organization CPI (Maoist) as a code to recognize their identity. Further this fact has been reflected from the page no.90 of document at Exh.267. It is a document found in the hard-disk seized from the house search of accused no.6 Saibaba. It shows that members of banned organization CPI (Maoist) are using banana, cap, newspaper as identification code and from the possession of accused no.3 Hem Mishra Kodak camera alongwith charger was seized and in the internal memory of said camera photograph of accused no.6 Saibaba and photographs of 16 GB, 18 GB and 32 GB memory-cards were found and the related questions were also put to the accused no.3 Hem Mishra in his statement u/s 313 of the Code of Criminal Procedure, but he merely denied the same. From the above, it is clear that the members of banned organization are using electronic gadgets by storing the information of banned organization CPI (Maoist) in text, audio and video form and for circulating the same to the members of banned organization CPI (Maoist) and its frontal organization RDF.

130] On perusal of evidence of Investigating Officer Suhas Bawche (P.W.11), Anil Badgajar (P.W.10), informant Atul Avad (P.W.6), and Santosh Bawne (P.W.1) which is corroborated by confessional statement of accused no.1 Mahesh Tirki and no.2 Pandu Narote, prosecution has proved that accused no.3 Hem Mishra was found at Aheri Bus Stand alongwith accused no.1 Mahesh Tirki and no.2 Pandu Narote and his personal search was taken in presence of Santosh Bawne (P.W.1) and 16 GB memory card of Sandisk company was seized from his possession and nothing has been brought on record from the cross-examinations of these witnesses to disbelieve their evidence about seizure of 16 GB memory-card of Sandisk company from the possession of accused no.3 Hem Mishra. Hence, prosecution has proved the seizure of 16 GB memory-card of Sandisk Company from the possession of accused no.3 Hem Mishra. Further accused no.1 Mahesh Tirki and no.2 Pandu Narote in their confessional statements stated that on 22.8.2013 when they alongwith accused no.3 Hem Mishra standing near Aheri Bus Stop they were arrested and they were taken to Police Station. Finding of incriminating articles umbrella and newspaper alongwith their personal documents like election identity card, bank pass-book, bonafide certificate, caste certificate clearly shows that they were arrested and from their possession above incriminating articles i.e. three naxal pamphlets were seized. As such prosecution has proved that on 22.8.2013 accused were arrested near Aheri Police Station and from their personal search of accused nos.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra above discussed articles were seized.

Argument of Spl. P.P. Shri Sathainathan on the point of Confession in respect of accused no.1 Mahesh Tirki, no.2 Pandu Narote

131] The learned Spl. P.P. Shri Sathainathan submitted that on 28.5.2013 accused no.1 Mahesh Tirki and accused no.2 Pandu Narote had been to Ballarsha Railway Station alongwith P.W.9 Raju Atram to handover amount of Rs.5 lacs to a member of banned organization CPI (Maoist) coming from Delhi as per the directions of lady naxal Narmadakka and from the evidence of P.W.9 Raju Atram it is established that on 27th of that month accused no.1 Mahesh and no.2 Pandu had been to him to Alapalli and they told him that he was called by naxal Narmadakka. P.W.9 Raju alongwith accused no.1 Mahesh and no.2 Pandu had been to Narmadakka and Narmadakka handed-over him amount of Rs.5 lacs and directed him to go to Ballarsha Railway-station alongwith accused nos.1 Mahesh and no.2 Pandu and hand-over said amount of Rs.5 lacs which he had brought from Narmadakka to one person who was coming to Ballarsha Railway-station and on next day i.e. on 28.5.2013 he left for Ballarsha and in the confessional statements, accused no.1 Mahesh and no.2 Pandu stated that they had to receive two persons on 28.5.2013 and on 29.5.2013 at Ballarsha Railway-station as directed by Narmadakka and this fact is corroborated from the confessional statements of accused nos.1 Mahesh and no.2 Pandu recorded by J.M.F.C., Aheri P.W.12 Nileshwar Vyas.

132] He further submitted that P.W.12 Nileshwar Vyas, Judicial Magistrate, First Class, Aheri recorded the confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote wherein they confessed before him that in the month of May, 2013 during

Tendupatta season accused no.2 Pandu Pora Narote met accused no.1 Mahesh and told that accused no.1 Mahesh and accused no.2 Pandu both were called by Narmadakka in village Todgatta and both of them at about 3-00 p.m. reached in village Todgatta and nearby four naxal persons alongwith weapon were present there and they took them at the foot of one hill in the forest area where absconding accused Narmadakka naxalite was present and she asked accused Mahesh that he should go along with Pandu Narote on 28th May 2013 to Ballarsha Railway Station and thereafter, on 28th May 2013 Pandu and Mahesh reached at Ballarsha Railway Station at 10-00 a.m. and at that time, two persons reached there and accused no.2 Pandu Narote went alongwith them on the same day and accused no.1 Mahesh Tirki stayed there because he was told by Narmadakka that on 29th May 2013 one Raju Atram hailing from Alapalli would come to Ballarsha Railway Station to give Rs.5,00,000/- and said amount was to be given to one person who would come from Delhi. He further submitted that on 29th May, 2013 at about 9-00 a.m. accused no.2 Raju Atram and accused no.1 Mahesh were sitting in the waiting room, two persons came there and after identification, P.W.9 Raju gave the amount to that person and he went away.

133] He further submitted that P.W.12 Nileshwar Vyas was cross-examined at length but nothing was elicited from his cross-examination to disbelieve his evidence and hence his evidence is worth to be relied upon on the point of confession. He submitted that though accused no.1 Mahesh and no.2 Pandu vide application (Exh.292) retracted the confession made before J.M.F.C., Aheri (P.W.12 Vyas) but it is well settled that the retracted confession can be believed if it is corroborated on material particulars, and it is duly

corroborated by the evidence of P.W.9 Raju Poriya Atram. In support of his submission he placed reliance on the following Judgments :-

i] **Ram Prakash v. State of Punjab reported in AIR 1959 Supreme Court 1 (V 46 C 1)** in which it is held that -

(a) Evidence Act (1872), S. 30 – Scope – Retracted confession of co-accused – Admissibility against other accused – Value to be attached to such confession – Necessity – Extent of corroboration required.

ii] **Hukma and another v. State of Rajasthan reported in 1976 CRI. L. J. 1480 (Rajasthan)** wherein it is held that -

It is no doubt true that as a general rule or practice it is unsafe to rely on a confession muchless on a retracted confession unless the Court is satisfied that retracted confession is true and voluntarily made and has been corroborated in material particulars.

134] He submitted that Magistrate P.W.12 Nileshwar Vyas has followed due procedure of law while recording confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote and Magistrate P.W.12 Nileshwar Vyas specifically stated in his evidence that he has taken precaution that both the accused persons i.e. accused no.1 Mahesh Tirki and no.2 Pandu Narote and police were not audible and visible to each other while recording confessional statements and hence confessional statements made by accused is substantial piece of evidence. In support of his submission he placed reliance on the judgment of **Division Bench** in case of **The State of Maharashtra v. Anil alias Raju Namdeo Patil reported in 2006(2) AIR Bom R 513 (DB) 1959 Supreme Court 1 (V 46 C 1)** in which it is held that -

(C) Criminal P. C. (2 of 1974), S. 164 – Confessional statement of accused – Recorded by Magistrate after following prescribed procedure – No police officer was present at that time – Confessional statement would be substantial piece of evidence.

135] He further placed reliance on the judgment of **Madras High Court** in case of **Sivakumar and another v. State** reported in **2003 CRI. L. J. 3690** wherein it is held that -

(A) Evidence Act (1 of 1872), S. 24 – Criminal P. C. (2 of 1974), Ss. 164, 313 – Retracted confession – Reliability – Statement of accused was voluntary in nature – Magistrate taking all precautions and recording it after satisfying himself that statement was voluntary in nature – It is reliable. 1978 Cri LJ 1251(SC), Rel.on (Paras 18,19)

136] He further submitted that after filing application by the Investigating Officer for recording confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote, on 2.9.2013 Magistrate P.W.12 Nileshwar Vyas before recording confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote asked them whether they wanted to give reflection time to think over and after personal verification both the accused showed their willingness about confession of their guilt and hence he had given reflection time to the accused till 4.9.2013 and again till 6.9.2013 and thereafter on 6.9.2013 he recorded the confessional statement of accused no.1 Mahesh Tirki and same procedure was adopted by the Magistrate for accused no.2 Pandu Narote and the said fact was stated by P.W.12 Nileshwar Vyas in his evidence and he satisfied himself that the confessional statements made by the accused were voluntary in nature. Hence, it appears that Magistrate has given sufficient reflection time to the accused for recording their statements.

137] In support of his submission he placed reliance on the judgment of Orissa High Court in case of Jotish Roy v. The State reported in 1982 CRI. L. J. 269 wherein it is held that -

(B) Criminal P.C. (2 of 1974), S. 164 – Confession – Sufficient time given to accused to reflect and free his mind from any possible influence of police – Confession in such circumstances would be voluntary in nature. [Evidence Act (1872), S.29].

(C) Penal Code (45 of 1860), S. 300 – Murder case – Conviction of accused on basis of retracted confession without corroboration – Not illegal. [Criminal P. C. (2 of 1974), S. 164]. [Evidence Act (1872), S. 29]

138] He submitted that accused no.2 Pandu in his confessional statement (Exh.286) stated that since last twenty years he was working for naxal and at the instance of naxal Narmadakka earlier to the incident he had supplied radio, torch to the naxal for which he received money from naxal and that his conduct of helping the naxalites and members of banned organisation CPI (Maoist) and its frontal organization RDF and knowingly facilitating them in their activities since several years show that he had been acting for them. Hence, the provisions of Section 13, 18, 20, 38, 39 of the Unlawful Activities (Prevention) Act, 1967 r/w Section 120 B of the Indian Penal Code are clearly attracted to accused no.1 Mahesh and no.2 Pandu.

Argument of Ld. Advocate Shri Gadling for Accused no.1 Mahesh Tirki and no.2 Pandu Narote on Confession

139] Per contra, the learned Advocate Shri Gadling for the accused submitted that prosecution has relied on the illegal confessional statements made by accused no.1 Mahesh Tirki and no.2 Pandu Narote. He submitted that confessional statements made by accused no.1 Mahesh Tirki and no.2 Pandu Narote were recorded under the threat and pressure of police and not made voluntarily and hence it can not be believed. To substantiate this defence he submitted that Magistrate P.W.12 Nileshwar Vyas who allegedly recorded confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote stated in his examination-in-chief that accused no.1 Mahesh Tirki and no.2 Pandu Narote were produced before him on 23-8-2013 and they were remanded to MCR on 2-9-2013 and on the same day P.W.11 Suhas Bhawche made application for recording the confessional statement of accused persons and on that day he has not recorded their statements as he wanted to give them reflection time to think over and on 4.9.2013 accused persons were produced by the police who were not connected with investigation of this case. He submitted that this was the subjective satisfaction of the Magistrate P.W.12 Nileshwar Vyas and there is no material on record that those police officers were not connected with the investigation of the case rather there is evidence to show that the police officers who produced the accused were very well connected with the investigation of this case.

140] On this point he placed reliance on para no.23 of the deposition of Investigating Officer P.W.11 Suhas Bawche at Exh.235 in which he stated that accused were taken to SP office, Gadchiroli, DIG office Gadchiroli and Naxal cell, Gadchiroli for interrogation purpose. This shows that all Police Officers of Gadchiroli area were connected with the investigation of the case. He submitted that P.W.12 Nileshwar Vyas stated that both accused were produced before him by HC Anwar Qureshi B.no.1163. This shows that all the time accused were in the custody of Aheri Police Station and police officers of Aheri Police Station are interested in recording confessional statements of accused persons and they were connected with investigation of crime.

141] He submitted that Magistrate P.W.12 Nileshwar Vyas in his examination stated that on 6-9-2013 for want of time he could not record the statement of no.2 Pandu Pora Narote and on the same day, Investigating Officer P.W.11 Suhas Bawche has given an application that from 9-9-2013 onwards they would be engaged in Ganesh Festival and etc and due to law and order problem, they would not be able to produce the accused no.2 Pandu Narote and they sought permission in writing to produce the accused on 8-9-2013 and after reading application and considering the prevailing circumstances therein he made an order that accused be produced on 8-9-2013 and on 8-9-2013 at about 3-30 p.m. accused was produced before him for recording his statement. From this para it is clear that P.W.12 Nileshwar Vyas directed the Aheri Police to produce accused no.2 Pandu on 8.9.2013 at the instance of Aheri Police Station only and he was not acting independently.

142] At this juncture, learned Advocate Shri Gadling pointed out the fact that in the deposition of P.W.12 Nileshwar Vyas at para no.5 where the word “guard” was typed there should be some correction and at the same time Marathi deposition should be considered and in the Marathi deposition it is mentioned that “Whether the guard was connected with the case?”. The learned Spl.PP. Shri Sathainathan admitted the same and prayed for correction as per Marathi deposition and Advocate Shri Gadling for the accused showed no objection for the same. Hence, correction was made by inserting the word “Whether”.

143] He pointed out at page no.9 of the deposition of P.W.12 Nileshwar Vyas at Exh.277 on last three lines wherein it is mentioned that accused nos.1 to 3 alighted at Aheri bus stand and they were making gossip with each other at the bus stand. He submitted that according to P.W.6 API Avhad accused no.1 Mahesh and no.2 Pandu were standing at secluded place and accused no.3 Hem came there afterwards and alleged confessional statement given by accused no.2 Pandu does not indicate that accused nos.1, 2 and 3 came together at Aheri bus stand. This shows contradiction in the evidence of P.W.6 API Avhad and alleged confessional statement of accused no.2 Pandu Narote hence there is doubt about recording of confessional statements.

144] He submitted that P.W.12 Nileshwar Vyas stated in his examination that when the accused were produced before him he came to know that they were Adiwasis and belonging to Madiya and Gond community and he did not make any enquiry with accused

about their education before recording their confessional statements and about their family background i.e. their profession, business, etc. and whether they were previously charge-sheeted for any offence. P.W.12 Nileshwar Vyas in the certificate has stated that accused were familiar with the Court while recording entire confession but in his cross-examination at para no.20 he admitted that when the accused were produced before him he came to know that they were Adiwasis and they belonging to Madiya and Gond community and they were not previously charge-sheeted. Hence, version of P.W.12 that the accused were familiar with the court is false and as they were not able to understand the language and he has not certified this fact and he signed on confessional statement prepared by Aheri police and did not record any confessional statement of any of the accused and all the times accused no.1 Mahesh Tirki and no.2 Pandu Narote were produced by the Aheri police and under such circumstances statement of the Magistrate P.W.12 Nileshwar Vyas that accused were not under the fear of police, is totally false.

145] He pointed out that P.W.12 Nileshwar Vyas in his cross-examination at para 17 admitted that giving an inducement or threat by police officer is a misconduct and also abuse of an authority as a police officer and accused no.5 Vijay Tirki on 24th Sept. 2013 made complaint that he was threatened by police to make confessional statement and he did not initiate any action against the police officer and did not initiate any enquiry because the accused did not give the details of threats and he did not record the question and answers given by the accused with regard to the threats in Exh.291 and he had not taken any action against police officer for giving threat to make

confession. This shows that P.W.12 Nileshwar Vyas was not impartial towards the accused.

146] He submitted that in para no.18 of the cross-examination P.W.12 Nileshwar Vyas admitted that none of the accused had made application before him about the illtreatment by the police during investigation and accused no.1 and 2 made written application before him about the illtreatment meted by them after recording their statement and he had not taken any action on the basis of their written application and even did not call any report from police officer and did not take cognizance of their complaints. He further admitted that he came to know that said confession was voluntarily made and application Exh.292 for illtreatment was made subsequently hence, he did not take any cognizance and on the said application he called say of APP and as the said application was received through envelop he directed his staff to attach with the case papers and there was endorsement to that effect on it but clerk of the court did not put it before him. He submitted that the explanation given by P.W.12 Nileshwar Vyas cannot be accepted.

147] He relied on the cross-examination of P.W.12 Nileshwar Vyas wherein he indirectly admitted that he might have passed order in this case for handcuffing the accused while producing the accused before the court and the accused might have given application before the Court during investigation not to handcuff while producing them before the Court and they might have given application before him that they were produced in handcuff condition and handcuff should be removed and he might not have taken the cognizance for the same.

This admission on the part of P.W.12 Nileshwar Vyas shows that there was ill-treatment to the accused no.1 Mahesh Tirki and no.2 Pandu Narote at the hands of police and they were under the pressure of police and made confessional statements due to threats and fear of the police.

Conclusion on the point of Confession Statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote

148] To appreciate the submissions made by the learned Spl. P.P. Shri Sathainathan for the prosecution and Advocate Shri Gadling for accused in respect of confessions made by accused no.1 Mahesh Tirki and no.2 Pandu Narote, it is necessary to keep in mind the related provisions dealing with offence and its ingredients of which the prosecution alleges that accused has been charged with and then to marshal the evidence as per the requirement of law to bring home the charges.

149] The word "Confession" has not been defined in the Code of Criminal Procedure, 1973 or in The Indian Evidence Act. The Privy Council in the case of **Pakala Narayanswami vs. Emperor, reported in AIR 1939 PC 47** held that the word "confession" as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed.

150] The said principle of law laid down was followed by Apex Court in the case of **Palvinder Kaur vs. State of Punjab reported in AIR 1952 SC 354.**

151] The law relating to confession is laid down u/s 24, 25, 26 of the Evidence Act 1872. According to Section 24 of the Indian Evidence Act, 1872, confession caused by inducement threat or promise is inadmissible. Further, according to Sec.25 confession before police is inadmissible. As per Sec.26 confession made by accused before Magistrate is admissible.

152] The provisions of Sec.164 of the Code of Criminal Procedure and the guidelines as issued by High Court of Judicature, Bombay to the Criminal Courts and subordinate officers in Chapter I of Criminal Manual lays down the procedure to be followed by Judicial Magisterial First Class, while recording confession.

153] The provisions relating to recording of confession statement by Magistrate is under Section 164 of Cr.PC. are reproduced as under :-

Section 164 :- Recording of confessions and statements.

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under

this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession ; and the Magistrate shall make a memorandum at the foot of such record to the following effect: -

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.
"Magistrate".

(5) Any statement (other than a confession) made under sub- section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case ; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

154] The provisions of Criminal Manual issued by Bombay High Court for the guidance lays down detail procedure for recording confession by Magistrate and it lays down the preliminary questions which are to be put to the accused by Magistrate in order to satisfy voluntariness of confession and it also further prescribes for issuance of certificate after recording of confessional statement by Magistrate after recording the same.

155] In the present case, according to the prosecution the confession was duly recorded by the Magistrate P.W.12 Nileshwar Vyas and accused no.1 Mahesh and no.2 Pandu made voluntary confession and without pressure by police. Hence, it can be relied. However, Advocate Shri Gadling for the accused submitted that the confession recorded by P.W.12 Nileshwar Vyas cannot be relied on following grounds -

i] The accused No.1 Mahesh and no.2 Pandu retracted the confession made by them by filing application at Exh.292 before P.W.12 Nileshwar Vyas.

ii] The confession made by accused No.1 Mahesh and no.2 Pandu was not voluntary one and it was under pressure and threat of police.

iii] The accused No.1 Mahesh and no.2 Pandu were handcuffed when they were brought to Court for recording confession and this shows that the confession was not voluntary.

iv] The Magistrate has not taken any action against police after filing application by accused No.1 Mahesh and no.2 Pandu at Exh.292.

v] The accused No.1 Mahesh and no.2 Pandu know only Gondi language and they are not knowing Marathi and Hindi language.

vi] No sufficient time was given by the Magistrate P.W.12 Nileshwar Vyas for reflection.

Confession and Retraction

156] Accused no.1 Mahesh and no.2 Pandu retracted their confession vide application (Exh.292). In the said application, these accused have expressed that the police had subjected them to physical and mental harassment due to which fear developed in their mind. Whenever their relatives used to come to meet them, the police were saying these accused that in case they did not make confession, their relatives would be entangled in other cases. Thus, it is the contention of accused no.1 Mahesh and no.2 Pandu that they were compelled to give confession on account of threat and pressure. On perusal of application (Exh.292) it reveals that these accused jointly made this application in Hindi language and it bears signatures of both the accused in Marathi language.

157] The law relating to appreciation of confession and retraction thereof is laid down by **Full Bench of Apex Court** in case **of Shankaria .v. State of Rajasthan reported in AIR 1978 Supreme Court 1248** in para 22 of the judgment. Para no.22 of the judgment is reproduced as under :-

22. It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused primarily on the basis of his confession recorded under S.164, Cr.P.C., the Court must apply a double test :

1] Whether the confession was perfectly voluntary?

2] If so, whether it is true and truth-worthy?

Satisfaction of the first test is a *sine qua non* for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in S. 24, Evidence Act, it must be excluded and rejected *brevi manu*. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the court must, before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.

Further, in para no.85 of the judgment it is observed as under :-

85. Where the accused, while retracting his confession, did not say that he was tutored by police to make the confession but only said that he made it under compulsion and threat and was false and a perusal of the confessional statement would show that *prima facie* there was nothing improbable or unbelievable in it; that it appeared to be a spontaneous account, studded with such vivid details about the manner of the commission of the

crimes in question, which only the perpetrator of the crimes could know, and the confession received assurance in several material particulars from reliable independent evidence, mainly of circumstantial character, held the confession, coupled with the other evidence on the record, had unerringly and indubitably brought home the charges to the accused.

158] On the point of retracted confession of co-accused and admissibility against other accused **Full Bench of Apex Court** in case of **Ram Prakash .v. State of Punjab** reported in **AIR 1959 Supreme Court 1** in para 6 observed as under :-

Section 30, Evidence Act, makes it clear that where more persons than one are being tried jointly for the same offence, a confession made by any one of them affecting himself and any one of his co-accused can be taken into consideration by the court not only against the maker of the confession but also against his co-accused. The Evidence Act nowhere provides that if the confession is retracted, it cannot be taken into consideration against the co-accused or the confessing accused. Accordingly, the provisions of the Evidence Act do not prevent the Court from taking into consideration a retracted confession against the confessing accused and his co-accused.

The amount of credibility to be attached to a retracted confession, however, would depend upon the circumstances of each particular case. Although a retracted confession is admissible against a co-accused by virtue of S. 30, Evidence Act, as a matter of prudence and practice a court would not ordinarily act upon it to convict a co-accused without the strongest and fullest corroboration on material particulars. The corroboration in the full sense implies corroboration not only as to the factum of the crime but also as to the connection of the co-accused with that crime.

159] When the accused makes confession and there is some exculpatory statement and if the said statement is found to be truthful then it can be taken into consideration. However, if it is found to be not truthful it will be proper for the court to reject some exculpatory part or inculpatory part which is not truthful. At this juncture, it is necessary to consider ratio laid down by Delhi High Court in case of Babu Lal and another v. The State and others reported in 1982 Cri.L.J. 41, wherein it is observed as under :-

(A) Evidence Act (1 of 1872), S.24 – Confessional statement consisting of inculpatory and exculpatory parts – Acceptance of one part – Permissibility.

Where a confession consists of exculpatory and inculpatory parts, it is permissible to believe one part and disbelieve another. 1979 Cri.L.J. 645, Rel. on (Para 12)

160] The Apex Court in the case of Mohammed Ajmal Mohammad Amir Kasab alias Abu Mujahid .v. State of Maharashtra reported in (2012) SCC 1 held that -

Criminal Procedure Code, 1972 – S. 164 – Confession before Magistrate – Whether voluntary and truthful – Some reference in confession about co-accused (TA-2 and TA-3) who were involved only in preparation of maps and not in actual attacks) being unsatisfactory – But regarding rest of confession, held, there is no reason to doubt that if was not made voluntarily and without any influence or duress from any external agency – Magistrate fully resorted to all safeguards under S.164 CrPC and gave TA-1 sufficient time (i.e. 3 days time) to reflect as to whether he really wanted to make the confession.

161] In view of settled principle of law it is to be seen whether the confessional statements made by accused no.1 Mahesh and no.2 Pandu before the Magistrate P.W.12 Nileshwar Vyas were voluntary and truthful and the exculpatory part of confession can be believed. In the present case at the end of confession, accused no.1 Mahesh and no.2 Pandu stated that naxals used to assault them and pressurize them to do the work as directed by the naxals. This is an exculpatory part. Further, it is to be seen whether the said exculpatory part is truthful. In both the confessional statements the accused no.1 Mahesh and no.2 Pandu clearly stated the fact that for three to four times at the instance of underground naxal Narmadakka they had gone to Ballarsha Railway station to receive the member of banned organization CPI (Maoist) and its frontal organization RDF and they took them to Abuzmad forest area as directed by Narmadakka for meeting with senior leaders of Maoist cadre who were hiding in Abuzmad forest area and the accused no.1 Mahesh Tirki & No.2 Pandu Narote were fully well aware that there was meeting of the underground members of banned terrorist organization.

162] Had the accused no.1 Mahesh and no.2 Pandu were not active members of the said organisation they would not have acted three times to bring Maoist leaders to Abuzmad forest area for attending the meetings and they would have made complaint about the same either to police of Aheri or police of Ballarsha where they had gone to receive the members of banned organisation at the instance of underground naxal Narmadakka. At Ballarsha they could have approached to Police Station but their conduct to receive the members of banned organisation for 2/3 times clearly shows that they are active members of such banned organisation CPI (Maoist) and its

frontal organisation RDF. This conduct on the part of accused no.1 Mahesh and no.2 Pandu shows that exculpatory part made by both of them in confession is truthful one.

Retraction of Confession

163] In the present case, the accused no.1 Mahesh and no.2 Pandu tried to retract their confession made before Magistrate (P.W.12 Nileshwar Vyas) by filing application vide Exh.292 on 3.10.2015. The said application is written in Hindi language and below the said application both the accused signed in Marathi language. The accused nos.1 Mahesh and no.2 Pandu in their statement u/s 313 Cr.P.C. specifically have taken defence that the confession was recorded under the pressure of police. In the application (Exh.292) these accused have expressed that the police had subjected them to physical and mental harassment due to which fear developed in their mind and further they stated that whenever their relatives used to come to meet them, the police told these accused that in case they do not make confession, their relatives would be entangled in other cases. Thus, it is contention of accused no.1 Mahesh and no.2 Pandu that they were compelled to give confession on account of threat and pressure.

164] The accused no.1 Mahesh in his statement u/s 313 Cr.P.C. has taken defence that he made confession under the threat of police. The relevant questions put to accused no.1 Mahesh in his statement u/s 313 Cr.P.C. are reproduced as under :-

Q.67: It has further come in his evidence that on 2-9-2013 the investigating officer Aheri made application before him for recording the statement of you accused regarding confession of you accused Mahesh Tirki and Pandu Narote and on the same day, he has informed you both the accused that the police have made application that they were going to make confessional statement. What have you to say about it ?

Ans : Police assaulted me, hence, I showed our willingness to give statement.

Q.68: It has further come in his evidence that he also asked you to think about making of confession and on that day you were willing to make confession but he has not recorded your statements as he wanted to give you reflection time to think over and he made it known to you both accused that if you were to make confessional statements. What have you to say about it ?

Ans: Yes. Police were standing at the door of court hall.

Q.69: It has further come in his evidence that after personal verification of both of you, you showed your willingness about the confession of your guilt, hence, he had given you time till 4-9-2013 and you both the accused produced on 4-9-2013. What have you to say about it?

Ans : Yes. Police were standing at the door of court hall.

Q.72:It has further come in his evidence that after your production he has placed you into witness box one by one and has taken the precaution that you both the accused and police were not audible and visible to each other and he appraised you both the

accused that you were not in police custody. What have you to say about it ?

Ans: Yes. Magistrate asked the questions to me, but police were present at the door of the hall of the court.

165] The accused no.2 Pandu Narote in his statement u/s 313 Cr.PC. has also taken the same defence and the relevant questions put to accused no.2 Pandu Narote in his statement u/s 313 Cr.PC. are reproduced as under :-

Q.76: It has further come in his evidence that on 2-9-2013 the investigating officer Aheri made application before him for recording the statement of you accused regarding confession of you accused Mahesh Tirki and Pandu Narote and on the same day, he has informed you both the accused that the police have made application that they were going to make confessional statement. What have you to say about it ?

Ans : Police assaulted me, hence, we showed our willingness to give statement.

Q.77: It has further come in his evidence that he also asked you to think about making of confession and on that day you were willing to make confession but he has not recorded your statements as he wanted to give you reflection time to think over and he made it known to you both accused that if you were to make confessional statements. What have you to say about it ?

Ans: Yes. Police were standing at the door of court hall.

Q.78: It has further come in his evidence that after personal verification of both of you, you showed your willingness about the confession of your guilt, hence,

he had given you time till 4-9-2013 and you both the accused produced on 4-9-2013. What have you to say about it?

Ans : *Yes. Police were standing at the door of court hall.*

Q.80: *It has further come in his evidence that after your production he has placed you into witness box one by one and has taken the precaution that you both the accused and police were not audible and visible to each other and he appraised you both the accused that you were not in police custody or magisterial custody. What have you to say about it ?*

Ans: *Yes. Magistrate asked the questions to us and but police were present at the door of the hall of the court.*

166] According to both accused no.1 Mahesh and no.2 Pandu, they retracted the earlier confession by filing application (Exh.292) but on going through the confession recorded by Magistrate P.W.12 Nileshwar Vyas it is clearly revealed that they stated that naxalites used to assault them and pressurize them to do the work as directed by the naxalites. Had there been really mental and physical harassment to accused no.1 Mahesh and no.2 Pandu at the hands of police and had they made confessional statement under the coercion or threats at the hands of police both accused could have stated before the Magistrate about the said fact as they stated in the retraction application (Exh.292) that because of fear of police they made confessional statement recorded by P.W.12 Nileshwar Vyas. This shows that the retraction made by the accused no.1 Mahesh and no.2 Pandu about the confession that they made confession under the threat or coercion by police is false. Further, P.W.12 Nileshwar Vyas stated that he did not take any cognizance on the application of

retraction (Exh.292) filed by accused no.1 Mahesh Tirki and no.2 Pandu Narote as at the time of recording confessional statements, he had satisfied that accused were making their confession out of their free will and without pressure of police. Hence, it can not be relied upon.

167] The confession was challenged on the ground that accused no.1 Mahesh Tirki and no.2 Pandu Narote are knowing Gondi language and they are not knowing Hindi and Marathi language and this defence was taken by accused in their statement u/s 313 of Cr.P.C. and during cross-examination of Magistrate P.W.12 Nileshwar Vyas. In cross-examination of Magistrate P.W.12 Nileshwar Vyas, suggestion was put to him that accused no.1 Mahesh and no.2 Pandu were not conversant with Marathi language in which statements were recorded. But this suggestion was denied by P.W.12 Nileshwar Vyas and he clearly stated that both accused were speaking in Hindi in court. P.W.12 Nileshwar Vyas denied that accused were not able to talk in Marathi and not knowing Hindi. It is important to note that after recording statement u/s 313 of Cr.P.C., accused no.1 Mahesh and No.2 Pandu signed below their respective statements in Marathi language. The accused no.1 Mahesh and No.2 Pandu retracted confession by filing joint application at Exh.292. The said application is in Hindi language and below the said application accused no.1 Mahesh and No.2 Pandu also signed in Marathi language and in the said application it is not stated that they were not knowing Marathi language. This shows that accused no.1 Mahesh and no.2 Pandu were well conversant with Marathi and Hindi language.

168] Further, the Apex court in the case of **Wariyam Singh and others .v. State of U.P.** reported in **AIR 1996 Supreme Court 305** while dealing the case under TADA Act observed as under :-

(E) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987, S.15 – Confession – Recording of, by Police Officer in Hindi language – None of accused expressing any difficulty in understanding language in which confessional statement was recorded – Plea raised by one of accused after about 1 and ½ years that he could not follow said language – Not tenable. (Para 14)

169] In view of above the defence of the accused is that they were not knowing Marathi language is false.

Whether sufficient time was given for reflection.

170] Further it has come on record that when accused were produced before the Magistrate P.W.12 Nileshwar Vyas on 23.8.2013 then they were remanded to magisterial custody till 2.9.2013 and thereafter they were again produced from Jail to Court on 2.9.2013 and on that day Investigating Officer made application for recording confessional statements of accused no.1 Mahesh and no.2 Pandu and further the evidence of Magistrate P.W.12 Nileshwar Vyas clearly reveals that thereafter on 4.9.2013 accused no.1 Mahesh and No.2 Pandu were produced by escort police officers who were not connected with the investigation of the case. Nothing has been brought on record to show that the police officers who were standing outside the court room were connected with the investigation of this case. The police officer who were escorting the accused no.1 Mahesh

and no.2 Pandu from jail to court time to time cannot be considered as police officers who are involved in the investigation of crime or case. At this juncture, it is necessary to consider ratio laid down by **Orissa High Court** in case of **Kurungalanga Luxman v. State** reported in **1964(1) Cri.L.J. 464** wherein it is observed as under :-

(C) Evidence Act (1 of 1872), S.26, S.24 – Admissibility of confession – Under-trial prisoner – Escorting of, to Magistrate – Escorting Police Officer not connected with investigation – Magistrate ascertaining voluntary nature of confession – Confession held was voluntary.

171] It has come in the evidence of Magistrate P.W.12 Nileshwar Vyas that accused no.1 Mahesh Tirki and no.2 Pandu Narote were produced before him on 23-8-2013 and thereafter they were remanded to MCR on 2-9-2013 and on 2-9-2013 the investigating officer Aheri P.W.11 Suhas Bawche made application before him for recording the confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote and he informed both the accused about the same and asked them to think about making of confession. It has further come in his examination that on that day both accused no.1 Mahesh and no.2 Pandu were willing to make confession but he has not recorded their statements as he wanted to give them reflection time to think over and he made it known to both accused that if they want to make confessional statements then it can be used as evidence against them.

172] This witness P.W. 12 Nileshwar Vyas further stated that he put certain questions to accused no.1 Mahesh and no.2 Pandu one by one and prepared their memorandum statements separately and

noted down all the questions and answers as stated by them and examined them one by one and the other accused was out of the court and not in presence of both. Magistrate P.W.12 Vyas has taken precaution while recording statement of accused no.1 Mahesh and no.2 Pandu that accused and police officers present in court premises were not visible to each other. The police officer who produced accused were not connected with investigation of the case. Memorandum regarding questions and answers put to accused no.2 Pandu Narote is at Exh.278 and memorandum regarding questions and answers put to Mahesh Tirki is at Exh.279. After satisfying that the accused were making confessional statements voluntarily he recorded the statement of accused no.1 Mahesh and no.2 Pandu and after recording statements he took signature of both accused on their respective confessional statements and signed himself and thereafter several certificate appended vide Exh.287 (Certificate I), Exh.288 (Certificate II) and Exh.289 (Certificate III) as per Criminal manual issued by the High Court. He specifically stated that when accused no.1 Mahesh Tirki and no.2 Pandu Narote retracted their confessional statements by filing application Exh.292 he did not take any cognizance because he did not find any substance in the said application (Exh.292) as at the time of recording confessional statements, he had satisfied that accused were making their confession out of their free will and without pressure of police.

173] From the evidence of Magistrate P.W.12 Nileshwar Vyas it reveals that after production of accused no.1 Mahesh and no.2 Pandu he placed them into witness box one by one and taken precaution that both the accused and police were not audible and visible to each other. Thereafter, he appraised both the accused that they were not in

police custody and asked one by one whether they had any ill-treatment in police custody and asked them whether they were induced by police to make confessional statements to which they replied in negative. A Magistrate (P.W.12 Vyas) also asked accused no.1 Mahesh and no.2 Pandu whether they have been induced by police or any other persons responsible for their arrest to which they replied in negative. He informed them that he wanted to examine them in person and then he examined body of both the accused and found no external injuries on the body of both the accused. After making notes of all questions and replies given by both the accused and after making the separate note of the same, P.W.12 Nileshwar Vyas realized that the accused had given satisfactory answers and ready to give confessions voluntarily. Therefore, he adjourned the matter for two days till 6-9-2013 for giving reflection time and explained both the accused that they would be in magisterial custody. From cross-examination of P.W.12 Nileshwar Vyas, it reveals that there is no suggestion on the part of defence about giving reflection time to accused for confession.

Corroboration to the confessional statement made by accused no.1 Mahesh and no.2 Pandu by evidence of P.W.9 Raju Atram

174] Both the accused no.1 Mahesh and No.2 Pandu have narrated detail story about the particular role played by them and it is clear from their confessional statements that underground naxal Narmadakka had called both accused in village Todgatta and accordingly both of them at about 3-00 p.m. reached in village Todgatta and nearby four naxal persons alongwith weapon were present there and naxal accused Narmadakka asked accused no.1

Mahesh that he should go along with accused no.2 Pandu Narote on 28th May 2013 to Ballarsha Railway Station and thereafter, on 28th May 2013 both accused reached at Ballarsha Railway Station at 10-00 a.m. and at that time, two persons reached there and accused no.2 Pandu Narote went alongwith them on the same day and accused no.1 Mahesh Tirki stayed there because he was told by Narmadakka that on 29th May 2013 one Raju Atram (P.W.9) hailing from Alapalli would come to Ballarsha Railway Station to handover cash amount of Rs.5,00,000/- and said amount was to be given to one person who would come from Delhi.

175] They further stated that on 29th May, 2013 at about 9-00 a.m. when Raju Atram (P.W.9) and accused no.1 Mahesh were sitting in the waiting room, two persons came there and after identification, P.W.9 Raju Atram gave the amount to that person and he went away. Again on 14 August 2013 Narmadakka came to his village along with 15 to 20 naxalites and both accused were called in the forest situated outside the village and when they went there Narmadakka was present along with armed naxalites and she told them that on 20/22 August 2013 two persons were coming to Ballarsha Railway Station and they would come either 10.00 a.m. or 2.00 p.m. and she asked to take these people at village Lendar and halt at the house of Komati Babu situated at village Lendar and Narmadakka had given one chit for handing over to said persons which would be used for identification purpose and in the morning at about 9.00 a.m. both accused went to Ballarsha Railway Station and they took that person i.e. accused no.3 Hem Mishra to Aheri by S.T. bus and when they were talking at Aheri bus stand, by that time police arrested accused no.1 Mahesh, no.2 Pandu and no.3 Hem Mishra.

176] As discussed above, from the evidence of PW.9 Raju Atram which is tested by learned defence counsel during cross-examination and nothing has been elicited from his cross-examination to disbelieve his evidence on the point that in the year 2013 there was a camp at Murewada where he acquainted with accused no.2 Pandu Narote and no.1 Mahesh Tirki and that accused no.2 Pandu Narote came to him and told that Narmadakka is calling him and thereupon, he told accused no.2 Pandu Narote that he had come back from his work and he was tired and he will go after 2-3 days but he was told by accused no.2 Pandu Narote that there was urgent work and therefore, on the two wheeler he went with accused no.2 Pandu on his Motor-Cycle in the forest of Todalgatta and reached there at about 7-00 p.m. Further, after half an hour, one lady by name Narmadakka came there, he was not knowing her and he could not identify her as it was dark and that accused no.2 Pandu Narote told him that she was Narmadakka and she told him that whether he would do her work for handing over Rs.5 Lacs when Mahesh and Pandu would meet him at Ballarsha Railway Station and she handed over money in the packet and he did not count the said money and on 27th of that month accused no.2 Pandu Narote and no.1 Mahesh Tirki had come to his house at Alapalli and told him that he should come at Ballarsha Railway Station along with said money which he had received from Narmadakka and on next day left his house.

177] Thereafter, on 29-5-2013 he left by bus at 6-00 a.m. and reached Ballarsha Railway Station at 10-00 a.m., accused no.1 Mahesh and accused no.2 Pandu were sitting in the hall of Railway Station, he went and sat with them and thereafter, two unknown

persons came there and accused no.2 Pandu went to them and discussed with them and thereafter, accused no.2 Pandu came to him and took the money packet and gave to one person out of them. Out of those two persons, one person, he himself and accused no.1 Mahesh came back to Alapalli and they came to his house and took some food and went away to bus stand. As such nothing is brought on record to disbelieve the confessional statements made by accused no.1 Mahesh at Exh.280 and accused no.2 Pandu at Exh.286. Hence, in view of judgment of Apex Court in the case of **Ram Prakash .v. state of Punjab** reported in **AIR 1959 Supreme Court 1** cited supra, the confessional statements made by accused no.1 Mahesh and no.2 Pandu can be taken into consideration against accused no.3 Hem Mishra also under Section 30 of the Evidence Act as all accused are tried jointly.

178] From the evidence of P.W.12 Nileshwar Vyas, Judicial Magistrate F.C., Aheri it is proved that accused no.1 Mahesh Tirki and no.2 Pandu Narote voluntarily made confessional statements. The confessional statements are corroborated by the evidence of P.W.9 Raju Poriya Atram and further from the evidence of panch witness P.W.1 Santosh Bawne seizure of incriminating articles is proved from the possession of accused no.1 Mahesh Tirki and no.2 Pandu Narote and from the cross-examination of witnesses cited above nothing has been brought on record by the defence to disbelieve their evidence about the fact that accused no.1 Mahesh Tirki and no.2 Pandu Narote have made confessional statements voluntarily and out of their free will and without pressure of police.

179] It is the defence of the accused that accused no.1 Mahesh Tirki and no.2 Pandu Narote were arrested at Ballarsha Railway-station and not at Aheri bus stand. According to their defence on 21.8.2013 accused no. 1 Mahesh Tirki and no.2 Pandu Norote were not present in Aheri Police Station and police falsely implicated them in this case. In this respect the learned defence Advocate Shri Gadling submitted that according to prosecution from the interrogation with accused no.1 Mahesh Tirki and no.2 Pandu Narote police came to know that accused no.1 Mahesh Tirki and no.2 Pandu Narote handed-over amount of Rs.5 lakhs through P.W.9 Raju Poriya Aram to the member of banned organisation CPI (Maoist) and its frontal organisation RDF at Ballarsha Railway-station at the instance of lady naxal Narmadakka. He submitted that P.W.9 Raju Atram in his cross-examination admitted that when he was called at Aheri Police Station on 21st August 2013, accused no.1 Mahesh Tirki and no.2 Pandu Narote were not present in Police Station, Aheri and the arrest panchanamas of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were alleged to be effected on 22.8.2013. It was argued, this shows that accused no.1 Mahesh Tirki and no.2 Pandu Narote were arrested on earlier date and false arrest panchanamas were prepared showing that accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra were arrested on 22.8.2013.

180] On going through the relevant portion of cross-examination of P.W.9 Raju Atram it is clear that this witness has not specifically stated the date when police came to know from interrogation of accused that he handed over Rs.5,00,000/- from Narmaddakka at Ballarsha Railway-station. He has not given the date

when he came to know this fact and he specifically denied that when on 21st he was again called in police station at that time accused no.1 Mahesh Tirki and no.2 Pandu Narote were not present in police station which shows that till 21st he was not knowing this fact. From this it reveals that accused no.1 Mahesh Tirki, no.2 Pandu Narote and no. 3 Hem Mishra were arrested on 22.08.2013 and apart from the evidence of prosecution witnesses i.e. the informant P.W.6 Atul Avhad and Police Inspector P.W.10 Anil Badgugjar, it gets corroboration from the confessional statement of accused no.1 Mahesh Tirki and no.2 Pandu Narote at Exh.280 and 286, wherein they stated that they alongwith accused no.3 arrested at secluded place near Aheri Bus Stand on 22.08.2013 and hence, the version of defence that the accused no.1 to 3 were arrested on 20.08.2013 at Ballarsha Railway-station is not acceptable.

181] Further, the fact of handing over amount of Rs.5,00,000/- to the members of banned organization at Ballarsha Railway Station by accused no.2 Pandu Narote is corroborated by the evidence of P.W.9 Raju Atram who stated in his examination that lady naxal Narmadakka handed-over Rs.5,00,000/- to him and he at the instance of lady naxal Narmadakka carried out the same at Ballarsha Railway Station and handed-over to accused no.2 Pandu Narote who had gave the said amount of Rs.5,00,000/- to the members of banned organization who came from Delhi.

182] From the confessional statements of accused no.1 Mahesh Tirki and No.2 Pandu Narote, it is clear that at the instance of naxal lady Narmadakka they had been to Railway-Station Ballarsha for 3-4

times to receive the members of banned organisation to have meetings with underground naxals and they were providing meals and important things like torch etc. and further from their confessional statements it is clear that they had come with accused no.3 Hem Mishra to Aheri and they were arrested at secluded place near Aheri bus stand. This act of accused no.1 Mahesh Tirki and no.2 Pandu Narote taking accused no.3 Hem Mishra to have meeting with underground naxals Narmadakka shows that they have assisted and facilitated him with intention to further the terrorist activities. The statement on the part of accused no.1 Mahesh Tirki and no.2 Pandu Narote that they had been to Ballarsha Railway-station for 3 to 4 times to receive the members of banned organisation to have a meeting with underground naxals and they were providing meals and important things like torch etc. and both the accused stated that on 29.5.2013 they had been to Ballarsha Railway Station and P.W.9 Raju Atram came there alongwith amount of Rs.5 lakhs which were given by naxal lady Narmadakka for handing over the same to members of banned organization and at Ballarsha Railway Station accused no.2 Pandu Narote took that amount from P.W.9 Raju Atram and handed-over the same to the members of banned organization who had come to Ballarsha Railway Station is an admission of guilt for offence punishable under section 18, 38 and 39 of UAPA.

Case against accused no.6 Saibaba

183] In respect of accused no.6 Saibaba, it is the case of the prosecution that Investigating Officer P.W.11 SDPO Suhas Bawche while interrogating with accused no.3 Hem Mishra and accused no.4

Prashant Rahi came to know about the involvement of accused no.6 Saibaba and thereafter Investigating Officer Suhas Bawche (P.W.21) sought permission from JMFC Aheri Vyas (P.W.12) for taking house search of accused no.6 Saibaba at Delhi and after taking the permission he alongwith Maharashtra police went to Delhi and with the help of police staff of Moris Nagar Police Station of Delhi and in presence of panch witness Jagat Bhole (P.W.2) search of the house of accused no.6 Saibaba was conducted and from his house search extensive electronic gadgets CDs, DVDs, pen-drives, memory cards, hard-disks (Art no.1 to 41) and other articles like magazine "Janapratirodh", one print-out, photograph of lady naxal with gun, book by name "Prashembabu Maowadi Nahi Hain", book-let with title "People's Hero Comrade Kishanji and one magazine "The arrested" regarding banned organization CPI (Maoist) and its frontal organization RDF were seized under panchanama at Exh.165 dated 12/09/2013.

184] Thereafter Investigating Officer P.W.11 Suhas Bawche deposited all the properties seized from the house search of accused no.6 Saibaba in the Malkhana of Aheri Police Station with Muddemal Clerk Ganesh Rathod (P.W.13) vide Exh.276C & 276D on 13.09.2013. On 14.9.2013 Investigating Officer P.W.11 Suhas Bawche took out said property for investigation purpose and he opened and verified the same in presence of panch P.W.4 Shrikant Gaddewar and again sealed under panchanama (Exh.202) and on the same day P.W.11 Suhas Bawche sent the property no.1 to 25 (i.e. Articles 1 to 41) to CFSL, Mumbai through carrier P.W.5 Ravindra Kumbhare. On 22.09.2013 P.W.5 Ravindra Kumbhare brought two hard-disk containing hard soft

copies from CFSL, Mumbai and panchanama to that effect was prepared on 23.09.2013 at Exh.204.

185] Further on 6.10.2013 P.W.5 Ravindra Kumbhare again brought two hard-disks containing soft-copies and panchanama to that effect was prepared on 7.10.2013 vide Exh.205 and both the hard-disks were brought by carrier P.W.5 Ravindra Kumbhare and after receipt of both the hard-disks and after viewing the mirror-images in soft copies of hard-disks supplied by CFSL, Mumbai printouts of incriminating documents were taken out by Investigating Officer P.W.11 Suhas Bawche in presence of panch witness P.W.4 Shrikant Gaddewar and those printouts were sent to CFSL, Mumbai for certification by letter dated 30.1.2014 (Exh.263) which were filed alongwith charge-sheet. Thereafter, from CFSL, Bombay, Investigating Officer P.W.11 Suhas Bawche received analysis report (Exh.267) dated 15.2.2014 in respect of Ex.1 to 25 (i.e. Articles no.1 to 41) annexed with certified hard-copies 247 pages containing incriminating text material.

EVIDENCE

186] To prove the above allegations levelled against accused No.6 Saibaba, prosecution has relied on the evidence of following witnesses :-

Sr. No.	P.W. No.	Name of Witness	Exh. No.
1]	P.W.11	Suhas Prakash Bawche, SDPO, the Investigating Officer.	235
2]	P.W.2	Jagat Bhole, the panch witness of the panchanama in respect of house search	164

		and seizure of muddemal from accused no.6 Saibaba.	
3]	P.W.5	Ravindra Manohar Kumbhare, the PC and carrier who carried and deposited the muddemal to CFSL, Mumbai.	210
4]	P.W.15	Narendra Shitalprasad Dube, Station Diary Duty Amaldar.	308
5]	P.W.21	Bhavesh Nikam, Scientific Expert.	371
6]	P.W.7	Apeksha Kishor Ramteke, WPC, who brought muddemal property from CFSL, Mumbai.	222

187] Besides this, the prosecution relied on the following documents to prove the allegations against accused no.6 Saibaba -

1	Seizure panchanama dated 12.9.2013 in respect of electronic gadgets (Arts.1 to 41) CDs, DVDs, pen-drives, hard-disks from the possession of accused no.6 Saibaba	Exh.165
2	Letter dated 14.9.2013 to CFSL, Mumbai for analysis of electronic gadgets (Arts.1 to 41) CDs, DVDs, pen-drives, hard-disks from the house search of accused no.6 Saibaba	Exh.212
3	Panchanama dated 23.09.2013 regarding the receipt of two hard-disk containing hard-copies from CFSL, Mumbai to Investigating Officer P.W.11 Suhas Bawche	Exh.204
4	Panchanama dated 7.10.2013 regarding the receipt of mirror copies of electronic gadgets (Arts.1 to 41) CDs, DVDs, pen-drives, hard-disks from CFSL, Mumbai to Investigating Officer P.W.11 Suhas Bawche	Exh.205
5	Letter dated 17.11.2013 from CFSL, Mumbai for receipt of the mirror-images of 16 GB memory-card and electronic gadgets (Arts.1 to 41) sent by letter dated 25.8.2013 and 14.9.2013 respectively.	Exh.261
6	Letter dated 30.1.2014 to CFSL, Mumbai by Investigating Officer P.W.11 Suhas Bawche for Certification of hard copies.	Exh.263
7	CFSL report Exh.267 alongwith certified pages 247	

188] Suhas Prakash Bawche (P.W.11) is the SDPO, Aheri and the investigating officer in this case. In his examination-in-chief at Exh.235 he stated that during interrogation with accused no.4 Prashant Rahi and no.3 Hem Mishra, the involvement of accused no.6 Saibaba was revealed and hence, he sought permission from JMFC Aheri P.W.12 Nileshwar Vyas on 4-9-2013 for taking the house search of accused no.6 Saibaba and after getting permission on 7-9-2013, he along with Addl. S.P. Mina, PI Badgujar, P.C. Kumbhare, H.C. Dubey and other police staff left for Delhi on 9-9-2013 and had taken entry Exh.275J in the station diary about the same and thereafter they reached at Delhi on 12-9-2013. He issued letter Exh.252 to in-charge Police Station officer, Morisnagar for providing police staff, computer expert and Videographer and thereafter the said Police Station provided police staff to them for conducting raid at the house of accused no.6 Saibaba as he was residing in the campus of Delhi University. Thereafter, he along with police, videographer, panch witnesses and police staff of Delhi proceeded to the house of Saibaba and after reaching to the house of accused no.6 Saibaba they found his wife Vasanta was present in the house. She opened the door of house and they gave their introduction and explained the purpose of their visit at their house and thereafter, she called accused Saibaba. He stated that they showed house search warrant to both of them and obtained the signature of Saibaba and requested to cooperate while taking the house search of his house and orally intimated to Saibaba and his wife that they can take personal search of police team and the panchas, but they refused to take the search. This fact is also mentioned in the panchanama of house search of accused No.6 Saibaba at Exh.165.

189] The Investigating Officer Suhas Bawche (P.W.11) stated that then they along with accused no.6 Saibaba and his wife entered the house and started taking search of the house of accused no.6 Saibaba in presence of panchas and collected incriminating material i.e. CDs, DVDs which contained literature regarding Maoist and Kashmir issue and thereafter seized some hard-disks, Pen-drives, CDs, laptop, mobile, memory cards, in all total six CDs, twenty-four DVDs, three pen-drives, thirty-two memory-cards, five hard-disks, one laptop, one attached blue-tooth suspected as a pen-drive, three mobiles, two SIM cards, documents relating naxal literature, i.e. books, magazine, some printed material, one photograph of lady naxal and some other articles. All these electronic devices were sealed in plastic box and laptop was seized in separate packet, the printed matter and books were sealed in three separate packets and all three items were sealed with labels having his signature and signatures of panchas. Thereafter, he prepared panchnama (Exh.165) and copy of the same was given to accused no.6 Saibaba and his signature was obtained on it.

190] The Investigating Officer Suhas Bawche (P.W.11) along with police officers went to Morisnagar Police Station and informed about the search of house of accused no.6 Saibaba and gave copy of the panchanama Exh.165 to that Police Station. He identified the articles seized from the house search of accused no.6 Saibaba before the Court. He further stated that the video recording of the proceeding of the house search of accused no.6 Saibaba was taken by videographer provided by Morisnagar Police Station and while the panchanama process was going on, the memory capacity of video

camera was full and at that time, the Police staff accompanying with him have also made video recording of panchanama on their respective mobile phones and it was stored in the computer after coming back and the same was saved in a folder and thereafter, prepared the CD of the same folder.

191] This witness was cross-examined by the learned defence counsel. In his cross-examination he has admitted that on 12-9-2013 accused no.6 Saibaba had given one letter to him when he had been to his house for house search and in the said letter accused no.6 Saibaba requested him that the search of his house should be conducted in presence of professors and his advocates and in the said letter he has written that his request was not acceded. He voluntarily stated that accused no.6 Saibaba had given the said letter after completion of house search and drawing of panchanama. He admitted that when the offence is punishable more than seven years imprisonment, the search in respect of the same should be taken in presence of Government servants and he knows that normally as per Delhi University Act and Central University Act the permission of Vice Chancellor is required for the search in Delhi University Campus and in the present case permission of Vice Chancellor was not taken. He voluntarily stated that in the present case with the help of Delhi local police all formalities were completed.

192] He admitted that he had been to Delhi for four times in the present case prior to filing of charge-sheet and visited Morisnagar Police Station for four times when he visited Delhi in respect of this case and he gave reminder to Morisnagar Police Station regarding the search carried out in the house of accused no.6 Saibaba. He admitted

that Morisnagar Police Station did not give CD of video recording in respect of search of house of Saibaba and Morisnagar Police Station showed its inability to give the CD on the ground that the person who had taken videography was not present there at that time and till filing of charge-sheet no written communication was made in respect of getting the CD of said videography. He admitted that it is not mentioned in the panchnama that the video recording was stopped because the storage capacity of memory card was full and his officers had done video shooting by their mobile phones. He voluntarily stated that the entry to that effect is in the case diary and after the lapse of one and half hour the videographer told him that the memory of SD card was full, thus his officers took out videography on their cell phones as per the capacity of their mobiles.

193] He admitted that Addl. S.P. Mina and himself came to Nagpur by plane on 12-8-2013 and the property which was recovered from the house of accused no.6 Saibaba was also brought by plane to Nagpur and then to Aheri by bus. He has admitted that the property wrapped in the plastic box was handed over to muddemal Clerk P.W.13 Ganesh Rathod and the plastic box before the court is not the same in which property was seized from the house of accused no.6 Saibaba but the said plastic box is similar to Art.136 before the court. He admitted that there is no mention in panchanama dated 12-9-2013 and 14-9-2013 and also in letter addressed to CFSL about DVD allegedly seized from the house of accused Saibaba and there is no mention in the panchanama that blue-tooth / DVD writer was attached to the laptop which was allegedly seized from the house of accused no.6 Saibaba and after receipt of the forensic report, he came to know that pen-drive was in fact blue-tooth and one hard disc was DVD writer and 24 CDS were DVDs.

194] Suhas (PW.11) admitted that on 12-9-2013 and 14-9-2013 computer experts were present on both the occasions and computer experts did not tell him that unique identification number of electronic device was to be mentioned in the panchanama. He admitted that there is one website for naxal related Banned Thoughts and all information regarding CPI (Maoist) and naxal literature, meetings, central committee resolutions is available on it and there are also websites on Internet regarding the naxal literature and their committee, meetings, resolutions etc. He admitted that he had requested Morisnagar Police Station to procure witnesses for panchanama which was to be effected at the house of accused no.6 Saibaba and thereafter Morisnagar Police Station procured the panch P.W.2 Jagat Bhole and another panch. He admitted that it is not mentioned in the panchanama that from the drawer of wooden table of the house of accused no.6 Saibaba, 25 to 30 CDS, laptop, 4-5 pen-drives, 4-5 hard discs and 5-6 books were found and it is also not mentioned in panchanama that paper labels bearing the signatures of panchas and police were affixed on the seized articles.

195] Suhas (PW.11) denied that letter given by accused no.6 Saibaba requesting him to take search of his house in presence of Professors and his Advocates was not filed along with charge-sheet as it was harmful to the prosecution. He denied that as the search was not properly carried out hence, permission of Vice Chancellor was not taken. He denied that his officers did not take video shooting on their mobiles and the videographer Harshavardhan carried out the whole videography of the proceeding of house search of accused no.6 Saibaba and he had given the CD of videography of the said

proceeding to him and after watching the same they did not find any incriminating material against accused no.6 Saibaba and he found their officers planting hard-disks and CDs/DVDs and pen-drives and hence, the said CD was not filed on record. He denied the suggestion that the Article Nos.1 to 41 were not seized under panchnama at Exh.165 from the house of accused no.6 Saibaba at Delhi and on 12.9.2013 nothing was seized from the house of Saibaba and it was not put in plastic box.

196] He admitted that he has not mentioned unique identification number in the panchanama. He denied that nothing was seized from the house of accused no.6 Saibaba and false panchanama was prepared by him. He denied that during his tenure at Aheri whatever literature was found from Dens, was shown as recovered from the house of accused no.6 Saibaba.

197] The panch witness Jagat Bhole (P.W.2) in his examination-in-chief at Exh.136 stated that on 12-9-2013 at about 2-45 p.m. he was called by Delhi Police and he was told that they want to take search of the house of Professor Saibaba (accused no.6 Saibaba) in his presence. He stated that he was knowing accused no.6 Saibaba as house of accused no.6 Saibaba is situated behind his shop and thus he went to the house of accused no.6 Saibaba alongwith Delhi police. When he reached in the house of accused Saibaba, Maharashtra Police were also present there and police started taking search of house of accused Saibaba and the search proceeding was recorded in Video camera. During search when police entered in the bed room of the house of accused Saibaba, they found 25 to 30 CDs, laptop, 4 to 5 pen-drives, 4 to 5 hard-disks and 5 to 6 books in the drawer of one

wooden table. Jagat (P.W.2) says police sealed all material in his presence and drew the panchanama to that effect and he alongwith another panch Ramkumar signed on the panchanama. He stated that in all 41 articles were seized from the bed room of the house of accused no.6 Saibaba and panchanama to that effect was prepared at Exh.165 in his presence. He stated that when he went to the house of accused no.6 Saibaba for taking search of his house at that time accused no.6 Saibaba, his wife and his daughter were present. This witness has also identified the articles seized from the house of accused no.6 Saibaba. Those are as under :-

- 1] one hard disk (Art.42)
- 2] one hard disk on which it was written bufallo which is inside the white envelop having label dated 14-9-2013 (Art.44)
- 3] one more hard disk dated 14-9-2013 of Dell company (Art.46)
- 4] one black coloured hard disk on which My passport having white envelop dated 14-9-2013 is written (Art. 48)
- 5] one hard disk of C-Gate company in white coloured envelop (Art.50)
- 6] CD cassettes of Moserbear company on which convention of Jiten (Part-1) (Art.52)
- 7] CD cassettes of Moserbear company on which convention of Jiten (Part 2) is written in white coloured envelop dated 14-9-2013 (Art.53)
- 8] CD of Sony company, on one CD (I) it is written "Convention against War on people" (Art.55)
- 9] Another CD there is only II is written (Art.56)
- 10] CD III (Art.57)
- 11] One Moserbaer CD in one envelop on which it is written as "On Trinamool issue convention on Kishanji New Delhi 13.12.11 (Art.59)
- 12] One CD in white envelop with title "Damaged prohibited area a Film by Subratkumar Sahu", (Art.61)
- 13] Two CDs of Moserbaer company in white envelop on which it is written "convention on Kishanji (Part I) 13 Dec. 2011 New Delhi", (Art.63 and 64)

- 14] One CD of Moserbaer on which it is written as "Combat Law converted books" in one white coloured envelop (Art.66)
- 15] One CD of Sony company in white envelop on which it is written as "Conference back APMS-2013, Dr. Ramdev (Art.68)
- 16] One CD of PUMA company in one envelop on which it is written as "Video on Sri Lankan War Crimes (Art.70)
- 17] One CD of Sony company in envelop on which it is written as "LE SALUT ROUGE, Cy-475/13 (Art.72)
- 18] One CD in CD box, on CD box it is written as "A Few Myths & Facts About Salwa Judum Concentration Camps" and on CD it is written as "A Few Myths and Facts About Salwa Judum Concentration Camps", CD cover (Art.74)
- 19] One CD (Art.75)
- 20] CD of Moserbaer company, on no.1 CD, it is written as "Meeting on Kashmir 21 October 2010 Naitab Sujata Bha" (Art.77)
- 21] CD of Moserbaer company, on no.2 CD, it is written as "Meeting on Kashmir-2, 21 October 2010, V.V.N. Venuh, (Art.78)
- 22] CD of Moserbaer company, on No.3 it is written as "Meeting on Kashmir-3, 21 October 2010, Gurusharan Singh message, (Art.79)
- 23] CD of Moserbaer company, on No.4 it is written as "Meeting on Kashmir-4, 21 October 2010 Arundhati Roy Amit Bhattacharayya" (Art.80),
- 24] CD of Moserbaer company, on No.5, it is written as "Meeting on Kashmir-5 21 October 2010 Message from Tyagu T.N. Sheikh Shaukat, (Art.81)
- 25] CD of Moserbaer company, on No.6, it is written as "meeting on Kashmir-6, 21 October 2010 SAS Dedani (Art.82)
- 26] CD of Moserbaer company, on No.7 it is written as "Meeting on Kashmir-7, 21-10-2010 SAS Dedani (Art.83)
- 27] one CD on which it is written as "Mati Ke Lal" CD (Art.85)
- 28] One CD of Commando make on which it is written as "Maoists in India" 15-9-2010 (Art.87)
- 29] One CD of Sony company on which it is written as "BBC Documentary on KASHMIR" (Art.89)

- 30] One CD (Art.91)
- 31] One CD (Art.92)
- 32] One CD (Art.93)
- 33] One CD (Art.94)
- 34] One CD (Art.95)
- 35] One CD (Art.96)
- 36] One pendrive on which it is written as "Simmtronics" (Art.98)
- 37] One black coloured pendrive of Sony company (Art.100)
- 38] One pendrive of Sandisk company (Art.102)
- 39] Memory card (Art.104)
- 40] One black laptop of Sony company (Art.109)
- 41] One another hard disk of Toshiba company (Art.111)
- 42] Three books by name Janpratirodh (Art.113)
- 43] red coloured book (Art.114)
- 44] One print out material containing revolutionary democratic front dtd. 7 June 2012 (Art.115)
- 45] One sketch of woman with date 7-6-2007 (Art.116)
- 46] Press statement dated 21st August, 2013 (Art.117)
- 47] one book by name Prasenbabu Mawowadi Nahi Hai (Art.118)
- 48] one book of Telgu language (Art.119)
- 49] one booklet with title People's Hero Comrade Kishenji (Art.120)
- 50] one magazine with title "The arrested" Volume 2 December 2012 (Art.121)
- 51] one magazine People's March dated 8-8-2007 (Art.122)
- 52] one photograph of woman with gun (Art.123)

198] Witness Jagat (P.W.2) was cross-examined by the learned defence counsel. In his cross-examination he admitted that Delhi police had shown him search warrant when he was called for panchanama and contents of search warrant were read over to him. He denied that neither Delhi police nor Maharashtra police stated him that they had to take search of house of accused no.6 Saibaba where stolen property was lying and police did not tell him what was to be seized from the house of accused no.6 Saibaba. He admitted that all

the labels on the envelopes containing the articles therein do not bear his signature. He admitted that he does not know the date when he received the summons. He voluntarily stated that he received the summon before 4 to 5 days of 2nd January and on the same day another panch Ramkumar also received the summons and they both were called to attend the court for evidence. He admitted that Maharashtra police had come to him to serve summons and the police told him that he should start journey on 2nd January and to reach Gadchiroli by 3rd and after reaching on 3rd January at Gadchiroli he informed Maharashtra police and on 2nd January he himself and second panch and Delhi police proceeded for Gadchiroli by train in the morning time. In reply to the question of defence counsel "Whether he had halted at police rest house?", he answered in affirmative.

199] He admitted that he can not write the spelling of his name, he does not have knowledge to write the spelling of his name and cannot write and read any language except signature in English language. He admitted that when police requested him to act as panch he told them he cannot read and write any language and he is illiterate and they should take another panch, however, police requested him to act as a panch in the present case. He admitted that in Delhi he resides near his Barber shop situated in the campus of Delhi university and in the campus of Delhi University several hostels of students are situated and more than 5000 students reside in the said hostels and quarters of professors and other staff of Delhi University are situated in the campus of Delhi university. He admitted that when they had gone to the house of accused no.6 Saibaba several

students and professors were gathered near the house of accused no.6 Saibaba and that when the search of house of accused no.6 Saibaba was being taken accused no.6 Saibaba requested that the search should be taken in presence of professor or his advocate. He admitted that the police locked the gate of the house of accused no.6 Saibaiba and they did not allow any professor to enter in the house of accused no.6 Saibaba and professors were requesting to police to watch the proceeding in the house of accused no.6 Saibaba but the police did not allow them to enter in the house of accused no.6 Saibaba and inside the house of Saibaba around 20 to 25 Delhi police and 20 to 25 Maharashtra police were present.

200] He admitted that the Delhi police were in uniform but Maharashtra police were not in uniform and two Maharashtra police were in uniform. He admitted that the police kept himself and accused no.6 Saibaba out of the house and locked the door from inside and there is only one door to the house of accused no.6 Saibaba. He admitted that he does not know the difference between C.D. and D.V.D. pen-drive and blue-tooth, C.D. driver and DVD driver and he does not know what is meant by hard-disk. He admitted that when the contents of the panchanama were read over to him by the police at that time police stated him that in the drawer of wooden table from the house of Saibaba 25 to 30 CDs, laptop, 4 to 5 pen-drives, 4 to 5 hard-disk, 5 to 6 books were found and those articles were seized in his presence and he signed on the packets of all the material which were seized and he cannot assign any reason as to why it is not mentioned in the panchanama (Exh.165).

201] He denied that police told him that in the house of accused no.6 Saibaba stolen property was lying and they had to take search of the same. He denied that on the day of recording of his evidence he came in court alongwith police and from 3rd January, 2016 he was in the custody of Gadchiroli police and they tutored him the statement which was to be given before the court. He has denied that he did not go to the house of accused no.6 Saibaba for search of his house. He stated that there were three doors to the house of accused no.6 Saibaba. He has denied that police obtained his signatures on 3 to 4 blank papers and he was not present in the house of professor Saibaba (accused no.6 Saibaba) for panchanama of the search of his house and nothing was seized in his presence and from 2nd January he was kidnapped by police till 16th January police threatened him to shut down his shop at Delhi University and therefore, he deposed falsely as per their say. He has denied that he saw Articles No.1 to 41 mentioned in the panchanama (Exh.165) for the first time in the court.

Depositing of seized electronic gadgets Articles i.e. 16 GB memory-card of Sandisk company and other articles seized from the possession of accused no.3 Hem Mishra and Articles no.1 to 41 CDs, DVDs, pen-drives, hard-disks and other articles seized from the house search of accused no.6 Saibaba in Police Station, Aheri.

202] After seizure of the above muddemal articles i.e. one 16 GB memory card of Sandisk company and other articles i.e. cash amount of Rs.7,500/-, Kodak Camera, cloth bag, white cap, one spect case of black colour, one newspaper of Sahara dated 19-8-2013, one

red coloured towel, one blue coloured napkin, one shirt of checks with lining, one gray half pant, one yellow coloured T-shirt, one dark brown pant, one money purse, pan-card, two identity cards of JNU University, one SBI ATM card, one travel card of Delhi Metro, one Delhi to Ballarsha Railway-ticket dated 19.8.2013 and xerox copy of election identity card i.e. Arts.21 to 38 seized from the personal search of accused no.3 Hem Mishra under seizure panchanama (Exh.137) and were deposited by PI Anil Badgujar (P.W.10) with Muddemal Clerk Ganesh Rathod (P.W.13) in Malkhana of Aheri Police Station.

203] The panchanama of personal search of accused No.3 Hem Mishra was prepared on 22.08.2013 and the articles seized under the panchanama were deposited with muddemal clerk (P.W.No.13) Ganesh Rathod Malkhana in-charge of Aheri Police Station to that effect there is a oral evidence of P.W.13 Ganesh Rathod about depositing of said articles and relevant copy of entry in muddemal register is produced on record on Exh.276-A and relevant entry about the same is taken on 22.08.2013.

204] The electronic gadgets Articles nos.1 to 41 CDs, DVDs, pen-drives, hard-disks and other articles i.e. magazine "Janapratirodh", one print-out, photograph of lady naxal with gun, book by name "Prashembabu Maowadi Nahi Hain", book-let with title "People's Hero Comrade Kishanji, one magazine "The arrested" regarding banned organization CPI (Maoist) and its frontal organization RDF in text, audio and video seized during the house search of accused no.6 Saibaba under seizure panchanama (Exh.165)

were deposited on 13.09.2013 by Investigating Officer Suhas Bawche (P.W.11) with Ganesh Rathod (P.W.13), Muddemal Clerk of Aheri Police Station.

205] To prove this aspect prosecution has examined Police Officer Anil Badgujar (P.W.10), Investigating Officer Suhas Bawche (P.W.11) and Muddemal Clerk Ganesh Rathod (P.W.13).

206] In this respect, the Investigating Officer Suhas Bawche (P.W.11) at Exh.235 stated that after house search of accused no.6 Saibaba at Delhi on 12.09.2013 and he came to Aheri Police Station on 13-9-2013 and deposited all the property which was seized from the house search of accused no.6 Saibaba with Ganesh Rathod (P.W.13), Muddemal Clerk of Police Station, Aheri and Ganesh Rathod (P.W.13) took entry in station diary of Police Station, Aheri.

207] To that effect there is an entry in muddemal register at Exh.276-D.

208] During cross-examination he admitted that property wrapped in the plastic box was handed over to muddemal clerk and plastic box before the court is not the same in which property was seized from the house of accused no.6 Saibaba but the said plastic box was similar to Art.136 before the court. He denied that on 12-8-2013 nothing was seized from the house of accused no.6 Saibaba and it was not put in plastic box.

209] Muddemal Clerk of Aheri Police Station Ganesh Rathod (P.W.13) in his examination-in-chief at Exh.297 stated that in the

month of August 2013 he was attached to Police Station Aheri as Muddemal Moharir (Property Clerk) and on 22-8-2013 Police Inspector Badgujar (P.W.10) of Aheri Police Station deposited property of Crime no.3017/2013 in the Malkhana and he gave property no.12/2013 to it and taken note of property in muddemal register and copy of the said register page no.76 is filed on record at Exh. 276-A. On 25-8-2013 the muddemal property i.e.16 GB memory card seized from the possession of accused no.3 Hem Mishra was sent to CFSL, Mumbai alongwith P.W.5 Police Constable Ravindra Kumbhare, B.no. 2086 and he has taken note of the same on Exh.276-A.

210] He stated that on 13-9-2013 P.W.11 SDPO Suhas Bawche deposited one plastic box in brown paper in sealed condition and two big packets in brown paper in sealed condition in this crime and he gave property no.15/2013 to the same and took entry in property register and again on 14-9-2013 SDPO Suhas Bawche (P.W.11) had taken said property for the purpose of investigation and he handed-over the property to SDPO Bawche vide entry in property register at Exh.276-C. He stated that on 14-9-2013 after drawing panchanama P.W.11 SDPO Suhas Bawche deposited the property alongwith copy of panchanama consisting of 1 to 25 sealed packets and remaining property and he had taken entry in respect of same in property register and gave property no.16/2013 to the same and further on 14-9-2013 he handed over property no.1 to 25 to carrier P.W.5 Police Constable Ravindra Kumbhare B.no.2086 depositing the same to CFSL, Mumbai and at that time, Police Inspector Badgujar (P.W.10) was also with him and on 16-2-2014 Woman Police Constable Apeksha Ramteke (P.W.7) brought said property from CFSL Mumbai in

4-5 sealed packets and deposited the same in Malkhana and he had taken note of the same in the register and he deposited all these properties in the Sessions Court on 13.10.2015 vide invoice slip at Exh.135. He stated that on 10-5-2013 P.W.11 SDPO Bawche deposited one mobile phone, R.C.book of vehicle and Rs.320/- with him and thereafter he has taken an entry of property bearing no.6/2014 in the property register vide Exh.276-E.

211] This witness brought the original register before the Court and all the articles filed in Court were verified from the original and found to be correct. He stated that in this crime he issued the receipts no.145, 146, 147 (Exh.299/A, 299/B and 299/C respectively) in his handwriting to the concerned officer for depositing the property with him and he had written the contents as per panchanama. In respect of property deposited with him vide property no.13/2013, he had issued receipts no.148 and 149 (Exh.300/A and 300/B) to the investigating officer and on 14-9-2013 he gave receipts No.150 to 158 (Exh.300-A to 300-I) to the Investigating Officer P.W.11 Suhas Bawche in respect of property no.16/2013.

212] On perusal of extract of Muddemal Register at Exh.276A it reveals that there is entry at Sr.no.12 dated 22.8.2013 relating to depositing of the property seized from accused no.3 Hem Mishra as under :-

- i] amount Rs.7700/-, 16 GB Sandisk memory card, Railway ticket of Ballarsha to Delhi dt.19.8.2013, ATM card of SBI, pan card, election card, I-card of Jawaharlal Neharu University etc.
- ii] one Kodak company digital camera with charger

iii] one bag containing clothes, spec cover, white cap, newspaper dt 19.8.2013 etc. In column no.11, it is mentioned that said properties were deposited on 13.10.2015 in the Court.

Further, again entry dated 2.9.2013 at Sr.no.13 (Exh.276B)

213] There is entry dated 13.9.2013 at Exh.276C relating to depositing of property seized from the house search of accused no.6 Saibaba which is described as under : -

- i] one sealed box
- ii] two big sealed envelopes.

214] There is entry at Exh.276D dated 14.9.2013 about description of property seized from the house search of accused no.6 Saibaba as under :-

i] one plastic box in sealed condition,

Articles from two big envelopes :

- 1] Seagate S/N 9 VMGA 22 P 500 Gbytd hard disc.
- 2] Convention on sitar. New Delhi dt.20-12-11,C.D.'s part I &II
- 3] Convention against War on people, C.D. Part I,II, III
- 4] Mati Ke Lal (Bhartiya Krantikari Sambhavana par ek Dastiwaz)120 minutes C.D.
- 5] C.D. Whereon it is written as Trinmul issue convention on Kishanji issue dt. 13-12-11
- 6] C.D. Cassette – Prohibited area
- 7] Convention on Kishanji,dt.13-12-11, C.D.Cassette Part I & II
- 8] Combat Law, converted books C.D. Cassettes

- 9] CD whereon it is written as "Conference Book apms.2013
- 10] Dada Storage IEC S/N7 PF200CBYQ002Y Hard disc.
- 11] My passport S1 WDBACX0010BBK-01 hard disc with wire use to connect laptop.
- 12] BUFFALO hard-disk.
- 13] hard-disk no.SN NA53EZ4N of DELL Company
- 14] Red blackish colour San disc 32 GB pen-drive.
- 15] One pen-drive having leather cover bearing name "Simmtronics GB"
- 16] Black coloured 16 GB pen-drive bearing name "SONY"
- 17] San disc 32 GB memory card.
- 18] C.D. Cassette containing heading BBC Documentary on Kashmir
- 19] C.D. Cassette bearing label Video's on Shrilankan war crimes
- 20] C.D. Cassette bearing name LE salute rouge
- 21] C.D. Cassette bearing name The international association of peoples lawyer presents few myths and facts about Salwajudam Concentration Camps.
- 22] C.D. Cassette 1 to 7 named as meeting on Kashmir 21 Oct. 2010
- 23] C.D. Cassette named as Maoist in India
- 24] Six C.D. Cassettes
- 25] Letter of Justice K. Balkrishnan, chairperson National Human Rights Commission, Delhi dated 31 July 2012

215] Further, there is entry at Sr.no.6 dated 1.5.2014 at Exh.276E about seizure of property belonging to accused no.6 Saibaba which is as under : -

- 1] RC book of vehicle
- 2] Cash 320/-
- 3] Mobile black colour having white colour symbol of cutting apple.

216] Further, it reveals from the muddemal register that Muddemal nos.1 to 25 were handed over to PC Ravindra Kumbhare (P.W.5) for depositing the same with CFSL, Mumbai for analysis on 14.9.2013 and WPC Apeksha Ramteke (P.W.7) brought the muddemal from CFSL Mumbai and deposited the same through SDPO Aheri. Some other property is also mentioned in the muddemal register which is as under :

- 1] letter dated 31 July 2012
- 2] Printed letter dated 7 June 2012 of Green hunt operation of RDF
- 3] 15 pages written on People Hero Comrade Kishanji
- 4] Information book named as "The arrested"
- 5] People march dt 8 August 2007
- 6] Booklet magazine 39 and 41, 42
- 7] Printed telgu book
- 8] Colour photo of naxal
- 9] Booklet "Lal Salam"
- 10] Prashenbabu Maowadi Nahi
- 11] Telgu magazine etc.

Thereafter, as per order of Sessions Court Gadchiroli, the muddemal properties were deposited on 13.10.2015 in the Court.

217] P.W.13 Ganesh Rathod was cross-examined by the learned defence counsel and in his cross-examination he admitted that he cannot say without seeing register who deposited the property with him in which Crime number and if the name of the officer in Crime number is mentioned and on 12.8.2013 he made last entry prior to the entry in crime no.3017/2013 and from 12.8.2013 to 8.9.2013 there are only two entries regarding two crimes. He admitted that in the invoice challan it is not mentioned that property was sealed and make of the seal was not mentioned and he did not make entry in writing about the fact that the clerk of the District court asked him to open the seal while depositing the property. He admitted that there are some over-writings in the muddemal register and the said over-writings were made by him at two places and when the property was deposited in Malkhana at that time, it was sealed and make of the seal was not mentioned. He was shown muddemal register and entry dated 26.8.2013 which is in his handwriting and the name of P.W.5 Ravindra Kumbhare was written thereon.

218] He denied that on 8-9-2013 he made entry at the instance of P.W.11 SDPO Shri Bawche and on 25-8-2013 he did not hand over 16 GB memory card to P.C. Ravindra Kumbhare (P.W.5) and thereafter from time to time he did not hand over the property to carrier and received the same and all these entries in Muddemal register were made at the instance of P.W.11 Shri Bawche and he did not make entry in writing about the fact that the clerk of the District court

asked him to open the seal while depositing the property. He further denied that as the property was not in sealed condition and make of the seal was not mentioned, hence he did not mention the same in muddemal register.

Argument of Spl. P.P. Shri Sathainathan about seizure of electronic gadgets from accused no.6 Saibaba.

219] In respect of accused no.6 Saibaba, the learned Spl. P.P. Shri Sathainathan submitted that while interrogating with accused no.3 Hem Mishra involvement of accused no.6 Saibaba was revealed and to that effect CDR of mobile SIM of accused no.6 Saibaba was verified. From the CDR of mobile of accused No.3 and accused No.4, it revealed that accused no.3 Hem Mishra and no.4 Prashant Rahi were in contact with accused no.6 Saibaba and their location was found at Delhi University. Thereafter, application was moved before the Judicial Magistrate F.C., Aheri (P.W.12 Vyas) and search warrant at Exh.244 for carrying house search of accused No.6 Saibaba at Delhi and he obtained search warrant at Exh.244, thereafter Investigating Officer P.W.11 Suhas Bawche alongwith police team of Morisnagar Police Station and Maharashtra police went to the house of accused no.6 Saibaba and copy of search warrant was served on accused no.6 Saibaba and his signature was obtained thereon. Search was carried out as per procedure and legal formalities were followed.

Submission of learned Advocate Shri Gadling for the accused in respect of seizure of articles from accused no.6 Saibaba

220] Per contra, the learned Advocate Shri Gadling for the accused submitted that panch witness P.W.2 Jagat Bhole in his cross-

examination has stated that during search of the drawer of wooden table kept in the bed room of the house of accused no.6 Saibaba 25 to 30 CDs, laptop, 4-5 pendrive, 4 to 5 hard disk 5 to 6 books were seized, however, this fact is not stated by Investigating Officer P.W.11 Suhas Bawche and further it is not mentioned in the panchanama (Exh.165). He submitted that panch witness Jagat Bhole (P.W.2) in his cross- examination stated that the contents of panchanama (Exh.165) were read over to him when panchanama (Exh.165) was prepared but the panchanama (Exh.165) is silent about the fact that the contents were read over to this witness. Hence, the panchanama which was prepared at the house of accused no.6 Saibaba is different than that of panchanama (Exh.165). He submitted that P.W.2 in his cross-examination admitted that when the search of house of accused No.6 Saibaba was carried out, accused Saibaba and himself were outside the home.

221] He submitted that panch witness P.W.2 Jagat Bhole in his examination stated that police sealed all material in his presence and drew panchanama to that effect and he signed on the panchanama however in his cross-examination he admitted that the labels on the articles do not bear his signatures that means the property produced before the Court is not the same property which was seized from the house of accused no.6 Saibaba and it is planted one. He submitted that P.W.4 Shrikant Gaddewar in his examination-in-chief stated that the property seized from the house of accused no.6 Saibaba was opened for sending it to CFSL and police brought one plastic box and two sealed paper packets and those were sealed and they bear his signatures. Shrikant (P.W.4) has not stated that there was earlier seal

having signatures of panch P.W.2 Jagat Bhole. Shrikant (P.W.4) stated that the labels bear the signatures of P.W.2 Jagat Bhole. It was argued that this shows property was not sealed when seized from the house search of accused no.6 Saibaba.

222] He submitted that after perusal of evidence of P.W.2 Jagat Bhole it reveals that he was not able to point out any seal bearing date 12.9.2013 and only stated having label dated 14.9.2013 on the envelopes and in cross-examination he admitted that he does not know difference between CD and DVD, pen-drive and blue-tooth, CD driver and DVD driver and hard-disk. Hence, it was argued that his evidence is not worth to be relied upon.

223] He submitted that P.W.2 Jagat Bhole identified the plastic box which is marked at Article 107 which was used at the time of seizure of articles, however, according to prosecution witness P.W.15 Narendra Dubey and P.W.5 Ravindra Kumbhare when they had been to CFSL they put all articles in another box which is different from Article-107. However, it is not mentioned in the panchanama that the property was deposited in plastic box and further P.W. 4 Shrikant admitted in cross-examination that plastic box which is before the Court was not brought before him at Police Station and all articles were put in hardboard box and there is no hardboard box before the Court.

224] He submitted that P.W.2 Jagat Bhole in his examination stated that all articles were in plastic box. Hence there is inter se contradiction between the evidence of both the witnesses about hardboard box and plastic box. This shows that the property which

was opened before P.W.4 Shrikant was different and there is no hardboard box before the Court. He submitted that unique identification number of electronic gadgets were not mentioned in panchanama and no seal and signatures are appearing on the labels. Hence, it was argued that property which was sent to CFSL was not the property which was seized from the house of accused no.6 Saibaba on 12.9.2013. He submitted that further witness Jagat (P.W.2) has admitted in his cross-examination that accused no.6 Saibaba made a request to police officer to take search in presence of Professors and Advocates, and that Investigating Officer P.W. 11 Suhas Bawche purposefully took him who is an illiterate person to act as a panch. This shows that they wanted to plant electronic gadgets Art.1 to 41 like CDs, DVDs, pen-drives, hard-disks etc. by showing that those properties were seized from the house search of accused no.6. He further submitted that P.W. 11 Suhas Bawche should have taken the Government servant as a panch, however, he purposefully took Jagat (P.W.2) as panch witness. He further submitted that permission of the Vice-Chancellor was not taken for house search of accused no.6 Saibaba.

225] He submitted that from the evidence of panch witness P.W.2 Jagat Bhole it reveals that he was hiding his stay at Gadchiroli and from his admission in cross-examination that he halted at the shelter of police. This shows that he is under the thumb of police and he is tutored witness. According to prosecution he is an illiterate witness and he can not read and write and he can only sign in English language and he requested the police to take another panch but police asked him to act as a panch.

226] He submitted that P.W.11 Suhas Bawche admitted in his cross-examination that videography of the proceeding of house search of accused no.6 Saibaba was taken but neither CD of the same nor videographer was examined to prove the fact that videography was done and Investigating officer P.W. 11 Suhas Bawche has not made any effort to get the C.D. from the Delhi police and the explanation given by the investigating officer P.W. 11 Suhas Bawche is not proper and hence, adverse inference should be drawn against the prosecution for non-production of CD and non-examination of video-grapher. In support in his submission he placed reliance on the judgment of Apex Court **Tomaso Bruno & Anr. Vrs State of U.P., reported in 2015 (1) Crimes 105 (SC)**, wherein Apex Court observed that -

(b) Criminal trial – Circumstantial evidence – Non Production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused – Not mere faulty investigation – Amounts to withholding of best evidence – Section 114(g) – Indian Evidence Act, 1972 – Adverse inference may be drawn against prosecution for not producing the aforesaid details particularly CCTV footage while it could – Prosecution neither examining the doctor declaring the deceased 'brought dead' nor producing the report that was prepared in the emergency ward of hospital – Not producing death intimation sent to the police. (Para 27, 29, 30)

Conclusion on the point of Seizure of articles from house search of accused no.6 Saibaba

227] On the point of seizure of electronic gadgets like CDs, DVDs, pen-drives, hard-disks, laptop (Articles no.1 to 41) from the

house search of accused no.6 Saibaba at Delhi, the prosecution has relied on the evidence of P.W.no.2 Jagat Bhole and P.W.no.11 Suhas Bawche. The evidence of P.W.no.2 Jagat Bhole is challenged on the ground that he was not present at the time of house search of accused no.6 Saibaba and that the defence relied on the admission given by this witness in cross-examination that while taking the house search of accused no.6 Saibaba he and accused no.6 Saibaba were kept out of the house and thereafter police told him that from the drawer of wooden table from the house of accused no.6 Saibaba 25 to 30 CDs, laptop, 4 to 5 pen drives, 4 to 5 hard disk, 5 to 6 books were found and those articles were seized in his presence and he signed on all the material which were seized on their packet. The omission in respect of number of CDs, DVD, Pen-drives found in the house search of accused no.6 Saibaba was brought on record. Further these articles were not sealed when they were seized.

228] It is well settled principle of law that while appreciating the evidence of witness the whole evidence of witness i.e. examination-in-chief and cross-examination is to be considered and a stray admission given by witness in cross-examination cannot be considered. At this juncture, it is necessary to consider the ratio laid down by **Karnataka High Court** in case of **B.A.Buddabai Vs. State of Karnataka** reported in **Criminal Appeal No.62 of 2007**. In the above case accused attempted the murder by firing three bullets by gun. Ballistic report states that after firing one pellet, gun was refilled. However, witness gave admission in his cross-examination that accused did not refill the gun. It was observed that mere stray admission that the gun was not refilled at the time of second gun-shot is not a ground to discard the version of Ballistic Expert.

229] In view of the above in the present case, we have to see whether the panch witness Jagat Bhole (PW.2) was present at the time of panchanama or not. During his cross-examination he admitted that at the time of house search of accused no.6 Saibaba, he was kept outside, however, in his examination he stated that at the time of house search of accused no.6 Saibaba, he was present and his signature was taken on seizure panchanama (Exh.165). It is to be noted that P.W.2 Jagat Bhole is illiterate witness and he can only sign in English language and his cross-examination was conducted for a whole day. In examination-in-chief he narrated that all the facts how the house search of accused no.6 Saibaba was taken. He stated that while taking search by police they entered in the bed-room of accused Saibaba and in the drawer of one wooden table 25 to 30 CDs, laptop, 4-5 pen-drives, 4 to 5 hard-disks, 5 to 6 books were found and police sealed all material in his presence and drew the panchanama to that effect and he alongwith another panch Ramkumar signed on the panchanama. He stated that in all 41 articles were seized from the bed room of the house of accused no.6 Saibaba and panchanama to that effect was prepared at Exh.165 in his presence. He stated that when he went to the house of accused no.6 Saibaba for taking search of his house at that time accused no.6 Saibaba, his wife and his daughter were present. On going through the examination-in-chief and cross-examination of P.W.2 Jagat Bhole, it is clear that this witness had made two inconsistent statement at different stages of the proceedings i.e. in examination-in-chief he stated that he entered in the bed room of Saibaba alongwith police and from drawer of wooden table 25 to 30 CDs, laptop, 4-5 pen-drives, 4 to 5 hard-disks, 5 to 6 books were found and police sealed all material in his presence

and drew the panchanama to that effect. But, in cross-examination he admitted that he and accused no.6 Saibaba were kept out of the house and police said that they recovered 25 to 30 CDs, lap-top, 4 to 5 pen-drives, 4 to 5 hard-disk, 5 to 6 books from the drawer of wooden table from the house of accused no.6 Saibaba. At this juncture, it is necessary to consider ratio laid down by Apex Court in the case of Surajmal Vrs State, reported in 1979 Supreme Court, 1408, cited supra, wherein it is observed that -

(A) Criminal P.C. (2 of 1974), S.354 – Appreciation of evidence – Two inconsistent statements by witness at one or two stages – Credibility. Where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witness becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.

230] It is to be noted that this witness is illiterate witness. He cannot read and write English language and his cross-examination was held in whole day that too by eminent lawyer having standing practice of more than 25 years and this witness might have frightened because of Court atmosphere, hence in view of judgment of Apex Court, in the case of Surajmal Vrs State, reported in 1979 Supreme Court, 1408, cited supra, the above circumstances could be considered as special circumstances to believe his evidence of P.W.2 Jagat Bhole and it can be inferred that P.W.2 Jagat Bhole was present at the time of house search of accused no.6 and at the time of preparation of panchanama (Exh.165) and hence stray admission given by P.W.2 Jagat Bhole that he and accused no.6 Saibaba kept

outside the house while taking house search of the house of accused no.6 Saibaba, is not a ground to discard the version of P.W.2 Jagat Bhole.

231] It has come on record that the copy of panchanama of house search of house of accused no.6 Saibaba regarding seizure of electronic gadgets (Articles no.1 to 41) was given to accused no.6 Saibaba and his signature was obtained on the copy of panchanama and this has not been disputed by the defence. To that effect there is evidence of Investigating Officer P.W.11 Suhas Bawche. From his evidence, it is clearly established that before taking the search of house of accused no.6 Saibaba he had obtained search warrant from J.M.F.C., Aheri vide Exhibit No.244 and thereafter he went to the house of accused no.6 Saibaba alongwith other police staff to Delhi and with the help of police of Moris Nagar Police Station he conducted house search of accused no.6 Saibaba in presence of P.W.2 Jagat Bhole and seized electronic articles No.1 to 41 from his house and before taking of house search of accused Saibaba, the police officers offered their personal search to be taken by his wife, but they refused for the same and this fact has been mentioned in panchanama at Exh.165. Even assuming for the sake of argument that panch P.W.2 Jagat Bhole and accused no.6 Saibaba were kept outside the house but from the evidence of PW.11 Suhas Bawche it has come on record that at the time of house search of accused no.6 Saibaba, accused no.6 Saibaba and his wife Vasantha were present.

232] Even assuming for sake of argument merely because there has been some irregularities at the time of taking search of house of accused no.6 Saibaba that is not a ground to discard the evidence

collected during such search and at this juncture it is necessary to consider ratio laid down by the Apex Court in the case of **State of Haryana vs. Rajmal and another (2011) Supreme Court Cases 326** reported in **Supreme Court Cases (Cri)1328** wherein it is held that -

D. Criminal Trial – Search and seizure – Illegality of search procedure – Effect of – Illegal search does not vitiate seizure of articles – Requirement of law in such cases is that Court has to examine carefully the evidence regarding seizure, and beyond this no further consequences ensue – Held, thus no error committed by courts below by proceeding on material collected as a result of seizure of materials – Animals, birds and fish – Punjab Prohibition of Cow Slaughter Act, 1955 (15 of 1956) – Ss. 3 and 8 – Criminal Procedure Code, 1973, Ss. 100 and 102. (paras 17 and 18)

233] The defence has attacked on the ground that at the time of house search of accused no.6 Saibaba video-grapher was provided and video-graphy of the said proceeding was done and thereafter CD was prepared to that effect. However video-grapher was not examined and CD was also not produced on record. Hence adverse inference is to be drawn against the prosecution. In support of his submission the defence relied on the following Judgments -

[ii] **Tomaso Bruno vs. State of U.P. reported in 2015 (1) Crimes 105 (SC)**, wherein it is held that -

(b) **Criminal trial – Circumstantial evidence** – Non-production of CCTV foot-age, non-collection of call record (details) and sim details of mobile

phones seized from the accused – Not mere faulty investigation – Amounts to withholding of best evidence – Section 114(g) – Indian Evidence Act, 1972 – Adverse inference may be drawn against prosecution for not producing the aforesaid details particularly CCTV footage while it could – Prosecution neither examining the doctor declaring the deceased 'brought dead' nor producing the report that was prepared in the emergency ward of the hospital – Not producing death intimation sent to the police. (Para 27, 29, 30)

[iii] Shri Balkrishna Bhau Desai vs. The State of Maharashtra reported in 2016 ALL MR (Cri) 1913, wherein it is observed that -

(C) Prevention of Corruption Act (1988), Ss.7, 13(2), 13(1)(d) – Evidence of trap – Non production of tape recorder used in trap – Effect – Evidence of complainant that conversation between him and accused was not only recorded, but also heard by IO and panchas after the trap was over – Whereas IO denied any such recording – Adverse inference may be drawn that recorded conversation, if produced, would not have supported the prosecution case – Approach of trial court while proceeding on possibility that conversation might not have been recorded due to some mechanical defect, or that it would not have been audible, even though nobody put a case to that effect, is erroneous approach – Held, this is serious infirmity which by itself, is sufficient to raise doubt on case of prosecution. (Paras 17, 18, 20, 26)

234] It is well settled that while considering *ratio decidendi* of the case the factual aspect under which the observations are made is to be considered. At this stage it is necessary to consider the ratio laid

down in the Judgment of Hon'ble Apex Court in case of **Padmasundara Rao (Dead) and others -v- State of T.N. and others reported in AIR 2002 Supreme Court 1334** wherein it is held that -

(A) Interpretation of Statutes – Precedents – Reliance on decisions – Cannot be placed without discussing fact situation of decision relied on.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

235] Further in case of **Ramesh Singh alias Photti v. State of A.P. reported in AIR 2004 Supreme Court 4545** the Apex Court observed that -

(B) Precedent – Earlier case – Can be treated as precedent only if facts and circumstances in such earlier cited case is in pari materia in all respects with facts and circumstances of case in hand. (Para 11)

236] At this juncture, it is necessary to consider ratio laid down by the Apex Court in the case of **Ajay Kumar Singh vs Flag Officer, Commanding-In-Chief and others** reported in **AIR 2016 Supreme Court 3528** wherein it is observed that -

Indian Penal Code (45 of 1860) – S. 391 – Evidence Act (1 of 1872), S. 45 – Robbery – Expert evidence – Chance fingerprints lifted from entrance glass doors of bank – Non-examination of photographer – Also non-production of negatives of photographs of chance fingerprints – Said lapse cannot result in acquittal of accused – Criminal trials should not be made casualty for such lapses in investigation or prosecution. Criminal P.C. (2 of 1974), S. 156. (Para 17)

237] In the above case accused was charged for offence punishable under section 392 and 342 and during investigation the photograph of accused was taken and negatives of photograph were also available and statement of photographer was also recorded, but during the trial the photographer was not examined. The photograph and negatives were also not produced and in that situation the Apex Court observed that the said lapses cannot result in acquittal of accused. On going through the Judgment of Hon'ble Apex Court relied by defence **Tomaso Bruno vs. State of U.P. reported in 2015 (1) Crimes 105 (SC)** cited supra it seems that CCTV footage was not collected during investigation. However, the facts of the present case are identical with the facts of **Ajay Kumar Singh vs Flag Officer, Commanding-In-Chief and others** reported in **AIR 2016 Supreme Court 3528**, hence as discussed above ratio laid down by Apex Court in the case of Ajaykumar singh would be applicable to the present case. Hence, merely because videographer was not examined and CD was not produced on record, is not a ground to reject the testimony of investigating officer PW.11 Suhas Bawche. When he has given explanation that while videographing the proceeding of search of house of accused no.6 Saibaba by the videographer, the memories of the video camera was full, hence it could not be produced.

238] But Investigating Officer P.W.11 Suhas Bawche stated that the Police staff accompanied with him have also made video recording of proceeding of panchanama on their respective mobile phones and it was stored in the computer after coming back to Aheri Police Station and the same was saved in a folder and thereafter, prepared the CD of the same folder and he submitted the same before the Court. It is at Art.144. As the said CD is not accompanied by the certificate as required under section 65-B of Indian Evidence Act, it cannot be taken into consideration.

239] The main defence of accused no.6 Saibaba is that seizure of all alleged electronic gadgets i.e. CDs, DVDs, pen-drives, hard-disks, memory-cards (Arts.No. 1 to 41) from the house search of accused no.6 Saibaba vide panchanama Exh.165 is false, fabricated and manipulated and the suggestions were given to the Investigating Officer P.W.11 Suhas Bawche that the electronic gadgets i.e. CDs, DVDs, pen-drives, hard-disks, memory-cards (Arts.No. 1 to 41) were taken out from the dens and manipulated and shown to be recovered from the house of accused no.6 Saibaba. In support of his submission he placed reliance on the following judgments:-

[i] Yusufalli Esmail Nagree vs. The State of Maharashtra reported in AIR 1968 Supreme Court 147, wherein it is held that -

(A) Evidence Act (1 of 1872), S.6, S.8, S.7 – Offence under S.165-A Penal Code – Evidence – Trap laid – Conversation between accused and complainant tape-recorded – Amount handed over to complainant – Voices of complainant and accused identified – Contemporaneous dialogue between them held formed part of res gestae and was relevant under S.8 – Further, like a photograph of a

relevant incident a contemporaneous tape-record of a relevant conversation was admissible under S.7. Case law relied (Para 5)

[ii] **Mahabir Prasad Verma .vs. Dr. Surinder Kaur reported in AIR 1982 Supreme Court 1043**, wherein it is held that -

(A) **Evidence Act (1 of 1872), S.63** – Tape-recorded conversation – Credibility – Can be relied on only as corroborative evidence. (Tape-recorded conversation – Credibility).

[iii] **Tukaram S. Dighole vs. Manikrao Shivaji Kokate reported in (2010) 4 Supreme Court Cases 329**, wherein it is held that -

B. Evidence Act, 1872 – Ss.3, 61 to 65, 74 and 75 - Contents of audio/video cassette – Nature of proof – Mere production of an audio cassette, assuming that the same was a certified copy issued by Election Commission – Held, tape records of speeches are “documents” as defined in S. 3 of the Evidence Act and stand on no different footing than photographs – Audio and videotape technology has emerged as a powerful medium through which first-hand information about an event can be gathered and in a given situation may prove to be a crucial piece of evidence – However, with fast development in electronic techniques, tapes/cassettes are more susceptible to tampering and alterations by transposition, excision, etc. which may be difficult to detect and therefore, such evidence has to be received with caution – To rule out possibility of any kind of tampering with tape, standard as compared to other documentary evidence – Held, appellant miserably failed to prove authenticity of cassette as well as accuracy of speeches purportedly made by respondent – Admittedly, appellant did not lead any evidence to prove that cassette produced on record was a true reproduction of original speeches by respondent or his agent – Thus, appellant failed to

prove that respondent was guilty of indulging in corrupt practices – Criminal Trial – Proof – Electronic evidence/Tape records. (Paras 23 to 27)

240] It is important to note that from the evidence of Investigating Officer P.W.11 Suhas Bawche it is clear that during interrogation with accused no.3 Hem Mishra and no.4 Prashant Rahi involvement of accused no.6 Saibaba was revealed and hence he sought permission from JMFC Aheri P.W.12 Nileshwar Vyas on 4-9-2013 for taking the house search of accused no.6 Saibaba and after getting permission on 7-9-2013, he along with Addl. S.P. Mina, PI Badgujar, P.C. Kumbhare, H.C. Dubey and other police staff left for Delhi on 9-9-2013 and had taken entry Exh.275J in the station diary about the same and thereafter on 12-9-2013 he issued letter Exh.252 to in-charge Police Station officer, Morisnagar for providing police staff, computer expert and Videographer and thereafter the said Police Station provided police staff to them for conducting raid at the house of accused no.6 Saibaba as he was residing in the campus of Delhi University.

241] Thereafter, Investigating Officer P.W.11 Suhas Bawche alongwith his police staff, videographer, panch and police staff of Delhi proceeded to the house of Saibaba and after reaching to the house of accused no.6 Saibaba they found his wife Vasanta was present in the house and she opened the door of house and they gave their introduction and the purpose of their visit at their house and thereafter, she called accused no.6 Saibaba. He stated that they showed the copy of house search warrant to both of them and obtained the signature of Saibaba and requested to cooperate while

taking the house search of his house and orally intimated to accused no.6 Saibaba and his wife that they could take personal search of themselves and the panchas and the accused no.6 Saibaba and his wife Vasanta declined to the same and this fact is mentioned in panchanama at Exh.165 and then they along with accused no.6 Saibaba and his wife entered the house and started taking the search of his house in presence of panchas and seized electronic gadgets Arts.1 to 41, three mobiles, two SIM cards, books, magazine and some other articles and panchnama (Exh.165) of house search and seizure was carried out in presence of panch witness P.W.2 Jagat Bhole and all the properties were sealed with labels and signatures of P.W.2 and P.W.11 Suhas Bawche copy of panchanama, the same was given to accused no.6 Saibaba.

242] After seizure and sealing of said articles Investigating Officer P.W.11 Suhas Bawche and other police staff came to Aheri Police Station by aeroplane and on 13-9-2013 deposited the property with the Muddemal clerk in Aheri Police Station in sealed condition and to that effect there is entry in the muddemal register at Exh.276C. On going through the above evidence it is clear that there is no reason to disbelieve the version of Investigating Officer P.W.11 Suhas Bawche and panch witness P.W.2 Jagat Bhole that on 12.9.2013 house search of house of accused no.6 Saibaba was taken and electronic data CDs, DVDs, pen-drives, hard-disks, laptops (Arts.1 to 41), three mobiles, two SIM cards, books, magazine, naxal literature and some other articles were seized under house search panchanama Exh.165 and defence of the accused that those articles were manipulated and fabricated is not reliable. Further it has come on

record that after drawing panchanama copy of the panchanama was also given to accused no.6 Saibaba and his signature was obtained thereon and Exh.165 bears his signature. This shows that panchanama Exh.165 was carried out at the house of accused no.6 Saibaba.

243] It is important to note that the electronic data contained in electronic gadgets like CDs, DVDs, pen-drives, hard-disks, (Arts.No. 1 to 41) is around 3 TB. Had the police officer manipulated or fabricated the said electronic data in CDs, DVDs, pen-drives, hard-disks (Art.nos.1 to 41), they would have inserted (by way of fabrication or manipulation) only incriminating material and not the data or material relating to the personal correspondence of accused no.6 Saibaba and family photographs of accused no.6 Saibaba and Hindi songs in audio and video form and English and Hindi movies around 100 in numbers.

244] Further had the police fabricated and manipulated the electronic data in CDs, DVDs, pen-drives, hard-disks (Art.nos.1 to 41) they would not have protected the text file with password and deleted the files from the hard-disks seized from the house search of accused no.6 Saibaba. Further, it is the contention of the defence that the said electronic gadgets CDs, DVDs, pen-drives, hard-disks (Art.nos.1 to 41) bear unique identification numbers which were not mentioned in panchanama (Exh.165) when those gadgets were seized. It is important to note here that on careful perusal of the said electronic gadgets CDs, DVDs, pen-drives, hard-disks (Art.nos.1 to 41) unique identification number is not visible. Besides, in view of the answer of Scientific Expert P.W.21 Bhavesh Nikam to the court question that he did not find any change, alteration or tampering in original existence

of file contained in electronic gadgets CDs, DVDs, pen-drives, hard-disks (Art.nos.1 to 41) and 16 GB memory card seized from the possession of accused No.3 Hem Mishra, the non mentioning of unique identification number of electronic gadgets in panchanamas is not fatal to prosecution case.

245] The defence further attacked on the evidence of prosecution witnesses on the point that before carrying out house search of house of accused no.6 Saibaba the permission of Vice-chancellor of Delhi University was not taken and when the offence is punishable with more than seven year imprisonment no public servant is taken as a panch witness for search of the house of accused no.6 Saibaba. Though there is an admission on the part of Investigating Officer P.W.11 Suhas Bawche, the defence side failed to point out under which law the permission of Vice-chancellor is required and that when the offence is punishable for more than seven years imprisonment the public servant is necessary to be taken as panch witness. On the contrary, Investigating Officer P.W.11 Suhas Bawche in his cross-examination stated that when he went to the Delhi alongwith his police staff on 12-9-2013 and he requested Police Station officer, Morisnagar for providing panch witness and the Morisnagar Police Station procured police staff and panch witness P.W.2 Jagat Bhole and thereafter Investigating Officer P.W.11 Suhas Bawche alongwith police staff of Aheri Police Station and Morisnagar Police Station and P.W.2 Jagat Bhole conducted the search. Hence, panch witness P.W.2 Jagat Bhole provided by Morisnagar Police Station was taken by Investigating Officer P.W.11 Suhas Bawche. Therefore, no illegality was committed by Investigating Officer P.W.11 Suhas Bawche.

246] According to defence accused no.6 Saibaba had requested to take search of his house in presence of Professors and students of Delhi University and his friend Advocates but the house search of accused no.6 Saibaba was not taken inspite of his said request. However, Investigating Officer P.W.11 Suhas Bawche in his cross-examination clearly stated that said request was made after completion of search, hence there is no substance in the argument of defence that students, professor of Delhi University were not taken as a panchas for house search of accused no.6 Saibaba.

247] According to the defence there is omission about the fact that 25 to 30 CDs, laptop, 4 to 5 pen drives, 4 to 5 hard disk, 5 to 6 books were found during house search of accused no.6 Saibaba is not mentioned in panchanama (Exh.165), however, on going through the panchanama Exh.165 it is clear that in the said panchanama details of electronic gadgets CDs, DVDs, pen-drives and hard-disks i.e. Articles no.1 to 41 are mentioned in it. The evidence of P.W.2 Jagat Bhole and Investigating Officer P.W.11 Suhas Bawche is clear that the articles no.1 to 41 alongwith other articles like magazines, books were seized from the house search of accused no.6 Saibaba and panch witness P.W.2 Jagat Bhole and Investigating Officer P.W.11 Suhas Bawche have identified all the articles before the Court. Hence, mere non-mention of above fact in the panchanama Exh.165 is not fatal to the prosecution.

248] According to the defence there is possibility of altering and tampering of the electronic gadgets Arts. 1 to 41 and for that purpose defence relied on the admission given by Investigating Officer P.W.11 Suhas Bawche in his cross-examination wherein he admitted

that there is a website on internet for naxal related banned thoughts and all information regarding CPI Maoist and naxal literature, meetings, central committee resolutions are available and there are also website on internet regarding to naxal literature and their committee, meetings, resolutions etc.

249] In the present case the data contained in text form was found in hard-disk seized from the house search of accused no.6 Saibaba is letters, correspondence by Comrades to members of CPI (Maoist), draft manifesto of RDF organisation, personal communication i.e. e-mail and the defence has not been able to show that the electronic data in text form is the same which is available on the website on internet. Hence, it cannot be said that prosecution has manipulated, fabricated the data downloaded and copied from internet in the electronic gadgets and shown it to be seized from the house search of accused no.6 Saibaba. Further according to the defence said electronic gadgets were collected from dens and those were shown to be seized from house search of accused no.6 Saibaba. However, Art.1 to 41 i.e. CDs, DVDs, Pen-drives, Memory cards electronic data contained in CDs, DVDs, pen-drives, hard-disks seized from the house search of accused No.6 Saibaba contains several texts documents addressed by accused No.6 Saibaba in his own name and some time in the name of Prakash to the members of banned organization CPI Maoist and RDF. Further there are several family photograph of Saibaba and, personal emails of Saibaba are appearing in the hard-disks seized from house search of accused Saibaba, hence the contention of the defence that the above electronic gadgets were seized from one dens is false.

Tampering of Seal and Hash Value

250] According to the defence the hash value of 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra and Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks alleged to be seized from the house search of accused no.6 Saibaba was not taken at the time of seizure. Hence, the CFSL reports (Exh.266 and 267) do not carry any value. From the evidence of P.W.10 Anil Badgajar it reveals that after the seizure of 16 GB memory-card of Sandisk company from the possession of accused no.3 Hem Mishra on 22.8.2013 it was sealed having labels of signatures of panch witness P.W.1 Santosh Bawne and P.W.10 Anil Badgajar and thereafter he immediately deposited the said 16 GB memory-card with the muddemal clerk of Aheri Police Station P.W.13 Ganesh Rathod on the same day and an entry to that effect was taken in muddemal register vide Exh.276A showing that it was deposited in sealed condition and on 25.8.2013 said memory-card was taken out by P.W.11 Suhas Bawche for sending it to CFSL, Mumbai for scientific examination in sealed condition and handed-over to carrier P.W.5 Ravindra Kumbhare and he deposited 16 GB memory-card of Sandisk company to CFSL, Mumbai in sealed condition. The evidence of P.W.21 Bhavesh Nikam shows that he received 16 GB memory-card for examination in sealed condition on 25.08.2013.

251] Further in respect of Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks there is evidence of Investigating Officer P.W.11 Suhas Bawche and panch witness P.W.2 Jagat Bhole that on 12.9.2013 they had been to the house of accused no.6 Saibaba and from his house

search electronic gadgets Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks were seized under panchanama at Exh.165 and after seizure of the same, all the electronic devices including Arts.no.1 to 41 were sealed in one plastic box, laptop was kept in another packet and the printed matter and books were kept in third packet and all three packets were sealed and labels of signatures of Investigating Officer P.W.11 Suhas Bawche and panch P.W.2 Jagat Bhole were affixed thereon and Investigating Officer P.W.11 Suhas Bawche came by plane to Nagpur and then to Aheri Police Station immediately on 13.9.2013 and on the same day he deposited the sealed articles in Aheri Police Station and an entry to that effect was taken in muddemal register by P.W.13 Ganesh Rathod vide Exh.276C.

252] On perusal of entry Exh.276C in muddemal register it reveals that on 13.9.2013 Investigating Officer P.W.11 Suhas Bawche, SDPO, Aheri had deposited one sealed plastic box and two sealed big paper packet in Aheri Police Station. According to the prosecution in order to separate the mobile phones from electronic gadgets Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks the box containing Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks was opened in presence of panch witness P.W.4 Shrikant Gaddewar and at that time earlier sealed plastic box bearing signatures of Investigating Officer P.W.11 Suhas Bawche and panch witness P.W.2 Jagat Bhole were removed and mobile phones were separated and new seals having signatures of Investigating Officer P.W.11 Suhas Bawche and panch witness P.W.4 Shrikant Gaddewar dated 14.9.2013 were affixed and to that effect panchnama at Exh. 202 was prepared and thereafter, said property was sent through carrier P.W.5 Ravindra Kumbhare to CFSL Mumbai

by letter dated 14.9.2013 and as deposed by Investigating Officer P.W.11 Suhas Bawche that there were sealed 24 packets and when P.W.5 Ravindra Kumbhare alongwith P.W.15 Narendra Dubey had gone to CFSL, Mumbai, the officer of CFSL asked them as the said property was relating to one crime, that officer asked him to put the said property in one box and he procured one box with the help of P.W.15 Narendra Dubey and put all the 24 sealed packet and one parcel in the said box and put seal thereon and to that effect there is earlier entry having signature of Clerk of CFSL about receipt of 24 sealed packets. Though, there are some discrepancies in the evidence of P.W. 5 Ravindra Kumbhare and P.W. 15 Narendra Dubey those discrepancies are in respect of only putting of 24 sealed packets in plastic box and not in respect of 24 sealed packets having seals and signatures of Investigating Officer P.W. 11 Suhas Bawche and panch witness P.W. 4 Shrikant Gaddewar. Hence, defence cannot make any use of the same.

253] Further the evidence of Scientific expert P.W. 21 Bhavesh Nikam reveals that he received 24 sealed packets for examination and those were sealed and thereafter he opened those 24 packets. From this fact, prosecution has clearly established the fact that after the seizure of 16 GB memory-card and electronic gadgets at Articles 1 to 41 those articles/properties were sealed with the labels of signature of panchas and police till it was sent to CFSL for examination and that till the opening of those packets the seal was intact. There was no time for police officer for fabrication and manipulation in electronic data contained therein and thereafter on examination of 16 GB memory-card and Articles 1 to 41 CDs, DVDs, pen-drives, hard-disk

Scientific Expert P.W. 21 Bhavesh Nikam had taken out hash value of the said gadgets as appearing in CFSL reports at Exhs. 266 and 267. They are reproduced as under:

(Exhibit No.266)

Hash Value

254] All the contents of memory card in exhibit Ex-1 are given in an annexure hard disk marked as “Annexure Hard Disk Cy-446-13”. The details are given as below ;

Sr.No.	Exhibit No.	Details are given in file named	Hash Value
1	Ex-1	Ex-1 All File Details.xls	a9e044aaea37f9756c30ef52d37d7974

RESULTS OF ANALYSIS

(Exhibit No.267)

255] On thorough cyber forensic analysis of exhibits Ex-1 to Ex-25/1 following were revealed.

1] The details of total disk capacity and partition capacity of hard disks are given as below :

Sr. No.	Exhibit No.	Total Capacity	Partition Capacity	Acquired in the Hard Disk
1	Ex-3	931.48 GB	931.48 GB	Make: Seagate, Capacity: 1 TB, Model: ST31000322CS,S/N:5VX2SVPE, Marked as: Image of Cy-475/13 Ex-3, MD5 Hash of Forensic Image: a77d51cdd3a18c32bb95653110086cfa
2	Ex-4	297.49	297.48 GB	Make: Western Digital,Capacity : 2 TB,

		GB		Model: WD20EARX-OOPASBO, S/N: WCAZAL276482, Marked as: Image of Cy-475/13 Ex-4 & 5, MD5 Hash of Forensic Image: 8CED9C856A6D671B85D9B6BAB25F8109
3	Ex-5	931.51 GB	931.51 GB	Make: Western Digital, Capacity : 2 TB, Model: WD20EARX-OOPASBO, S/N: WCAZAL276482, Marked as: Image of Cy-475/13 Ex-4 & 5, MD5 Hash of Forensic Image: efe5ce211c5e941025c25454fd7dbaf6
4	Ex-25	465.76 GB	<u>12.95 GB</u> <u>100 MB</u> <u>452.72 GB</u>	Make: Seagate, Capacity: 500 GB, Model: ST500DM002, S/N: Z3TPHA8J, Marked as: Image of Cy-475/13 other, MD5 Hash of Forensic Image: 6ee482dad22c15f4215752c50406f118

2] The CDs and DVDs are acquired in hard disk [Make: Seagate, Model: ST500DM002, S/N: Z3TPHA8J, Capacity: 500GB]. The details of total disk capacity and data capacity are as follows;

Sr. No.	Exh. No.	Disk Capacity	Date Capacity	Hash Value
1	Ex-6/2	4.7 GB	4.11 GB	C10680C6B242878C459094617F62FE38
2	Ex-7/1	4.7 GB	2.85 GB	686DBE3AE6275A7A430DA430F8C8158F
3	Ex-7/2	4.7 GB	3.33 GB	6007D9461883CBEOBB8F1F4C6D2B5CCO
4	Ex-7/3	4.7 GB	2.00 GB	3BA35224DA6E58A3DBOBAC1AB3A7DE02
5	Ex-8	4.7 GB	4.31 GB	22757987E266C3D2EDOD3C430007694D
6	Ex-9	4.7 GB	4.20 GB	CEB1DF18F4946FO171A67146B66CD59A
7	Ex-10	4.7 GB	3.88 GB	D275EA24504BC65E58A3744A8609EE5A
8	Ex-11/1	4.7 GB	3.56 GB	97555BB79F0319BD52AOEAF26DFE2DBE
9	Ex-11/2	4.7 GB	3.73 GB	DCDF9C2F1693A5CE20096A44F9666DCA
10	Ex-12	4.7 GB	456.56 MB	ACD5202277B0883BACBEE2CFB0CF0BCF
11	Ex-15	4.7 GB	4.30 GB	80E49A952F9B93C34E819F6DDC8D1EF4
12	Ex-16	4.7 GB	1.37 GB	B21DE36B55F9AD60C273EB01F3E2550F
13	Ex-17	700 MB	303.58 MB	C42DE937D3D68632048A3D50DB59605B
14	Ex-18/1	4.7 GB	2.43 GB	6370545844C6A45FE5BD78B0899C8DBE

15	EX-18/2	4.7 GB	2.38 GB	30595B2EC2AF89EF2E5E79A64EB13C46
16	Ex-18/3	4.7 GB	2.13 GB	EF88A6963972271CE4B5567B5BDC6F7F
17	Ex-18/4	4.7 GB	2.44 GB	1e25d4ca7a20b2ca8ae5611fda186c66
18	Ex-18/5	4.7 GB	2.40 GB	566E10E003CC7713C7ACBAE7FE6EB449
19	Ex-18/6	4.7 GB	2.43 GB	6432EC8D5C5CBB128931C972A7EE0008
20	Ex-18/7	4.7 GB	2.43 GB	EF0434B86989D02B60693A22BC04C109
21	Ex-19	700 MB	502.82 MB	AB8E8167778FC2424F63C57B98C72EC8
22	Ex-20/3	4.7 GB	2.45 GB	F09A3B69D5F41546FAC6F2416261682D
23	Ex-20/4	4.7 GB	2.5 GB	2FCAA696EFFC0B629373EC48E7F44973
24	EX-20/5	4.7 GB	708.47 MB	579D77F3121BF05FD9D92B3A0EC0C0F5

3] The pen drives and memory cards are acquired in hard disk [Make:Seagate, Model:ST500DM002 S/N: Z3TPHA8J, Capacity: 500GB]. The details of total disk capacity and partition capacity are as follows :

Sr. No.	Exhibit No.	Disk Capacity	Partition Capacity	Hash Value
1	Ex-21	29.82 GB	29.82 GB	A8083D4B8021E59E414A6DA6EF7E0C4B
2	Ex-22	7.52 GB	7.52 GB	38FF8914BADBEB5A337B7D152C0226D2
3	Ex-23	15.11 GB	15.11 GB	9CFD64D314EBB0E906AAE727722DCF34
4	Ex-24	29.72 GB	29.72 GB	9126ACEBF152378E04C7C012A1D8104A

256] The police officer had no occasion to take hash value at the time of seizure. Ordinary computer expert cannot determine the hash value of the electronic gadgets. Therefore, it was sent to CFSL, Mumbai. Hence, merely because the hash value was not taken at the time of seizure that cannot be a ground to reject the prosecution case. As the prosecution has proved this fact that from the time of seizure of electronic gadgets till its examination by CFSL expert PW.21

Bhavesh Nikam those were in sealed condition there was no time or opportunity to police to fabricate or manipulate the electronic data contained therein.

257] It is important to note here that the defence has filed application at Exh.145 on 4.1.2016 for getting soft copies of the data contained in electronic gadgets 16 GB memory-card of Sandisk company and Articles 1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks. In order to preserve the hash value in respect of electronic data contained in the said electronic gadgets to make out possibility of editing, tampering and alteration by virtue of order dated 4.1.2016 passed below Exh.145, electronic gadgets Articles 1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks, laptop, memory-card seized from the house search of accused no.6 Saibaba and 16 G.B. memory card of Sandisk company seized from possession of accused no.3 Hem Mishra were sent to CFSL Mumbai for making soft-copies of the same for providing to prosecution and defence. The CFSL Mumbai prepared the soft copies of the same and sent the same to the Court and thereafter those soft copies of electronic data contained in 16GB memory-card and Arts.1 to 41 were supplied to prosecution and defence and while recording statements of accused No.3, 4 and 6 under section 313 of Cr.P.C. The text documents, video clips and photographs were opened on the laptop of the Court and on the laptop of defence advocate and the text document, video clips and photographs were compared from the original electronic gadgets which are the muddemal properties before the Court and from the soft copies supplied to defence and thereafter answers given by accused No.3, 4 and 6 were recorded and the Court did not find any

change or alteration in the said text documents, video clips and photographs, hence though the hash value of the seized electronic gadgets was not taken at the time of seizure it is not fatal to prosecution.

Sending of 16 GB memory-card of Sandisk Company to CFSL, Mumbai for scientific examination -

258] According to prosecution the 16 GB memory card of sandisk company seized from personal search of accused No.3 Hem Mishra was sent to CFSL, Mumbai for examination through P.W.5 Ravindra Kumbhare. To prove this fact prosecution has relied on the evidence of following witnesses -

Sr. No.	P.W. No.	Name of Witness	Exhibit No.
1]	P.W.5	Ravindra Manohar Kumbhare, the PC and carrier who carried and deposited the muddemal to CFSL, Mumbai.	210
2]	P.W.13	Ganesh Rahod, the Muddemal Clerk in Aheri Police Station	298
3]	P.W.21	Bhavesh Nikam, Scientific Expert who received electronic gadgets 16 GB memory-card for scientific analysis	371

Evidence

259] Muddemal Clerk of Aheri Police Station P.W.13 Ganesh Rathod in his examination stated that on 25.08.2013 the muddemal property i.e. 16 GB memory-card of Sandisk company seized from the possession of accused No.3 Hem Mishra was sent along with carrier P.W.5 P.C.Ravindra Kumbhare B.No.2086 to CFSL, Mumbai and he had

taken note to that effect in Muddemal Register at Exh.276-A and obtained signature of P.W.5 P.C.Ravindra Kumbhare on it. The copy of entry is at Exh.276A shows signature of P.W.5 P.C.Kumbhare about receipts of the same. The learned defence Advocate Shri Gadling did not cross-examine this witness on this point specifically.

260] P.W.5 Ravindra Kumbhare in his examination stated that on 25.08.2013 he received memory card of Sandisk company seized from the possession of accused No.3 Hem Mishra from Investigating Officer SDPO P.W.11 Suhas Bawche for depositing the same to CFSL, Bombay by letter dated 25.08.2013 and he received the said memory card in sealed condition from Aheri P.S. and he took the same and deposited the same with CFSL, Bombay on 30.08.2013 and got the acknowledgement from the CFSL Office, Bombay vide letter Exh.211.

261] Alongwith the said letter questionnaire at Exh.211-A were sought by Investigating Officer P.W.11 Suhas Bawche and these are as under -

- 1] make of the memory card and its capacity
- 2] two copies of data containing memory card
- 3] soft and hard copy about all information in memory card
- 4] to state whether the files were protected by password and to open the said password and give details of file containing the said memory card.

262] The learned defence Advocate Shri Gadling did not cross-examine this witness on this point specifically.

263] Scientific Officer P.W.21 Bhavesh Nikam in his examination-in-chief stated that he received letter dated 25.08.2013 alongwith one 16 GB memory card, on which Sandisk Micro SD capacity 16 GB written and it was received in his office on 30.08.2013 and when the memory card was received, it was in sealed condition and alongwith letter dated 25.08.2013 he received questionnaire from the Investigating Officer P.W.11 Suhas Bawche. The learned defence Advocate Shri Gadling did not cross-examine this witness on this point specifically.

Sending of Electronic Gadgets Articles No.1 to 41 CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba to CFSL, Mumbai.

264] According to the prosecution the electronic gadgets alongwith mobile phones of accused no.6 Saibaba were sealed in one box having labels of signature of P.W.2 Jagat Bhole and P.W.11 Suhas Bawche and as the mobile phones were to be separated from electronic gadget, P.W.11 Suhas Bawche called P.W.4 Shrikant Gaddewar and removed the earlier seal of having labels of signature of himself and P.W.2 Jagat Bhole and separated the mobile phones, thereafter he put all electronic gadgets i.e. CDs, DVDs, pen-drives, hard-disks in 24 pockets and those were put in the plastic box and sealed in his presence and the label containing signature of himself and P.W.4 Shrikant Gaddewar, were affixed to plastic box and then sent the same to CFSL, Mumbai through P.W.5 Ravindra Kumbhare and P.W.15 Narendra Dube and P.W.21 received the same for examination. To prove this fact prosecution has relied on the

evidence of following witnesses :

Sr. No.	P.W. No.	Name of Witness	Exhibit No.
1]	P.W.4	Shrikant Gaddewar, panch witness	198
2]	P.W.5	Ravindra Manohar Kumbhare, the PC and carrier who carried and deposited the muddemal to CFSL, Mumbai.	210
3]	P.W.11	Investigating Officer Suhas Bawche	235
4]	P.W.13	Ganesh Rathod, Muddemal Clerk in Aheri Police Station	298
5]	P.W.15	Narendra Dubey Station Diary Incharge in Aheri Police Station who accompanied P.W.5 Ravindra while carrying electronic gadgets (Arts.1 to 41)	308
6]	P.W.21	Bhavesh Nikam, Scientific Expert who received electronic gadgets 16 GB memory-card for scientific analysis	371

Evidence

265] Investigating Officer P.W.11 Suhas Bawche in his examination at Exh.235 stated that the electronic gadgets Arts.1 to 41 seized the house search of accused no.6 Saibaba were sent alongwith P.W.13 P.C.Kumbhare to CFSL, Bombay by letter dated 14.09.2014 at Exh.212.

266] Panch witness P.W.4 Shrikant Gaddewar in his examination at Exh.198 stated that police called him in Aheri Police Station on 14-9-2013 in afternoon and at that time, the police officials, panchas and P.W.11 Dy.SP Bawche were present there and police told him that after obtaining search warrant from the court they had seized some property from the house of accused no.6 Saibaba and the same was to be opened to verify whether some property was required to be sent to

Forensic laboratory. He stated that then police had brought one plastic box and two sealed packets and those were sealed with his signature and signature of police and he stated that police opened plastic box and in the said plastic box hard disk, pen-drive three mobile phones were found and there was one hard-disk, one CD writer, three mobile phones and four pen-drives and one hard disk of Seagate company and other was of WD buffalo company and on one hard-disk 'my passport' was written. One pen-drive of Sandisk company and another was of sony company and one pendrive was of Dell company and one 32 GB memory-card of sandisk company and those were 25 to 30 CDs and there was black laptop of sony company alongwith blue-tooth device was found inside one packet. In another packet there were books. Except three mobiles and books, all electronic devices like blue tooth and CD writer, hard disks, pen-drive and DVDs were put in one plastic box and panchanama to that effect was prepared at Exh.202.

267] During cross-examination he admitted that plastic box before the Court was not brought before him at Police Station but all the articles were in hardboard box.

268] Ravindra Kumbhare (P.W.5) in his examination at Exh.210 has stated that the property seized from accused no.6 Saibaba was sent to CFSL Mumbai and on 15-9-2013 he received sealed packets regarding seizure of articles from the house of accused no.6 Saibaba in Crime No.3017/2013 by letter (Exh.212) under the signatures of P.W.11 SDPO Bawche and thereafter he deposited the said sealed envelop in the office of CFSL Bombay on 17-9-2013 and got the

acknowledgement about the receipt from CFSL Bombay. He stated that muddemal which he deposited on 17-9-2013 consisted of 24 sealed packets and one sealed parcel and when he went to CFSL, Bombay on 17-9-2013 for depositing 24 sealed packets and one parcel in sealed condition, the officer of CFSL asked him to give the said property in one box and he procured one box with the help of one police officer by name Narendra Dube, who was alongwith him and put all the 24 sealed packets and one parcel in the said box and put seal thereon. On the said copy of letter office of CFSL, Mumbai gave receipts of one sealed parcel, six blank hard-disks and below that signature of Mahesh Khanvekar and seal of CFSl an appearing, but before that entry of receipts of 24 sealed pockets, one sealed parcel, below that there is signature of concerned clerk and this entry was scratched and subsequent above entry was taken. To that effect there is a copy of letter at Exh.212, in which it is mentioned that 1] one sealed plastic box ; 2] one sealed parcel; 3] six blank hard-disks were received by CFSL, Mumbai and below that signature of Mahesh Khavnekar, seal of office of CFSL is appearing. Before that Mahesh Khavanekar has received 24 sealed packets and 1 sealed parcel and to that effect he put his signature and seal of office of CFSL.

269] He further stated that he had handed over 6 blank hard disks to CFSL, Bombay for getting mirror images.

270] This witness was cross-examined by the learned defence counsel. In his cross-examination he admitted that he did not state before police in his statement that "The muddemal which he deposited on 17.9.2013 consist of 24 sealed packets and one sealed parcel and when he went on 17-9-2013 for depositing 24 sealed

packets and one parcel in sealed condition to CFSL Bombay, the officer of CFSL, Bombay asked him to give the said property in one box and accordingly he procured one box with the help of one police officer who was alongwith him and put all the 24 sealed packets and one parcel in the said box and put seal thereon which was brought by P.W.15 Dubey H.C. He admitted that he did not state in his police statement that he deposited mirror-images in Police Station, Aheri. He denied that he deposed falsely that he had given second copy of mirror images to P.W.11 SDPO Bawche on 31-8-2013. He denied that he never received any property from Aheri Police Station and never carried the same to CFSL Bombay and never received mirror images from CFSL Bombay and never deposited the same in Aheri Police Station.

271] Narendra Dube (P.W.15) who was attached to Police Station, Aheri as ASI. He accompanied with Ravindra Kumbhare (P.W.5) to CFSL, Mumbai. He in his examination at Exh.308 has stated that on 14-9-2013 / 15-9-2013 he along with P.W.5 Police Constable Kumbhare had been to CFSL Mumbai along with muddemal on 17-9-2013 for depositing 24 sealed packets and one parcel in sealed condition. Then said officer asked him to give all the property in one box and accordingly they procured one plastic box with the help of one police officer who was alongwith them and put laptop and other 24 sealed packets separately and one parcel in the said box and put seal thereon along with hard-disks.

272] This witness was cross-examined by learned defence counsel. In his cross-examination he admitted that the seal of police station is in the custody of Malkhana Moharir and he does not know

whether there is movement register of seal in police station. He admitted that at present the plastic box does not have any seal and label. He denied that entry is to be taken in Malkhana register when the seal is to be removed from Malkhana and he did not go with wax seal in the office CFSL, Mumbai and 24 articles were not kept in plastic box and thereafter he had not sealed the same with his seal and thereafter it was not handed over to CFSL Mumbai.

273] Scientific Officer of CFSL, Mumbai P.W.21 Bhavesh Nikam in his examination at Exh.371 stated that he received letter dated 14.09.2014 sent by Investigating Officer P.W.11 Suhas Bawche SDPO Aheri alongwith 24 sealed packets and one more parcel with blank hard-disks and his office received the property on 17.09.2013 and letter Exh.212 bears seal of inward clerk of his office.

Argument of learned Spl. P.P. Shri Sathainathan

274] The learned Spl. P.P. Shri Sathainathan submitted that 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra and electronic gadgets like CDs, DVDs, pen-drives, hard-disks (Arts.1 to 41) seized from the house search of accused no.6 Saibaba were sent for examination and analyst report to CFSL, Mumbai through the carrier Ravindra Kumbhare (P.W.5). To that effect, Ravindra Kumbhare (P.W.5) has categorically stated in his examination that on 30.8.2013 he deposited the 16 GB memory-card to CFSL, Mumbai which he received alongwith letter (Exh.211) from Aheri Police Station and got acknowledgement to that effect and on 17.9.2013 he deposited 24 sealed packets and one parcel i.e. Arts.1 to

41 seized from the house search of accused no.6 to CFSL, Mumbai. This fact is corroborated by P.W.15 Narendra Dube who had accompanied Ravindra Kumbhare (P.W.5) to the office of CFSL, Mumbai on 14.9.2013 and on 17.9.2013 and deposited 24 sealed packets and one parcel in sealed condition. Hence, prosecution has established the sending of articles seized from accused no.3 Hem Mishra and no.6 Saibaba to CFSL, Mumbai in this case.

Argument of learned Advocate Shri Gadling

275] He submitted that panch witness P.W.4 Shrikant Gaddewar stated in his examination-in-chief in para 7 that police called him in Aheri P.S. on 14-9-2013 in afternoon and police told that after obtaining search warrant from the court they had seized some property from the house of accused no.6 G.N. Saibaba and the same was to be opened and seen and to verify whether some property was required to be sent to Forensic laboratory and then police had brought one plastic box and two sealed paper packets which bear their signatures. He further stated that those were opened in his presence and plastic box was containing electronic gadgets like hard discs, pen drives, CDs, three mobiles etc. and in black coloured laptop of Sony company alongwith blue-tooth device was found inside one packet and in another packet there were books and three mobiles and panchanama to that effect was prepared at Exh.202.

276] He invited attention of the Court on para no.8 of the examination of Investigating Officer P.W.11 Suhas Bawche in which he stated that all the electronic devices seized from the house search of

accused no.6 Saibaba were sealed in plastic box, laptop was seized in separate packet, the printed matter and books were sealed in 3 separate packets and all three items were sealed with labels of signatures of panchas under panchanama at Exh.165.

277] He submitted that when Investigating Officer P.W.11 Suhas Bawche had segregated all the properties in one plastic box and other two packets on 12.9.2013 there was no necessity to prepare panchanama on 14.9.2013 for sending the said property to CFSL and the said panchanama was prepared by Investigating Officer P.W.11 Suhas Bawche as he wanted to plant electronic gadgets to show that the property was seized from the house search of accused Saibaba and the property which the prosecution alleged to have seized was never seized from the house search of accused no.6 Saibaba and as such no electronic gadgets Art. 1 to 41 like CDs, DVDs, pendrives and hard-disks were seized from the house search of accused no.6 Saibaba and were sent to CFSL and there was no necessity to prepare panchanama Exh.202 and different property which was sent to CFSL was planted by investigating officer P.W. 11 Suhas Bawche. Hence, it was argued that no value is attached to the CFSL report and the evidence of P.W.4 Shrikant Gaddewar who was acting under the thumb of police is not reliable.

278] He submitted that theory of putting all property in one plastic box is concocted as it falsifies the version of prosecution witnesses and from the covering letter dated 21.9.2013 of P.W.11 Suhas Bawche it is clear that property in crime no.3017/2013 was sent in the packet and parcel and hence there was no reason for

asking the question by officer of CFSL to P.W.5 Ravindra Kumbhare whether the said property was in the same crime or in different crime. If the contention of the prosecution is accepted that on 21.9.2013 P.W.11 Suhas Bawche put all property in one plastic box there was no reason to have labels and signatures of panchas which were alleged to be made on 14.9.2013 and there should have been seal and signatures of either of P.W.15 Narendra Dube and P.W.5 Ravindra Kumbhare and CFSL report Exh.267 says that the sealed packets were intact.

279] He submitted that P.W.5 Ravindra Kumbhare stated that property was kept in one plastic box and CFSL report Exh.267 on record says that one sealed packet and one parcel were received. Hence, CFSL report Exh.267 contradicts the oral testimony of P.W.5 Ravindra Kumbhare and P.W.15 Narendra Dube. For above grounds, he prayed rejection of prosecution evidence on above aspect.

Conclusion

280] P.W.11 Suhas Bawche, in his examination-in-chief stated that while interrogating with accused no.3 Hem Mishra and accused No.4 Prashant Rahi, he came to know about the involvement of accused no.6 Saibaba, thereafter he made an application at Exh.268 before J.M.F.C., Aheri for getting permission to carry out the house search of accused No.6 Saibaba at his house at Delhi. The said application was made on 26.02.2014. Thereafter on 12.09.2013 he went to Morisnagar Police Station at Delhi and requested them to provide police staff and panchas for carrying out house search of accused No.6 Saibaba at Delhi. They provided P.W.2 Jagat Bhole and

another pancha Ramkumar. Thereafter, he alongwith police staff and panchas went to house of accused No.6 Saibaba, which is situated in the campus of Delhi University. Before proceeding to Delhi, he made an entry in the Station diary on 09.09.2013 and the copy of station diary is produced on record at Exh.275. On 12.09.2013 when the wife of accused Saibaba, Vasanta was present, he showed the copy of search warrant to her and asked her to call Saibaba, then accused Saibaba came at house. Thereafter he offered to take personal search of himself, police officers and panchas, but they refused for the same and this fact is mentioned in the panchanama at Exh.165. Thereafter he carried out the house search of accused Saibaba and seized extensive electronic gadgets CDs, pendrive, hard-disks, laptop containing electronic data in the form of text, audio, video clips and photographs alongwith other articles and the copy of panchanama Exh.165 and the said property was sealed with the labels having signature of panchas and police and copy was given to accused Saibaba and his signature was obtained thereon.

281] Thereafter on 13.09.2013 he came to Nagpur by plane, thereafter to Aheri Police Station and deposited all the electronic gadgets in sealed condition with PW.13 Ganesh Rathod. To that effect there is an entry in muddemal register at Exh.276-D. Thereafter in order to separate the mobile phones from the electronic gadgets, which is kept in one box, as the said electronic gadgets were to be sent to CFSL, Mumbai for examination. He called P.W.4 Shrikant Gaddewar and separated the property from the said box, at that time, earlier seal and having labels of his signature and panchas was removed and all the electronic gadgets Art.1 to 41 were put in 24

packets and labels of signature of himself and P.W.4 Shrikant Gaddewar dated 14.09.2013 were affixed and the said 24 sealed packets were sent through carrier P.W.5 Ravindra Kumbhare for depositing the same to CFSL, Mumbai. Ravindra Kumbhare P.W.5 along with P.W.15 Narendra Dube went to CFSL, office and deposited 24 sealed packets with CFSL, Mumbai to that effect. Initially, there was entry by the clerk Mahesh Khavnekar about the receipts of sealed 24 packets with his signature and seal of office of CFSL, Mumbai, but at the instance of Mahesh Khavnekar, the Ravindra Kumbhare P.W.5 and Narendra Dube P.W.15 put the same in one another plastic box and to that effect there is an entry dated 17.09.2013. P.W.21 Bhavesh Nikam opened the plastic box on 19.09.2013 and he found 24 sealed packets containing electronic gadgets. Though the plastic box was changed, but the 24 sealed packets were in sealed condition before examination by P.W.21 Bhavesh Nikam.

282] The data containing articles 1 to 41 is around 3 TB and after the seizure of article 1 to 41 under panchanama Exh.165 those were sealed with the signature of P.W.2 Jagat Bhole and in the sealed condition art.1 to 41 alongwith other articles were deposited with P.W.13 Ganesh Rathod, Muddemal Clerk, Police Station Aheri. Thereafter on 14.09.2013 the property/Articles 1 to 41 were separated from mobile phones and those were put in 24 packets, those were sealed with the signature of Suhas Bawche and Shrikant and those were handed over to P.W.5 Ravindra Kumbahre and he deposited on 17.09.2013 all 24 sealed packets in CFSL, Mumbai, but only box was changed and P.W.21 Bhavesh Nikam examined the same on 14.02.2014 before examination he found 24 sealed packets. This

shows that at no point of time P.W.11 Suhas Bawche had an opportunity to manipulate electronic data around 3 TB in Art.1 to 41 and 16 GB memory card seized from possession of accused No.3 Hem Mishra.

283] Even, assuming for the sake of argument, there are some discrepancies in the evidence of P.W.2 Jagat Bhole, P.W.11 Suhas Bawche, P.W.5 Ravindra Kumbhare and P.W.15 Narendra Dube about putting of 24 sealed packets in plastic box and sealing of the same, but the evidence of these witnesses is consistent on the point that 24 packets were in sealed condition.

284] The Apex Court in the case of Krishna Pillai Sree Kumar and another vs. State of Kerala reported in 1981 Cri.L.J. 743 wherein it is observed that -

(B) Evidence Act (1 of 1872), S.3 – Evidence – Appreciation of – Criminal trial – Discrepancies.

The prosecution evidence no doubt suffers inconsistencies here and discrepancies there but that is a short-coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies, etc., go to the root of the matter or pertain to insignificant aspects thereof. In the former case the defence may be justified in seeking advantage of the incongruities obtaining in the evidence in the latter, however, no such benefit may be available to it. That is a salutary method of appreciation of evidence in criminal cases. (Para 11)

285] It is further well settled that while appreciating the evidence it is the duty of the court to remove the grain from the chaff and the maxim “falsus in uno falsus in omnibus” has no application in

India. The Apex Court in the case of Gunnana Pentayya vs. State of A.P. Reported in 2008 BHCCO 1910 in Criminal Appeal No.292 of 2006, decided on 20th August, 2008, in para 15 observed that -

E. Maxim “falsus in uno falsus in omnibus” – It has no application in India—Even if major portion of evidence found to be deficient, residue if found sufficient to prove guilt, conviction can be sustained.

286] Similar observations were made by the **Apex Court** in the case of Sucha Singh and another .vs. State of Punjab reported in AIR 2003 Supreme Court 3617 wherein it is observed that -

(B) Evidence Act (1 of 1872), S.3 – Maxim falsus in uno falsus in omnibus-Not applicable in India – Major portion of evidence of witness found deficient – Residue sufficient to prove guilt of accused – He can be convicted, notwithstanding acquittal of other accused – Court should separate grain from chaff.

287] In view of above though there are discrepancies in the evidence of prosecution witnesses in respect of putting of the sealed packets in plastic box, there is reliable evidence in respect of seizure of electronic gadgets from the house search of accused Saibaba and it is clear from the examination by CFSL. Evidence of prosecution witnesses is consistent and above discrepancies do not go to the root of matter and the prosecution has proved the fact there was no occasion or opportunities to police to manipulate or alter the electronic data in the above electronic gadgets which were seized from the personal search of accused No.3 Hem Mishra and house search of accused No.6 Saibaba.

Examination of 16 GB memory card of Sandisk company seized from the possession of accused no.3 Hem Mishra and Articles No.1 to 41 CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba by CFSL, Mumbai.

288] It is the case of the prosecution that after arrest of accused no.3 Hem Mishra, 16 GB memory-card of Sandisk company alongwith other articles were seized from his possession under seizure panchanama (Exh.137) and the same were deposited in Malkhana of Aheri Police Station with Muddemal Clerk Ganesh Rathod (P.W.13). Further, during investigation involvement of accused no.6 Saibaba was revealed and after taking search warrant from P.W.12 Nileshwar Vyas, Investigating Officer Suhas Bawche (P.W.21) had taken house search of accused no.6 Saibaba situated at Delhi and during house search electronic gadgets Arts.1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks alongwith other articles were seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165).

289] Seized electronic devices i.e. 16 GB memory-card seized from accused no.3 Hem Mishra and Arts.1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks alongwith other articles were sent through carrier Ravindra Kumbhare (P.W.5) to CFSL, Kalina Mumbai for scientific analysis and report and those articles were examined by Scientific Expert Bhavesh Nikam (P.W.21) and after examination he issued analysis report at Exh.266 in respect of 16 GB memory-card of Sandisk Company and report Exh.267 in respect of Arts.1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks.

290] To prove this aspect prosecution relied on the evidence of Bhavesh Nikam (P.W.21) Scientific Officer CFSL, Bombay at Exh.371.

EVIDENCE

291] Scientific Officer Bhavesh Nikam (P.W.21) who was attached to CFSL, Mumbai, in his examination at Exh.371 stated that he received letter in Crime no. 3017/2013 along with 16 GB Memory card of Sandisk company on 30-8-2013 in sealed condition and also received questionnaire from investigating officer. He stated that he received letter dated 14-9-2013 issued by investigating officer SDPO Aheri and one sealed box containing 24 sealed packets, one more sealed parcel and six blank hard-disks were also provided to him and he received the same on 17-9-2013.

292] He stated that on receipt of the said 16 GB memory card and Arts.1 to 41 he examined the same and he opened the seal in front of Head of Department Shri R.R. Mawle and it was marked at Exh.X1. He stated that as requested by investigating officer one mirror image of the memory was provided by attending officer Mr.Uttara Gawand and handed over to investigating officer along with letter dated 30-8-2013 at Exh.372. He opened 24 sealed packets received from Aheri P.S. in front of Head of the Department and exhibit numbers were marked to the articles provided by investigating officer and description of exhibits were mentioned in description book of CFSL Lab. He again sealed the articles in forensic lab and kept in safe custody of Head of the Department.

293] He stated that on 19-9-2013 memory card and 24 articles along with laptop were provided to him for analysis for verification and during analysis he gave exhibits on it and after recovering deleted files, he created its folder and then hashing of the files were done and file signature matching was done based on the questionnaires of Investigating officer and analysis was done and he provided the data present in the exhibits were provided to investigating officer in hard-disk marked as "Hard-disk Cy-475-13 Part-1, Part-2/1 and Part 2/2" with letter dtd. 5th Oct. 2013 vide O.W.no. 2296/13 and 2297/13.

294] He stated that he issued letter to Suhas Bawche (P.W.11) SDPO Aheri, alongwith mirror image of hard-disk Exh. 4, Exh. 6 to 12, Exh.14 to 17, Exh.18, Exh.19, Exh.20/3, Exh.20/4, Exh.20/5 at Exh.373 and also issued letter dt 5-10-2013 in respect of copy of Exh.5, Exh.21, Exh.22, Exh.23, Exh.24 to SDPO Aheri at Exh.374 and thereafter, he provided all data present in the exhibits provided to the investigating officer in Annexure hard-disk marked as "Annexure hard-disk Cy-475-13" alongwith report generated by him dated 15-2-2014 vide O.W.no. 4860/2014. He stated that on 15-2-2014 one sealed parcel containing one memory card of 16 GB, one report, one Annexure hard-disk and attested hard copies (15 pages) were handed over to P.W.7 Apeksha Ramteke, LPC and those were received by her as per receipt and seal of office of CFSL Kalina. He identified report dated 15-2-2014 and hard copies of 15 pages at Exh.266. On the same day he handed over one sealed plastic box containing 24 separate sealed parcels and one sealed parcel containing laptop, one sealed report, one Annexure hard-disk, attested hard copies (247 pages) to P.W.7 Apeksha Ramteke, LPC Buckle no.4131. The report dated 15-2-2014 containing 247 pages annexed to Exh.267.

295] He stated that Hard copies of Annexures to Exh.267 were provided to him by letter from SDPO Aheri on 30-1-2014 and thereafter based on contents present keywords were generated and based on file path provided by Investigating Officer P.W.11 SDPO Aheri and the concerned documents were searched and verified and provided in hard copies and attested and thereafter, as per request of SDPO Aheri by letter dated 10-3-2016, CFSL office has provided certificate dated 22-3-2016 vide O.W.no. 989/2016 under sec. 65(b) of Indian Evidence Act and it was countersigned by our Head of Department, Asst. Director of Cyber crime department Mrs. C.S.Kamat. The said certificate dt. 22-3-2016 bears his signature and signature of Mrs. C.S. Kamat, Asst. Director Forensic Science Laboratory, Home Department, Government of Mah. Mumbai which is at Exh. 375 and by this certificate, he certified that Exhibits in Cr.no. 3017/2013 of Aheri P.S. were received in CFSL Mumbai on 30-8-2013 and 17-9-2013. He stated that he analysed the exhibits and prepared the report as per CFSL standard operating procedure and thereafter, analysis report, annexure hard-disk, annexure hard copies (247 pages annexed to report Exh.267 and 15 pages annexed to report Exh.266) furnished which were prepared by him using CFSL computer.

296] He stated that the path is marked on some of the documents annexed to Exh.267. For example one letter dated 27-9-2002 Investigating Officer noted salutation dear comrades thereon and some of the document is not given path and in respect of those documents he applied following procedure.

i] By OCR (optical character recognition) and indexing he prepared soft copy of hard copies provided to him and he prepared keywords based on unique words per page and searched complete in data set. After processing the respective search hits were visually analysed and compared personally with the hard copies provided by investigating officer vide Exh. 267.

ii] So also in respect of Exh. 266 (15 pages) he followed the same procedure. For CBIR (content based image retrieval) images prepared and index was performed and then they were compared with the hard copies provided to him. He checked Exh. 266 and 267 from the original hard disc provided by the investigating officer.

He stated that author of every file is a meta data property file and it is in the name of profile system.

297] This witness was cross-examined by the learned defence counsel. In his cross-examination, he admitted that he was serving on contract basis in CFSL and every year there is an advertisement of recruitment in CFSL Mumbai and after submission of application persons are appointed after 2 to 3 months and he does not remember the date when the advertisement given by CFSL Kalina Mumbai. He admitted that ENCASE software is a license software and CFSL Mumbai having ENCASE software of its own. He admitted that he does not have any information regarding to the license of Encase software and has not brought copy of the said licnece and he does not have any information in respect of issuance of tender in respect of EnCase software. He admitted that M.K. Malve was their Director

and he cannot identify his signature. He admitted that the information regarding the issue of tender is available on internet but he was not able to submit the same to the court.

298] He admitted that there is book in respect of ENCASE Computer Forensics, The official Encase Certified examiner Study guide software and the said book is also available on internet and from this software paperless report is generated. He admitted that Exhs.266 and 267 are not the paperless report of Encase software and the Encase report is prepared in text, RTE, HTML, XML, XLS, XLSX, CSV and PDF format. He admitted that report Exh.266 and 267 are in XLS format. He admitted that the report is generated in XLS format, however, as the size of the document was more to provide it in hard copy, so the final reports are provided in XLS format, but final reports are provided in text format to file in the court. He admitted that OCR and CBIR facilities are not available in encase software and in report Exhs.266 and 267 there is no mention of any software except encase software. He admitted that encase software belongs to Guidance company and said company gives certified training course for examination of documents by using encase software and he does not know whether there are 61 persons as document examiners in India and he did not go through the examination prescribed by guidance company for examination of documents.

299] He admitted that in computer system's the time, date setting can be changed by entering the Bios set up and when they go through the bios set up then there is entry created in the event log by system. He voluntarily stated that if the document is copied in the same drive, for example, C drive then created date, last modified

date, last excess date will remain same and if the same document is copied from one drive to another drive for example C drive to D drive, then only created dates change, and last modified, last access date will remain same. He admitted that if the date and time is changed by entering into Bios set up then any new document created would have meta data similar to system date and one can remove the personal information and properties and also the author's name, title and date also can be changed by entering into the properties of the computer. He admitted that the paperless report generated by Encase software is not filed on record. He admitted that there is no copy of Encase report but there is copy of file details exported by Encase and he has not mentioned the system details in his report in which Exh.266 and 267 are generated and in Encase software separate report of Hash value is generated.

300] He admitted that in his report Exh.266 & 267 there is no mention of matching of hash value and there is no mention of matching of hash value by Encase software. He voluntarily stated that acquisition log, verification report and other processes followed i.e. hashing log, file signatures matching log, filter run log, etc. are generated only for office copy purpose. He admitted that no such logs are mentioned in report as per the current template of the report nor provided to the Investigating Officer if requested said document can be provided and unique hash value is generated for every evidence or digital media acquired. He admitted that he did not file the soft copy prepared from the hard copies provided to him by investigating officer with respect to 247 pages and 15 pages which are the part of Exh.267 and 266 respectively and in his report there is no reference of process followed by him regarding OCR and CBIR and preparing

soft copies and the meta data of the file is vulnerable to any changes or editing. He voluntarily stated that such changes can be identified and corrected. He admitted that hash value is not mentioned in the hard-disk of 1 TB mentioned in report Exh.266.

301] In his cross-examination, he denied that they have not been provided the Encase report generated by Encase software. He voluntarily stated that all the reports generated by Encase software are provided separately in digital media and note for the same is also mentioned in the end of the report as these documents provided are parts of report. He denied that as they were not having encase software they had not generated the said report through encase software. He denied that if any one go through Bios set up, date and time is changed in computer then if a copy of document generated which is already exists in the computer before the changes of system date by entering into Bios set up cannot change the last access date and last modified date but will change the created date. He denied that he did not use Encase software and hence, the paperless report generated through Encase software is not filed on record and he did not go through Encase software at any point of time. He denied that he did not follow the OCR and CBIR process and he blindly signed on Exhs.266 and 267 on the instructions of Mr. Bawche and signed 247 pages and 15 pages. He denied that he was not working in CFSL Kalina Mumbai hence, he did not prepare said report and all hard copies and soft copies were prepared by Shri Bawche and he does not know anything about the case and he is deposing falsely at the instance of P.W.23 S.D.P.O. Shri Dhumal.

302] He denied that he deposed falsely that he received letter on 25-8-2013 alongwith one 16 GB memory card, on which Sandisk micro HB capacity 16 GB was written and it was received in his office on 30-8-2013, when the memory card is received it was in sealed condition alongwith letter dated 25-8-2013 and he received questionnaire from the I.O. and the seal was opened in front of his Head of department Shri Mawale. He denied that he did not receive letter dated 14-9-2013 issued by I.O. SDPO Aheri and one box was provided containing 24 sealed packets, one more sealed parcel and six blank hard-disk were also provided and he did not receive the said property in his office on 17-9-2013. He denied that after it was received on 17-9-2013, the seals were opened in front of Head of the department and Exhibits numbers were marked to the exhibits provided by investigating officer and description of the exhibits was mentioned in the description book of the CFSL lab and an entry to that effect was made in CFSL record book and exhibits were again sealed in forensic seal and kept in safe custody of Head of the Department.

303] In this case, after completing the cross-examination by defence, the question was asked on behalf of the Court that - "Whether Exh.1 is a original memory card and Exh.1 to 25 contains all the electronic digital storage media like pen drives, CDS, DVDs, memory cards, laptops hard-disks, etc. which contains document files, media i.e. audio, video?" and "What you can say about the original existence of the file in text visual, audio and video format in the above files and changes occurring in the same?"

304] In reply to the said question, this witness answered that he did not observe any such changes, addition or tampering related

to the files present in the exhibit provided and based on file signatures analysis, link file analysis, prefetch analysis, system information, MFT details, registry analysis, time stamp analysis and USB analysis, he came to the conclusion that there are no such changes in text, audio and video.

305] In further cross-examination by defence he admitted that he has not mentioned in his reports at Exh.266 and 267 that he had followed the process as deposed in answer to court question but he denied that he did not mention it, as he did not follow the above process. He admitted that there is no report either in the form of soft or hard copy showing whether there is a tampering or not in the electronic gadget containing electronic record like pen-drive, CDs, VCDs, memory card, etc. He voluntarily stated that in case he would have come across any such alteration, he would have mentioned about the same in the report.

306] This witness was recalled for cross-examination as per order passed below application at Exh.467 filed by Shri Gadling Advocate for the accused and he was cross-examined by Advocate Shri Gwalwansh on behalf of the accused. During his cross-examination he admitted that the created date and time will be same as date of system date and time and only created date will be same as that of system's date and time. He admitted that details of computer system is not mentioned in his certificates at Exh.266 and 267 where the analysis was made and he does not know whether the head of CFSL, Mumbai Kalina is officer in the rank of IPS and he does not know whether the CFSL is managed by police department. He further stated that his initial posting in CFSL Software Assistant Chemical

Analyzer for first year and for last two years he was working as Scientific Officer and in CFSL at Cyber Division where he was posting no posts are permanent but all are on contract basis and Uttara Gawand was also on temporary post. He stated that Assistant Director was assigned work to them and there was no special order of Government of Maharashtra for analysis of digital evidence in this case and there was no specific order in favour of him to examine digital evidence. He denied that in ENCASE software, format is provided for saving the report.

307] This witness was re-examined by the learned Spl. PP. Shri Sathainathan and during his re-examination this witness stated that he has passed Bachelor of Engineering from Padmabhusan Vasantdada Patil College of Engineering in 2009 from Mumbai University with First Class and delivered lectures as an Expert in Maharashtra Judicial Academy to Judges, police officers as an Expert. He stated that due to family reasons since 2009 to 2011 he was not working anywhere and on 6th March 2011 he joined Forensic Science Laboratory, Mumbai for a period of one year on contract basis and his Contract was renewed from 25th June 2012 to 24th June 2013 and thereafter from 30th August 2013 to 12th August 2014. He stated that he is having experience certificate for working in CFSL and he filed on record copies of his experience certificate, qualifications and participation letter in seminars vide Exh.470. He stated that in between March 2012 to June 2012 and from 24th June to 30th August 2014 he was working as Forensic Analyst in Lab System Private Limited as Forensic Analyst in private Sector and from April 2015 he joined Deloit India Company.

308] He stated that during his tenure as Forensic Expert he handled approximately 189 cases which included digital evidence files like CDs, DVDs, pen-drives, memory-cards, magnetic tape, hard drives, servers, mobiles, tablets and other digital storage media and besides this case he had given evidence as a Forensic Expert in more than 40 cases and he had given evidence in Sessions court, Dapoli, Mumbai, Dhule, Gondiya, Shirdi, Pune. Mohadi rape case is a landmark case. He stated that he is certified access certified examiner (ACE) and access data mobile examiner (AME). With respect to court question, he answered that there was no alteration and change in the text, audio and video form in the electronic devices provided to him in this case and he answered on the basis of chemical analysis done by him for concluding the same and he conducted the following test for coming to the above conclusion:-

i] File signature analysis - means header and footer of the file extension in hexadecimal. For each file in evidence those file signatures are compared with the ideal file signature available for that file extension. If they do not match, the error is observed and the concerned file will be converted to the original file signature.

ii] Link file analysis - when a file is executed a temporary file with same contents and properties is open in background. From which we can state which file is opened or accessed.

iii] Prefetch analysis - when a software is executed in background a prefetch file for that software is opened. From those we can conclude which softwares were executed.

iv] System information - This provides the information regarding installation formatting a last shutdown date of the system.

v] MFT details - this provides details regarding creation of partition available in evidence.

vi] Registry analysis - this provide informations if any registry file has been tampered or value has been changed.

vii] Time stamp analysis - depending on the time zone available in the evidence system. The time zone is converted into real time IST time zone and details of date created, date modified, date accessed, date written of the file are calculated.

viii] USB analysis - this provides information regarding removable storage media connected with the system.

309] He stated that all the analysis is done by ENCASE Software and on that basis he gave answers to the Court. For example in Exh.267 page no.5 in the last column at the end there is mention of a77d51cdd3a18c32bb95653110086cfa is a hash value of that exhibit i.e. hard-disk. He stated that while examining the said hash value for forensic analysis they used write blockers to create an image of the evidence and by that process hash value of the exhibit i.e. hard-disk is not change. He stated that at the time of analysis he can detect last access made in the exhibits (hard-disks). He stated that at page no.7 of his report Exh.267 he provided operating system details, user details, installed softwares, hardware connected and internet history of Exh.25 (laptop).

310] He stated that in the last column shut down time is mentioned as 9-8-2013 and this last shut down cannot be changed of the device unless and until it is again restarted and shutdown. He stated that as Exh.25 is a laptop it is a operating software system hence this analysis is done but with respect to other devices CDs,

DVDs, pen-drives, hard-disks these are not having operating software system and therefore on the basis of procedure of MFT analysis any change, alteration can be determined. He stated that he has given the report in soft copy i.e. paper less report with the help of Encase software in the hard-disk marked as Annexure hard-disk-Cy474-13 and in the note no.1 of his report Exh.267 he has given details of said hard-disk which is make of western digital, capacity of 2 TB with model number and serial number as part of his report.

311] This witness was further cross-examined by defence Advocate and during cross-examination he admitted that he did not mention in Exh.267 and in certificate 65B about the procedure followed by him as deposed regarding file system etc. He admitted that he has not brought his appointment letter. He denied that he did not make any analysis in this case and he was not working in CFSL during the period 6th March 2011 to 24th June 2013 and he was not appointed during that period in CFSL, Mumbai.

312] After examination of 16 GB memory card and article nos.1 to 41 those were sent back by CFSL Bombay to Police station Aheri by P.W. No.21 Bhavesh Nikam through carrier P.W.5 Police Constable Ravindra Kumbhare and Woman Police Constable P.W.7 Apeksha Ramteke.

Argument of learned Spl. P.P. Shri Sathainathan in respect of examination of 16 GB memory-card of Sandisk Company and Electronic gadgets CDs, DVDS, pen-drives, hard-disks (Arts.1 to 41).

313] The learned Spl. PP. Sathainathan submitted that 16 GB memory-card of Sandisk company which was seized from the personal search of accused no.3 Hem Mishra vide seizure panchanama (Exh.137) was sent to CFSL, Mumbai for examination through carrier P.W.5 Ravindra Kumbhare vide letter Exh.211 dated 25.8.2013 and CFSL Scientific Expert P.W.21 Bhavesh Nikam examined the same. The hard copies of the documents certified by P.W.21 Bhavesh Nikam are filed on record at Art.A17 to A21 alongwith CFSL report Exh.266.

314] He submitted that all the electronic gadgets Art.1 to 41 like CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba were sent to CFSL, Bombay through carrier Ravindra Kumbhare (P.W.5) by letter Exh.212 dated 14.9.2013 for examination and for getting mirror-images and analysis report and initially hard-disk was received by P.W.11 Suhas Bawche from CFSL, Mumbai and panchanama to that effect was prepared on 23.9.2013 vide Exh.204 and he further received another hard-disk containing mirror-images of electronic data and panchanama to that effect was prepared on 7.10.2013 vide Exh.205 and both the hard-disks were brought by carrier P.W.5 Ravindra Kumbhare and after receipt of both the hard-disks and after viewing the mirror-images in soft copies of hard-disks supplied by CFSL, Mumbai printouts of incriminating documents were taken out by Investigating Officer P.W.11 Suhas Bawche in presence of panch witness P.W.4 Shrikant Gaddewar and those printouts were sent to CFSL, Mumbai for certification by letter dated 17.11.2013 (Exh.261) and letter dated 30.1.2014 (Exh.263) and by that time original electronic gadgets Arts.1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba and 16 GB memory-card of Sandisk company seized

from the possession of accused no.3 Hem Mishra were with CFSL, Mumbai.

315] Thereafter, in response to letter (Exh.263), the CFSL, Mumbai certified all the hard-copies of mirror-images and those were sent to P.W.11 Suhas Bawche along with analysis reports (Exh.266 and 267) and this fact is stated by Scientific Expert P.W.21 Bhavesh Nikam in his examination at para no.4, 5 and 6. He submitted that from the evidence of P.W.21 Bhavesh Nikam it reveals that on 30.8.2013 his office received one sealed parcel containing one memory card of 16 GB and on 15.2.2014 he handed-over one sealed parcel containing said 16 GB memory-card, one report at Exh.266, one Annexure hard-disk and attested hard copies (15 pages) to P.W.7 Apeksha Ramteke, LPC. He submitted that on 15-2-2014 one sealed plastic box containing 24 separate sealed parcels and one sealed parcel containing laptop, one sealed report at Exh.267, one Annexure hard-disk, attested hard copies (247 pages) were handed over to Apeksha Ramteke, LPC.

Argument of Advocate Shri Gadling for the accused

316] The defence has further attacked on the evidence of Scientific Expert P.W.21 Bhavesh Nikam on the ground that he is not expert witness and he was not appointed by CFSL, Mumbai and he did not carry out any examination. Further, it has come on record that he did not undergo training of EnCase software and he has given different versions at different stages.

317] The learned Advocate Shri Gadling further argued that paper-less report generated by EnCase Software of soft-copies and hard-copies are not produced on record and the same has been admitted by Scientific Expert P.W.21 Bhavesh Nikam. Hence, evidence of Scientific Expert P.W.21 Bhavesh Nikam is not worth to be relied upon. On this point defence relied on the cross-examination of Scientific Expert P.W.21 Bhavesh Nikam in which he admitted that EnCase software belongs to Guidance company and said company gives certified training course for examination of documents by using encase software and he has not gone through the examination prescribed by guidance company for examination of documents. But in cross-examination this witness has clearly denied the fact that he did not use EnCase software and hence, the paperless report generated through Encase software is not filed on record. In support of his submission he placed reliance on the judgment of Rameshchandra Agrawal Vrs Regency Hospital Limited and Others, reported in (2009) 9 Supreme Court cases 709 wherein it is observed that -

E. Evidence Act, 1872 – S.45 - Expert evidence –
Admissibility – Requirement - Evidence of expert is admissible when (I) expert is heard, (ii) he must be within a recognised field of expertise, (iii) his evidence must be based on reliable principles, and (iv) he must be qualified in that discipline – Reiterated, without examining expert as a witness, no reliance can be placed on his opinion alone (Paras 16,21 and 22)

318] Per contra, on this point Spl.P.P submitted that prosecution filed application for getting the estimate and tender of CFSL Bombay. This shows that examination was done through EnCase software and there is no contention of the defence that the examination was done through Encase software and evidence of this witness could not be disbelieved merely because the paperless report is not filed on record.

CONCLUSION

319] It is important to note that P.W.21 Bhavesh Nikam has carried out the examination of electronic gadgets Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks allegedly seized from the house search of accused no.6 Saibaba and 16 GB memory-card of Sandisk company allegedly seized from the personal search of accused no.3 Hem Mishra by using EnCase software version and as application filed by the defence at Exh.467 the prosecution has filed on record the documents from CFSL, Mumbai. The important documents are – [1] Experience certificate of P.W.21 Bhavesh Nikam stating that he was working with CFSL, Mumbai as Assistant Chemical Analyzer from 17th March 2011 to 16th March 2012 and thereafter from 25.6.2012 to 24.6.2013 and from 30.8.2013 to 12.8.2014 he was working as Scientific Officer. [2] Appointment Order of P.W.21 Bhavesh Nikam CFSL, Mumbai is dated 30.8.2013 and he received the said appointment order on 4.9.2013 and examination of electronic devices was carried out by him on 19.9.2013. This shows that at the time of examination of electronic devices P.W.21 Bhavesh Nikam was present in the office of CFSL, Mumbai.

320] Further there are documents showing that P.W.21 Bhavesh Nikam conducted Seminar in the College of Engineering and delivered lectures in Maharashtra Judicial Academy to Judges, police officers as an Expert. The document no.6 filed below the list at Exh.474 shows the supply of EnCase software for cyber forensic system by M/s Lab System (I) Pvt. Ltd. as per the demand of CFSL, Kalina, Mumbai and another document shows that the quotation of tender of Encase software was provided by M/s Lab Systems (I) Pvt. Ltd. to CFSL, Mumbai and the price was mentioned as Rs.64,02,900/- and hence it reveals that EnCase software was available with CFSL, Mumbai. Further document at Serial no.5 of list of document filed by the prosecution at Exh.474 it is mentioned the version of EnCase software is 6.19.7.2 and name of the owner is mentioned as Lab Systems India Pvt.Ltd., on the other hand, in report at Exh.267 version of EnCase software used is mentioned as 6.19 and 7.09 and name of owner is CFSL, Mumbai. This shows that version of EnCase software was used for examination of electronic data. The tender notice clearly mentioned the said version. P.W.21 Bhavesh Nikam in his examination-in-chief stated about his education and qualification that he passed Bachelor of Engineering from Padmabhushan Vasantdada Patil College of Engineering in 2009 from Mumbai University with First Class and having experience certificate for working in CFSL and besides this case he had given evidence as a Forensic Expert in more than 40 cases and he had given evidence in Sessions court, Dapoli, Mumbai, Dhule, Gondiya, Shirdi, Pune. Mohadi rape case is a landmark case and he filed on record copies of his experience certificate, qualifications, copies of court summons and

attendance certificates and participation letter in seminars vide Exh.470 as above and no suggestions were made during cross-examination of Scientific Expert P.W. 21 Bhavesh Nikam by defence about the education, qualification and his experience and the fact that he has given evidence in several cases. Hence, in view of the Judgment of Apex Court in the case of Sarwan Singh -v- State of Punjab reported in AIR 2002 Supreme Court 3652 wherein it is held that -

(B) Evidence Act (1 of 1872), S. 137 – Cross-examination – Opponent declining to avail himself of opportunity to put his case in cross-examination – Evidence tendered on that issue ought to be accepted. (Para 8).

321] Hence, in view of above, as the defence declined to cross-examine the witness on the point of his qualification and education, on going through the certificates of P.W.21 Bhavesh Nikam about the fact that he was serving in CFSL, Mumbai and he has given evidence in several important cases, shows that he is an expert witness in electronic equipment as he was Electronic Engineer and he has passed Bachelor of Engineering in May 2009 in the First Class and thereafter he applied for the post Scientific Expert and he was appointed by letter dated 30.8.2013 which was received by him on 4.9.2013 and to that effect appointment order is very clear but merely because he admitted that he has not undergone the training it cannot be disbelieved that he did not carry out the examination of electronic data by using Encase software. He denied that he did not go through Encase software at any point of time. He denied that he did not use

Encase software and no paperless report was generated in Encase software. It is important to note that it is not disputed by the defence that CFSL, Mumbai did not conduct examination of electronic gadgets by using Encase software, but there is a dispute only on the point of version of software used by CFSL, Mumbai. The relevant para of the notes of argument of defence side is reproduced as under -

B. It is not disputed by the defence that CFSL did not have license of version 7.08 of Encase software as the name of Directorate of Forensic Science is mentioned in the licence of Encase software. Here the submission of the defence is that the Examination report EXH-266 & 267 was prepared by version 7.09 and the defence is not disputing this fact also. But the objection of the defence is that with the licensed version of 7.08 of Encase software no examination was conducted by PW-21. Because by their own admission the prosecution had mentioned in the examination report itself that tests were performed on Version 7.09 of Encase software.

322] The learned Advocate Shri Gadling for accused submitted that in the examination report EXH-266 & 267 under the title TESTS CONDUCTED that “ Reading contents of memory card using Encase Version 6.19 and 7.09 of Guidance Software Inc., USA.” But by bare perusal of document no.5 submitted by the prosecution on 9.1.2017 it appears that CFSL does not have the license of above mentioned version of Encase Software. In Document No.5 in the programme column at 2nd last box the name of the license holder is mentioned

which is Lab Systems India Pvt Ltd. It suggests that the license of version 6.19.7.2 is in the name of Lab Systems India Pvt Ltd. He submitted that as the Lab Systems India Pvt Ltd is the distributor of Encase software in India, that is why the name of the distributor is mentioned in the column. If we believe on the prosecution story than the name of Lab Systems India Pvt Ltd should have also appeared on the next page, which is the document of License related to version 7.08.01.27 but contrary to the claim of the prosecution there is mention of Directorate of Forensic Science in the column "Name". Is Directorate of Forensic science a distributor of Encase software too? This in itself has contradicted the story of the prosecution and strengthen the claim of the defence that the CFSL Mumbai did not have the license of version 6.19.7.2. So it is proper here to submit that no examination EXH-266 & 267 was performed by CFSL or PW-21 by version 6.19 of Encase software. On the basis of above, it was argued that no examination report was prepared EXH-266 & 267 by PW-21 by applying version 6.19 & 7.09 of Encase software.

323] It is important to note that from the documents contained in 16 GB memory-card and electronic data in the form of text, audio and video contained in Articles 1 to 41 CDs, DVDs, pen-drives, hard-disks and his evidence shows that he carried out following tests -

1] **File signature**, means header and footer of the file extension in exa decimal. For each file in evidence those file signatures are compared with the ideal file signature available for that file extension. If they do not match the error is observed and the concerned file will be converted to the original file signature.

2] **Link file analysis** : When a file is executed a temporary file with same contents and properties is open in background. From which we can state which file is opened or accessed.

3] **Prefetch analysis** : When a software is executed in background a prefetch file for that software is opened. From those we can conclude which softwares were executed.

4] **System information** : This provides the information regarding installation formatting a last shutdown date of the system.

5] **MFT details** : This provides details regarding creation of partition available in evidence.

6] **Registry analysis** : This provide informations if any registry file has been tampered or value has been changed.

7] **Time stamp analysis** : Depending on the time zone available in the evidence system. The time zone is converted into real time IST time zone and details of date created, date modified, date accessed, date written of the file are calculated.

8] **USB analysis** : This provides information regarding removable storage media connected with the system.

324] Bhavesh (P.W.21) in his cross-examination has given details about the fact how he came to the conclusion about the

existence of original files in text visuals, audio and video format in the above files and the Court question to that effect was put to this witness. The same question is reproduced as under -

Court question - Exh.1 is a original memory card and Exh.1 to 25 contains all the electronic digital storage media like pen drives, CDS, DVDs, memory cards, laptops hard-disks, etc. which contains document files, media i.e. audio, video. What you can say about the original existence of the file in text visual, audio and video format in the above files and changes occurring in the same?

Ans: I, did not observe any such changes, addition or tampering related to the files present in the exhibit provided. Based on file signatures analysis, link file analysis, prefetch analysis, system information, MFT details, registry analysis, time stamp analysis and USB analysis, I came to the conclusion that there are no such changes in text, audio and video.

325] Further in the cross-examination of P.W.21 Bhavesh question was asked to him about the changing of date and time in the file and he has given details about the same. The said questions and answers are reproduced as under-

Que : If the system 'date' and 'time' is changed and file is copied or created, then what will be 'created date' and 'time' of the file?

Ans : The created date and time will be same as date of system date and time.

Que : If the system date and time is change and if something is download from the Internet what will be the effect of that ?

Ans : Only created date will be same as that of system's date and time.

Que : In ENCASE software report a report is saved i.e. there is format in that software and report will be saved in that format only particularly in ENCASE software?

Ans : Not true to say that in ENCASE software format is provided for saving the report.

Test conducted

326] Reading contents of memory card using Encase Version 6.19 and Version 7.09 of Guidance Software Inc.,USA.

Test conducted

327] Reading contents of hard-disks, CDs, DVDs, pen drives and memory cards using Encase Version 6.19 and Version 7.09 of Guidance Software Inc.,USA.

328] In view of this it can be concluded that P.W.21 Bhavesh Nikam is a expert in examination of electronic evidence and he carried out the examination of seized electronic gadgets i.e. 16 GB memory card and Art.1 to 41 with the help of Encase software and this has been reflected in report at Exh.266.

Absence of notified examiner and its effect under section 79A of the Information Technology Act, 2000

329] Defence further submitted that there is nothing on record to show that CFSL Mumbai is authorized department to examine the electronic data u/s 79A. There is nothing on record to show that CFSL, Mumbai is notified as an examiner for electronic evidence as required u/s 79A.

330] To appreciate the rival contention of the parties it is necessary to produce the provisions of Section 79A of Information Technology Act.

79-A. Central Government to notify Examiner of electronic evidence – The Central Government may, for the purpose of providing expert opinion on electronic form evidence before any Court or other authority specify, by Notification in the official Gazette, any Department, body or agency of the Central Government or a State Government as an Examiner of Electronic Evidence.

Explanation : For the purpose of this Section, “electronic form evidence” means any information of probative value that is either

stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, digital fax machines.

331] On going through the said provisions it is clear that they are directory and not mandatory. At this juncture, it is necessary to consider the ratio laid down by the **Madras High Court** in the case of **K. Ramajayam Vs-Inspector of Police, Chennai reported in 2016 Cr.LJ 1542.** In para 25 observed that -

“It is axiomatic that the opinion of an expert, which is relevant under Section 45 of the Indian Evidence Act, 1872, when accepted by the Court graduates into the opinion of the Court. The Central Government has not yet issued notification under Section 79A of the Information Technology Act, 2000 on account of which Section 45A of the Indian Evidence Act, 1872 remains mute. Therefore, the methods evolved by Kala (PW-23) and Pushparani (PW-24), Scientific Officers of the Tamil Nadu Forensic Sciences Department to analyze and give their opinions on the electronic data, are correct and cannot be faulted.”

332] The State of Maharashtra issued Government Resolution of Home Depart, Government of Maharashtra no.FSL/0306/634/Pra.Kra.231/Pol-4, Mantralaya, Mumbai 400 032 dated 17th July 2006 in respect of authorization to Cyber Forensic Scientific Laboratory, Mumbai to conduct test on Polygraphy, Brain finger printing, narco analysis, cyber crime, tape authentication and speaker identification and accordingly during investigation Scientific Expert P.W.21 Bhavesh Nikam conducted scientific examination of electronic gadgets i.e. 16 GB memory-card of Sandisk company and Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks seized in the crime.

333] Hence, in view of above the reports (Exh. 266 and Exh. 267) given by C.F.S.L.Mumbai and opinion therein about the electronic data contained in 16 GB memory-card and Articles 1 to 41 like CDs, DVDs, pen-drives and hard-disks can be considered.

334] From the above it is clear that from the time of seizure electronic gadgets 16 GB memory card of Sandisk company seized from possession of Hem Mishra and Articles CD, DVD, pen-drive, hard-disk seized from the house search of Saibaba were sealed after seizure of the same and till the examination of above gadgets by CFSL expert, they were in sealed condition and P.W.21 Bhavesh Nikam examined the same. On examination he did not find any change in the original existence of file in text, audio and video form and the certificate u/s.65-B are filed on record and it is at Exh.266 (in respect of 16 GB of Sandisk Company seized from accused No.3 Hem Mishra) and Exh.267 (in respect of Art.1 to 41)

335] From the above, it is clear that the electronic data containing in 16 G.B. memory card and electronic gadgets article 1 to 41 CD, DVD, Pen-drives, hard-disk was not found tampered and altered at any point of time. It is important to note that suggestion was put to the informant P.W.6 PSI Atul Avhad that in Maoist group, every party member has alias name and he admitted that normally they use alias name. It is well settled that when the suggestions are given to the witnesses and if they are admitted, then it constitutes an evidence and the fact is clear that in Maoist group members of banned organization used pseudo name or alias name. It is important to note that from the documents at page no.17 of Exh.267 it is clear that Prakash is nothing but the accused no.6 Saibaba and from the

contents of this letter it shows that Prakash was not well and he faced several problems due to his physical inability and it is not disputed that accused no.6 Saibaba is 90% disabled. The word physical inability is relates to handicap condition of accused no.6 Saibaba.

336] From the document at Article 150 written by accused no.6 Saibaba addressed to Professor Anandkrishnan shows that he was physically handicapped person with a severe deformity (90%) and his both lower limbs were affected by polio in his childhood and he cannot stand or walk on his own and he moves in a wheelchair. Had the investigating officer wanted to tamper or alter the data in electronic gadgets, he would not have included the document in the name of Prakash. Further at one time there is reference of name of Chetan as the alias name of accused no.6 Saibaba and this evident from the document at Article 21 found in the 16 GB memory card seized from the personal search of accused no.3 Hem Mishra and from the document "Brief Review of FC" containing eight pages collectively marked at Exh.130-A in which the name "Chetan" is used in reference to accused no.6 Saibaba.

337] There are personal communications of accused no.6 Saibaba in the form of e-mails and letters. They are - i] a letter written by accused no.6 Saibaba to Prof. Anandkrishnan, Chairman of Inquiry Committee, CIEFL, Hyderabad at Art.150, ii] Letter to the Principal, Ram Lal Anand College, University of Delhi at Art.151 where his daughter Manjira was studying, iii] Letter written by accused no.6 Saibaba to Mr.Santosh Kumar Mishra, Narayana Academy, Delhi at Art.152 about his daughter Manjira, iv] Letter written by Vasanta, wife of accused no.6 Saibaba to the Manager SBI,

Delhi University Branch at Art.153 about wrongly debit of Rs.5000/- from her account, v] Letter written by accused no.6 Saibaba addressed to Girish Srinivasan, Research Unit for Political Economy, Colaba, Mumbai at Art.154 about payment of issues of magazine 'Aspects of Indian Economy'.

338] Further there are several Hindi songs in audio and video form and English and Hindi movies around 100 in numbers in the hard-disk. Had there been any intention on the part of the investigating officer for manipulating and fabricating the electronic data, he would have manipulated Hindi and English songs in audio and video form and movies around 100 in numbers in the hard-disk.

339] Another important point is that four hard-disk were seized from the house search of accused no.6 Saibaba and one hard-disk was crashed and this is evident from the document at page no.17 of Exh.267 in which it is mentioned that Prakash failed to finalise the draft of programme and when the draft almost finalised the hard disk of Prakash's computer got crashed and in CFSL report (Exh.267) on the last page it is mentioned that the data in the hard-disk in Ex.1 could not be detected. This shows that the above electronic gadgets Art.1 to 41 were seized from the house of accused no. 6 Saibaba and hence there was no tampering or alteration.

Whether certificate under Section 65B of the Indian Evidence Act is necessary when the electronic gadgets containing electronic gadgets 16 GB memory-card and Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks are available before the Court?

340] Even assuming for the sake of argument that the evidence of Scientific Expert P.W.21 Bhavesh Nikam is excluded for one or the other reason, it is important to note that the electronic data contained in 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra and Arts.1 to 41 CDs, DVDs, pen-drives, hard-disk seized from the house search of accused no.6 Saibaba are before the Court. At this stage it is necessary to consider the ratio laid down in the judgment of Apex Court in the case of **P.V. Anvar v. P.K. Basheer, MANU/SC/0834/2014** wherein it is observed in para no.24 that -

"24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true.

The above decision does not in any way enhance the case of the defence in as much as, in the last line, the Supreme Court has stated that, if an electronic record as such is used as primary evidence under Section 62 of the Indian Evidence Act, 1872 the same is admissible in evidence, without compliance with the conditions in Section 65B of the Evidence Act."

341] Further, the Division bench of Delhi High Court in case of **Kishan Tripathi alias Kishan Painter-vs-State reported in 2016 (3) ADR 495** held that -

Evidence Act (1 of 1872) – S. 65B, 60 – CCTV footage – Evidentiary value – Murder of security guard in factory – Evidence on record showing that no one was watching CCTV footage when it was being recorded and recording was result of commands or instruction already given and programmed – Original hard disc therefore would enjoy a unique position and could be relied on as primary evidence. Penal Code (45 of 1860), S. 300 (Paras 13, 14, 15)

342] Further, the **Madras High Court in 2016 Cr.L.J.1542**, in the case of K.Ramajayam alias Appu Vrs Inspector of Police, Chennai, para 35, it is held that -

We are aware that in many public and private offices, though computers are operated by their staff, yet the manning and maintenance of servers, where the data is actually stored is outsourced to private players like TCS, WIPRO etc. Under those circumstances, it would suffice if Section 65-B certificate is obtained from the person, who is in-charge of the server albeit the fact that he is not a staff to the parent organization. Section 65-B does not require certification by a public authority unlike cases of issuance of certified copy of public document under sec- 76 of Indian Evidence Act, 1872. It is not necessary in every case to examine the person who had given the 65-B certificate as witness before the trial Court, unless the Court suspects the integrity of the electronic record i.e. produced as evidence. One should bear in mind that a digital image cannot be manipulated easily. Every digital image has a meta data stored in it. The meta data are structured as coded data, which gives every image its own character. It should be remember that the certification under section 65-B is not for truthfulness of the content of the computer generated record, but it is essentially related to the working condition of the computer from where the

stored record is produced in a tangible form for the Court to inspect.

Defence will always complain of manipulation, but Court can reject fanciful objections bearing in mind the principle underlined in Section 114 of the Indian Evidence Act, 1872. De omnibus dubitandum (doubt every thing) Philosophy may be road to scientific discoveries, but not for judicial enquiries, where perfect proof is utopian. The celebrated Jurist late lamented Nani Palkhivala commented.

“Our Legal System has made life too easy for criminals and too difficult for law abiding citizens. A touch here and push there and India may become ungovernable under the present constitutional set up”

It is time that we come out of anachronistic mind set of suspecting and doubting every act of the Police, lest the justice delivery system should become a mockery.

343] In the present case, it is the case of the prosecution, the accused No.6 Saibaba used pseudo/alias name as Prakash, while making correspondence with the members of banned organization (CPI Maoist and RDF). The defence Advocate Shri Gadling had given suggestion in cross-examination to P.W.6 Atul Avhad that in Maoist group every party members has alias name and they normally use alias name. It is well settled that when the suggestion is admitted in cross-examination by witness it constitutes evidence.

344] Following are the text documents which were found in 16 GB memory card seized from personal search of accused No.3 Hem Mishra and Art.1 to 41 CDs, DVDs, pen drives, memory card seized from the house search of accused No.6 Saibaba.

1] The documents at Art.A21 of Exh.266 retrieved from the 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra it is clear that it is a letter written by Jaddu and Prakash addressed to dear Comrade Red Salute in which demand of fund of Rs.2 lacs was made and he requested for asking the international fraternal organisations to wait and suspend all work till they get guidance from Comrades. Now it is necessary to see whether that Prakash is accused no.6 Saibaba.

345] It is important to note that from the house search of accused no.6 Saibaba four hard-disks were seized alongwith electronic gadgets Arts.1 to 41 and data in one hard-disk was not retrieved and from the CFSL report (Exh.267) it is clear that data in that hard-disk was not detected and from the document at page no.17 of Exh.267 found in the hard-disk seized from the house search of accused no.6 Saibaba, wherein it is mentioned that Prakash failed to finalise the programme and constitution of A4 by incorporating amendments accepted in the conference and when the draft almost finalised the hard disk of Prakash's computer got crashed. On perusal of CFSL report (Exh.267) it reveals that in CFSL report (Exh.267) on the last page it is mentioned that the hard-disk in Ex.1 could not be detected and the said hard-disk is the same as referred at page no.17 of Exh.267. Hence, it is clear that said crashed hard-disk was sent to CFSL Bombay alongwith other electronic devices (Art.1 to 41) and it could not be detected in the Cyber Forensic Scientific Laboratory. Hence, it reveals that the name "Prakash" mentioned in Secretary's report at page no.17 of Exh.267 is nothing but accused no.6 Saibaba.

100%

346] Further from the letter at page no.206 of Exh.267 taken out from the hard-disk Exh.4 seized from the house search of accused no.6 Saibaba written by Prakash addressed to **The Secretary Sub-Committee on Mass Organization (SUCOMO) CPI (Maoist)** dated 2 December 2006, it is clear that Prakash had given resignation from his primary membership of the party and to the Fraction Committee due to deeply pained by the treatment metered out from some comrades and his health is also not cooperating to face the aggressive attitudes of the comrades. Further from the document at page no.17 of Exh.267 taken out from the hard disc Exh.4 titled as **Secretary's report regarding review of RDF work since its formation**, in which it is mentioned that whole house rejected Joseph and reiterated that Prakash should be the chief co-ordinator and whole house expressed confidence in him and finally Prakash agreed to the said resolution.

347] Further from the letter at page no.81 of Exh.267 addressed to accused no.6 G.N. Saibaba by Ufuk Berdan, Chairperson of the International Relation Commission ATIK (Avrupa Turkiyeli Isciler Konfederasyonu) shows that this letter was written by ATIK international organization to accused no.6 Saibaba about invitation and lastly complimented accused no.6 G.N. Saibaba to meet them soon and wish him all the best in his struggle. From above, it reveals that all these documents were written by accused no.6 Saibaba by using his pseudo name "Prakash" and from Art.A21 found with accused no.3 Hem Mishra in 16 GB memory-card it is clear that it was written by accused no.6 Saibaba by using pseudo name "Prakash" and further it is clear that there is no manipulation and fabrication by the police, in the electronic data seized from accused no.3 Hem Mishra and accused no.6 Saibaba.

348] Further, it is important to note that in the hard-disk seized from the house search of accused no.6 Saibaba there are several personal documents of the accused no.6 Saibaba regarding letters by accused no.6 Saibaba to his daughter, letter written by wife of accused no.6 Saibaba by name of Vasantha and letter written by accused no.6 Saibaba to the colleges regarding the problem of his daughter and had the police intended to manipulate or fabricate the data they would not have planted those letters.

349] Further in the said hard-disk Exh.2, 3 and 4 there are several files which were protected by unique password and this fact is clear from the CFSL report (Exh.267) that some files were detected with unique password and could not be opened in CFSL, Mumbai and some files were password protected and those were opened with the passwords detected by CFSL and at CFSL report Exh.267 password in one hard-disk the password detected by CFSL are mentioned as Manjeera 123 and Malabiragi. The prosecution has filed on record a letter under signature of accused no.6 Saibaba stating therein that the name of passwords are - "manjeera123" and "malabiragi". The signature bearing on the letter if compared with the signatures of accused no.6 Saibaba on his application, vakalatnama, plea of accused and the statement u/s 313 Cr.PC. by virtue of Section 73 of Evidence Act this Court found no difference. However, because of the fact that no question was put to accused no.6 Saibaba u/s 313 of Cr.PC. with respect to that letter that cannot be considered. But from the fact that one hard-disk was not detected seized from the house search of accused no.6 Saibaba. This clearly shows that all electronic gadgets were recovered from the house search of accused no.6 Saibaba.

350] As discussed above accused no.6 Saibaba was using pseudo name as “Prakash” and to that effect suggestion was made to the informant P.W.6 Atul Avhad and he admitted in his cross-examination that in Maoist groups every party member has alias name and members of banned organisation normally use alias name. So from this it is clear that in my opinion Prakash is nothing but accused no.6 Saibaba and the documents found in 16 GB memory-card found in possession of accused no.3 Hem Mishra i.e. Art.A21 shows that it was written by Jaddu and Prakash. This shows that even the data contained in 16 GB memory-card is also not manipulated or tampered by the police. It is important to note that there are certain text files which were protected by password and even that passwords could not be detected by CFSL. Had the police officer intended to manipulate or fabricate the electronic data in the electronic gadgets they would not have planted the password protected files therein.

351] Further there are several personal family photographs of accused no.6 Saibaba and Hindi songs in audio and video form and English and Hindi movies around 100 in numbers found in electronic gadgets seized from the house search of accused no.6 Saibaba. As per judgment of **Madras High Court** in the case of **K. Ramajayam alias Appu -v- Inspector of Police reported in 2016 Cri. L.J. 1542** as the photographs, text, audio, video-clips have meta data files and it is difficult to manipulate. During examination-in-chief P.W.21 Bhavesh Nikam stated that he used meta data technique for determining the same. He stated that author of every file is a meta data property file and it is in the name of profile system. Had the police wanted to manipulate data they would not have included the Hindi songs, movies, personal data and personal communication. Further during

the course of argument in respect of text documents contained in hard-disk Exh.2,3 and 4 seized from house search of accused Saiababa, the date of creation of file and author was seen and following are the text documents in which date of creation and author are appearing as under :

[i] Author of draft manifesto is G.N.Saibaba and the same document is a part of Exh.4/31.12.12/RDF Conference material titled as draft manifesto of RDF amended by conference. The said document is opened on the laptop of the Court and after putting cursor in specific file and right clicking on the said file, folder, properties is opened and after opening the property folder in details tab the name of “author” is appearing as G.N.Saibaba and the said document is created on 5.3.2012 at 12.29 p.m. and its word count are 8602 and it is prepared in Microsoft Word.

[ii] Another letter issued by Prakash to Dear Comrade dated 17th June 2003 at page no.205 of Exh.267 is opened on the laptop of the Court and after putting cursor on specific file and right clicking on the said file, option 'properties' is opened and after clicking on the option 'properties' in details tab the name of author is appearing as “Saibaba” and the said document is created on 20.6.2003 at 4.44 p.m. and it is prepared in Microsoft Word.

[iii] A letter at page no.206 of Exh.267 dated 2nd December 2006 having path **Exh.4/Data/personal** written by Prakash to The Secretary, Subcommittee on Mass Organisations (SUCOMO) CPI (Maoist) regarding his resignation from the party is opened on the laptop of the Court and the name of author is appearing as “aaa” and the said document is created on 2.12.2006 at 10.58 p.m. and it is prepared in Microsoft Word.

[iv] The another document Art-150 is dated 12th December, 2006 having path **Exh23/ ALLL/ Accommodation Issue/Letters/ Representation before the Inquiry Committee** written by G.N.Saibaba addressed to Proft. Anandakrishnan, The Chairman, Inquiry Committee, is opened on the laptop of the Court and the name of author is appearing as “aaa” and the said document is created on 11.12.2006 at 6.04 p.m. and it is prepared in Microsoft Word. According to the prosecution author of “aaa” is nothing but accused no.6 Saibaba.

[v] A letter at Page no.87 of Exh.267 dated 20 December 2010 having path “Ex-4/cy-475-Ex-4/c/All old and new/News” addressed to Dear concerned comrades by Prakash and the entire team is opened on the laptop of the Court and the name of author is appearing as “Vasantha” and the said document is

created on 20.12.2010 at 8.35 p.m. and word count is 529 and it is prepared in Microsoft Office Word.

[vi] A document from the hard-disk Exh.4 seized from the house of accused no.6 Saibaba under seizure panchanama (Exh.165) having path **Exh.4/latest/hai dear, written to Hai dear by Amani**, written by Amani to accused no.6 Saibabai is opened on the laptop of the Court and the name of author is appearing as “Saibaba” and the said document is created on 26.10.2002 at 9.11 p.m. and it is prepared in Microsoft Word. According to prosecution “Amani” nothing but a wife of accused no.6 Saibaba by name “Vasantha”.

[vii] A document taken out from the hard-disk Exh.4 at page no.200 of Exh.267 having path **Exh.4/new folder/teachers response**, addressed to The Home Minister, Ministry of Home Affairs Government of India New Delhi 110001 dated 4 August 2013, is opened on the laptop of the Court and the name of author is appearing as “VS” and the said document is created on 4.8.2013 at 11.25 p.m. and word count is 615 and it is prepared in Microsoft Office Word. From the contents of this letter it reveals that it was not written by Saibaba and written by somebody else but in fact it is written by accused no.6 Saibaba as the author is “VS”.

[viii] A document at Art.151 of pen drive Exh.23 dated 21 August 2013 having path **letter/document Exh 23/ALLL/Letter re Adhoc Appointment**, written by Dr.G.N.Saibaba addressed to The principal Ram Lal Anand College University of Delhi Benito Juarrej Road New Delhi 110021 and the author of said personal letter of accused no.6 Saibaba is "VS".

352] The prosecution has filed text documents containing 247 pages retrieved from the hard-disks seized from house search of accused No.6 Saibaba and the said 247 pages are filed alongwith CFSL report 267 at page No.1, there is a secretary report of RDF conference, which is titled as under -

REVOLUTIONARY DEMOCRATIC FRONT (RDF)

Secretary's Report (presented in the 1 st Conference of RDF)

First Conference of the Revolutionary Democratic Front (RDF
22-23 April, Sundaraiya Vigyam Bhavan, Hyderabad, Telangana)

353] It is important to note that there is also video clips of the 1 st conference held on 22-23 April at Hyderabad. The said video-clip, found in hard-disk was played on the laptop the court in presence of accused and his Advocate Gadling and Special PP. and it is seen that the address as given in Exh.1 is appearing in video clip. This shows that the video-clip of 1st conference found in hard discs seized from the house search of accused Saibaba is not manipulated.

354] Further there is a reference at point No.40, of page no.1 of Exh. 267 that public protest meeting against fake Encounter Killing of Maoist Leader Kishenji was held in Gandhi Peace Foundation, Delhi on 13 December, 2011. The CD of Moserbear, on which it is written as "On Trinamool issue convention on Kishanji New Delhi 13.12.11, this CD was seized from house of accused no.6 Saibaba and on playing the said CD on the lap-top of the Court, in the presence of accused, his Advocate Shri Gadling and Spl.PP. Shri Sathianathan and accused Saibaba is seen attending the said function that he said that he got inspiration from Kishanji. This shows that the said CD is not manipulated.

355] There is a reference of comrade Jiten Murandi in page No.1 of Exh. 267 that Jiten Murandi was falsely implicated under Draconian Laws and he was imprisonment of various Government and but in spite of their incarceration, they are relentlessly fighting inside the prisons against the anti-people policies of the central and State Government and for prisoners rights. We salute these brave comrade of ours. Two CDs cassettes of Moserbear company on which convention of Jiten (part I) and Part II is written Art.52 and 53 were seized from the house search of accused No.6 Saibaba and in one CD, which was played on the laptop of the Court in presence of accused, his Advocate Gadling and Special PP Shri Sathainathan and accused No.4 Prashant Rahi is seen attending the said meeting on dais with other persons and one lady was also seen addressing the meeting. This shows that data contained in the video-clips in Art.52 and 53 is not manipulated.

356] Further there is a reference at page no.1 of Exh.267 at Sr.No.48 that RDF launches election boycott programme. Further there is a video-clip found in the hard disc seized from the house search of accused no.6 Saibaba and the said video-clip is having path **Exh.3/films/s1/RDF/4/VIDEO_TS/VTS_01_2**, and the said video-clip was played on the laptop of the court in presence of accused, his Advocate Shri Gadling and Special PP Shri Sathainathan and it is seen that accused no.6 Saibaba said that RDF rejects the parliamentary path and strives for intensifying people's struggles to overhaul the current semi-feudal-colonial society and to build a new democratic society and he further said that RDF reject electoral system. This shows that the video-clip is not manipulated.

357] In view of clear evidence of Scientific Expert P.W.21 Bhavesh Nikam that he did not any change in created date. Hence, from the above facts it is clear that the dates which were created earlier to seizure of said property i.e. 16 GB memory-card from the possession of accused no.3 Hem Mishra and Arts.1to 41 from the house search of accused no.6 Saibaba. From all above facts prosecution has proved beyond reasonable doubt that at no point of time there was any alternation or manipulation in the electronic data contained in electronic gadgets. Hence, the electronic data contained in original electronic gadgets in the form of audio, video and text can be considered without the certificate as required u/s 65B of the Indian Evidence Act.

Delay in filing certificate u/s. 65-B of Evidence Act

358] According to defence certificate under Section 65B of the Evidence Act was filed after one and half year. The police received the CFSL reports (Exhs.266 and 267) on 15.2.2014 but the certificate under Section 65B of the Evidence Act was received from CFSL, Mumbai on 22.3.2016. Hence there is delay of more than one and half year. Hence, it cannot be read in evidence. However, Division Bench of Delhi High Court in the case of **Kundan Singh vs. The State reported in MANU/DE/3674/2015** held that -

“Even if the certification is not obtained at the time of collection of evidence, yet, at the time of trial, evidence aliunde can be given through the person who was in charge of the server in terms of Section 65B of the Act.”

359] In the present case, the said certificate was produced before the commencement of evidence and it was proved through the evidence of Scientific Expert P.W.21 Bhavesh Nikam. Hence, in view of above judgment it can be read in evidence and contention of defence is liable to be rejected.

360] In view of above impeachable circumstances brought on record prosecution has clearly proved that from the house search of accused no.6 Saibaba police seized electronic gadgets like CDs, DVDs, pen-drives, hard-disks i.e. Articles no.1 to 41 alongwith other articles from the house of accused no.6 Saibaba and there was no tampering or alteration in the electronic data contained therein.

Authenticity of electronic evidence

361] According to defence voice-recorder, video-recorder and tape-recorder from which the CDs, DVDs copied were not produced on record. Hence, he submitted that the data contained in 16 GB memory-card and Arts.1 to 41 CDs, DVDs, hard-disks, pen-drives were tampered and planted by the Investigating Officer. In support of his submission he placed reliance on the judgment of Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke reported in (2015) 3 Supreme Court Cases 123, wherein it is held that -

B. Evidence Act, 1872 – Ss.65-A and 65-B – Authenticity of electronic evidence – Analysis /verification of source – Significance of – Inaudible voice recording – Voice recorder not subjected to analysis – Alleged translated version, held, cannot be relied on – Held, without source, there is no authenticity for translation – Source and authenticity are the two key factors for an electronic evidence – Criminal Trial – Proof – Electronic evidence.

362] The electronic gadgets Art.1 to 141, seized from the house search of accused Saibaba containing electronic data in text, audio, video and photograph form and 16 GB memory card containing electronic data in text form seized from the possession of accused No.3 Hem Mishra is proved by the prosecution beyond reasonable doubt and it is in the exclusive knowledge of the accused No.3 and 6, whether the data contained in above electronic gadgets in primary or secondary form, but they have not explained the same in their statements under section 313 of Cr.PC. They only denied that the said data was manipulated. Hence the non-production of camera from

which videography was done and the non-examination of videographer, will not be fatal to the case of the prosecution.

Ownership of house

363] It was argued by the defence side that the prosecution has not produced any cogent evidence on record to show that the house in which search was made was owned by accused No.6 Saibaba, hence, the evidence in respect of seizure of electronic gadgets article No.1 to 41 will not be helpful to the prosecution.

364] It is not in dispute that the accused No.6 was working as a professor in Delhi University at the time of incident. The P.W.2 Jagat Bhole, the panch witness in his examination stated that he is having barber shop within the premises of Delhi University and he knows the house of Saibaba which was situated behind his shop and after taking the search of the house of Saibaba, the copy of panchanama was given to accused Saibaba. This shows that the house from where electronic gadgets Art.1 to 41 were seized was owned by accused Saibaba and non-production of documentary evidence is not fatal.

Effects of non-blocking of the objectionable websites under Section-69A of the Information Technology Act, 2000

365] He submitted that Investigating Officer P.W.11 Suhas Bawche in his cross examination admitted that he knows that there is one website as Naxal related banned thoughts and all information regarding CPI Maoist and Naxal literature, meetings, central

committee resolutions are available. He further submitted that this admission explains that the documents which was allegedly found in the electronic equipments and seized from the house of Saibaba are already in public domain and if the Government would have found those to be “incriminating material” then they by exercising their power would have banned the publication or blocked those websites for public access. This power lies within the Government which is mentioned in Section-69A of the Information Technology Act, 2000. It deals with power to issue directions for blocking the website to prevent public from accessing any information through computer resource. He submitted that till date there is no such ban imposed by the Government on these websites and they are already in the public domain. It may have been the conscious decision of the government not to restrict the fundamental right of '**freedom of expression**' guaranteed by the **Constitution of India under Article 19 (1)(a)**. So how could the police can claim those documents to be incriminating materials which are in public domain?

366] In the present case the data contained in text form was found in 16 GB memory-card of Sandisk company seized from accused no.3 Hem Mishra and Arts.1 to 41 CDs, DVDs, pen-drives, hard-disk seized from the house search of accused no.6 Saibaba are letters, correspondence by Comrades to members of CPI (Maoist), draft manifesto of RDF organisation, personal communication i.e. email and the defence has not able to show that the electronic data in text form is the same which is available on the website on Internet. It is important to note that nowadays several objectionable and offensive materials are available on Internet e.g. pornographic

websites and porn videos etc. Though the said website is not yet banned by the Government by exercising power u/s 69 of Information Technology Act that cannot be ground for a person to download the said data and to use it for committing the crime. Hence, mere non-banning of said website does not mean that the data contained therein is not offensive. Hence, contention of the defence is liable to be discarded on this count alone.

Depositing of Mirror-images in respect of data contained in 16 GB memory-card seized from the possession of accused no.3 Hem Mishra and Electronic gadgets (Arts.1 to 41) like CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba in Aheri Police Station

367] According to the prosecution the CFSL, Mumbai has examined the 16 GB memory card seized from personal search of Hem Mishra and PW.5 brought the mirror images in respect of data containing in memory card.

EVIDENCE

368] Head Constable Ravindra Manohar Kumbhare (PW.5) who was attached to Aheri Police Station and carried muddemal property to CFSL, Mumbai and brought mirror-images of 16 GB memory card of Sandisk Company seized from the possession of accused no.3 Hem Mishra and further brought mirror-images of the electronic gadgets articles 1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba from CFSL, Mumbai and deposited the same in Aheri Police Station. Ravindra in his examination at Exh.210 stated that on 30-8-2013 he received the mirror image copies in another by CFSL, Bombay as per the demand and deposited the same in Police Station Aheri with Investigating Officer PW.11 SDPO Suhas Bawche on 31-8-2013 in sealed condition.

369] According to prosecution after depositing of mirror images with Investigating officer P.W.11 Suhas Bawche by carrier P.W.5 Ravindra Kumbhare, Investigating officer P.W.11 Suhas Bawche drew panchanama with the help of panch witnesses P.W.4 Shrikant Gaddewar and Dildar Khan at Exh.201.

370] Investigating officer P.W.11 Suhas Bawche in his examination stated that he received mirror images of memory cards seized from possession of accused no. 3 Hem Mishra and the said mirror images were seized in the presence of panchas and panchanama was drawn under the signatures of panchas vide Exh. 201 and during panchanama they opened the memory card on the computer with its card writer and upon opening the same they found some video files and word file and video files and word files were not protected by password but in the said memory card there was one folder containing 10 files which were protected by password and thereafter they took out print out of word files and they are Art. A/17 to A/21 and they are the same print out which were taken from the memory card seized from accused Hem Mishra which was opened in the computer with the help of card writer in PS. Aheri.

371] In cross-examination he stated that he came to know that some files were protected by password after receiving the mirror images from CFSL and this fact was also told by accused Hem Mishra that some files were protected by password during his interrogation. Further he denied that the memory card was planted by him and he was knowing that it was protected by password.

372] The panch witness P.W.4 Shrikant Gaddewar in his examination stated that he was called on 31-8-2013 at P.S. Aheri at 8 p.m. to 9 p.m. and at that time, DySP Bawche and another panch and police personnels, PI Badgujar were present there and Dy.SP told me that one memory card was found with accused Hem Mishra which was sent to forensic laboratory Mumbai and mirror copy of the same has been received and panchanama to that effect was to be made and one police official brought one paper box and that paper box was having cello tape pasted on it and then police opened that box in his presence and inside that box there was white paper and in that white paper there was plastic pouch and inside that pouch there was a black memory card and on that memory card it was written Sandisk 16 GB micro SD and the card was put in the card writer and the said card writer inserted in the computer and memory card was opened with the help of card writer and he himself inserted the card writer in the computer and after opening they found one folder on which Cy and some number was written and that was opened and in that folder, there were 10 to 12 PDF files and they were protected by secrete passwords and in the same memory card there were some word files and he does not exactly remember how many word files were there and there were another folders in the same memory card and he does not remember the name which were given to the PDF files and word files.

373] The police opened the word files in his presence and in one file there was letter written in Hindi language and the sender was by name Javi and it was addressed to Sathi and in that letter it was written that the condition of Uttara Khand was not proper.

374] Thereafter another word file was opened by police and in that file letter was sent by CPI Maoist and it was addressed to NRB and in that file it was written about police awareness is fake and lot of matter was written but he does not remember it and thereafter police opened another file, the letter was signed by Sahyadri and on top of letter it was written as CPI Maoist and the signature was in Marathi and matter was in English and thereafter police opened another file and in that letter demand of money was made regarding acknowledgement receipt of Rs. 1,50,000/-, Rs. 75,000/- and it was also written loan of Rs. 2,50,000/- was taken and requirements of Rs. 13 lacs and in another file it was written that Mahesh was recently released from the jail and he was wrongly expelled from the party but he was doing good work and then the print out of the said files around 16 to 17 pages were taken and on the said print out his signatures were taken and the electronic data in the memory card was copied by him on the computer of the P.S. Aheri and the said print out was taken by him and the print out bears his signatures and the memory card was thereafter sealed and labels and signatures of panchas were put on them and panchanama to that effect was drawn on 31-8-2013 and it bears his signature and signatures of panchas and its contents are correct and it is at Exh. 201 and the Print out now shown to him, bears his signatures and those are taken out by him and those are marked at Art. A/17 to A/21.

Depositing of mirror images containing Electronic gadgets (Arts.1 to 41) like CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba in Aheri Police Station

375] P.W.5 Ravindra Kumbhare in his examination stated that

on 20.09.2013 he received mirror images regarding to 1 hard disc which he had deposited alongwith letter dt.14.09.2013 i.e. Exh.212 and he deposited the said mirror images with Aheri P.S. on 21.09.2013 and the muddemal which he deposited on 17.09.2013 consists 24 sealed packets and one sealed parcel.

376] He again had gone to CFSL, Bombay on 1.10.2013 as their P.S. had received phone that mirror images of the articles deposited with them were ready and hence, he went to the office of CFSL, Bombay to bring the same and accordingly he went to the office of CFSL, Bombay on 5.10.2013 and received mirror images under the letter from CFSL, Bombay in sealed condition and deposited the same in Aheri P.S. and his statement was recorded by police in this crime.

377] After receipts of mirror images the panchanama Exh.204 was made by P.W.11 Suhas Bawche in the presence of P.W.4 Shrikant Gaddewar.

378] Investigating officer P.W.11 Suhas Bawche in his examination stated that on 22.09.2013 he recorded statement of P.C.Kumbhare regarding depositing of hard-disks containing mirror image from the hard-disks submitted to CFSL, Bombay and on 23.09.2013 he prepared panchanama regarding contents of the electronic material in the hard-disks containing mirror image in the presence of panchas and now he had shown the panchanama dtd.23.09.2013 and it bears his signature and signature of panchas and its contents are correct and it is at Exh.204.

379] The panch witness P.W.4 Shrikant Gaddewar in his examination stated that thereafter police again called him on 23-9-2013 in Aheri P.S. Dy.S.P Bawche, police officials and another panch witness were present there and police told him that the mirror copy of the hard disc seized from the house of Saibaba has been received from Forensic laboratory and panchanama to that effect was to be made and then police took out one white paper pouch and as the panchanama took place before 2 and half year, he does not recollect the colour of pouch and it was sealed packet and it was opened in my presence and In the said packet there was hard disk and after opening the same, police asked him to connect it to the computer at P.S. and then he put the said hard disc on the computer and it was played and it was opened in the computer and there were 7 folders, some files and on the said folder Ex numbering were there and he does not remember whether the files were numbered and thereafter as per the instruction of Dy. S.P important files were checked and thereafter the said hard-disk was sealed in my presence and in presence of other panchas and signatures and labels were put on it and panchanama to that effect was prepared in his presence and panchanama now shown to him, is the same and it is at Exh. 204 and its contents are correct.

380] Investigating officer P.W.11 Suhas Bawche in his examination stated that on 6.10.2015 P.C.Kumbhare had brought 2 hard-disks containing mirror images and he recorded statement of P.C.Kumbhare and panchanama to that effect was prepared on 7.10.2013 and it bears his signature and its contents are correct and it is at Exh.205.

381] The panch witness P.W.4 Shrikant Gaddewar in his examination stated that thereafter police again called to P.S. Aheri on 7-10-2013. Dy. S.P. Bawche, police officials and another panch witnesses were present there and police told him that the mirror copy of the two hard discs seized from the house of Saibaba has been received from Forensic laboratory and panchanama to that effect was to be made and then police took out one white paper pouch and as the panchanama took place before 2 and half year, he does not recollect the colour of pouch and it was sealed packet and it was opened in my presence and in the said packet there were 2 hard disks and after opening the same, police asked him to connect it to the computer at P.S. and then he put the those hard discs on the computer and those were played and it was opened in the computer and in one hard-disk, there were 16 to 17 folders and 25 files and in another hard-disk there were 25 folders and some files and in one file 'video conference' was written and in another file it was written 'Cobad Gandhi' and on the said folder Ex numbering were there and he does not remember whether the files were numbered and thereafter as per the instruction of Dy. S.P. important files were checked and thereafter the said hard-disks were sealed in my presence and in presence of other panchas and signatures and labels were put on it and panchanama to that effect was prepared in his presence and panchanama now shown to him, is the same and it is at Exh. 205 and its contents are correct.

Sending of Hard-copies of mirror-images of 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra and Electronic gadgets Arts.1 to 41 seized from the

house search of accused no.6 Saibaba to CFSL, Mumbai for certification.

382] The mirror-images of 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra and Electronic gadgets Arts.1 to 41 seized from the house search of accused no.6 Saibaba were retrieved by the Scientific Officer Bhavesh Nikam (P.W.21) at CFSL, Mumbai and same were sent to Investigating Officer Suhas Bawche (P.W.11) vide letter dated 5.10.2013. Thereafter, Investigating Officer Suhas Bawche (P.W.11) in presence of Shrikant Gaddewar (P.W.4) took printouts (hard-copies) of the said mirror-images on the laptop in Aheri Police Station and the said hard-copies were sent by Investigating Officer Suhas Bawche (P.W.11) vide letter dated 30.1.2014 vide Exh.263 for certification.

383] Thereafter Scientific Officer Bhavesh Nikam (P.W.21), CFSL, Mumbai certified the hard-copies of incriminating data Art.A17 to A21 contained in text form in 16 GB memory-card seized from the possession of accused no.3 Hem Mishra under panchanama (Exh.137) alongwith its generated analysis report at Exh.266 and the attested hard-copies of the incriminating data contained in electronic gadgets i.e. CDs, DVDs, pen-drives, hard-disks, memory-card seized from the house of accused no.6 Saibaba under seizure panchanama (Exh.165) in text form and photographs alongwith generated analysis report at Exh.267 containing 247 pages and were handed-over to LPC Apeksha Ramteke (P.W.7) and she deposited the same in SDPO, Office, Aheri.

EVIDENCE

384] In this respect Scientific Officer Bhavesh Nikam (P.w.21) in his examination stated that he issued letter to P.W.11 SDPO Aheri, alongwith mirror image of hard-disk Exh. 4, Exh. 6 to 12, Exh.14 to 17, Exh.18, Exh.19, Exh.20/3, Exh.20/4, Exh.20/5 at Exh.373 and also issued letter dated 5-10-2013 in respect of copy of Exh.5, Exh.21, Exh.22, Exh.23, Exh.24 to SDPO Aheri at Exh.374 and thereafter, hard copies of Annexures to Exh.267 were provided to him by letter from SDPO Aheri on 30-1-2014 and thereafter based on contents present keywords were generated and based on file path provided by Investigating Officer P.W.11 SDPO Aheri and the concerned documents were searched and verified and provided in hard copies and after attestation provided to the investigating officer in Annexure hard-disk marked as "Annexure hard-disk Cy-475-13" alongwith report generated by him dated 15-2-2014 vide O.W.no. 4860/2014. He stated that on 15-2-2014 one sealed parcel containing one memory card of 16 GB, one report, one Annexure hard-disk and attested hard copies (15 pages) were handed over to P.W.7 Apeksha Ramteke, LPC and those were received by her as per receipt and seal of office of CFSL Kalina. He identified report dated 15-2-2014 and hard copies of 15 pages at Exh.266. On the same day he handed over one sealed plastic box containing 24 separate sealed parcels and one sealed parcel containing laptop, one sealed report, one Annexure hard-disk, attested hard copies (247 pages) to P.W.7 Apeksha Ramteke, LPC Buckle no.4131. The report dated 15-2-2014 containing 247 pages annexed to Exh.267.

385] In his cross-examination he denied that he blindly signed on the analysis reports (Exhs.266 and 267) on the instructions of P.W.11 Suhas Bawche and signed 247 pages and 15 pages.

386] The learned Spl. P.P. Shri Sathainathan submitted that after receiving the mirror-images of 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra, Investigating Officer Suhas Bawche (P.W.11) took out printouts of incriminating documents at Arts.A17 to A21 (15 Pages) with the help of panch witness Shrikant Gaddewar (P.W.4) under panchanama (Exh.201). He further submitted after receiving the mirror-images of electronic gadgets Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba, investigating officer Suhas Bawche (P.W.11) opened those mirror-images in presence of panch witness Shrikant Gaddewar (P.W.4) and printouts of incriminating documents and photographs i.e. 247 pages were taken.

387] He further submitted that Investigating Officer Suhas Bawche (P.W.11) by his letter dated 30.1.2014 sent those hard-copies to CFSL, Mumbai for certification and after due certification of all the hard-copies, Scientific Officer Bhavesh Nikam (P.W.21) handed-over the same to LPC Apeksha Ramteke (P.W.7) along with its analysis reports (Exh.266 and 267) and she deposited the same with SDPO Investigating Officer Suhas Bawche (P.W.11). He submitted that evidence of Investigating Officer Suhas Bawche (P.W.11), panch witness Shrikant Gaddewar (P.W.4) and LPC Apeksha Ramteke (P.W.7) is consistent with each other and the same was corroborated by panchanamas (Exh.201 and Exh.202) and letter dated 30.1.2014 (Exh.263). He submitted that nothing was elicited from the cross-

examination of these witnesses to disbelieve their testimony. Hence, he submitted that prosecution has proved that hard-copies of 16 GB memory-card and electronic gadgets Arts. 1 to 41 were sent to CFSL Mumbai, those were certified by Scientific Officer and the said hard-copies were deposited in Aheri Police Station.

Conclusion

388] On perusal of evidence available on record it is clear that the Investigating Officer Suhas Bawche (P.W.11) after receiving the mirror-images from CFSL, Mumbai opened the same in Aheri Police Station in presence of panch witness Shrikant Gaddewar (P.W.4) and took out the printouts (hard-copies) of incriminating documents and photographs and those were sent to CFSL, Mumbai vide letter dated 30.1.2014 (Exh.263) for certification and Scientific Expert Bhavesh Nikam (P.W.21) after verifying the same from its mirror-images duly certified the same and thereafter handed-over to LPC Apeksha Ramteke (P.W.7) alongwith generated analysis reports (Exh.266 and 267) and the same were deposited by her in Aheri Police Station.

Depositing of original 16 GB memory card and original electronic gadgets Art.1 to 41 to Aheri Police Station from CFSL, Bombay

389] According to the prosecution after examination of 16 GB memory card and Art.1 to 41 electronic gadgets seized from accused No.3 Hem Mishra and accused No.6 Saibaba and the same were brought by Apeksha Ramteke from CFSL, Bombay and deposited the same to Aheri Police Station. To that effect prosecution examined Apeksha Ramteke.

390] P.W.7 Apeksha Ramtane in her examination stated that in the month of February 2013 she was attached to Police headquarter Gadchiroli and she was on general duty and she used to carry Tapal, on 13-2-2014 she had taken post (Tapal) from Gadchiroli headquarter and handed over to Director General of Police office, Mumbai and on 14-2-2014 she received telephone call from SDPO office, Aheri that she had to bring some Tapal from Forensic Laboratory Mumbai (CFSL) relating to Crime No. 3017/2013 and therefore, she went to the office of CFSL in the evening but it was closed and hence, she went on 15-2-2014 to CFSL office Bombay and she received muddemal in 3 sealed packets in Crime No. 3017/2013 and she took those 3 sealed packets and then she signed the acknowledgement receipt in that office and thereafter she took those 3 sealed packet and handed over it in SDPO office, Aheri and the entry of deposited sealed packets in Muddemal register at Aheri Police Station is Exh.278-D.

391] In her cross examination she denied that on 14-2-2014 she did not receive any message from SDPO office, Aheri and she did not go in the office of CFSL, Bombay and she did not take any articles from CFSL office, Bombay and she did not deposit it to SDPO office, Aheri and her statement was recorded by police and she did not state in her statement that she received 3 sealed packet from CFSL office Mumbai and deposited those packets in SDPO office Aheri, and she denied that she deposed falsely at the instance of SDPO Dhumal.

Depositing of 16 GB memory-card of Sandisk company and other articles seized from the possession of accused no.3 Hem Mishra and electronic gadgets Articles 1 to 41 and other articles seized

from the house search of accused no.6 Saibaba in Court at the time of filing of charge-sheet against the accused.

392] At the time of filing of charge-sheet, above articles i.e. 16 GB memory-card of Sandisk company and Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks alongwith other muddemal articles were deposited by Muddemal Clerk of Aheri Police Station Ganesh Rathod (P.W.4) in the Sessions Court with Superintendent (Muddemal Clerk) Khumaji Korde (P.W.17). In this respect prosecution relied on the evidence of Ganesh Rathod (P.W.4) and Khumaji Korde (P.W.17).

EVIDENCE

393] Ganesh Rathod (P.W.4) Muddemal Clerk of Aheri Police Station in his examination at Exh.258 stated that he deposited the muddemal property on 13-10-2015 in Sessions Court, Gadchiroli and prepared invoice challan (Exh.135) through Police Constable Firoz Pathan for depositing all property in crime in court and when the property was deposited in court it was in sealed condition and the property clerk of the District court asked him, he wanted to open the sealed envelop to verify whether the property deposited in court is the same as described in invoice challan in Exh.135 and hence, the said property was opened by this witness in the court and the same was verified by the property clerk of District Clerk and gave receipt about depositing of property on carbon copy of invoice challan (Exh.302).

394] He stated that on 10-5-2013 P.W.11 SDPO Bawche deposited one property in this crime and he gave property no.6/2014 to the said property and took entry in the property register vide Exh.276-E. He brought the original register before the Court and it was verified from original register and found to be correct. This

property was deposited by NPC Firoz Pathan in the court on 5-2-2016 alongwith invoice challan Exh.186. Nothing was brought on record in his cross-examination to disbelieve his evidence on the point of depositing the muddemal property in this crime in Sessions Court.

395] Shri Khumaji Devaji Korde (P.W.18) was Court Superintendent. He stated in his examination at Exh.339 that the muddemal in crime no.3017/2013 was placed before him by Head Constable Rathod (P.W.13) and along with the said muddemal invoice challan was also sent and all the properties produced before him was in sealed condition and some property was having seal of CFSL Bombay and some property was having seal of Police Station, Aheri. He stated that he did not break open the seal of property received from CFSL and asked the police to open the seal in respect of property produced from Police Station, Aheri for verification purpose. He verified the property from seizure panchanama and invoice challan Exh.302 and gave the endorsement about receipt of property. He had brought original property register in the Court in which it is written that the sealed envelops of property no.1 to 14 were opened, copy of which is at Exh.340.

396] Nothing has been elicited from the cross-examination of prosecution witnesses to discredit the prosecution evidence on the point of depositing the mirror images of electronic gadgets seized from possession of accused No.3 Hem Mishra and house search of accused No.6 Saibaba and sending of hard copies for certification to CFSL and depositing of muddemal from CFSL office to Aheri Police Station and in the Court, hence prosecution evidence in that respect can be taken into consideration.

Electronic Evidence in respect of accused no.3 Hem Mishra, No.4 Prashant Rahi and No.6 Saibaba.

397] Now it is necessary to see the evidentiary value of data contained in text form in 16 GB memory-card of Sandisk company seized from accused no.3 Hem Mishra under seizure panchnama (Exh.137) and the data contained in text, audio, video form in electronic gadgets Articles no.1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks seized from the house search of house of accused no.6 Saibaba under seizure panchnama (Exh.165). In some CDs, DVDs, pen-drives and hard-disk there are photographs and video clips of Accused No.3 Hem Mishra, No.4 Prashant Rahi and No.6 Saibaba while attending and addressing the meetings of banned organization Communist Party of India (Maoist) and its frontal organisation RDF. The above electronic gadgets were produced by police alongwith Charge-Sheet and these form muddemal property at Exh.135 having Article nos.1 to 38.

398] At the commencement of the trial on behalf of the accused nos.1 to 6 on 4.1.2016 application at Exh.145 was filed on record for getting soft copies of the data contained in electronic gadgets Articles 1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks, laptop, memory-card which were alleged to be seized from the house search of house of accused no.6 Saibaba and 16 GB memory-card of Sandisk company seized from accused no.3 Hem Mishra. In order to preserve the hash value in respect of electronic data contained in the said electronic gadgets and to avoid the possibility of editing, tampering and alteration by passing an order on 4.1.2016 below Exh.145, the

electronic gadgets Articles 1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks, laptop, memory-card seized from the house search of accused no.6 Saibaba and 16 G.B. memory card of Sandisk company seized from possession of accused no.3 Hem Mishra were sent to CFSL Mumbai for making soft-copies of the same for providing to prosecution and defence. The CFSL Mumbai prepared the soft copies of the same and forwarded the same to the Court and those soft copies of electronic data contained in 16GB memory-card of Sandisk company and Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks were supplied to prosecution and defence. This procedure was adopted as per the observations made by the Madras High Court in para 8 in case of **K. Ramajayam alias Appu -v- Inspector of Police reported in 2016 Cri. L.J. 1542.**

399] The data contained in electronic gadgets i.e. article nos.1 to 41 CDs, DVDs, Pen drives, Hard Disc, Memory cards seized from the house of accused no.6 Saibaba is around 3 TB. During investigation the important electronic data contained in the form of audio, video and text contained in Arts.1 to 41 like CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba and the data contained in 16 GB memory card of Sandisk company in text form seized from the possession of accused no.3 Hem Mishra which the investigation officer thought important, he sought the mirror copies/transcript of data contained in above electronic gadgets by letter Exhibit No.212 dated 14.9.2013 and the above gadgets were sent to CFSL, Mumbai and Scientific Expert Bhavesh Nikam (PW.21) examined the same and supplied the mirror-copies in respect of data contained in text form in 16 GB memory-card of Sandisk company at Exh.266 (Articles A17 to A21) and the data

contained in CDs, DVDs, pen-drives, hard-disks (Articles no.1 to 41) consisting of audio, video and text format is at Exh.267 (Page nos.1 to 247 of CFSL report).

400] Further at the time of recording of statements of accused no.3 Hem Mishra, No.4 Prashant Rahi and No.6 Saibaba under Section 313 of Code of Criminal Procedure the original electronic gadgets played before the Court in presence of the accused, Shri Gadling counsel for accused and Spl.PP. Shri Sathainathan and in respect of incriminating data containing the text form on which questions were put to the accused no.3 Hem Mishra, No.4 Prashant Rahi and No.6 Saibaba under Section 313 of Code of Criminal Procedure the defence sought for supplying hard copies of the same by filling application Exhibit No.246 and after displaying the data on laptop of the court with the help of System Administrator of this court Shri Atul Wasamwar printouts were taken out and copies were supplied to prosecution and defence and one copy of each document was kept on record and the copies taken out are marked at Article nos.147 to 164. Further the video clips and photographs contained in above electronic gadgets were shown to concerned accused and questions were put while recording statement u/s 313 of Code of Criminal Procedure and their answers were recorded.

401] The Apex Court in case of **Shamsher Singh Verma v. State of Haryana reported in 2016 Cri.L.J. 364** held that -

(A) **Criminal P.C. (2 of 1974), S.294** - Documents requiring no formal proof - 'Document'- What is - Compact disc is a document -It is not necessary for court to obtain admission or denial on a document

under S. 294 (1) personally from accused or complainant or witness.

(B) Criminal P.C. (2 of 1974), S.294 - Application for getting exhibited compact disc - Rejection of - Validity - Complainant alleging that his minor niece was molested by accused - Accused has alleged that he has been implicated due to property dispute - Compact disc relating to conversation between father of victim and son and wife of accused regarding alleged property dispute - Order rejecting application to play compact disc in question to enable public prosecutor to admit or deny, and to get same proved from FSL - Is erroneous and set aside.

402] In view of above as the CD, DVD, hard-disks, pen-drives, memory-cards are documents, it is necessary to consider the provisions of Information Technology Act and Indian Evidence Act relating to the procedure for proof of data contained in electronic gadgets in the form of text, audio, photographs and visual form.

403] On the questions of importance of electronic evidence in investigation and increasing impact of technology in everyday life, in **Tomaso Bruno .vs. State of U.P., MANU/SC/0057/2015 : (2015) 7 SCC 178**, the Apex Court observed that -

"25. With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents strictu sensu are admitted as material evidence. With the amendment to the Indian

Evidence Act in 2000, Sections 65A and 65B were introduced into Chapter V relating to documentary evidence. Section 65A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act. Subsection (1) of Section 65B makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section(2) of Section 65B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act. PW-13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.

26. Production of scientific and electronic evidence in court as contemplated under Section 65B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of Mohd. Ajmal Mohammad Amir Kasab vs. State of Maharashtra, MANU/SC/0681/2012 : (2012) 9 SCC 1, wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in the case of State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru, MANU/SC/0465/2005 : (2005) 11 SCC 600, the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers." only through court and e-mails printouts.

404] Now it is necessary to apply the legal position to see what is admissible and proved by the prosecution in respect of electronic

data contained in text form in 16 GB memory-card of Sandisk company seized from accused no.3 Hem Mishra under seizure panchnama (Exh.137) and Articles no.1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks seized from the house search of house of accused no.6 Saibaba. I will begin by scrutinizing the statutory provisions.

Section 3 of the Evidence Act in sub-section (2) stipulates that documentary evidence means and includes all documents including "electronic records" produced for the inspection of the Court. By way of amendment to the Evidence Act, incorporated by Act, No. 21 of 2000, the following was inserted:

"The expression "Certifying Authority", "Digital Signature", "Digital Signature Certificate", "electronic form", "electronic records", "information", "secure electronic records", "secured digital signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act, 2000."

Section 2(c) of the Information Technology Act, 2000 reads as -

"electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro record."

"Section 22-A of the Evidence Act reads as follows:

"22-A. When oral admission as to contents of electronic records are relevant.--Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question."

Section 45-A of the Evidence Act reads as follows:

"45-A. Opinion of Examiner of Electronic Evidence.-- When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79-A of the Information Technology Act, 2000 (21 of 2000), is a relevant fact.

Explanation.--For the purposes of this section, an Examiner of Electronic Evidence shall be an expert."

Section 59 under Part II of the Evidence Act dealing with proof, reads as follows:

"59. Proof of facts by oral evidence.--All facts, except the contents of documents or electronic records, may be proved by oral evidence."

Section 65-A reads as follows:

"65-A. Special provisions as to evidence relating to electronic record.--The contents of electronic records may be proved in accordance with the provisions of Section 65-B."

Section 65-B reads as follows:

"65-B. Admissibility of electronic records.--

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as "the computer output") shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings,

without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely--

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether--

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or
(c) by different combinations of computers operating in succession over that period; or
(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say--

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section--

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate

form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.--For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

405] As per ratio laid down by the **Apex Court** in the case of **Shamsher Singh Verma v. State of Haryana reported in 2016 Cri.L.J. 364**, the 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mihra and the electronic gadgets Arts.1 to 41 like CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba are incriminating material, contained data in the form of audio, video, text and photographs and it is required to be put to the concerned accused in their statements u/s 313 of Code of Criminal Procedure. The **Madras High Court** in the case of **K. Ramajayam alias Appu -v- Inspector of Police reported in 2016 Cri. L.J. 1542** has held that -

A] **Evidence Act (1 of 1872), S. 3** – 'Document' – Articles like Memory Card, Hard Disc, CD, Pen-drive, etc., containing relevant data in electronic form – Are 'documents' as defined under S. 3 albeit, marking them as material objects – After all, nomenclature cannot have effect of altering characteristics of object (Para 8)

B] **Evidence Act (1 of 1872), S. 65-B** -Electronic record – Received by Magistrate in petition filed by prosecution – He can take a back up, without disturbing integrity of source, in a CD or Pendrive or any other gadget, by drawing proceedings – Back up can be kept in safe custody by wrapping it in anti static cover and should be sent to Sessions Court at time of committal (Para 8)

C] **Evidence Act (1 of 1872) Ss. 62, 3** – Documentary evidence – Court has power to view CCTV footage and video recordings, be it primary or legally admissible secondary evidence – In presence of accused for satisfying itself as to whether individual seen in footage is accused in dock.
(Para 8)

D] **Criminal P.C.(2 of 1974), S. 313** – Examination of accused – Trial Court should specifically put questions to accused about specifically put questions to accused about his overt acts appearing in CCTV footage and record his answers. (Para 8).

406] The Delhi High Court in case of **Kishan Tripathi alias Kishan Painter -v- State reported in 2016(3) ADR 495**, observed that -

Evidence Act (1 of 1872) – S. 65B, 60 – CCTV footage – Evidentiary value – Murder of security guard in factory – Evidence on record showing that no one was watching CCTV footage when it was being recorded and recording was result of commands or instruction already given and programmed – Original hard disc therefore would enjoy a unique position and could be relied on as primary evidence. Penal Code (45 of 1860), S. 300. (Paras 13, 14, 15)

407] The observations of Delhi High Court in Para nos.12 and 13 of the said judgment are reproduced as under :-

[12] Pertinently, in order to re-assure and verify, we had called for the original hard disc from the malkhana. The same was produced in a sealed cover with court seals. The said seals were inspected by the counsel for the appellant- Kishan Tripathi. This hard disc was attached to a computer by one Neeraj and CCTV footage was played in the Court for our examination and visual viewing. Counsels were also allowed to watch and see the relevant portions of the video files. Files from the said hard disc were copied in two pen drives of 8 GB each marked Exhibits HC-1 and HC-2. Thereafter, the original hard disc was detached and re-sealed in the presence of the Court Master and

returned to the Additional Public Prosecutor to be deposited in the malkhana. We had also played the two CDs available on the trial court record on the laptop.

[13] The CCTV footage, which was directly and immediately stored in the hard drive of the computer is the original media, that was self generated and created without any human intervention. This CCTV footage is not secondary evidence and does not require certification under Section 65B of the Evidence Act. This issue is no longer res integra and is settled in the decision of the Supreme Court in Anwar P.V. (S) v. P.K. Basir, (2014) 10 SCC 473, which hold:-

"24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made there from which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65-B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence.

408] In order to ascertain whether there is any alteration, change or tampering with the said electronic devices i.e. 16 GB

Memory-Card of Sandisk company (Exh.137) and electronic gadgets i.e. CDs, DVDs, pen-drives, hard-disks (Articles no.1 to 41), Court has asked specific question to Scientific Officer of Cyber Crime P.W.21 Bhavesh Nikam which is reproduced as under :-

Court Question

Que. Whether Exh.1 is a original memory card and Exh.1 to 25 contains all the electronic digital storage media like pen drives, CDS, DVDs, memory cards, laptops hard-disks, etc. which contains document files, media i.e. audio, video. What you can say about the original existence of the file in text visual, audio and video format in the above files and changes occurring in the same?

Answer:- In reply to the said question, Scientific Officer P.W.21 Bhavesh Nikam answered that he did not observe any such changes, addition or tampering related to the files present in the exhibit provided and based on file signatures analysis, link file analysis, prefetch analysis, system information, MFT details, registry analysis, time stamp analysis and USB analysis, he came to the conclusion that there are no such changes in text, audio and video.

409] The electronic gadgets i.e. 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra and

Articles no.1 to 41 i.e. CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba were produced before the Court and electronic data contained therein is in primary form and in view of evidence of Scientific Expert Bhavesh Nikam (P.W.21) there is no change, alteration or tampering in it.

410] The questions were put from the incriminating electronic data contained in electronic gadgets in the form of text, audio, video form to accused nos.3 Hem Mishra, No.4 Prashant Rahi and No.6 Saibaba in their statements u/s 313 of Code of Criminal Procedure. The mirror-images received from CFSL, Mumbai in respect of electronic data contained in 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra and Arts.1 to 41 i.e. CDs, DVDs, pen-drives and hard-disks seized from the house search of accused no.6 Saibaba were supplied by passing an order on Exh. 145 on 4-1-2016 in view of judgment of Madras High Court in the case of K. Ramajayam alias Appu -v- Inspector of Police reported in 2016 Cri. L.J. 1542 and Delhi High Court in the case of Kishan Tripathi alias Kishan Painter -v- State reported in 2016(3) ADR 495.

411] Original 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra and Arts.1 to 41 i.e. CDs, DVDs, pen-drives and hard-disks seized from the house search of accused no.6 Saibaba were played on the laptop of the Court with the help of System Administrator of this Court Shri Atul Wasamwar and Shri Rawrane, Police Officer who was not connected with investigation of the present case and questions in respect of incriminating data in the form of text were put to accused no.3 Hem

Mishra, no.4 Prashant Rahi and no.6 Saibaba in presence of Spl. P.P. Shri Sathianathan and learned Advocates of the defence Shri Gadling, Shri Jagdish Meshram and Shri Narendra Narnaware.

412] This Court is provided with the laptop and computers having Ubuntu operating system and the computer section with the laptop and computers having Windows operating system. Initially while opening text file in Ubuntu some changes in para setting like changes in paragraphs and line spacing was noticed, but when reopened in Windows operating system no changes was noticed. Some files in 16 GB memory-card and hard-disk were protected by unique passwords. Those passwords were mentioned in CFSL report (Exhs.266 and 267). With the help of those passwords the data contained in 16 GB memory-card and Arts.1 to 41 was opened.

413] Some files in the text format even could not be opened by CFSL, Mumbai as password could not be retrieved. One hard-disk seized from the possession of accused no.6 Saibaba was crushed and the data contained therein could not be retrieved by CFSL and this fact is also mentioned in the CFSL report (Exh.267). Some files in text format in 16 GB memory-card seized from the possession of accused no.3 Hem Mishra and hard-disk seized from the house search of accused no.6 Saibaba were opened with the help of “partition Guru” software by Shri Rawrane. Some files in text formate were opened with the help of computer operating system Windows.

414] In respect of evidence of electronic data specific questions were put to accused no.6 Saibaba and his statement u/s 313 of Code of Criminal Procedure was recorded continuously for a period of three

days i.e. on 3.10.2016, 4.10.2016 and 5.10.2016. Saibaba is 90% disabled and he was not able to sit. He filed an application at Exh.440 for recording his further statement u/s 313 of Code of Criminal Procedure and in the presence of his Advocates. In view of Judgment of Apex Court in case of **Basavaraj R. Patil and others .v. State of Karnataka and others reported in AIR 2000 Supreme Court 3214**, by passing an order, the application at Exh.440 filed by accused no.6 Saibaba, for recording his further statement through his Advocates Shri Surendra Gadling, Shri Jagdish Meshram, Shri Narendra Narnaware was allowed and that the remaining questions u/s 313 Code of Criminal Procedure were recorded on 18.10.2016, 19.10.2016, 20.10.2016 through his advocates and the electronic data in audio, video and text form was played on the laptop of the Court in presence of Spl. PP. Shri Sathianathan and the learned counsels Shri Surendra Gadling, Shri Jagdish Meshram and Shri Narendra Narnaware.

415] The learned Advocate Shri Gadling submitted that prosecution failed to prove the contents and ownership of the documents alleged to be found in the seized electronic gadgets (Arts.1 to 41) alleged to be seized from the house search of accused no.6 Saibaba on 12.9.2013. He submitted that the contents of the documents allegedly seized from the house search of accused no.6 Saibaba has not been proved by the prosecution and no witness was examined by the prosecution to prove the contents of the said documents and it is trite that an accused cannot be confronted during the questioning u/s 313 of Code of Criminal Procedure with any circumstances which were not in evidence. Section 313 of the Code of Criminal Procedure is not intended to be used as an interrogation. It

was argued that the contents of the documents which has not been proved by the prosecution may not be picked and put to the accused under section 313 of Code of Criminal Procedure and corner him for giving an answer favourable or unfavourable. This cannot be permitted by law. In support his submission he placed reliance on the following judgments -

[i] The Apex Court in the case of Kalpanath Rai vs State (Through CBI) reported in (1997)8 SCC 732 observed that -

Cr.P.C. - S.313 - Examination of accused -
Circumstances not appearing in Evidence cannot be put to the accused-Letters written by the accused to the Court from jail during pre-trial period-Letters not adduced as evidence through any procedure known to law-Court not justified in putting those letters to the accused during his examination.

[ii] Bank of India v. M/s. Allibhoy Mohammad reported in AIR 2008 Bombay 81 it is held that :-

The settled principle of law has been approved by the Bombay High Court Wherein the Hon'ble Court held that Evidence Act, Ss.61,62,63-Documentary Evidence-Document produced as primary or Secondary evidence-Has to be proved in manner laid down in Ss. 67 to 73. At para 25 it was held that :

25. Where the execution of the document like promissory note was denied, it is required to be proved through the scribe, where the truth of the facts stated in the affidavit is in issue mere proof of handwriting and execution of the document would not furnish evidence of the truth of the facts stated in the document or contents. Truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e. by the evidence

of person who can vouchsafe for the truth of the facts in issue as held by the Apex Court in Ramji Dayawala and Sons Pvt.Ltd. vs. Invest Import, AIR 1981, SC 2085. Person with knowledge must be examined. Every document should first be started by some proof before the person who disputed that document can in any way be considered as proved because its genuineness is not disputed by the opposite party. Documents do not prove themselves.

Further in para 33 it is held that -

33. “As already stated hereinabove the production of the document purporting to have been signed or written by a certain person is no evidence of its authorship. It is necessary to prove their genuineness and execution. Proof, therefore, has to be given of the handwriting, signature and execution of a document. No writing can be received in evidence as a genuine one, and none as a forgery until it has been proved to be a forgery. A writing by itself, is not evidence of the one thing or the other. A writing, by itself, is evidence of nothing, and therefore is not, unless accompanied by proof of some sort, admissible as evidence.”

[iii] Ramji Dayawala and Sons Pvt.Ltd. vs. Invest Import, AIR 1981, SC 2085 it is held that -

“undoubtedly, if the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue.”

[iv] **Sir Mohammed Yusuf and another v. D and another**

reported in **AIR 1968 BOMBAY 112** wherein it is held that

(A) Evidence Act (1 of 1872), S.47, S.60, S.61, S.67 - Proof of contents of document - Proof of contents of documents by proving signature – Whether permissible.

The evidence of the contents contained in the document is hearsay evidence unless the writer thereof is examined before the Court. An attempt to prove the contents of the document by proving the signature or the handwriting of the author thereof is to set at naught the well recognised rule that hearsay evidence cannot be admitted. AIR 1954 Bom 305, Rel. on; AIR 1957 SC 857. Ref.

“Even if the entire document is held formally proved, that does not amount to a proof of the truth of the contents of the document. The only person competent to give evidence on the truthfulness of the Contents of the document is the writer thereof.”

Para 42 - “The reason on which the decision of Bhagwati, J. is based is not far to seek. The evidence of the contents contained in the document is hearsay evidence unless the writer thereof is examined before the Court. We, therefore, hold that the attempt to prove the contents of the document by proving the signature or the handwriting of the author thereof is to set at nought the well recognised rule that hearsay evidence cannot be admitted. This question has been discussed by Halsbury at paragraph 533 at p. 294 (Halsbury's Law of England, 3rd Edition, Vol. 15) under the heading 'Hearsay' Says Halsbury : “.. .. Statements in documents may also be hearsay. So, if A had taken counsel's opinion before acting, the contents

of the opinion would be admissible for the same purpose, but not to prove the truth of any statement of fact therein". In paragraph (534) Halsbury has discussed the reasons for rejection of hearsay evidence and says : "The reasons advanced for the rejection of hearsay are numerous, among them being the irresponsibility of the original declarant, the depreciation of truth in the process of repetition, the opportunities for fraud which its admission would offer, and the waste of time involved in listening' to idle rumour."

416] In view of the observations made by the Apex Court in the case of **Shamsher Singh Verma v. State of Haryana reported in 2016 Cri.L.J. 364** in para no.14 observed that -

The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 of Cr.P.C. Similarly on a document filed by the defence endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution.

417] At this juncture, it is necessary to consider the ratio laid down by the **Chhattisgarh High Court** in the case of **Asit Kumar Sen Gupta -v- State of Chhattisgarh reported in 2012 Cri.L.J. (NOC) 384(Chh)** wherein it is observed that -

Indian Penal Code (45 of 1860) - S. 124-A — Chhattisgarh Vishesh Jansuraksha Adhiniyam (14 of 2006), S. 8 — Unlawful Activities (Prevention) Act (37 of 1967), Ss. 18, 39(2) — Charge of sedition — Proof — Accused found exciting and encouraging

people to wage war against Govt. by armed rebellion — Loads of naxal literatures seized from possession of accused — Accused used to invite people to join CPI (ML) People—s War and CPI (Maoist) Organisations — Conviction of accused for offences charged proper.

418] The observation of Chattisgarh High Court in para 37, 56, and 57 are material. These are reproduced as under -

37. There is other corroborative material to support the finding recorded above inasmuch as the loads and loads of naxal literatures seized from the possession of the appellant contains writing, text of speeches etc. of naxal leaders/activists exhorting violence and revolution against the Government established by law by means of armed rebellion. One such document is titled as (Vernacular matter omitted.ed.) to mean “letter by the Company Commander from the war field”. It is written by some ‘Hidmal’ and addressed to comrade ‘Jangudada’ and starts with ‘red salute’. It gives graphic description of an incident which took place at Errabore camp in the naxal affected area of Dantewada in Chhattisgarh in the morning of 9th July, 2007. It laments killing of policemen which is a symbol at that level of the Government established by law. It also gives the details of arms and ammunitions looted from the police. There is another letter on record written by one Ganpati, General Secretary of the Communist Party of India (Maoist) addressed to comrade Hidmal and Singla. This letter appears to be a reply to the letter written by Hidmal to Jangudada on 11th July, 2007, contents of which have been mentioned above. It also praises/laments killing of policemen at Errabore by referring to the incident which has taken place in different parts of the country like Kalinga Nagar, Singoore and Nandigram etc. The other literatures in the name of ‘Lal Pataka’, ‘Lal

Chingari' etc. have also been seized from the possession of the appellant. One book issued by the CPI (Marxist Leninist) has also been seized which gives history of the organization, its goal and the constitution of party. From these documents also, it clearly emerges that the appellant, who was inciting the witnesses to join naxal forces for waging war against the Government established by law by means of armed rebellion was also in possession of huge volumes of naxal literatures in which such articles louding naxal violence are contained. In view of this, it cannot be said that present is a simple case of a person found to be in possession of some naxal literature or literature advocating leftist ideology as claimed by the appellant.

56. In Volume III of the paper books which have been prepared from the material stored in the CPU of the computer belonging to the appellant, minutes of special conference of CPI (ML) People's War is available. The document contains views of the delegates and formation of new Central Committee. It speaks of military strategy or path of the Indian Revolution which is the path of protracted people's war i.e. liberating the countryside first through areawise seizure of power, establishing guerrilla zones and base areas and then encircling the cities and finally capturing power throughout the country. The document further declares "It should be pointed out that destruction of the enemy is the primary object of war and self-preservation the secondary, because only by destroying the enemy in large numbers can one effectively preserve oneself. Therefore attack, the chief means of destroying the enemy, is primary, while defence, a supplementary means of destroying the enemy and a means of self-preservation, is secondary. In actual warfare the chief role is played by defence much of the time and by attack for the rest of the time, but if war is taken as a whole, attack remains primary." This

document is at page 706 of Volume-III of the paper books. At page 716, list of martyrs of the people's war of Nepal is provided. Elsewhere in the volume, support provided by the CPI (ML) People's War and MCC from India has been greeted by the banned Nepali Maoist.

57. Volume-V of the paper books is transcript of the material by the Central Forensic Laboratory stored in the CPU found from the possession of the appellant which contains the documents regarding building and development of People's Guerilla Army in India at page 1102. The press release issued by the CPI (Maoist) on 4-12-2004 is available at page 1138. This press release has been issued by "Ganapati, General Secretary, Central Committee (Provisional) of CPI (Maoist). The name of this Ganapati is found in two other letters which this Court has already discussed in the preceding part of this judgment. At page 1141 of Volume V of the paper books, the details of meeting of the Joint Central Committee held in September, 2004 is provided and the points of differences for the debate in the forth coming Congress of the CPI (Maoist) have been highlighted. This document is dated 10-10-2005. Elsewhere also, the activities, minutes, points of debate etc. of the meeting of CPI (Maoist), a terrorist organization as also a banned organization are contained in this volume. In most of the documents, the revolutionary path undertaken by the Maoist which are popularly known as Naxalites waging Guerrilla war in the interior forest areas of the State has been appreciated and louded. The appellant claims himself to be a writer and has also published a book namely 'A World to Win', the only issue of which was published probably in the year 2006, though the entire book is conspicuously silent as to the date of publication or the date of printing etc. Neither before nor after this issue, any other issue of the magazine has ever seen the light of the day and this fact is candidly admitted by the appellant

in his examination.

419] In the above reported case several letters, correspondence between members of banned organization were seized from the possession of accused and further CPU containing several text documents was seized from house search of accused and the CPU was send to CFL, Hyderabad and CFL Hyderabad retrieved the text documents contained in CPU and transcripts of those were made available before the Court and the Court relied on the said transcripts as a documents addressed by accused.

420] The facts of the present case and facts of the case cited supra are same. In the present case naxal pamphlets Articles 139 to 141 were seized from the possession of accused No.1 to 3. Further from the possession of accused Prashant Rahi 8 documents relating to naxal literature alongwith type written papers of under-trial Maoist leader Narayan Sanyal at Art.130-A were seized. From the house search of accused Saibaba, the letter dated 31 July 2012, printed letter dated 7 June 2012 of Green hunt operation of RDF, 15 pages written on People Hero Comrade Kishanji, information book named as "The arrested", people march dt 8 August 2007, booklet magazine 39 and 41, 42, printed telugu book, colour photo of naxal, booklet "Lal Salam", prashenbabu Maowadi Nahi and Telugu magazine etc. were seized. Besides, this the 16 GB memory card of Sandisk company containing text documents seized from the possession of accused No.3 Hem Mishra vide panchanama Exh.137 was sent to CFSL, Mumbai for examination and the CFSL, Mumbai examined the same and sent the mirror copies of the text documents contained in 16 GB memory card to SDPO Suhas Bawche. He had taken out the print

outs of 5 documents Art.17 to 21 and those were sent to CFSL for certification to CFSL, Mumbai and P.W.21 Bhavesh Nikam certified the same and forwarded to P.W.11 Bawche alongwith CFSL report Exh.266.

421] The hard discs containing text documents, video-clips and photographs were sent to CFSL for examination and CFSL, Mumbai examined the same and forwarded the mirror copies of text documents in the hard-disks. Thereafter, P.W.11 Suhas Bawche took out print outs about 247 pages from the mirror images supplied to him and sent it to CFSL, Mumbai for certification and P.W.21 Bhavesh Nikam certified the same and forwarded to P.W.11 Suhas Bawche alongwith CFSL report Exh.267. In view of observation of Chhatisgarh High Court in Asit's case (cited supra), those documents can be read in evidence.

422] At this juncture, it is necessary to consider the ratio laid down in the case of **Ashish C. Shah v. M/s. Sheth Developers Pvt. Ltd. and Ors** reported in **2011 Cr.L.J. 3565** wherein it is observed in para 12 that -

(E) Evidence Act (1 of 1872) , S.135 - Examination of witnesses - Prosecution can never ask accused to enter into witness box as witness of prosecution - It is against basic principles of criminal jurisprudence. (Para 12)

“**Para 12.** The learned Counsel for the petitioner vehemently contended that the document could not be admitted in evidence unless author of the same was examined before the Court and in support of this contention, he relied upon Vishwanath Rai v. Sachhidamand Singh, AIR 1971 SC 1949. In that case, witness of one party deposed that a letter written by one S to him had been received by him.

The Supreme Court held that burden lies on other side to prove its allegation that the letter was not written by S or that it was written in collusion with S and the witness. However, the Supreme Court also held that the letter is relevant and admissible to the extent of the fact that S wrote such a letter to the witness with its contents. However, correctness of the contents of the letter would be proved only by examining S as a witness because he was the author. In the present case, the author and signatories of the above referred two letters are accused Nos. 1 and 2. The letters purporting to have been signed and sent by them were received by the Managing Director of the complainant and this fact is deposed to by witness Sharad Doshi. In view of this, if the accused persons allege that the said letters were not signed and sent by the accused persons, burden lies on them to prove the same. The contention of the learned Counsel that the contents of this document and the truth for the same cannot be proved without examining the author of the same is against the basic principles of criminal jurisprudence, because prosecution can never ask the accused to enter into witness box as a witness of prosecution. In fact, the accused cannot be called in the witness box even as defence witness unless he makes a written request for the same. Not only this, even in the statement under Sec. 313, Cr.P.C. wherein the incriminating circumstances are required to be put to the accused to enable him to explain the same, the accused is not bound to answer those questions, though the Court may draw adverse inference against him if he keeps quiet. In such circumstances, to suggest that the document written by and signed by the accused could not be proved without examining the accused as witness of the prosecution is against the settled position of law and therefore this contention of the learned Counsel for the petitioner is liable to be rejected.

423] The facts of the cases cited supra and the case in hand are identical. In the present case, the documents contained in electronic data contained in CDs, DVDs, pen-drives and hard-disks and data contained in 16 GB memory card was found in the hard-disks seized from the house search of accused no. 6 and several letters written by accused no. 6 Saibaba by using his pseudo name Prakash addressed to Comrades of CPI(Maoist) were found in hard-disks as well as in 16 GB memory-card card and if he alleges that the said letters were not signed or sent by him, burden of proving the same is on the accused as the said fact is well within the knowledge of the accused. Hence, in view of judgment of Apex Court in the case of **Ashish C. Shah -v- Sheth Developers Pvt. Ltd. reported in 2011 CRI L J 3565**, (cited supra), it is not the duty of prosecution to ask the accused to enter into witness box as witness of prosecution.

424] In view of above I have no hesitation to hold that the electronic data in text form contained in 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra and electronic data in text, video-clips and photographs found in Articles 1 to 41 CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibaba can be read in evidence.

425] It is important to note that when the documents are proved according to the law it can be read in evidence. Mere marking the documents with Articles number does not preclude the Court from taking into consideration when it is duly proved. As discussed above, the mirror-copies of data contained in text form in 16 GB memory card of Sandisk company seized from personal search of accused no.3

Hem Mishra were filed by prosecution alongwith CFSL report at Exh.266 and those were prepared by P.W.21 Bhavesh Nikam by retrieving the data contained in text form from the 16 GB memory-card of Sandisk company and the said 16 GB memory-card of Sandisk company is a part of muddemal property and it is before the Court and at the time of recording of statement under section 313 of Code of Criminal Procedure of accused no.3 Hem Mishra the said document was opened on the laptop of the Court in the presence of accused no.3 Hem Mishra, his Advocate Shri Gadling and Spl PP Shri Sathainathan and it was compared alongwith the mirror-copies of Articles no.A17 to A21 attached to CFSL report Exh.266. Same procedure was adopted in respect of viewing the data contained in audio, video and text form in CDs, DVDs, pen-drives, hard-disks at Arts.no.1 to 41 seized from the house search of accused no.6 Saibaba and to that effect the prosecution filed on record the CFSL report Exh.267 containing pages 247.

426] Further the printouts of Art.147 to 164 were taken at the instance of the accused vide application Exh.246 and the printouts were taken from original hard-disk produced before the Court and the data contained in said electronic gadgets was viewed in presence of learned defence Advocate Shri Gadling, Spl PP Shri Sathainathan and accused. Hence, mere marking of some documents as Article number does not debar the court from reading the said document in the evidence. Though, the said documents were marked as articles as discussed above they were proved properly. At this juncture it is necessary to consider ratio laid down by the Bombay High Court in case of Bama Kathari Patil .v. Rohidas Arjun Madhavi and another reported in 2004(2) Mh.L.J.752 wherein it is observed that -

Civil Procedure Code, O.13, R.4 – Proof of document – Exhibiting of document in court is an administrative act – It has nothing to do with proof.

Exhibiting of document is an administrative act. A document which is produced in the Court is ordinarily exhibited only after its proof. But, exhibiting a document does not mean that the document is proved and non-exhibiting a document does not mean that the document is not proved. A document is required to be proved in accordance with the provisions of the Evidence Act. Merely, for administrative convenience of locating or identifying a document, it is given an exhibit number in courts. Exhibiting a document has nothing to do with the proof though, as a matter of convenience, only the proved documents are exhibited. Since, the document in question has been exhibited after the cross-examination of the plaintiff, it is open to the petitioner/defendant to contend at the stage of arguments that the document (agreement) though exhibited has not been proved by the plaintiff in accordance with law. (Paras 3 and 4).

427] Further the Madras High Court in the case of **K. Ramajayam alias Appu -v- Inspector of Police reported in 2016 Cri. L.J. 1542**, in para 8 observed that Articles like memory card, Hard Disc, CD, Pen-drive, etc. containing relevant data in electronic form are “documents” as defined under S.3 albeit, marking them as material objects. After all, nomenclature cannot have effect of altering characteristics of object. In view of above documents it is clear that the data contained in text, video-clips, photographs can be considered as evidence in this case.

428] The incriminating evidence in text form contained in 16 GB memory-card of Sandisk company which was seized from the

possession of accused no.3 Hem Mishra which are at Articles A17 to A21 as under :

Documents in respect of accused no.3 Hem Mishra found in 16 GB memory-card of Sandisk Company seized from his possession.

429] Prosecution has relied on the print outs Annexures Art.A-17 to A-21 taken out from 16 GB memory card of Sandisk company seized from the possession of accused no.3 Hem Mishra which are produced alongwith CFSL report Exh.266 shows the incriminating material against the accused which are as follows:

(1) On perusal of print-out of letter at **Art.A17** of Exh.266 (in Hindi language) addressed to **Lal Salam by J.V.** about the Uttara Khand that the position of Uttara Khand was not proper and therefore, some difficulties arose in the work of party and he along with one other person removed from the party and the reason for removal is the lower level and inspite of that he is working in the party honestly. It was further suggested to interfere in the matter in order to solve the problems. This letter is in Hindi language. Contents of the same read as under :-

साथी,

लाल सलाम,! आशा है आप स्वस्थ होंगे, यंहा (Uk) मे स्थितीया ठिक नही चल रही है, पुरानी समस्या बनी हुई है। जिसके कारण काम मे कई बाधा आ रही है। दुसरे साथियों का दृष्टीकोन जन संगठन व जन आन्दोलन के प्रति पहले

जैसा ही है। जिसके कारण अन्तर विरोध पैदा हो रहे हैं। मुझे व चा. को P ने निकला दिया है। निकालने के पीछे जो कारण है वह बहुत ही निचले दर्जे के झूठे आरोप है। जबकि उन साथियों को दृष्टीकोन तो पहले जैसा ही बना हुआ है। उन साथियों की गलतियों बावजूद हम काम को चलाये हुये हैं। लेकिन (U.K.) की परिस्थितियों व जन संगठनों व जन आन्दोलन के प्रति उनके संकीर्ण सोच के कारण काम को आगे बढ़ाने में दिक्कत आ रही है। जिसके बारे में बहस चलायी गयी तो (लिखित बहस चलायी गयी) तो हम दोनों को निकाल दिया गया है। इसके बावजूद हम दोनों समर्पित भाव से काम कर रहे हैं।

आप से अनुरोध है कि आप इसमें तत्काल हस्तक्षेप कर समस्या के समाधान करें जिससे काम को आगे बढ़ाने में आ रही दिक्कत दूर की जा सके। अभी मैं बहुत ही संक्षेप में आपकी बात लिख रहा हूँ, आशा है आप पुरानी समस्या की वजह को जानते हैं इसलिये समस्या को अच्छी तरहसे समझ गये होंगे।

लाल सलाम

ज.बी.

(2) On perusal of **Art.A18** of Exh.266 it reveals that it is addressed to **Jan Sanghathan and Sanyukta Morcha by N.R.B.** in which it is suggested to make effort about strengthening and expanding the party and to struggle against repression, in developing campaigns and unlawful organization and lastly to support all anti-imperialist struggles and peoples' wars on the international level. The said letter is in Hindi language which is reproduced as under :-

जनसंगठनों और संयुक्त मोर्चा संगठनों में कार्यरत कामरेडों के नाम एन.आर.बी. का पत्र

हमारी पार्टी, उसके नेतृत्व में जारी क्रान्तिकारी आन्दोलन और अन्यान्य जनान्दोलनों पर राज्य के बर्बर व चौतरफा आक्रमण परास्त करने हेतु जनता को तैयार करें !

पार्टी और पीएलजीए को षक्तिषाली करने हेतु जनता की सक्रिय भूमिका को सुनिश्चित करें और क्रान्तिकारी जनआन्दोलनों को नई उँचाइयों तक विकसित करें !!

दि. 18/8/2013

प्रिय कामरेडो,

आप सभी अच्छी तरह जानते हैं कि आज हमारी पार्टी, पीएलजीए और क्रान्तिकारी जनसमुदाय पर, हमारी पार्टी के नेतृत्व में जारी क्रान्तिकारी आन्दोलन पर और साथ ही अन्यान्य जनआंदोलनों पर राज्य का एक चौतरफा, बर्बर व अत्यन्त ही हिंस्र आक्रमण पूरे जोर-शोर से चल रहा है। हमारे खिलाफ और भारत की क्रान्तिकारी जनता के खिलाफ इस दमन-अभियान का जो दायरा है, उसकी जो तीव्रता है, नृषंसता है और इस क्रम में राज्य ने अपनी मीडिया व सषस्त्र बलों सहित जितनी ज्यादा षक्ति को केन्द्रित किया है, 1947 के बाद आज तक के समूचे इतिहास में वैसा कभी नहीं हुआ। यानी यह मामूली दमन-अभियान नहीं है बल्कि हमारे खिलाफ व क्रान्तिकारी जनसमुदाय के खिलाफ राज्य द्वारा छेड़ा गया सचमुच का एक युद्ध है। अपने हमलावर तेवर, खुफिया विभागों, सषस्त्र बलों की तैनाती, वायुसेना के प्रयोग, इन सबके बीच को-आर्डिनेशन, प्लानिंग, कमाण्ड आदि सभी चीजों में यह अभियान अपने आप में अभूतपूर्व है और भारतीय जनता आज एक चरम प्रतिक्रियावादी युद्ध का सामना कर रही है।

सच्चाई का दूसरा पहलू यह है कि आज भारत का क्रान्तिकारी कम्युनिस्ट आन्दोलन जिस मुकाम पर जा पहुंचा है, वह भी अपने-आप

अभूतपूर्व है। हमारे देश के कम्युनिस्ट आन्दोलन के 85 साल के इतिहास में ऐसा देशव्यापी उभार कभी नहीं दिखा। चार दशकों के कम्युनिस्ट क्रान्तिकारी संघर्षों व वर्गयुद्ध के अनुभवों से लैस तथा मालेमा को सृजनात्मक रूप से लागू करने में समर्थ एक अखिल भारतीय स्वरूप वाली क्रान्तिकारी कम्युनिस्ट पार्टी, जनता के स्नेह व सक्रिय समर्थन व भागीदारी पर आधारित बड़े फारमेशनों तथा उन्नत हथियारों व युद्धकला से लैस एक मजबूत पीएलजीए और दर्जनों राज्यों में फैली जागरूक संगठित व सशस्त्र जनता, एक विस्तारित होते जाने वाला विषाल व व्यापक आन्दोलन, कई गुरिल्ला जोन, वहां पनपती, सुदृढ़ होती व विकसित होती जनता की क्रान्तिकारी राजनीतिक सत्ता, देशव्यापी गहन व विषाल राजनीतिक प्रभाव—ये सब अपने कई दशकों के संघर्षों के दौरान मिली हमारी अभूतपूर्व उपलब्धियां हैं।

हमारी पार्टी, उसके नेतृत्व में जारी आन्दोलन और वर्ग-षोषण, जुल्म व अत्याचार पर आधारित सड़ी-गली राजनीतिक व्यवस्था को उखाड़ फेंककर जनता की एक नयी जनवादी राजनीतिक व्यवस्था के भ्रूण का विकास व विस्तार ने शासक वर्गों को पूरी तरह आतंकित कर डाला है। उनके द्वारा हमारे खिलाफ चलाया जा रहा यह प्रतिक्रान्तिकारी युद्ध उनके इसी आतंक व बदहवासी का प्रतीक है, उनकी कमजोरी का प्रतीक है।

हम जानते हैं कि हमारी देश की क्रान्ति दीर्घकालीन लोकयुद्ध के रास्ते आगे बढ़ रही है। दीर्घकालीन लोकयुद्ध का स्वरूप ही ऐसा होता है कि दुष्मन हम पर बार-बार “घेरा डालो, विनाश करो” की मुहिम चलाता है और हम उस मुहिम परास्त करते हुए, अपनी आत्मगत ताकतों का संरक्षण और उनकी वृद्धि व विकास करते हुए आगे बढ़ते जाते हैं। यानी घेराव-दमन मुहिमों का चलाया जाना और इन्हें परास्त करते हुए आगे बढ़ते जाना दीर्घकालीन लोकयुद्ध का ठोस स्वरूप यही होता है। हर घेराव-दमन को सफलतापूर्वक परास्त करने के जरिए ही लोकयुद्ध नये चरण में छलांग लगाकर उन्नत होता है। यहां भी निस्संदेह अभी के इस घेराव-दमन अभियान को

सफलतापूर्वक परास्त करने के जरिए हमारी पार्टी, पीएलजीए और इसके नेतृत्व में चलाया जा रहा लोकयुद्ध भी छलांग लगाकर नई मंजिल में उन्नत होगा।

इस हमले के स्वरूप, कारणों और हमारे आम व ठोस कार्यभारों के बारे में हमारी केन्द्रीय कमेटी ने कई मार्गदर्शन दिये हैं। फिर जनसंगठन व संयुक्त मोर्चा संगठनों में कार्यरत साथियों के लिए सेन्द्रल सुकोमो ने भी लेटर आदि जारी किया है। उन्हीं की रोषनी में हमें अपने ब्यूरो, राज्यों व अन्यान्य कार्यक्षेत्रों की ठोस परिस्थितियों को देखते हुए इस बर्बर व चौतरफा हमले को परास्त करने हेतु आम व ठोस तथा दीर्घकालिक व फौरी कार्यभार तय करने होंगे, उन्हें पूरा करने के लिए ठोस तौर-तरीके अपनाने होंगे तथा योजनाएं बनानी होंगी।

समूचे देश में ही जारी और खासकर हमारे केन्द्रीय क्षेत्रों में केन्द्रित इस बर्बर व चहुंमुखी प्रतिक्रियावादी हमले के मददेनजर हमारी एनआरबी के सभी राज्यों के जनसंगठनों व संयुक्त मोर्चा संगठनों में कार्यरत साथियों के सामने मुख्य-मुख्य कार्यभार निम्न रूप में सामने आते हैं —

1. इस हमले के खिलाफ व्यापक जनता को, विभिन्न जनवादी व प्रगतिशील, देशभक्त, न्यायपसंद विभिन्न संगठनों, गुप्तों व व्यक्तियों को

गोलबंद करना; सभी स्तरों पर विभिन्न किस्म के दमन विरोधी स्थायी-अस्थायी मंचों व संयुक्त फोरमों के जरिए व्यापकतम षक्तियों को साथ लेकर दमन-विरोधी कार्रवाइयों को एक सही तालमेल के साथ आगे बढ़ाना।

2. इस हमले के एक प्रमुख भाग के रूप में षत्रु ने हमारे खिलाफ एक जबर्दस्त दुष्प्रचार व कुत्सा अभियान चला रखा है। इस क्रम में उसने मीडिया के एक बहुत बड़े हिस्से को हमारे खिलाफ झोंक दिया है। हमें अपनी पूरी ताकत से इस दुष्प्रचार व कुत्सा अभियान का भंडाफोड़ करना चाहिए। इस क्रम में सिर्फ हमें अपने मीडिया-तंत्र पर ही नहीं निर्भर रहना चाहिए बल्कि प्रचलित मीडिया का भी यथासंभव भरपूर उपयोग करना चाहिए। साथ ही अन्यान्य सभी मित्र षक्तियों व सकारात्मक षक्तियों के साथ मिलकर एक बेहतर तालमेल के साथ अपने जवाबी प्रचार-अभियान को लगातार चलाते रहने की जरूरत है। इसे हर वक्त व निरंतर किये जाने वाले एक सर्वकालिक काम के रूप में लेना होगा।

3. हमारे प्रचार में इस प्रतिक्रियावादी हमले के मुख्य कारण के रूप में साम्राज्यवाद एवं दलाल-नौकरशाह-पूंजीपति वर्ग द्वारा वन-सम्पदा व खनिज-सम्पदा के दोहन का सवाल मुख्य रूप से सामने उछला है। भारतीय शासक वर्ग लूटना चाहते हैं अगाध वन-खनिज-जल सम्पदा को। माओवादी इसमें बाधा हैं। इसीलिए उनके सफाये की यह योजना ली गई है, यह प्रचार मुख्य बना है। हमारे प्रचार में भी यही पहलू महत्व पा रहा है। इसके अलावा दूसरा सर्वाधिक महत्वपूर्ण पहलू, यानी हमारा आन्दोलन इस षोषण, गैरबराबरी, अन्याय व जुल्म की इस राजनीतिक व्यवस्था के खिलाफ एक सही जनवादी व्यवस्था का नया विकल्प भारतीय जनता के समक्ष पेश कर रहा है, और इस वैकल्पिक माडल जनताना सरकार के उद्भव, विकास व सुदृढीकरण ने उन्हें इतना बदहवास बना दिया है, यह कम महत्व पा रहा है। हमें अपने प्रचार में साम्राज्यवाद और उनके दलाल वर्गों की इस सड़े-गले मौजूदा जनविरोधी विकल्प के बरक्स क्रान्तिकारी विकल्प, उनके प्रतिक्रियावादी विकास के बरक्स जनता के वास्तविक विकास के माडल को, जो कि जनताना सरकारें कर रही हैं, मजबूती से सामने लाना होगा। इस बात को मजबूती से रखना होगा की मौजूदा प्रतिक्रियावादी राजनीतिक व्यवस्था में कोई वास्तविक जनपक्षीय विकास हो ही नहीं सकता और इसके लिए इस व्यवस्था को उखाड़ फेंककर जनता की जनवादी राजनीतिक व्यवस्था की स्थापना जरूरी है।

4. यह दमन-अभियान बड़ी संख्या में विभिन्न तबकों व षक्तियों को हमारी ओर धकेल रहा है। राजसत्ता के बर्बर व बढ़ते फॉसीवादी रूख के चलते विभिन्न किस्म की षक्तियां और भी ज्यादा इसके खिलाफ उभर रही हैं। हमें इस फॉसीवादी, सुदृढ होते पुलिसिया राज्य के खिलाफ उभर रही विभिन्न षक्तियों को अपने पक्ष में जीत लेने वाली नीतियां लेनी होंगी। योजनाबद्ध रूप से उन्हें विभिन्न स्थायी-अस्थायी मोर्चों व संयुक्त गतिविधियों में शामिल करना होगा, उन्हें साथ लेकर लम्बे समय तक चलने लायक जरूरी धैर्य व लचीलेपन का प्रदर्शन करना होगा। इस मामले में हमारी आम नीति होगी-सभी रैडिकल ताकतों को एकजुट करो, बीच की मध्यवर्ती षक्तियों के साथ एकताबद्ध हो जाओ और मुट्ठीभर कट्टरतावादी षक्तियों को अलगाव में डाल दो !

5. इस क्रम में हमें षत्रु खेमे पर भी पूरी तरह निगाह रखनी होगी और उनके बीच के छोटे से छोटे अन्तरविरोध का भी इस्तेमाल करना होगा। इस मामले में संकीर्णतावादी और कठमुल्लावादी नजरिया हमारे लिए घातक साबित होगा।

6. इस दमन-अभियान को परास्त करने का सवाल मुख्यतः इस बात पर निर्भर करता है कि हम नये-नये युद्ध के मोर्चे कितने कम समय में कितनी ज्यादा संख्या में खोल पाते हैं। यानी कृषि क्रान्तिकारी छापामार युद्ध को नये-नये क्षेत्रों में निर्मित व विकसित करना सर्वप्रमुख कार्यभार है। इसके लिए हमें चुनिन्दा क्षेत्रों में कम से कम समय में तैयारियों को पूरा करना होगा। हमारे जनसंगठनों व संयुक्त मोर्चा संगठनों में कार्यरत कामरेड स्थानीय पार्टी-संगठनों से सही व नियमित तालमेल विकसित करते हुए कितने कम-से-कम समय में उक्त क्षेत्रों में उपरोक्त तैयारियों को पूरा करने में जनसंगठनों व जनआंदोलनों को यथोचित भूमिका में उतार पाते हैं, यह पहलू अत्यन्त महत्वपूर्ण भूमिका निभायेगा। यानी सभी क्षेत्रों में पार्टी, पीएलजीए, क्रान्तिकारी जनआन्दोलन व क्रान्तिकारी सुगठित जनाधार बनाने व विकसित करने पर एक समयबद्ध व योजनाबद्ध ढंग से खुद को और अपनी शक्तियों को केन्द्रित करना अभी आपके प्रमुख कार्यभारों में से एक है। इस मामले में सभी नेतृत्वकारी कामरेडों को एक क्षेत्र चुनकर वहां माडल विकसित करने का टारगेट लेना चाहिए।

7. हमारे ब्यूरो के कार्यक्षेत्र का अधिकांश हिस्सा मैदानी क्षेत्र है, जहां करोड़ों-करोड़ किसान बसते हैं। यानी दीर्घकालीन लोकयुद्ध को बार-बार के दमन-अभियानों का मुकाबला करते हुए आगे बढ़ाते जाने के अगाध जनस्रोत व अन्यान्य स्रोतों से यह क्षेत्र काफी समृद्ध है। अतः अभी से हमारे केन्द्रीय इलाकों के संघर्षों को आगे बढ़ाने के लिए जरूरी हर किस्म की मदद देने व जरूरतों की आपूर्ति करने का बड़ा कार्यभार हमारे कार्यक्षेत्रों पर है। इस क्रम में जनसंगठनों व मोर्चा संगठनों की, उनमें कार्यरत कामरेडों की, संसाधनों का विकास करने और उन्हें यथोचित क्षेत्रों में आपूर्ति करने में बड़ी भूमिका है। उसके लिए हर क्षेत्र व मोर्चे पर उपरी कामरेड उपरी जरूरतों को रखें तथा नीचे के संगठन तदनुसार ठोस योजना बनावें!

8. साम्राज्यवाद और उनके दलाल वर्गों के आज के दौर के हमलों का यह क्षेत्र काफी शिकार है। विस्थापन, रोजगार का विनाश, संसाधनों की लूट यहां बड़े पैमाने पर हो रही है तथा यह और भी बढ़ेगी। साथ ही सामंती दमन उत्पीड़न तो चरम पर है ही। फिर आज के इस दमन के खिलाफ भी यहां एक माहौल बना है। इन सभी चीजों के मद्देनजर हमारे कार्यक्षेत्रों में एक-एक क्षेत्र चुनकर वहां कामरेड खुद को केन्द्रित करें। लालगढ़ के मॉडल से सीखते हुए हमें इन मैदानी क्षेत्रों में क्रान्तिकारी जनउभारों व क्रान्तिकारी जनाआन्दोलनों के नये-नये बिन्दुओं को ब्रेक करना होगा। इस चौतरफा हमले को परास्त करने में ये नये-नये संघर्ष के बिन्दु बड़ी भूमिका निभायेंगे।

9. दमन की हर घटना को इस आक्रमण से जोड़ते हुए हमें हर क्षेत्र में नयी-नयी पहल लेनी होगी। ज्यादा-से-ज्यादा राजनीतिक हस्तक्षेप करने होंगे।

10. उपरोक्त कार्यभारों को पूरा करने का सारा दारोमदार इस बात पर निर्भर करता है कि हम जनसंगठनों व संयुक्त मोर्चा संगठनों में सभी स्तरों पर कार्यरत नेतृत्व व कतार की वैचारिक, राजनीतिक, सांगठनिक व अन्यान्य व्यावहारिक योग्यताओं का कितना विकास कर पाते हैं। हमारे लिए यह फौरी तौर पर जरूरी है कि हम उनकी कमेटियों को सभी क्षेत्रों में आत्मनिर्भर, समर्थ व सक्रिय बनायें, उनकी फंक्शनिंग को नियमित व सुचारु बना पायें। अतः सभी स्तर के पार्टी व जनसंगठनों के नेतृत्वकारी कामरेडों को इस काम को, यानी अपनी कतार की राजनीतिक-व्यवहारिक शिक्षण-प्रशिक्षण के कार्य को सर्वाधिक महत्वपूर्ण कार्य के रूप में लेना

होगा। इसके लिए सभी स्तरों पर सही पद्धति लेनी होगी तथा ठोस योजनाएं बनानी होंगी।

कामरेडों, आज जितना जबरदस्त आक्रमण हमारे खिलाफ जारी है, उतना ही वह ज्यादा प्रतिवादी व प्रतिरोधी ताकतों को सामने लाता जा रहा है और लायेगा। का. माओ ने कहा है कि जितना ही ज्यादा दमन-उत्पीड़न, उतना ही जबरदस्त प्रतिरोध।

आइए, हम सभी प्रतिवादी व प्रतिरोध की ताकतों को गोलबंद कर शासक वर्ग के इस बर्बर व चौतरफा आक्रमण को परास्त करें और समूचे देश में क्रान्तिकारी आन्दोलन को नयी ऊंचाइयों तक विकसित करें!

क्रान्तिकारी अभिवादन के साथ
एन.आर.बी.

(3) Art.A19 of Exh.266 is titled as -

**Oppose the Government's ongoing war against the people
of Garhchiroli district !**

**Condemn the brutal attacks on people, mass leaders and
people's warriors.**

**Propose the happening massacres in the name of
encounters and take initiative to put forth the
Government's cruelty before society !**

Dear friends red salute !

Indian revolutionary movement has come to a juncture where the ruling classes considering it as a biggest threat for then. It does mean that it, with its all strength will try to suppress the revolutionary movement, it does also mean that the Maoists revolutionary line has been proved. It has really become a challenge for class enemies. Though the people's war, till date has been brought up to this juncture, if it has to take towards victory, and to make people free from the clutches of imperialism, comprador capitalism, and feudalism then all the people's movements and its supporters, those who uphold people's side should fight coherently with co-ordination co-operation and united. The government's policies till date, a crisis ridden capitalist system never before has huge impact over the lives of people. Due to this huge unrest among people is clearly visible. Consequently, people's movements in various forms all over India are emerging. Our Maharashtra is not far from this.

Whether it is movement under Maoist leadership or under any other leadership, the government has begun its repression all over in the name of operation green hunt the all

out repression since 2009. This repression has a single aspect i.e. suppressing the mass movement whether urban or rural. The government has got a single policy i.e. cruelly suppressing the voice of the people. This repression campaign of the government has been called war on people by the intellectuals.

We politically analyze this onslaught in two points.

1. On political scenario CPI (Maoist) has been emerged as a major struggling and a strong people's power. It has a clear, reconcilable strategy and tactics which has a leading capability and evolved encountering so many reverses in the last 44 years. It has people's liberation guerilla army to carry on political work on behalf of people. The Jantana Sarkar the embryonic form of people's power (jansatta) has been established in guerilla zones. The end of political power of the comprador bureaucratic capitalists and feudal classes is inevitable if the people's unrest and mass struggles have been turned into revolutionary struggles.

2. The areas where the mass movements under the leadership of CPI (maoist) is strong, is the richest part of the country in terms of minerals and natural wealth. The Indian ruling classes have sold out this invaluable wealth to the imperialists at the throw out prices in order to come out of economic crisis. In this regard hundreds of MOU's were signed but due to Maoists this loot if happened to be impossible.

The governments attacks are continue on the peoples of Garhchiroli district. People, various organizations of the people (particularly DAKMS, AKMS, BAL SANGHTANA, KAMS and jantana sarkar etc.) and people's army PLGA are united resisting this onslaught. When so much fierce battle in rural India has been taking place, martyrs blood is flowing for the freedom of people the vigilant and conscious class from various parts of the country are seem either obscurest or waging struggles in an individual and limited manner. So that we, the CPI(MAOIST) makes an appeal to the friends, people of the exploited classes, intellectuals, journalists who upholds and stands for people's cause, workers, worker's leaders, students, people fighting against displacement, for justice, rights and who honestly works for society, cultural activists-artists, literary writers, balladeers, those who fight for women's rights and to comrades to come forward for help and for co-operation in the mahasangram (fierce battle) of the Indian revolutionary movement.

Around 30 IPS officers have been deployed in Garhchiroli district to perpetrate the attacks on people.

Along with district police thousands of commando forces were made in the name of C-60, in which local youths are recruited and thus the government started murdering adivasi by arming adivasis. SRPF has also been deployed, so as CRPF. 5 battalions of para-military forces with commando training are also deployed. If we see, regarding balance of forces in the battle, on the one hand there is more than around 10,000 police equipped with disastrous (mass destructive) mortar bombs, armed with LMG, AK-47, SLR, INSAS, Bulletproof jackets, mine proof vehicles, helicopters and unmanned aeronautic vehicles (UAV) and on the other hand there is PLGA with limited rifles and people armed with old traditional axe and barmar gun.

With these more than 10,000 police force, helicopters and unaccounted expenses (free from audit) with crore's of rupees the states minister for home R.R. Patil commanding these attacks in a brazen manner. He openly stated that goli ka jawab goli se dhenge which is itself unconstitutional.

The forms of attacks which are being perpetrated are as follows.

1. Infiltrating the forces in the jungle and encircling it on a large scale. Prohibiting people from entering in jungle, threatening to kill.
2. Carrying out massacres by creating fake encounters. The government has had announced prize on each dead body so that with each dead body in your list you earn more (more dead bodies, more you earn) promotion is also in waiting . So that to score more, they by labeling anyone as a naxalite they kill anybody. Recently same had happened on April 4, 2013 in batpar village.
3. Spreading terror among people by showing the posters of dead bodies, maliciously propagating the issue like violence, women, manufactured propaganda against leadership and false propaganda over money and tax collection.
4. Beating people sometime beating until death, cold blooded murder.
5. Raping women, molestation of women.
6. Prohibiting from cutting paddy crops and destroying them.
7. Forcibly taking away the food grains and paddy crops and arson them.
8. Encircling and surrounding the villages disallowing people to go out to attend natures call.

9. Forcibly sleeping in the houses of villages and creating terror in their personal life, forcibly eating the cooked food.
10. Destroying the collective decision making process of the adivasi villages. Some people are being turned into people's betrayers and informers by police by abetting greediness or by giving threats or by trapping them.
11. Throwing in the jail by instigating false cases, if one goes to help then he also has to go through similar treatment, threatening, abusing and insulting him so much so that one would never dare to help again.
12. Camping in school and hostels, beating up students purring hurdles in their studies by spreading terror among them.
13. Forcibly involving students in police melavas (programmes) and in so called peace rallies.
14. Distributing television sets, DVDs, film CDs for spreading consumer and commercialized culture by destroying adivasi culture.
15. Emotionally blackmailing, threatening corrupting and harassing by denying basic facilities and even necessary certificates and documents to the families of the cadres active, recruited in the paddy and forcibly asking them to surrender their children.

Some instances.

1. Date April 4, 2013. Time 8 a.m. 5 Maoists were killed at the shores of river Indravati near batpar village. Police had recovered 5 barmaar gun.

This is a fake encounter. A local activist laxman and ammi along with some villagers were supposed to cross the river by donga (a small boat.) At the same time police surrounded and caught them and killed them. This is a cold blooded murder. No casualties at police side. Barmaar gun and axe are old traditional and daily means of earning food and wage. One could clearly see that the villagers were sitting on the boat. Nevertheless, the police fired at them. Just for increasing the score of the dead bodies to complete the target given by home minister. Just for that five people were killed.

Sunita's brother one of the victim, in the incident of the batpar village had told media that his sister had nothing to do with Maoist organization. He has claimed for dead body. Among the killed are. 1. Laxman 2. Ammi 3. Prakash Pallo of Kondegaon. 4. Sudhakar Usali of Pengunda, and sunita of Batpar village.

2. Date 20 January 2013. Govindgaon, time 1.30 a.m. 6 Maoists were killed. Among them are 1. Shankar Lakda a member of divisional committee. 2. Mohan Kowase Acm. 3. Vinod Kodape Acm. 4. Geeta Usendi platoon deputy commander 5. Juru Mattami 6. Raju Gavde.

These comrades completed the village sabha (public meeting) and finished their dinner and were having discussion near in the light of lamp post. Police equipped with sophisticated weapons surrounded them covering three sides to ambush them. Police fired indiscriminately killing 6.

This is also can't be called an encounter. This is a murder because instead of killing, police could easily arrest them. But just for scoring number of targets in the minister's darbaar they killed them.

3. 12 April 2013. Near about 1 k.m. From village Sindesur. Police Encircled and indiscriminately fired on a jan sabha (public meeting) killing 6 people. Among the killed , there were young boys namely sukhdev varlu gawade and kalidas duru hidko from village Sindesur. Comrade Kailash a member of Tipragrh area committee was killed when he came down to save the people. Since 1993 he had been active in the party and had been to jail for almost 5 & half years. After he was released from jail, he joined the party with more determination and took the responsibility of spreading revolutionary movement in Dhanora area. In this incident police would have killed more villagers if Kailash wouldn't have taken initiative to retaliate. At that time 3 women also got martyred. They were all teenagers and unarmed and were engaged in propagating the revolutionary thoughts among. People by distributing phamplets and singing songs. They were also killed by police. Here also, it is clear that the police wanted to complete their target of counting dead to get praised in government darbaar.

4. Date 20 March Ambezari, taluka Dhanora, 2 bambu cutting labours were beaten up by C-60 police till they lost consciousness. At last people took them to hospital and saved their lives. They belonged to Mandla and Balaghat district of Madhya Pradesh. Every year hundreds of labour comes from these districts. It is a crime to carry java (a traditional drink made of wheat flour and nachni) in tiffin dabbas. The police could then and by assuming that the java was being taken for naxlities they were beaten up mercilessly.

5. Tansing a villager from navezari, taluka Korchi, A police agent tied a bag to the back stand of his motor cycle not known to him. All of a sudden police trapped him he was beaten and thrown into prison. This was done because he was an active cadre of Kisan sangarsh samiti of Korchi.

6. Cri. 21 January 2013, the local peasant organization of Korchi called Kisan sangarsh samiti brought out a rally mobilizing more than 10,000 people. The leaders of this rally were issued threatening notices by police. Last year also Shivdas from village Gangin taluka Korchi an adivasi (tribal) leader of the rally was arrested and tied to a tree and was beaten and was sent to jail. Similarly, ratiram from village nadekal, Korchi an activist of same organization was arrested and thrown into jail.

7. The people of village nadekal were encircled and beaten up mercilessly.

8. Gangaram Kallo, village navezari, taluka Korchi. A famous and popular leader of adivasi people and Kisan sangarsh samiti was arrested and detained in police custody for whole night. By seeing the intensifying resistance of the people he was released immediately. But now police has begun harassing him and his family members. Day and night police surrounds his house and without a legal notice searches his house.

9. Village murkudi, taluka korchi, the adivasi cultivated the land collectively and with their collective farming grown paddy crops but C-60 police forbade them from cutting the paddy crop. when the reason was asked by the villagers they were beaten up relentlessly,

10. 32 bags of dhan (paddy) of the villagers were seized by plice in lekurbodi village korchi.

11. Molestation and beating up women in village katenetola.

12. Kanneli, taluka dhanora, in july, 2 people were beaten up and arsoned the grain.

13. Kasansur area, taluka etapally. Within one year 105 people were beaten up by police.

14. The students of korchi ashram school when refused to participate in the police melawa (campaign) they were beaten up by police.

15. Village nainguda, taluka etapally, 30 September, 5 people were beaten up, oct 3, village gudaram of etapally, 9 villagers were beaten up. 11 oct. a person from village kohaka was beaten up until he fell unconciouss. Oct. 3, village koti 6 people were beaten up.

16. 7 november, village karka, taluka etapally 2 people were beaten up. Nov. 1, village manewara of etapally 10 villagers were beaten up and for of them were taken to camp including some girls and were beaten up and thrown into jail.

17. Village gaderi, taluka etapally, 10 people were beaten up until they fell unconciouss.

18. Village gaddapally, taluka etapally, 15 people were beaten up while being taken to camp. women resisted this so that they were released.

19. In the adjoining chattisgarh, on border in the village sadethriyanshi 10 people were beaten up. To add, there are lot of such incidents. In all the terror of police and para-military forces exists in Garhchiroli district. Civic action programme, navjivan abhiyan and janjagran melava is nothing but a propaganda stunt to misguide and to present rosy picture before civil society. Through this they try to humanize the cruelty of the Government's violence so that it is necessary to expose them. Cruel police repression is being perpetrated in Garhchiroli. Justice loving and democracy loving friends, the on going revolutionary movement under the leadership of CPI

(Maoist) belongs to all of us. **Mass movement and armed struggle both are equally important and are necessary for the revolution.**

We Kindly appeal you.

1. To come forward for a fact finding of the encounter of govindgaon, batpar and sindesur and to bring out the truth before people.
2. Para-Military forces and commando forces should stop spreading terror among people, encircling villages, saturating people for whole day, forcibly sleeping in the houses of the people day out day in and should stop destroying food grain.
3. Immediately release the people imprisoned fabricating the false cases. As well as the status of political prisoners must be given to them who are linked or was associated with Maoist movement.
4. Compensation must be given to the people for the destruction & loot of their property & belonging.
5. Stop the repression campaign on the people namely 'Operation green hunt'
Raise your voice for above demands.

Secretary

Sahyadri

State committee of maharashtra

CPI (Maoist)

430] From the above document at Arts.A19 of Exh.266 it reveals that the accused no.3 Hem Mishra is the member of banned organisation CPI (Maoist) and its frontal organisation RDF and lastly appeal

was made for revolutionary movement and mass movement by armed struggle.

(4) A print-out at **Art.A20** of Exh.266 addressed to **Comrade General Secretary, The CPI (Maoist)** **written by Mahesh** is as under :-

To
Comrade General Secretary,
The CPI(Maoist)

Subject: About the anti-unity activities of those who are running the party in Uttarakhand.

Dear Comrade

I learnt, a few days after I was released, that I have been expelled from the party. This expulsion has come close on the heels of the expulsion, reported to me following my release, of one woman comrade, and expulsion/suspension of another male comrade. All three of us were released on bail from jail at different times. We three may have different specificities, but we were all members of the Zonal Committee responsible for this state. The woman comrade expelled when I was still in jail also happens to me my life-partner. With our expulsion, those who are running the show have, incidentally, got rid of all the remaining leadership (zonal) comrades who joined our beloved united party from one and the same organisational stream, whatever it may, incidentally, be. Some of us have the potential and have in the past actually contributed to some important Central tasks, and hold the unification of the two streams as the best thing that could have happened. In Uttarakhand, however, the unity has been, and still seems to retain a strong negative aspect.

The two other comrades may or may not appeal to the next highest committee, which, as I gather in the present extraordinary situation, could be the very highest committee, the Central Committee itself. Due to technical reasons, I am sending this letter alone, right away, and then only shall I be able to tell them that I have done so. It is possible that they may not choose to (out of a sense of reaction) or may be unable to communicate their appeals to your committee due to technical difficulties, such as too early a date for the last possible link-up, and my large geographical distance from them at this precise moment.

I have not met any member of the leading committee for Ukhnd, or their emissary yet, but with some part-time comrades in the open, I saw and read a leaflet issued by the Uttarakhand Seemant Committee on the occasion of the formation day of our party, ie 21st September 2011. It is a verbose pamphlet in Hindi, explaining the present situation to party cadres and supporters. The main problem with it, however, is that, at the end, there is a concluding paragraph devoted exclusively to what they have called the expulsion of some comrades from the party. I was told that the comrades who have been expelled are myself and my life-partner. On further enquiry, I was told that the other male comrade was not expelled (as I had been told by him within hours of my release from jail), but suspended, ostensibly for 3 months.

I don't have a copy of the leaflet, but shall try to send a copy at the next date of contact. It was given to a leader of a mass organisation to be sent to the CC. In a very vague and jumbled-up language, they seemed to have pointed out 3 main reasons for the expulsion ("of some comrades"). One, they said, was our diverting the practice of the party since the unity in 2004-05, away from the line of the party. The second was to have revealed party secrets. The third was to have surrendered to the state.

Let me, first and foremost, state that the other two comrades, against whom action was taken, had not committed any of the above-mentioned mistakes/crimes. It is only I who have committed one. And that is "revealing party secrets" to the enemy. This happened when I broke under torture, after trying to resist for 3 days and 3 nights. For this I have already self-criticized, when in jail itself, through a letter sent out, and this was well-reported across the ranks, I am told. Even when I broke down under torture, I successfully guarded the major secrets, especially the ones related to my involvement in activities at the party center, which they were trying to rake out, and some of which they apparently knew before accosting me. This weakness on my part was also a fallout of the weakening of my communist spirit, which was caused in great part by the conspiracies of these same leadership comrades who now purport to have expelled me.

There is no question of my or any one known to me having surrendered to the enemy.

Moreover, the practice after the unity, as advocated by me, or by any of the two other comrades, was never opposed to the party line. In fact, it is I who played the leading role in synthesizing the practice of the two streams, which upheld one and the same ideological-political line. This was something which the higher committee or the concerned CCMs should have done. The draft of the review report for the Zonal Conference of Uttarakhand in mid-2006, which includes our united perspective for the practice in the state, was indeed prepared by me, approved after minor amendments by the higher committee and the concerned CCMs, including the then NRB Sec and then by the Zonal Conference. Even as a delegate for the 3USAC conference in late 2006, though I was not a SAC member (I remained a ZC member even after the Congress), it was my draft of the perspective portion, for Uttarakhand, of the

3USAC review report for the conference which was approved and passed, virtually without amendment, by the entire house. The 2 SAC members from Uttarakhand (my seniors!) had played no role worth mentioning in formulating or carrying out the line of the party until the Congress. Since my humble contribution had passed through the process of the Congress, and was approved in the process, in spite of the successful manipulation and conspiracies of these same comrades, so as to enable them to represent the slim majority in terms of numbers (as is done in bourgeois-revisionist parties, not in genuine revolutionary parties like ours). Their group, which operated throughout as a group, not as a united party, had emerged as a majority also due to the unfortunate machinations of certain CCMs and SACMs, who were seeing to it that the then Politbureau's analysis of such problems in the run up to the Congress, and the PB guidelines to set things right were ignored and not acted upon too seriously. Personally, I had even sought time from Com Kishan da on the fringes of my technical work with the PB and CC in order to seek help, at the then advice of the GS, to resolve the problems of Uttarakhand which originated in the NRB. The welcome PB resolution to resolve various such problems, in fact, came after that.

Just before my arrest, the same NRB Secretary as before, had, instead of rooting out the problems, split up the Uttarakhand Zonal Committee into two, and efforts were afoot to corner me out, and render me ineffective. It was in such an isolated condition that, with no solution in sight, I grew hopeless just 2 days before I was suddenly picked up by the enemy, in the city. I knew all along that I was being sought by the enemy, and had always followed the UG method, which is why I could survive for all of the 6-7 years since I became UG and was being targetted all along. It is only when the organisation problems caused by the comrades leading us drove me to hopelessness that I lost my alertness and was picked up by the enemy within a short span of time. The

then Secretary of my Zonal Committee, also representing the then SAC leadership (the one who represented Uttarakhand in the Congress), who I believe must now be leading this "Seemant Committee", was the one who had actually asked me to resign and get out from the party, just before my arrest. Had he not done so, I would have continued to remain firm in the face of the enemy's 6-7 year-long attempts to nab me. Nor would I have succumbed under torture, and exposed the membership of my Zonal Committee (this is all that I revealed by way of party secrets; two of the members who had just resigned got arrested immediately thereafter, a third, the woman comrade, continued to work UG, unfortunately got arrested after over one year, due to an error of judgement of a sympathizer contact, not due to surrender or anything that these comrades, having cliquish tendencies, may allege).

After being jailed, I had the time to analyze my own weaknesses, and am prepared to face any further possibility of torture or whatever the enemy might do, even to deal with the problems created by cliquish comrades within the noble precincts of our party.

The said decision to expel me was taken summarily, without telling me what I was accused of. There was no question of their having given me a chance to defend myself, or to explain anything. It was a purely unconstitutional act.

It is my humble request to the leadership to please investigate and, if found guilty, take stringent disciplinary action as may be necessary, in order to prevent such comrades from working against the interest of the party and the revolution. They have repeatedly worked against the party interest. Regarding work in Uttarakhand, with the CCM, who knew the problems of this area, having been arrested, it is going to be difficult to solve these

organisational problems. Whatever may have been this CCMs other shortcomings and mistakes, he was certainly very particular about preserving the spirit of unity, at least until I was arrested, something which the other CCMs of the NRB seriously lacked. Therefore this problem within the then NRB has influenced the comrades down the line, and their stance has hardened, following the arrest of Comrade Srikant. This, I believe, have given these "Seemant Committee" comrades the courage to impatiently and summarily malign me through their spurious announcement of expulsion of me and my life-partner.

She, while doing open revolutionary work, as per the directions of the then CCM incharge, was deviously expelled at the behest of the concerned ZCM and the Secy of the committee leading the work in Uttarakhand, just when it was realized by these manipulators that I was likely to get bail, following the release of the doctor of Chhgrh. Then, even before I could be considered for readmission into the party after my release from jail, they resorted to slander that I had surrendered to the enemy, etc., because of which there was no option but to "expel" me.

All this is a ploy to hoodwink our inexperienced comrades, however few may have now remained in the state, but, fortunately for me, those mass activists who had helped me join the party around 1999-2000, following a revolutionary life and political struggle against revisionism, even without a revolutionary party, since 1981, have offered to help me communicate with the leadership, whom I hold in high regard. The party has much to do to regain its losses and improve its organisational and mass practice (essentially, tactics), and I am ever willing to continue giving my level best. Of course, I can manage on my own for the time being, and am also trying to help my other close comrades to preserve the party spirit in the hope of reunity/reorganisation.

I am also quite confident, now that I have had the opportunity to face the ordeal of arrest, torture, and solitary confinement for prolonged period, uncertainties, and all that, that even with such enormous Central losses I can be part of the overall process of rebuilding, even if I have to do without the rightful collective at the committee level.

Let me also make it known, that I, along with the other two, would prefer to fight out this legal case, as it is politically necessary to do so, in the prevailing circumstances of Uttarakhand. Hence I may not be able to go UG completely, though I am willing to perform whatever UG tasks I may be given from time to time, as I have done successively all my years of political life. Even in these challenging times, we need not be mechanical about UG and OG.

I think I have already taken too much of your attention. So I must end here.

Looking forward to a resolution, with communist greetings,

yours comradely
Mahesh

(5) The recitals of the print-out of letter (**Art.A21**) of **Exh.266** addressed to **Comrade by one Jaddu and Prakash** dated 1st August 2013 are as under :-

Dear Comrade,
Red Salutes!

We have sent letters and reports several times, but we have not received any reply in the last eight months. Especially after the arrest of the comrade who was guiding and coordinating with us, we have not received any reply.

This situation has made our organisation and many activities around our organisation difficult to go ahead. Without the guidance of the CC it is most difficult for an all India organisation to take up important steps, particularly our organisation is playing a central role in coordinating many activities. Now that we have announced our all India conference, it becomes even more difficult to take many decisions without consulting you. Our conference has been postponed several times in the past due to the arrests and other obstructions. This is known to you.

We had sent several times letters mentioning the issues relating to international relations and the problems arose therein. We don't even know if you have received these letters. But we have not received any reply so far from you. We had taken some decisions due to the urgency. For instance, signing the letters that were circulated. Now we have a meeting to take decisions further. We have been asking the international fraternal organisations to wait and suspend all work till we get guidance from you. But this cannot go like this for more time.

We have to decide about the new body of our organisation. We plead with you to arrange a proper channel to communicate with us and call at least two among us, who are young from among us to hear all the reports and pending issues. Those two persons are accused no.3 Hem Mishra and accused no.4 Prashant Rahi.

We have received 1.5 lakhs once and 75 thousand at another time so far after the arrest of the comrade. But we incurred several lakhs of rupees on the continuous programmes and activities. We have incurred a loan of 2.5 lakhs as of now. Every passing day brings in new expenditure. We do collect funds but the range of our activities is so very high that we are not in a position to meet all expenses through collections.

We urgently need funds under the following heads:

Prisoner comrades' health and other legal charges on cases (we are looking after here): 2 laks.

Conference (apart from what we can be collected): 3 Lakhs.

Books we are publishing now: 2 lakhs.

(For more books we could collect 1 lakh) But need 2 lakhs more to publish the remaining books.

Loan to be cleared: 2.5 lakhs.

One arrested senior comrade's life partner needs at least 1 lakhs here.

For our team (next 6 months) to run ourselves and activities planned we need 4 lakhs at least.

Therefore we need a minimum of 13 lakhs immediately to meet various urgent needs and activities.

Money apart, we need many of the important decisions to be taken. We are in a position to advance on many fronts. But before taking any new step, we need to discuss with you. We request you to arrange to call these two comrades as soon as possible.

With rev. greetings. – Jaddu and Prakash
1 August 2013.

431] On perusal of Art.A20 of Exh.266 it is clear that this Mahesh is accused no.4 Prashant Rahi as his name is appeared in the charge-sheet of Uttarakhand Court at Exh.264 wherein his name is mentioned as Prashant Sanglikar @ Prashant Rahi @ Navin @ Mahesh Da @ Sima s/o Narayan Babaji Sanglikar. Police Inspector P.W.6 Atul Avhad admitted in his cross-examination that in Maoist group every member has alias name and normally they use alias name.

Documents containing 247 pages of Exh.267 taken out from the electronic gadgets i.e. Arts.1 to 41 CDs, DVDs, pen-drives, hard-disks seized from the house search of accused no.6 Saibabai

432] As discussed above the incriminating data contained in text format found in the electronic gadgets Arts.1 to 41 CDs, DVDs, Pen-drives, hard-disks seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165) can be read in evidence. The important incriminating documents are reproduced as under :-

433] The document at Page no.1 of Exh.267 is the Secretary's report of first conference of the "**Revolutionary Democratic Front (RDF)**" which was held on 22-23 April at Hyderabad Telangana addressed to **Comrades and Friends** by Red salute to all delegates in which it is mentioned that in 2005 two organizations i.e. All India Peoples' Resistance Forum (AIPRF) and Struggling Forum for Peoples' Resistance (SFPR) merged into Revolutionary Democratic Front (RDF) which was declared on 23rd May (Naxalbari Day) in a Press Conference in Delhi. The details of the said document are reproduced as under :-

Rise! Resist! Liberate!

**REVOLUTIONARY DEMOCRATIC FRONT (RDF)
Secretary's Report (presented in the 1st
Conference of RDF)**

First Conference of the Revolutionary Democratic
Front (RDF)
22-23 April, Sundaraiya Vigyan Bhavan, Hyderabad,
Telangana

Comrades and Friends,

Braving many difficulties, the first conference of Revolutionary Democratic Front (RDF) is being finally held on the seventh year after its formation. On this occasion, it is worth remembering Comrade Khagen Das, the founding President of RDF, who has become a martyr due to old age and after suffering ill health. Along with him, we also remember young Comrade Nagina Majhi, who was a member of Krantikari Sanskritik Sangh, a constituent unit of RDF, Bihar, was also martyred as a result of police torture, custodial suffering and medical negligence by jail authorities. Red salute to all our martyr comrades!

It must here be noted that three of our comrades from RDF Central Committee, Comrade Raja Sarkhel and Comrade Prasun from West Bengal and Comrade Jiten Marandi from Jharkhand have been falsely implicated under draconian laws and are currently imprisoned by various governments of the reactionary Indian state. But in spite of their incarceration, they are relentlessly fighting inside the prisons against the anti-people policies of the central and state governments and for prisoners' rights. We salute these brave comrades of ours.

We know that many of the comrades who have gathered here today, have repeatedly faced the brunt of the fascist policies of the government and have been falsely implicated, intimidated, arrested or even imprisoned. Against many of us false cases are being continuously pursued. But despite all this, the struggle for real independence, real democracy and for dignity is intensifying with revolutionary resoluteness and zeal.

In the current period of world economic crisis and the political turmoil, the political and organizational responsibilities of RDF have become even more important. In 2005, keeping in mind the existent economic, political and social conditions and after analyzing the material condition of the anti-imperialist anti-feudal mass movements, the two

organizations All India People's Resistance Forum (AIPRF) and Struggling Forum for People's Resistance (SFPR) merged to form Revolutionary Democratic Front (RDF). The formal declaration of the formation of RDF took place on 23rd May, Naxalbari Day, in a press conference in Delhi. There it was firmly declared that RDF will work towards the formation of a new democratic society in India and will fight along with the various ongoing anti-imperialist and anti-feudal mass movements. RDF will work towards liberating the people from the clutches of the ruthless exploitation by the forces of imperialism, feudalism and the comprador bureaucratic bourgeoisie. RDF supports the ongoing valiant struggle for self determination and nationhood of the oppressed nationalities of Kashmir and the entire North East. RDF rejects the parliamentary path and strives for intensifying people's struggles to overhaul the current semi-feudal semi-colonial society and to build a new democratic society free of all injustices. In the context of these aims and objectives, a detailed manifesto of RDF was adopted. On the basis of this, the central and state committees of RDF have been functioning as per their organizational strength for the past seven years.

In this First Conference of RDF we need to assess how much were we able to carry out our responsibilities and implement the organisation's programme in the given situation prevailing in the country. We have to carefully analyse how successful we have been in establishing a collective leadership and developing independent decision-making between the central committee and constituent units at the state level. We need to make concrete analysis of our political and organizational activities in order to correctly identify our strengths and weaknesses. We must assess the level of our success in taking our politics to the broader masses, in understanding their everyday problems and in mobilizing people by building mass movements to solve them. We also have to learn from experiences and boldly raise the

level of their revolutionary consciousness. We must face all these questions and objectively assess our achievements and failures. We have to identify our practical weaknesses and strive more to overcome them and thereby strengthen ourselves. By doing so, we will establish our organization firmly among the masses.

During the last few years of its existence, RDF has undertaken many programmes, activities and movements. Some of these programmes are summarized here:

1] State conferences: Punjab: August 2007, October 2011, Jharkhand- 2009, Bihar- September 2009, UK- August 2010. In UP Poorvanchal Sanskritik Manch, Bharat Nau Jawan Sabha, Inqilabi Chatra Morcha and a Kisan Sanghatan have been included RDF constituents.

2] A leaflet was issued on state repression in many states including AP. In the central leaflet particularly the organisation demanded unconditional release of comrades VV and Kalyana Rao and also demanded the withdrawal of ban on mass organizations in AP. We also demanded unconditional release of CPI (Maoist) leader comrade Shushil Roy and other comrades, withdrawal of ban on CPI (Maoist) and a stop to encounter killings. The organisation called for withdrawal of cases against mass activists and a stop to combing operations. A week against state repression was observed from 12 Sept -19 Sept 2005 in all states where RDF started functioning.

3] An all India Fact-finding team was formed and toured AP on the issues of state repression, political murders by the state and state violence that was perpetrated in AP. About 47 mass organizations came together and held a public hall meeting in Hyderabad on 26th September 2005 at the beginning of the fact-finding of the team in which 1200 people participated. The team consisting of 9 members

along with many local activists toured many districts and collected facts of violence on mass activists between 26-30 September 2005. In every district the team visited, a press conference was also held. The team also met the CM and a memo was submitted against violence and repression on mass organizations. At the end, the initial report was released in a press conference.

1) Against the death sentence on the Bihar peasants, RDF took up mass programmes in Delhi, Bihar and Jharkhand. A rally and a convention were held in Delhi.

2) RDF sent a fact-finding team to study the arrests of the Maoist leaders comrades Shushil Roy, Patitpawan Haldar and others by the fascist CPM led West Bengal government. The team along with the representatives of local civil rights organizations went to Jhargram jail and met Maoist prisoners and took long interviews with them. It also visited the place of arrest and inquired with the local people. It was made clear how the intelligence and the police used illegal methods in the process of arrests. On the next day, the team went to Krishnanagar jail and tried to meet comrade Ashok Sarkar and other Maoist leaders. But the jail superintendent did not allow the interview. Also went to the place of arrest of these prisoners. People there described the illegal and high-handed behaviour of the police at the time of arrest to the team. A CD of the interviews with comrade Shushil Roy and others was released along with the report in a press conference in Kolkata on 30th December 2005.

3) Between 2-8 January 2006, a campaign was organized by the state units of RDF on the call of the All India EC on the unconditional release of Political prisoners like comrades Shushil Roy, Patitpawan and others.

4) Between 19-25 January, 2006 a campaign against Salwa Judum initiated by Chhattisgarh Govt. was organized. This was implemented by some state units through wall-writing and leaflets.

5) In states including WB and Punjab, where elections were taking place, 'election boycott call' was implemented and leaflets were distributed.

6) On the occasion of 8 March, 2006 International Working women's day, RDF units participated and helped women's organizations.

7) On 23rd March, 2006 Bhagat Singh's martyrdom was observed as anti-imperialist day in many states.

8) RDF organized protest dharnas and marches against the arrest of comrade Narayan Sanyal in Delhi and many states.

9) RDF unit of Delhi participated and involved in many programmes taken up by Nepali Jan Adhikar Surakha Samithi and NBA.

10) Punjab unit organized protests against the visit of American President G. W. Bush. In many cities, protest rallies were organized on broad mobilization with the slogan 'Bush Go Back'. In other states also particularly Bihar similar joint programmes against Bush's visit to India were organised.

11) A signature campaign was taken up in many states against Salwa Judum and thousands of signatures were sent to the President of India.

12) An international appeal was released by RDF on the issue of Salwa Judum by the all India Committee and asked the international organizations to send help to the victims of Salwa Judum.

13) RDF called a meeting of democrats and

people's organizations on 23rd April 2006 and appealed to them to work on the issue of release of political prisoners. In this meeting a broad understanding was arrived at by the prominent personalities who participated in the meeting. A Campaign Committee for the Release of Political Prisoners was formed. It was decided to collect all information about political prisoners in various states and a perspective was to be drafted. State units to be formed. But we couldn't carry out these tasks so far.

14) An All India campaign against Salwa Judum was conducted from 10 August to 10 November 2006 on the banner of CATAS with a team of artists from Chhattisgarh Adivasi Kala Manch. RDF all India committee members and prominent democrats participated in many states like Kerala, Karnataka, Tamil Nadu, AP, Orissa, MR, WB, JH, Bihar, UP, UK, Punjab, Haryana and Delhi. All India EC members led the campaign in various states. Some members of All India Committee showed wavering when state tried to stop or intervene in the campaign in AP and Kerala. These very members created confusion and didn't properly carry out their responsibilities by not staying with the team at some places and time when they were to perform. The culmination convention was held in Delhi on 9 November and on 10 November a public rally was organized in Delhi and a Memorandum with thousands of signatures of adivasis was submitted to the President of India demanding him to intervene and stop Salwa Judum. Dr. BD Sharma, Dr Vinayak Sen, com. Varavara Rao and others went in a team to the president's office. They couldn't meet the President as appointment was not finalised but the memo was accepted by his office.

15) A bandh call was given by RDF NMS's and Maoist leader com. Sheela Devi was arrested. The RDF called for a 24 hours bandh in Orissa, Jharkhand, and Bihar on 14th October, 2006. Appealed to all sections of people in these three states to observe bandh (General Strike) voluntarily

and make it a success. Also appealed to all democratic organizations to support the bandh call. The bandh was observed in Jharkhand, where RDF came up with posters and leaflets in support of bandh and released a note in the press. A bandh call is basically a political initiative and asking people to involve in it is a political act which a political organization like RDF should issue such calls. RDF should not restrict itself to simple legalistic and secure measures when state comes out with heavy repressive measures.

16) A protest dharna was organized in Delhi and other states when CPI Maoist leader Dr.Osho alias com. Narender was arrested. such protests could only be spontaneous and we very well know that mobilization would only that much according to our strength in Delhi.

17) EC decided to take up a campaign on Agrarian crisis, farmers' debt burden and suicides in the states. Some state units have taken up this by bringing out leaflets, posters and wall writing. A call was issued to strengthen the people's movement against these issues. As RDF state units are still weak this call has not yet been converted into a movement.

18) A hall meeting and a dharna was organized in Delhi and other states on 10 December 2006 against death sentence awarded to Afzal Guru and Sadam Hussain. These protests demanded the commutation of death sentence given to Afzal.

19) Participated and presented a paper in a seminar organized at Jamia Milia University conducted by Nelson Mandela Centre for Peace and Conflict Resolution on Chhattisgarh: Development, the Naxalite Movement and Salwa Judum. The paper focused and exposed on the anti-people policies of the so-called developmental model of the Government and it was stressed that the Naxalism wasn't a problem but the answer to the problem.

20) On 23rd March 2007, an all India Conference against displacement was organized in Ranchi where anti-imperialist day was observed on the occasion of

Bhagat Singh's 76th Martyrdom day. An all India platform was formed with more than 100 organizations and another 100 individual democrats. An impressive rally was organized at the end of the programme.

21) Against Nandigram and Singur incidents RDF participated in dharnas and demonstrations along with other democratic forces in front of the CPM central Office in Delhi in January and February 2007.

22) RDF called for a protest programme on the next day in Delhi soon after Nandigram massacre happened on March 14th. Many forces participated in it. A demonstration was held.

23) RDF EC Members went to Nandigram soon after 14th March massacre along with a team including BD Sharma and Medha Patkar. Addressed the press and released a report. The report was released in Delhi also.

24) RDF EC decided to send a team of eminent democrats for a fact-finding on state repression in Orissa January 2007. Prominent civil rights activists from AP and Jharkhand visited places of repression and brought out a report.

25) RDF representatives participated in a conference against SEZs and Nandigram massacre in Kolkata and presented a paper. In the presentation, our delegates argued for a united movement against displacement and also for excluding funded NGO's

26) The state units of RDF organized programmes about 150 years of 1857 and Bhagat Singh's Birth Centenary year.

27) A call was given to take up campaign of Economic Blockade to be observed on 26, 27 June 2007 against displacement, emergency day and imperialism on the occasion of the Naxalbari Day. It was implemented in Jharkhand and WB to an extent. In Delhi some campaign in terms of propaganda happened.

28) Nagaland trip 27-June to 2 August 2007. A 6 member delegation went to Nagaland to appeal Naga people to demand the withdrawal of 9IRB-Naga battalion. The trip was a success and good relations have been developed with Naga people's organisations.

29) In Orissa anti displacement conference was organised by some elements of ND. We participated in it and effectively intervened to prevent yet another committee to be formed; our political intervention became fruitful to correct the resolution there.

30) RDF local unit of Jharkhand worked for the convention in January 2007 and later conference in March 2007 where a broad based anti- displacement front was formed.

31) RDF has participated to implement All India Bandh Call given by VVJA on 30 October,2007. The bandh was successfully organised in Jharkhand. In other states, the call was implemented by various organisations.

32) Our RDF unit of Punjab had organized an impressive programme on 28th September 2007 at Hussaini Wala.

33) Visit of Naga in India to expose the fallacies of peace talk going between NSCN(IM) and GOI in 2008.

34) A Signature Campaign for the release of Seela Didi had been taken and had made a representation to Women commission. A fact finding team of women had visit the prison to meet Seela Didi in Jharkhad. There was a resolution to meet President regarding this case.

35) Jose Maria Sison was arrested by the Holland Police under the pressure of US imperialist . RDF had issued a press statement and sent a message in

solidarity to ILPS against the arrest of Jose Maria Sison, the founding leader of Philippines communist party. Rdf had taken part in the joint protest programme in Delhi.

36) A blog was started named rdf-2005.blogspot.com, but has not put information regularly in it.

37) Fact finding team had visited in Lalgarh in solidarity with people's movement and to expose the atrocities committed by Joint forces.

38) War on People

a) Cultural events and Talk has been organised under banner of WAP on 13 November, 2009 in Delhi University

b) In context of declaration of Operation Green Hunt, All India Convention Against War on People was organised in Constitutional Club on 4th December, 2009. A all india Rally and public meeting was held in Delhi on the 17th December.

c) The Public Meeting to demand the judicial enquiry into the killings of Azad, the spokesperson and Polit Bureau member of the CPI (Maoist) along with journalist Hem Chandra Pandey at Rajendra Bhavan, New Delhi was addressed by a large number of prominent citizens in the presence of packed auditorium. It was held on 3rd August, 2010. It was held under banner of Concerend Citizen and Forum against war on people.

d) The Public Meeting to demand the judicial enquiry into the killings of Azad, the spokesperson and Polit Bureau member of the CPI (Maoist) along with journalist Hem Chandra Pandey at Rajendra Bhavan, New Delhi was addressed by a large number of prominent citizens in the presence of packed auditorium. It was held on 3rd August, 2010. It was

held under banner of Concerend Citizen and Forum against war on people.

e) RDF take initiative to hold a public meeting on slogan STOP ARMY ENCROACHMENT IN BASTAR! And OPPOSE INDIAN STATE'S WAR ON PEOPLE! On 21 May 2011 in Delhi under banner of FORUM AGAINST WAR ON PEOPLE. The Speakers in meeting were A B Bardhan, General Secretary, CPI, Amit Bhaduri, Professor Emeritus, JNU, Aparna, CPI(ML) New Democracy, Arjun Prasad Singh, PDFI, Arundhati Roy, Writer, B D Sharma, Girija Pathak, CPI(ML) Liberation, Madan Kashyap, Hindi writer, Pankaj Bisht, Editor, Samayantar, SAR Geelani, Delhi University, Sashi Bhushan Pathak, PUCL, Jharkhand, Sumit Chakravarti, Editor, Mainstream. In meeting resolution was passed to withdraw army from Bastar deployed in name of training school.

f) Anti-war fronts are formed in seven states. At least in 5 states we have to form similar fronts as soon as possible such as in Maha, UP, Bihar, Orissa and Chh. There is also a need to develop the coordination between all the fronts. Further with the fast changing scenario on a day to day basis there is a need to make the activities of the fronts more vibrant with larger mass participation. As of now the numerous programmes that are happening in various states are scattered and unsystematic. There is an urgent need for coordination of all these initiatives that are fundamentally being taken up through our forces.

g) OGH & Evaluation: The aggressive postures of the ruling classes in the context of the war against people have brought forth many aspects of the movement which led to a public debate that seems to be having a wider impact. We have been successful in establishing among a wide section of the informed people that this is nothing short of a war on the people. This has also galvanized many more elements into the campaign. This has further made the state defensive. The state could not anticipate the manifold

responses that came against the war from the urban spaces so much so that it desperately started attacking the urban intelligentsia against its opposition. This created a backlash which the state is finding hard to ward away. The contradictions within the congress are reflecting in the form of those forces which are directly under the influence of imperialist corporations and those which are under the influence of feudal forces. In the context of the available space that is there to project our movement in a larger landscape we should be able to educate the rank and file about the need to propagate the various aspects of the movement.

39) Public Protest Meeting against Fake Encounter Killing of Maoist Leader Kishenji was held in Gandhi Peace Foundation, Delhi on 13 December, 2011. This meeting was organised by Bahujan Vam Manch, CPI (ML), CPI (ML) New Proletariat, Democratic Students Union, IFTU, Inquilabi Majdur Kendra, Krantikari Navajawan Sabha, Lok Raj Sangathan, Navajwan Bharat Sabha, NDPI, PDFI, Peoples Front, PUDR, Revolutionary Democratic Front, and other organizations and individuals.

40) In December, 2009 RDF took initiative to form a Committee named 'friends of Telangana' in solidarity of Telangana statehood movement and participate and organised various programme in support of movement.

41) Meeting on GPCR did not materialise.

42) Cultural team from Lalgah had visited in various state calling to support Lalgah movement exposing CPI(M)'s social fascist character.

43) Meeting with the small-scale industrialist and traders was held on 13 April 2010.

44) On Indo-US nuclear treaty protests were organised.

45) LALGARH solidarity Movement

46) **Anuradha Gandhi Memorial Committee**

47) Election Boycott Program

48) RDF will participate in program of CRPP and help to develop CRPP, PDFI and VVJA in various states.

49) Central Leaflet on Corruption and Anna hazare, Oeration Green Hunt, Nandigram,

50) International

a) ICWOP, B) ICRPP, C) On Solidarity forum Nepal

b) 12 June took place in London an important initiative of the International Committee Against the War on People in India (ICAWPI). About 500 people crowded the hall of the Friends House in London and attended with attention and participation, even emotional, at the program. On the walls of the room stood out two large banners signed ICAWPI with pictures of the struggles of the Adivasi people, the fierce war on people unleashed by the regime in India, the many initiatives of solidarity held around the world. There were also the posters of the campaign "week of solidarity" that the International Committee to Support the People's War in India had posted throughout Europe and around the world and the slide-show that in the same week had been used in Italy. This meeting was addressed by Arundhati Roy and Jan Myrdal

c) On ILPS meeting and contradiction

d) Visit of Dave Pugh to study anti displace movement in 2008

e) Visit of anti imperialist camp to help the adivasis

Resolution on EC Functioning and Development of the Organisation:

The all India EC discussed and analyzed the weaknesses in its functioning and in implementing its planned activities. After discussing different points thoroughly the following decisions are taken:

11- RDF's strength lies in its state units. So the first priority is to strengthen its state units and the

constitute organizations in each state wherever the state units are already in existence;

12- All EC members should also focus their attention in one or more states to develop state units;

13- By taking up the people's burning issues in each state, our state units and their constituent organizations should go to the people and organize struggles by taking our politics to them;

14- We should plan our programme based on our manifesto concretely linking it up with the present local problems of the people in each state;

15- The political action calls given by the all India EC should directly reflect the ground level problems of the people, wherein the local units can implement the calls by linking them with local burning issues of the people;

16- The all India EC members should work in close co-ordination with each other and particularly the office-bearers should also meet whenever needed to intervene into all major burning issues which come up time-to-time at all India level and at different level of states;

17- All issues that various EC members are involved in building struggles through different fronts should share various aspects with the entire EC so that the EC will have comprehensive idea about all activities;

18- A workshop will be conducted with the EC members of each state committee on organizational and political growth of the organization in connection with the RDF's manifesto and joint activities;

19- All reports from the states should be presented in written form in detail;

20- Press statements should be issued on all such burning issues immediately and they should sent to the

state units and

21- In addition to other responsibilities in different fronts each EC member is already involved the specific state-wise responsibilities for building RDF are entrusted here as follows:

Resolution on State Level Structures:

All the state units should drive the constitute organizations to take up peoples' issues and strengthen each organization.

Each state unit should take up membership drive through their constituent organizations and they should also give individual membership.”

Our weaknesses:

Political weakness: On behalf of RDF we have indeed tried to take our politics to the masses through our central and state units. And we have been able to take the revolutionary message among the masses. But our activities have remained restricted to a limited circle only. We are yet to reach out to the broader masses of workers, peasants and intellectuals to organize them in an anti-imperialist anti-feudal mass struggle. We are far behind in qualitatively developing the revolutionary and political consciousness of workers, peasants, women, students, youths and oppressed nationalities as well as in building their abilities to resist. The strength of RDF is concentrated mainly among its state units. These state units so far have not been able to organize the broader masses around them nor could they establish the aims of establishing a new democratic society in the masses. We have failed to mingle with the masses, to learn from the masses, to arouse consciousness among the masses and to organize them.

Organizational weakness: In the past seven years we have been able to form state units of RDF only in

Punjab, Delhi, Jharkhand, Bihar, West Bengal, Uttarakhand and Kerala. Even these units are structurally not yet strong since the constituent units of workers' organization, peasants' organization, women's organization, students' organization or intellectuals' organizations are organizationally weak. In some states no other constituent organization has been formed apart from the state committee.

The state units of Haryana and U.P have remained ineffective right from the beginning. In Orissa even before the formation of the unit, RDF was banned by the fascist state government. We have established contacts with people in Maharashtra, Karnataka, Tamil Nadu and Assam but we have not been able to form state units yet in these places.

Overall one can say it is the failure, inability and loose functioning of the Central Working Committee and of the state units that we are yet to reach many of the states of the country, and even in places where our units are present, we are yet to establish our organization strongly.

Weakness in publication: According to the central manifesto of RDF, there was a decision to publish two magazines: *People's Resistance* in English and *Jan Pratirodh* in Hindi. Among these the Hindi magazine is somehow being published albeit irregularly. There is no concrete group of editors. The state units are not being able to contribute too much with writings. The English journal *People's Resistance* is yet to be published. Alongside that the decision to regularly publish on various political issues, state repression, people's mass movements, cultural issues etc is also not being fulfilled.

Financial Weaknesses: For the finance of RDF as per the manifesto, it is mainly dependent on the state units. It was decided that the state units will collect funds for all central activities. The state units will collect money from its members, sympathizers, constituent organizations and larger masses. The

central committee has indeed been helped by some of the state units with collected funds. But that is not enough. Some of the state units have remained completely inactive in this context. Without funds no organization can run itself. For the development of any organization too, financial self-subservience is necessary.

Comrades,

Today we have gathered for the All India conference of RDF. This Conference is the highest platform of our organization. We will determine our revolutionary future from here. We have kept our central report in front of you which is based on the report received from various state units. If you think there are still some errors in the report then we welcome your suggestions. We humbly reiterate to all the comrades that we must strive to fulfill the aims and objectives and political activities that we have resolved in our manifesto. We appeal to all our members from various states to fight liberalism, individualism and subjectivism to unite together and establish a political collective leadership. We must unite with the larger mass of people and identify and understand their problems. We have to politically motivate and guide people in understanding the roots of the problems as well as lead them in their struggles. The members of the state committees must keep in regular contact with other members as well as with the members of the central committee and constituent organizations, so that on any issue a common and collective understanding and concrete political reactions can be made across all units. It is through unity and collective leadership that we can overcome all our limitations and weaknesses and intensify the revolutionary mass movement.

The strengthening and sustenance of the state units are mainly contingent on strengthening the constituent organizations like the organizations of the workers, peasants, students, youths, women and that of cultural activists. Launching membership campaigns is important for this. Along with works in the urban areas our activities must be spread in the

villages too. With courage and patience we must take the message and politics of anti-imperialist and anti-feudal movements clearly and imaginatively to the people.

The final conclusion and the success of this conference will be achieved if we are able to acquire a new revolutionary zeal from this assembly. The broader masses are the source of our strength. We must have complete faith in the people. We must boldly associate with the people to build the anti-imperialist anti-feudal mass movements. We must intensify our movement to build a new democratic India. The strength of exploited and oppressed masses is boundless. The people are the real heroes. The victory of the people is certain.

Inquilab Zindabad!
Red salute to all delegates!

434] This letter shows about work of RDF organization and activities and responsibilities of RDF and directions issued to RDF organizations in all States to strengthen each organization and also to take membership and to come together to understand their problems.

435] In the document at page no.17 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.22/recovered folder/folder 003/Secretary's report**, titled as **Secretary's report** regarding **review of RDF work since its formation** it is stated that - RDF in the present form emerged on the Naxalbari day 23rd May 2005 merging the earlier two organizations AIPRF and SFPR which impact started as one organization in 1991, AIPRF. It is further mentioned RDF sent a fact finding team to study the arrests of Maoist leaders; Comrades Sushil Roy, Palit Pawan Haldar and others by the facist CPM led West Bengal Government. It is further stated between 2-8 January 2006 a

campaign was organized by the state units of RDF on the call of the All India EC on the unconditional release of political prisoners like comrades Sushil Roy, Palit Pawan and others. It is further stated RDF unit of Delhi participated and involved in many programmes taken by Nepali Janadhikar Suraksha Sammittee and NBA.

436] It is stated in the said document that a signature campaign was taken in many states against Salwa Judum and thousands of signatures were sent to the President of India.

437] It is stated in the said document that a hall meeting and a dharna was organized in Delhi and other states on 10 December 2006 against death sentence awarded to Afzal Guru and Saddam Hussain. These protests demanded the commutation of death sentence given to Afzal Guru.

438] It is stated in the said document that Against Nandigram and Singur incidents RDF participated in dharnas and demonstrations along with other democratic forces in front of the CPM central Office in Delhi in January and February 2007. RDF called for a protest programme on the next day in Delhi soon after Nandigram massacre happened on March 14th. Many forces participated in it. A huge demonstration was held. RDF EC Members went to Nandigram soon after 14th March massacre along with a team including BD100% Sharma and Medha Patkar. Addressed the press and released a report. The report was released in Delhi also.

439] It is stated in the said document that The task of RDF is to serve People's Democratic Revolution. It has to build a strong alliance of revolutionary classes of people and mobilise them into the ongoing revolutionary task. This task cannot be fulfilled by remaining in the legalistic methods of undertaking struggles. The Indian state has recognised the real nature of this organisation even before it came into complete shape and organised itself. It was banned in Orissa before a committee was formed. The Prime Minister mentioned it in the meeting of Chief Ministers, which was planning to suppress the revolutionary movement. The central Home Ministry also mentioned the organisation in their report by saying that this is one organisation through which Maoist are trying to co-ordinate themselves at all India level. All major newspapers published these details in front pages. We decided to form the organisation at UG level, wherever the state doesn't allow us to function. The task ahead is tremendous. The challenges are manifold. But our strength is still limited. In order to meet our objective of serving the People's Democratic Revolution directly, by mobilising the revolutionary masses, we need to meticulously plan and organise people of various sections.

440] It is stated in the said document that RDF all India FC has become only a conveyor of the decisions of the CC to our mass organizations. It is merely working as a liaison body, instead of organizing the masses for the revolution under the leadership of the party. Another point in the development of the RDF is the development of the constituent organizations of the state units like the students, youth, womens, farmers, workers and cultural fronts. We have to pay proper attention in developing these basic mass organizations to carry out programmes of action effectively by the

RDF: The new democratic united frontal activity can be taken up only when our basic mass organizations are strong enough to take the political calls of the federation which is formed with a basic view to propagate revolutionary agenda among the broader masses by effectively countering the ruling classes reactionary politico ideological offensive on the revolutionary masses.

441] It is stated in the said document at point no.6 that Some comrades in the EC see the armed struggle counter posing the mass movement. Many times, they raise this with individual members of the EC and at other times they guide the cadres in different states with this view directly or indirectly. Any armed action on the state forces and enemy classes in any state by the Party evokes sharp reactions among these members and they freely comment among the activists saying that mass movements face severe hurdles because of these armed actions. They also maintain that masses suffer due to these armed actions. When newspapers try to paint wrong picture of the Party when Party conducts armed actions on the enemy forces by saying that innocent people have been killed, these comrades without verifying any details they liberally share the views propagated by the bourgeois newspapers and negative comments are passed by these comrades.

442] It is stated in the said document at page no.24, point no.6 that These views in the ultimate analysis reject the political understanding that the protracted people's war as the basis line and armed struggle as the main form of struggle in a semi-feudal and semi colonial country like India.

443] It is stated in the said document at page no.24, point no.7 struggle is the means to unity and unity is the aim of struggle. Expanding Armies, establishing democratic base areas on an extensive scale, building up communist organizations throughout the country, developing national mass movements of the workers, peasants, youth, women and children, winning over the intellectuals in all parts of the country and spreading the movement for constitutional government among the masses as a struggle for democracy.

444] It is stated in the said document at page no.26 and 27, point no.7 Prakash failed to finalise the programme and constitution of A4 by incorporating amendments accepted in the conference. The inordinate delay had happened because of several reasons. First of all he made several revisions of the draft with the help of TM/BDS and RR. This took a lot of time. After this when the draft almost finalised, the hard disk of Prakash's computer got crashed. He made several efforts to retrieve the data but couldn't retrieve it. Mean while Prakash was not well and he faced several problems comrade Jaddu advised Prakash to redo the finalisation of the draft without handing over this work to anyone else.

445] From this document it is clear that it is a document in respect of merging of two organizations i.e. AIPRF and SFPR into RDF which is an organization through which Maoist are trying to coordinate themselves in India and it further shows that RDF is the development of State Units like students, women, farmers, workers and cultural fronts. In order to prove that accused no.6 Saibaba is using pseudo name "Prakash" and he made correspondence with

Comrades of CPI (Maoist), prosecution has relied on this document in which it is mentioned that Prakash failed to finalise the programme and constitution of A4 by incorporating amendments accepted in the conference and when the draft almost finalised the hard disk of Prakash's computer got crashed.

446] According to prosecution Prakash means accused no.6 Saibaba and this fact is clear from the document at Page no.17 of Exh.267 in which it is mentioned that Prakash failed to finalise the programme and when the draft almost finalised the hard disk of Prakash's computer got crashed. On perusal of CFSL report (Exh.267) it reveals that in CFSL report (Exh.267) on the last page it is mentioned that the hard-disk in Ex.1 could not be detected in the Cyber Forensic Scientific Laboratory and hence data could not be retrieved from the hard-disk and the said hard-disk is the same as referred at page no.17 of Exh.267. Hence, it reveals that said crashed hard-disk was sent to CFSL Bombay alongwith other electronic devices (Art.1 to 41) and it could not be opened in the Cyber Forensic Scientific Laboratory. It is clear that the name "Prakash" mentioned in the Secretary's report at page no.17 of Exh.267 is nothing but accused no.6 Saibaba.

447] It is stated in the said document at page no.27, point no.7 that a core committee was formed to coordinate the anti-displacement front work. Wherever the core members are working in those States the work is progressing. But about half of the members named by the SUCUMO did not join the core committee. As a result the work in those states has been lagging behind.

448] It is stated in the said document at page no. 29, point no.9 So far all the programmes came from the CC and through SUCOMO in this sense, the FC/EC lacks initiative.

449] It is stated in the said document at page no. 29, point no.9 that another problem with the present FC is that it takes up project based work rather than taking up continuous and planned work of building struggles and organisation. The FC members are so overburdened with project based work that comes from the SUCUMO/CC that whatever is taken up earlier is dropped or delayed in getting it implemented. For example, the work on Political Prisoners got inordinately delayed due to this. Other EC members don't shoulder any responsibility. Some others only attend the EC meetings and work in their states. So we need to develop the EC in such a way that the FC members are not overburdened and the decided work is shared among the active EC members.

450] It is stated in the said document at page no. 26, point no.7 The whole house rejected Joseph and reiterated that Prakash should be the chief co-ordinator. All of them unanimously said that if Prakash wouldn't accept there should be no chief co-ordinator. The presidium ruled that despite Prakash's rejection, he had to do it because the whole house expressed confidence in him. Finally Prakash agreed to the resolution.

451] In print out at page no.33 of Exh.267 having path **Exh.3/newfolder(2)/allmetters1/photos/rdfconvestion** there is

photograph of accused no.6 Saibaba addressing to the people under the banner of **Revolutionary Democratic Front (RDF) ALL INDIA FIRST CONFERENCE.**

452] In print-out at page no.35 of Exh.267 having path **Exh.3/C/New Folder(2)/All Metters I/photos/C.R.PP programmes** there is photo of accused no.6 Saibaba and there appears a meeting under the head of banner **“Release all political Prisoners unconditionally”** and in that meeting accused no.6 Saibaba is addressing to the people. This shows that accused no.6 Saibaba is the active member of banned organization.

453] One document at page no.41 of Exh.267 having path **Exh.4/Oct.2010/people res/material on JP/interview with G.N.Saibaba** is having photo of accused no.6 Saibaba below the titled as, **“Interview of G.N. Saibaba on the Revolutionary and Democratic Movements in India”** in which he stated that he started working in an anti imperialist organization formed at the all India level called **All India Peoples' Resistance Forum (AIPRF)** and the AIPRF in 2005 merged with other similar organizations to form Revolutionary Democratic Front (RDF). In most states, its members and main functionaries are arrested and incarcerated. Hundreds of its functionaries either suffer in prisons or work in different forms. In his interview accused Saibaba replied to one of the question that the RDF believes that militant mobilization of basic classes of the people is the only way to democratize the South Asian Subcontinent. RDF also involves in building and participating in the larger United Fronts of different democratic and anti-imperialist forces in the country.

454] From this document it reveals that accused no.6 Saibaba during interview stated that AIPRF merged with other similar organization to form Revolutionary Democratic Front (RDF) frontal organization of CPI (Maoist) and its members are being branded as links with CPI (Maoist). From this interview it clearly reveals that the nature of the communist movement in India has completely changed with the rise of the Naxalbari revolution and RDF promotes way of Naxalite guerrials and the banned organization CPI (Maoist) supports all the movements of RDF continuously to build relationship between them. This document also shows that 40 to 50% of women are the party members in the banned organization CPI (Maoist) and its frontal organization RDF and the Aadiwasi people have been resisting under the leadership of naxalites and or Maoist. From this document it clearly reveals that the banned organization CPI (Maoist) and its frontal organization RDF are working in Aadiwasi area in Gadchiroli district.

455] On page no.54 of Exh.267 having path **Exh.4/All/Tehelka** titled as "**Tehelka**" there is photograph of accused no.6 Saibaba and at the beginning accused no.6 G.N. Saibaba stated that the real alternative will come from the maoists and at the last stated that the growth of the revolutionary movement under CPI (Maoist) has always remained outside of the electoral rat race. According to the government figures, it has grown in 200 districts across the country. The changing ruling parties in various states and their devious electoral theatrics are irrelevant in the growth of the Maoist movement. In West Bengal, it grew even when the social-fascist CPI(M) was in power with all its repressive mechanism. It is growing

because of its increasing mass base and the support of the people. Irrespective of the party in power, it has always fought the ruling class. Whether a particular party is electorally ousted or not does not make any difference in the growth of this revolutionary movement. To say this is to state the truth as it exists on the ground.”

456] From this document it reveals that accused no.6 Saibaba is active member of banned organization CPI (Maoist) and its frontal organization RDF which has grown in 200 districts across the country.

457] The document at Page no.72 of Exh.267 having path **Exh.4/old EHD/old/all12345/PP/main decision(2)** titled as **“Main aspects** of proceedings of the Preparatory Committee convened towards forming the Committee for the Release of Political Prisoners** shows meeting was held at Rajendra Bhawan, Deen Dayal Upadhyay marg, Delhi dated 20-1-08 and it shows that some resolutions were passed in the meeting i.e. release of political prisoners, on death penalty, condemn the so called war against terror of the Manmohan Singh Government. Expose the anti-people nature of the HOAX of so called internal security threat and on prison conditions. It is also mentioned in the said document that, “It was suggested that the Preparatory Committee should have a Convenor's team. After further deliberations along with the four member presidium, G.N. Saibaba (Accused no.6) and Rona Wilson were also made part of the convening body of the committee. Thus, the total number of members in the Convenors' Committee equalled six. Later Prof. Amit Bhattacharya was declared the Coordinator of the Convenor's Committee with the consent of the house”.

458] Contents of the document clearly reveals that the committee passed resolutions to release the political prisoners, on death penalty and condemn the so called war against the terror of Manmohan Singh's Government. It shows that there was disaffection against the Government and they support prisoners and the persons who undergone death penalty who lawfully punished.

459] A document at Page no.75 of Exh.267 having path **Exh.4/oldEHD/old/all12345/PP/proceedings(1)** titled as **“Main aspects of proceedings of the Preparatory Committee convened towards forming the Committee for the Release of Political Prisoners** held at Rajendra Bhawan, Deen Dayal Upadhyay marg, Delhi dated 19-01-08 is about the report of committee for the release of political prisoners and in the said meeting one of the participant Sir Gilani pointed out the way in which prisons have become the arena of political vendetta and torture of isolation and incarceration of people belonging to specific communities. Further another participant Surendra Mohan talked about the Salwa Judum in the State of Chattisgarh where the State has used tribals against their own fellow forest dwellers. Further one of the participant Rona Wilson stated that the calculated hysteria of the so called war against terror and the hype of Maoists being the single largest security threat in the subcontinent as told by none other than the Prime Minister of India, along with the ruthless implementation of the policies of Liberalization, Privatization and Globalization have created a scenario where the general masses of the subcontinent was facing the worst kinds of onslaughts on their right to dissent. From this document it reveals that participants i.e. leaders and activists of the said

committee are fighting for release of prisoners through the strategy of Maoists and supporting ideology of Maoist in West Bengal, Tamil Nadu, Andhra Pradesh and Maharashtra. Further, it is mentioned in this document that some suggestions were made for sending the invitation to the organizations separately and also mentioned that G N Saibaba has informed to contact them at the end of each mail content so that they will under the importance and his E-mail ID named as **“G N Saibaba: gnsaibaba@gmail.com”** is appearing in it.

460] In the letter at page no.78 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/OLD EHD/OLD/All 12345/ILPS/Dear Arman**, addressed to Dear Arman it is mentioned that, “An international team of ILPS to visit areas of anti-displacement movements in India in March 2008 to come out with a report for international propoganda. The team will also to visit Chhattisgarh in the area effected by Salwa Judum, an area of indigenous people most serious affected in a major way. Other important areas, among others, would be Nandigram and Singur West Bengal, Kalingar, Jagatisgapur and Kashipur in Orissa, and Jharkhand. the team needs to in India for at least 15 days. Further ILPS to aid and promote the formation of international Solidariety Committees supporting and taking up the issues of Indian Anti-displacement movement particularly in Europe and Americas to start with. The international monopoly corporate houses that directly displace, kill, maim, rape people in India are to be targeted in a big way through campaign.” And at the end of the letter the name of accused no.6 G.N.Saibaba having his email ID gnsaibaba@gmail.com is mentioned.

461] A letter at page no.81 of Exh.267 having path path **Exh.4/All old and new/others/international/dearGNSaibaba** is addressed to **G.N. Saibaba by Ufuk Berdan, Chairperson of the International Relation Commission ATIK (Avrupa Turkiyeli Isciler Konfederasyonu)**. It shows that there was invitation to Arundthaty Roy to visit their organization and lastly complimented G.N. Saibaba to meet them soon and wish him all the best in his struggle.

462] A document at page no.82 of Exh.267 having path **Exh.4/oldEHD/redpendrive/w02010/working dictionary/campaign/India/correspondence** is a **Draft letter addressed to The General Secretary, Communist Party of India (Maoist)** in which the name of accused no.6 G.N. Saibaba is appearing at the end and the said letter shows about the problems of Adivasis who were killed, tortured and raped and villages being burnt in the unprecedented military operation of the Government of India and also suggested that the military offensive has all the characteristics of genocide to have been launched on the tribal people of these regions and simultaneously targeted against the CPI (Maoist) and other people's organizations.

463] A document at page no.84 of Exh.267 having path is a **Draft letter addressed to The General Secretary, Communist Party of India (Maoist)** in which the name of accused no.6 G.N. Saibaba is appearing at the end and the said letter shows about the problems of Adivasis who were killed, tortured and raped and villages being burnt in the unprecedented military operation of the Government of India and also suggested that the military offensive has all the characteristics of genocide to have been launched on the tribal people

of these regions and simultaneously targeted against the CPI (Maoist) and other people's organizations. The contents of the said document are reproduced as under :- Draft letter

To
The General Secretary
Communist Party of India (Maoist)

19 February 2010

Dear

We, a group of democratic individuals from Delhi, write to you amidst the serious turn of events in the last few months with the Government of India declaring Operation Green Hunt (though the Union Home Minister denied this name being given to the military operation at least once in the media) in the central and eastern regions of the tribal habitats. We hear with great pain and shock about officially unsubstantiated figures of adivasis being killed and thousands being tortured, women being raped and villages being burnt down in this unprecedented military operation of the Government of India ever initiated since 1947.

We are aware that this military offensive has all the characteristics of genocide to have been launched on the tribal people of these regions and simultaneously targeted against your party and other people's organizations. We have also openly stated several times that this military offensive is a pretext to clear the areas under mention from any hurdles that will come in the way of the unbridled exploitation of forest and mineral wealth of the region. Further we believe that the approach of the Government of India to look at the whole question as a purely law and order issue goes against the very own conclusions arrived at through studies undertaken by its own institutions.

We have gone through the statements, appeals and interviews issued by you and your comrades in the past six months responding to this situation

regarding your proposal of talks with the Union Government. We appreciate your stand along with the reasonable and justified framework proposed for creating the necessary conducive atmosphere before any dialogue could take place. We have also been keenly following the statements issued by the Union Home Minister, Mr P Chidambaram offering talks with your party. He has modified his stand from putting conditions like abandoning of arms to abjuring of violence over the months.

We are of the opinion that it's the responsibility of the Government of India to create conducive atmosphere by suspending the military operations and temporarily holding back the paramilitary and other combat forces from all these regions to initiate a dialogue. Once the Government starts fulfilling these responsibilities, we hope that your party also suspends all hostilities against the security forces. We propose this not as a precondition on either side but as confidence-building exercise to move towards a fruitful dialogue wherein the Union Government and respective State Governments on one side and the CPI Maoist and various concerned peoples' organizations on the other. As of now, it is unfortunate that the Government has not taken any concrete steps towards this direction, though reiterated several times its offer of talks.

We are also of the firm opinion that the Union Government should hold this dialogue and not the concerned State Governments as primarily the Constitution of India reposes the responsibility of the Scheduled areas and the tribal people through its Fifth Schedule. Also since the grave issue in question is concerned with several states, no piecemeal effort like what had happened in Andhra Pradesh before 2004 will yield any concrete results.

We make it clear before your party that we are no peace-brokers. We are neither pacifists nor do we stand on behalf of any aggressive exploiter being

aware of the history of people's struggles in this country in general and that of the tribal people in particular. This proposal is being mooted principally because we are concerned about the people as you are. We do not represent the government or your party in any way.

We would like to know the concrete steps and framework of the political dialogue including an understanding of facilitating the process from your side authoring us to negotiate with the Government of India in this regard. We would like to have comprehensive and concrete proposals to be sent to us in the form of a letter addressed to us so that we can proceed as a collective to initiate a process with the UPA alliance that commands the government at the Centre. This however doesn't mean that we represent your party or any other organization. We only work to facilitate this process. Your party is a sovereign political organization to decide about your emissaries and representatives in the actual process of talks and towards charting the modalities for the same dialogue.

We expect your reply at the earliest.

In solidarity and concern,

Prof. Randhir Singh, Justice Rajender Sachar, Dr. B D Sharma, Prof. Manoranjan Mahanty, Arundhati Roy, Prof. Amit Bhaduri, Sumit Chakravarty, G N Saibaba (Accused no.6), Prashant Bhushan, P K Vijayan, SAR Geelani, Saroj Giri, and Karen Gabriel.

464] A document at page no.86 of Exh.267 having path **Exh.4/researchwork/IMP/Research Work/Research plan/personnel/personnel/personnel final/personal/contacts/final reply to Arman letter by Sai** is a letter addressed to Dear Comrade Arman (AIPRF)

by accused no.6 Saibaba in which he lastly suggested to develop the anti-imperialist forces to the maximum possible and further stated that their strength is no doubt limited but focus it in a direction to give maximum results. Some recitals of the said document are reproduced as under :-

Basically the ILPS Committee formed at the international level and the local body of MR 2004 should act as facilitators to make the programme a grand success.

Now for some other points of clarification to your letter:

1) The draft on “introducing MR-2004” is not to be continuously changed but was to be finalized by the list of initiators. This was a necessary democratic procedure. Now, this will not change, and will be the minimum basis to draw in wider participation. Those who cannot accept it will simply not join. So, there need not be any apprehension that the draft will be “continually changed to suit the request of the individual orgs”. Practically, there were no major changes proposed by the Initiators.

2) From Sept 5 to Nov.7 the Initiators will travel all over the country for the formation of the Reception Committee and bring in a host of “participating organizations”, all of whom will be called to a meeting in Mumbai on Nov.9 where an “Organizing Committee” will get elected of about 25 persons.

Here we propose that ILPS and some of the organizations from outside India particularly from Philippines, Turkey and Europe should be there in the Organizing Committee.

The Initiators body will thereby get dissolved and the OC will get formed and take on the central responsibility for the MR 2004, in consultation with the participating organizations, both at the India

and international level. ILPS needs to play a crucial role.

3) Regarding the topics for the workshops and the plenary sessions we have taken into consideration the proposals of the ILPS meet of July 17 and also the needs of the local organizations involved. Being held in India and with the bulk of the audience being mobilized from here, quite naturally the issues must be relevant to those attending. We have tried to accommodate most of the subjects suggested at the ILPS meet.

4) Regarding the inclusion of other international organizations the question of WPRM was already settled in the ILPS meeting. The General Secretariat Meeting of the ILPS says, “wprm can join MR2004. In India it is a significant force so they should be approached for sponsoring the event”.

5) Regarding the formation of ILPS India as part of this process, as of now we have some problems to be sorted out. Besides our organization's representative in the ICC there is another representative, Fatima; an NGO about whom we know little. And the little that we now know is not very positive. Anyhow, there are also a number of other participants from India as well. Some of them are the mass fronts from the revisionist parties in power. Even when we get ready to work with them, they run away, while their parties in power (West Bengal) kill and unleash repression on us and other sister organizations. At present we do not have the subjective forces to take the step; and if at all we feel it necessary to do so, it will require far greater discussion in the mother org. before such a step can be initiated. That the anti-imp. forces in the country have to be consolidated in the process is not debated; the question before us is how best this could be done given the subjective forces available to us and complexity of relations that exist among the mass fronts in ILPS from India.

6) Regarding MR 2004 we consider it a one-time event and not any continuous process. As the situation evolves various forms and methods may be necessary.

465] From this document it is clear that accused no.6 Saibaba has invited the Comrades of Maoist Organization from other countries to a meeting in Mumbai where organizing committee will get elected.

466] In a letter at page no.87 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/all Old and new/news-** addressed to concerned comrades dated 20.12.2010 sent by Prakash and entire team, in which it is mentioned that – We are surprised to see the mail circulated by the Anuradha Ghandy Memorial Committee stating that Baburam Bhattarai would deliver this year's (3rd) Anuradha Ghandy Memorial Lecture on 14th January, 2011 in Mumbai. Further it is mentioned that - “we are pained to see Baburam Bhattarai being selected to fondly recall such an ideal revolutionary personality as Anuradha Ghandy - not to say a role model for revolutionaries - who fought-revisionism. Further our team discussed this internally and felt that we should convey our strong feelings at the earliest to some of you who are involved in organising Anuradha Ghandy Memorial Lecture every year. In fact we are highly inspired by your efforts to consistently organise the memorial lecture to remember and commit ourselves for the revolutionary work for which Comrade Anuradha is a symbol. Further we will face tremendous criticism from the revolutionary parties and organisations from all the countries where we have fraternal relations. We can't simply explain them in any way about this event as they are also

engaged in ideological struggle against the Prachanda-Baburam clique as much as we are involved in this country.

467] In letter at page no.88 of Exh.267 addressed to **Dear Comrade** by Prakash and the entire team, it was suggested that “Now as per the draft constitution of A3 as you know units can be built with various constituent organizations (NDR based MOs) in the area or if such a situation is not there for any reason we can also build it as a unitary organisation with individual members. Lastly, it was suggested that “On April 22, (Lenin's birth anniversary and formation day of CPI ML) in line with recent PB's suggestion, how would it be if we conduct a small meeting with Marxist intellectuals and our open activists and friends a discussion on Socialism and the need for propagating Socialism as the only alternative to the crumbling capitalism/ imperialism in the present context.

468] In print-out at page nos.90 of Exh.267 having path **Exh.4/All Sai/for study/latest/Vanja's Articles** titled as “**I am convinced the Naxalites (Maoists) have a lot of support**” in which it is mentioned that A newspaper and bananas helped link up with Maoists. The Communist Party of India-Maoist (CPI-Maoist) asked C. Vanaja twice to reach Chhatisgarh all the way from her home in Hyderabad but on both occasions her contacts failed to turn up and on third time, she was told to come with newspaper and bananas pretending to be an ordinary visitor and at that time, Vanaja did that and made contact with the highly secretive Maoists. From this letter, it reveals that there is usual practice of Naxalites (Maoists) to use newspaper and bananas pretending to be an ordinary visitor and at that time, Vanaja did that and made contact with the highly secretive

Maoists to contact with their secrete persons which the accused no. 1 and 2 followed in this case.

469] A document at Page no.94 of Exh.267 having path **Exh.4/Old EHD/Read Pen Drive/WD 2010/Working Directory 2010/others/Dantewada Press Release** is a Press Release issued by Ramanna Secretary DKSZC CPI(Maoist) titled as “**The claim made by the government that 7 ‘Naxals’ were killed by the CoBRA, Greyhounds and SPOs in an encounter between the Maoists and the police on 10th November 2009 is completely false!**” wherein it is mentioned that the claim made by the Government that 7 'Naxals' were killed by the CoBRA Greyhounds and SPOs in an encounter between the Maoists and the police on 10th November 2009 is completely false. In the said letter there was appeal to all the democratic, progressive and pro-people organisations and individuals, democratic and civil rights organizations and activists, writers and intellectuals, journalists, students and youth to come forward and make all efforts to stop this genocide and brutal repression committed on the people by the Indian government and to punish the police officers guilty of these crimes.

470] This letter shows that police officers in India are first target of naxals and that naxals want to pressurise the Government.

471] A document at Page no.97 of Exh.267 having path **Exh.4/8 Oct 2012/120610-DK/Martyrs Day-Eng** titled as Communist Party of India (Maoist) by Gudsa Usendi, Spokesperson, Dandakaranya Special Zonal Committee, CPI

(Maoist) headed by “**Observe Martyrs Week From July 28 to August 3! Red Homage to Our Party’s Fore-founders and Beloved Teachers Comrades Charu Mazumdar and Kanhai Chatterjee!** and further it is mentioned that By virtue of these sacrifices, revolutionary movement has been advancing raising the slogan **‘Naxalbari Ek Hi Rasta’**, with the aim of building liberated areas through area-wise seizure of political power. July 28 is an important day to commemorate the sacrifices of all the martyrs and to rededicate ourselves to fulfill their cherished dreams. Further it is mentioned that repression always leads to revolution is a historical truth. Ideas cannot be wiped out by killing people. The issue of hunger, poverty, unemployment, corruption, scams, price-hike, displacement etc. are making people restless. None of the parliamentary political parties has any credibility in the eyes of the people. In this context, the fact is that the Maoist People's War which is marching ahead with matchless sacrifices and heroic struggles, stands as a great inspiration to the toiling masses of the country. Let's pledge to expand the people's war across the length and breadth of the country and to intensify the guerilla war by safeguarding the Party. Let's emulate the ideals of the martyrs and propagate their spirited life histories among the vast people. With the inspiration of the great martyrs, let's consolidate the revolutionary movement as per the aspirations of the billions of Indian oppressed masses.

472] A Document at page no.99 of Exh.267 having path **Exh.4/Old EHD/OLD/All 12345/Concept of Revolutionary Mass Organizations** titled as **Concept of Revolutionary Mass Organizations** (RMOs) shows that no revolution can advance until

and unless the vast masses are mobilized to actively participate on a mass scale in it and not merely stay as passive observers. To do so requires that the party, the people's army and the UF be effectively consolidated while doing the mass work. Building the secret party deep amongst the masses and drawing them into the armed struggle and anti-imperialist, anti-feudal United Front can alone result in effective wielding the seizure of political power. It further suggests that while people's war has already started in 17 states of India revolutionary mass organizations must emphasize their activities on strengthening the armed struggles and building armies while continue their mass movements like processions, Demonstrations, mass meetings, Protest movements, street corner meetings, seminar with intellectuals, cultural functions etc. In present day India armed struggle and building of army is the main task of all RMOs. In this connection we can remember and lean from Comrade Raja Mouli (Prasad) who played an important role in successfully building the RYL in an underground way in the new situation of class-enemy throughout India.

473] A document at page no.103 of Exh.267 having path **Exh.4/8 Oct 2012/Ban on Rdf/2012 Gad_MS430 ban order (PDF files)** titled as "**Government of Andhra Pradesh Abstract**" written by Minnie Mathew, Chief Secretary to Government reveals that Revolutionary Democratic Front (RDF) formed with the merger of All India People's Resistance Forum (AIPRF) and Struggling Forum for People's resistance (SFPR) in May 2005, is a part of Tactical United Front, has been indulging in the following unlawful activities namely,-

- 1] Sub serving the interest and objectives of the Communist Party of India (Maoist) whose avowed

objectives is to over throw the lawfully established Government by means of force and violence through terrorist activities involving the use of firearms and explosives;

- 2] Urging people to fight against the Police and join the Maoist movement;
- 3] Opposing and demanding stoppage of anti extremist combing operations of the police and security forces in the left wing extremism affected area of the States and there by abetting and encouraging the violent activities of Maoist;
- 4] Organising dharnas, rallies and other forms of agitations in support of the unlawful activities of the Communist Party of India (Maoist) and
- 5] Opposing lawful actions of police and criminal justice system and inciting the people to take violence against the democratically elected government established by law.

474] From the document at page no.105 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.4/Ritu 13 March/my documents/DSU/from Jatinder/Democratic right movement/Document**, written by Santosh Kumar, Principal Secretary of Government, it is clear that it is a notification titled as “The Orissa Gazette EXTRAORDINARY PUBLISHED BY AUTHORITY HOME DEPARTMENT NOTIFICATION DATED The 20TH June 2006, having total thirteen numbers of notifications regarding ban on Communist Party of India (Maoist), Revolutionary Democratic Front Etc.

475] A document at page no.107 of Exh.267 is a Gazette Notification of Home Department of Orissa Government dated 20th

June 2006 wherein Revolutionary Democratic Front subserving the interests and objectives of the Communist Party of India (Maoist), has been indulging in the following unlawful activities, namely :-

(1) Sub serving the interest and objectives of the Communist Party of India (Maoist) whose avowed objective is to over throw the lawfully established Government by means of force and violence through terrorist activities involving the use of firearms and explosives;

(2) Urging people to fight against the Police and join the Maoist movement;

(3) Opposing and demanding stoppage of anti extremist combing operations of the police and security forces in the left wing extremism affected area of the States and there by abetting and encouraging the violent activities of Maoist;

(4) Organising dharnas, rallies and other forms of agitations in support of the unlawful activities of the Communist Party of India (Maoist) and

(5) Opposing lawful actions of police and criminal justice system and inciting the people to take violence against the democratically elected government established by law.

Lastly, by this Notification, Orissa Government declared the **Revolutionary Democratic Front (RDF)** to be an unlawful association with immediate effect.

476] The Orissa Government has declared **Jana Natya Mandali, Chasi Mulia Samiti, Krantikari Kisan Samiti, Daman Pratirodh Manch, Kui Lawenga Sangha, Bal Sangam** as an unlawful association and the documents are at Page nos.108 to 113.

477] The above documents notifying RDF as a unlawful association by Andhra Pradesh and Orissa Government were found in the hard-disk seized from the house search of accused no.6 Saibaba. This shows that RDF is involved in unlawful and terrorist activities.

478] A document at page no.114 of Exh.267 titled as **“Expressing Solidarity with Communist Party of India (Maoist)”** wherein it is appealed to continue on the path of Comrade Azad, spokesperson for Communist Party of India (Maoist). It is mentioned in the said document that Comrade Azad would have played a very critical and decisive role at the current juncture: at a time when the reactionary Indian state on one hand has mobilized more than 250000 police and mercenary forces against the Maoist peoples war within the framework of a large military campaign called Operation Green Hunt, and on the other hand it is espousing a deceptive propaganda about "peace talks" and "ceasefire." In the said letter there was criticism on the Andhra Pradesh Government about the death of Comrade Azad. The resistance of the masses under the leadership of CPI (Maoist) against "Operation Green Hunt" that spreads across twenty states out of 28 Indian states is a resistance against the comprador policies of the reactionary Indian state which is making possible the vast plunder and pillage of the natural resources of India by multinational corporations. In the process of the ongoing resistance, which continuously expands and spreads, the masses of people are selflessly giving sacrifices and also give tough blows to the vicious and repressive forces of the reactionary state. The officials of the reactionary Indian state and at its helm the Prime Minister,

Manmohan Singh, since the last few years is continuously declaring that the Maoist peoples war is the biggest threat to the Indian state. The armed struggle and the current peoples war in India that is being led by CPI (Maoist) is the continuation of the Naxalite uprising that began a few decades ago in that country. Now this revolutionary war has spread across the vast and populous country and directly affects the lives of hundreds of millions of Indian masses, the martyrdom of comrade Azad, as one of the central and top leaders of the movement is considered an important success for the reactionary and atrocious Indian armed forces. But, among the hundreds of millions of the revolutionary Indian masses, there are many more 'Azads' and many other 'Azads' will join the battle. The people's war in India can and should successfully overcome this loss and continue ahead until the total victory of the revolution. Communist (Maoist) Party of Afghanistan on the path of struggle for starting the peoples war in Afghanistan, whose specific character at the current juncture is the people's revolutionary national war of resistance against the imperialist occupiers and their puppet regime will commemorate comrade Azad and expresses its solidarity with CPI (Maoist) and the peoples war in that country on the occasion of this loss.

479] A document at page no.117 of Exh.267 is a press release of **Communist Party of India (Maoist)**, Central Committee by Azad, Spokesperson, Central Committee CPI (Maoist) has written Red Salutes to Maoist Leaders comrades Skhamuri Appa Rao (Ravi) and Kondal Reddy (Ramana) and further suggested to take revenge for the death of leaders of CPI (Maoist) from the Government and to built country-wide wave of people's struggle to sweep away the fascist

regime led by leaders of Indian Government. It is alleged in the said letter that the cold-blooded murders of Maoist leaders are an integral part of the unprecedented fascist offensive unleashed by the Central and State Government against the CPI (Maoist) in the name of operation Green Hunt.

480] In the document at page no.119 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/OLD EHD/OLD/All 12345** titled as **“Maoist Strategy in India”** with Sub title **“An interview with G.N.Saibaba”**, it is mentioned that accused no.6 G.N. Saibaba is the deputy secretary of the Revolutionary Democratic Front, an all Indian Federation of revolutionary organizations and further stated that the Maoist are following the new democratic method proved by China under the leadership of Mao that the revolutionary movements must put priority on working in the areas where the State is weak. The Maoists are following the new democratic method proved by China under the leadership of Mao, that the revolutionary movements must put priority on working in the areas where the state is weak. The Maoists work in the backward regions to smash the local government and establish people's power. They build bases in these backward areas. This doesn't mean that they don't also work in the cities. In fact, in the party congress in January/February 2007 they decided to increase their work in the urban areas. They have produced a new document concerning work in the urban areas that analyses the work done the last thirty years. This document sets out a strategy for developing the work in the urban areas.

481] It is further mentioned in the said document that The Maoists do work in the urban areas among the working classes and the middle classes. This has secondary importance. The primary importance is to capture the villages first and develop the armed struggle with peasants as the main force and with the working class as the leadership. This means not just the physical workers but those of the people that have the proletarian ideology and without properly of their own Maoists do combine legal and the illegal struggles as far as there is space in legal means available. Whatever little legal space there is, it's being used to the maximum extent possible. But the ruling classes don't allow thee use legal means and different institutions of democracy. Participating in elections is not the only way to participate in legal and urban spaces. Even boycotting elections is a highly political activity, which is another way of participating politically within the given democratic space that exists in India. First of all the Maoists are concentrating on gaining power for the people to build people's democratic revolutionary institutions. When this is achieved in large areas they will get more space in the urban centres and institutions.

482] It is further mentioned in the said document in Note 2 that the following is a closer description of the communist movement in India today according to accused no.6 **Saibaba** and there are three different main streams of the revolutionary movement like (a) CPM maoist – peoples war (b) Cpi(ml)naxalbari, ct and others are also Maoist and close to the Maoists. Also CPRCML, Red Flag, Communist Revolutionary Platform, CCICP(ml), CPI(ml)central team, CPM (ml)new democracy. These are all small, but they have a mass base. They partake in mass struggles but do not follow a correct track. They

follow a right deviationist line. CP(ml)liberation is now fast turning to revisionism, a fairly large party. There are no left revisionist groups remaining. There used to be Lin Biao groups, they hardly exist anymore.

483] It is further mentioned in the said document that the last stream i.e. (c) of the revolutionary movement is mentioned in above document is that Communist League(ml) split from the CPI(ml) originally in the 1970s.They believe that India is capitalist. They split into five different groups. They are very small. They work in urban areas. They are petty bourgeois. They constitute a democratic voice in the country today. They voice the urban democratic intellectuals.

484] A photograph at page no.144 of Exh.267 having path **Exh.5/C/All photos/photo sai/New folder 1/File038** headed by **“Krantikari Janwadi Morcha”** in which there appears programme and in that photograph accused no. 3 Hem Mishra is standing on the stage addressing to people and accused Saibaba is appearing at the right side of the stage. Further one print-out of photograph of Public Meeting, there is accused Saibaba addressing to people. Further the accused Saibaba is appearing in another print-out in one programme under the banner of “Convention Against War on People”.

485] From document at page nos.170 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.4/OTHERS**, it is clear that it is a Press statement of COMMUNIST PARTY OF INDIA (MAOIST) CENTRAL COMMITTEE North Regional Bureau dated June 3 2011 issued by Gudsa Usendi Spokesperson, Dandkaranya Special Zonal Committee CPI (Maoist). In this document it is stated at page no.171

and 172 OPPOSE THE ARMY DEPLOYMENT IN BASTAR! TALK OF 'TRAINING' IS NOTHING BUT A PLOY TO DECEIT THE PEOPLE! GIVING POWERS TO THE ARMY TO ATTACK IN THE PRETEXT OF 'SELF - DEFENSE' IS NOTHING BUT FREE - HAND FOR MASSACRES AND ATROCITIES ON ADIVASIS ! Followed by detailed Press Release. It is further mentioned that - Our Special Zonal Committee appeals to all democrats, human rights organizations, anti-displacement movements, Adivasis' organizations, and well-wishers of Adivasis, intellectuals, writers, Artistes and media persons to raise their voice against setting up of Army training schools in Bastar and the proposed huge land grab meant for this purpose. Come forward to build agitations with the slogan - "Indian Army, Go back from Bastar". Oppose the deployment of the Army in the ongoing war against people in the name of training schools. Demand to scrap all those MoUs signed by the government of Chhattisgarh with big corporate houses and all those projects of forceful land acquisition.

486] A document at page no.172 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.4/OTHERS**, is press release titled as **Communist Party of India (Maoist)** dated June 4, 2011 issued by Abhay Spokesperson, Central Committee, CPI (Maoist). In this document it is stated at page no.173 and 174 that Deployment Of Army In the name of Training Schools Puts The Very Existence Aborigines and Inhabitants of Bastar In Peril!, Forest Belongs To The Indigenous People (Mulvasis) – The Government Doesn't Have Any Right Over Even A Inch Of It!, Indian Army GO BACK – Do Not Kill Your Own Citizens ! followed by detailed press release. From this document it reveals that the Central Committee CPI (Maoist)

appealed to the banned organisations particularly the Aadiwasi Organisation in India to raise voice against deployment of Army in central and eastern India. From this document it reveals that Central Committee of CPI (Maoist) calls upon people of Bastar and Chhatisgarh to fight against the Indian army as they are backing the police and para-military.

487] In a letter at page no.174 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/latest/hai dear, written to Hai dear by Amani**, it is mentioned that - Hai dear, How are you? How is your health? Two days back I am in a struggling situation. I faced a lot of struggle because I am in the turning point. Elsewhile I took a decision about Manjeera. I am not spend to see her. Because my work is changed and a lot of work to do. It is difficult to do implement the decision earlier we both of them took a lot of discussion is going here in that there is no question to see her in which place?/where? the main question is why you are seeing? prs they don't have any families or family attachments. If you want to do work like pm (part time) then you take Mj. If you continue this position you must don't have any family relations. Any family relation donot use to the movement are cut it don't continue with them (parents also). Further take correct decision then our Cmeet is possible. If you want to discuss with sai take time and tell better is you take your own decision about MJ. Personal problem is Political politicise your problem. How many children are in India face this problem? We are doing nothing abroad your thinking and take decision about 3-4 hours only we discussed Mj issue there is no option you want to take care about MJ we think to continued this Cmeet? no

Cmet shall postponed. Further most of the remaining contents is in English script and in some other language. From this document it reveals that Amani who is wife of accused no.6 Saibaba has written said letter to accused no.6 Saibaba in which problems faced by their daughter Manjeera were discussed.

488] A document at page no.175 of Exh.267 having path **Ex-4/cy-475-13-ex-4/c/OTHERS** is a Press Release of Communist Party of India (Maoist), Dandakaranya Special Zonal Committee titled as **“Oppose The Raoghat Railway Line And The Mining Project Which Would De-rail The Very Existence Of Bastariya People! Claim Of Saving Bhilai Steel Plant is Nothing But Trickery Ensuring the Plunder of Bastar's Wealth By Multi National Companies is Reality!!”**. In this document it is mentioned that local people of Bastar were opposing the project because of destroy of forest and large portion of adjoining forest would also be destroyed due to this project. It is further mentioned that the Special Zonal Committee of Communist Party of India calls upon all the workers and farmers of Chhatisgarh to demand the closure of Raoghat Project and to oppose the Army Development in Bastar to suppress their just struggle. **This document shows accused was opposing Government actions.**

489] A document at page no.177 of Exh.267 having path **Ex-4/C/oct2010/Talks** dated 31st May 2010 written by Azad, spokesperson, Central Committee, CPI (Maoist), India regarding the proposal for talks by Mr. P.Chidambaram to Swami Agnivesh in which it is mentioned that CPI (Maoist), India desires peace sincerely in the interests of the lakhs of adivasis who are being cruelly crushed under the jack-boots of the forces sent by the Indian State and the people of

our country at large. However, to ensure the establishment of peace there should be cease-fire or cessation of hostilities by both sides simultaneously instead of asking one side to abjure violence. If the government is really serious about reducing levels of violence then it should immediately lift the ban on the party and mass organisations so as to facilitate them to take up open forms of struggle. If the government is serious about holding talks it should initiate measures to release Party leaders as a prelude to the release of political prisoners and most importantly, it should stop all its efforts to escalate the war including the measure of calling back all the paramilitary forces deployed in the war zones.

490] A letter at page no.180 of Exh.267 having path **Ex-4/C/oct2010/talks** addressed to Dear Swami Agniveshji by Shrikant, a member of Central Committee, CPI (Maoist) dated 3rd August in which allegations were made against P.Chidambaram, the then Finance Minister of India that so called efforts by CPI (Maoist) are torpedoed by Chidambaram with his dirty tricks by killing com. Azad and he referred P.Chidambarm as Hitler.

491] A document at page no.182 of Exh.267 having path **Ex-4/C/All old and new/others** is a letter written by Swami Agnivesh to The Central Committee Leadership, Communist Party of India (Maoist) in which he asked to pay real homage to Mr. Azad which would be the continuation of the peace process and further appealed to leaders of CPI (Maoist) to discuss and arrive at a date for mutual ceasefire.

492] From the document at page nos.183 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.4/on Azad/Statement on Azad Killing by CPI (Maoist)**, it is clear that it is a press statement dated 3rd July 2010 titled as “**Communist Party of India (Maoist), Central Committee North Regional Bureau**” wherein it is mentioned that “It is not an encounter at all !! It is a cold blooded murder by AP Police !! Red Salute to Martyrs com. Azad (Cherukuri Rajkumar) and com. Hem Pandey (Jitender)!! Let us avenge the killing of the beloved comrades by the khaki clad fascist gangs of AP government!! Followed by detailed press statement.”

493] A document at page no.186 of Exh.267 having path **Exh.4/OTHERS** is a Press Release of Communist Party of India (Maoist) Central Committee with a heading, “**Throw into the dust bin all the vicious propaganda carried on by the ruling classes and corporate media against the Maoist leadership!**” In this document the Spokesperson Abhay, Central Committee CPI (Maoist) made allegations against the State Government that the faithful servant of the imperialists and the Prime Minister of India Manmohan Singh began describing the Maoist movement as the biggest internal security threat after this historic unity. It is also an undeniable fact that the ruling classes have intensified their fascist offensive on massive scale against the revolutionary movement only after this and lastly appealed to the oppressed people of the world and our country, democrats and revolutionary ranks to condemn this vicious propaganda, to stay alert to such tricks of the state, to throw them into the dust bin and to stand firmly with the revolutionary movement in solidarity.

494] A document at page no.188 of Exh.267 having path **Exh.4/31-12-12/Rdf Conference Material/Day 2 of first RDF Conference** is “**Minutes and Proceedings of Day 2 of First RDF Conference**”, reveals that accused no.6 Saibaba had attended the said conference of RDF organisation and he conducted the said conference and in this conference the resolutions of publication of several books containing Maoist literature were passed and discussed about the solidarity to Revolutionary Democratic Front (RDF) to end green hunt operation and to remove the army. At page no.196 of the said document the reference of Abuzmad in Gadchiroli district was made and it is mentioned in the said document that Abuzmad was an area in which there was no administration and army is being sent to combat Maoist. On perusal of confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote which is corroborated by the evidence of P.W.9 Raju Poriya it reveals that accused no.1 Mahesh Tirki and no.2 Pandu Narote were taking accused no.3 Hem Mishra to the forest of Abuzmad in Gadchiroli district to meet the underground naxal leader and lady naxal leader Narmadakka but they were arrested at Aheri Bus Stand.

495] In a letter at page no.200 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/new folder/teacher response**, addressed to **The Home Minister, Ministry of Home Affairs Government of India New Delhi 110001 dated 4 August 2013**, it is clearly mentioned that - “Sir, This is with reference to the report titled, “DU ka Professor Suraksha Agenceyon ke Nishane par” by Niloo Ranjan, in the Dainik Jagran of 1 August 2013. We, the undersigned

(teachers of Delhi University, Jawaharlal Nehru University and Jamia Milia Islamia University) are deeply shocked at the casual and callous manner in which the said report has leveled outrageous allegations against a senior and respected colleague, Dr. G.N. Saibaba, Asst. Prof. in English at Ram Lal Anand College, Delhi University. A newspaper of the standing and experience of Dainik Jagaran should have at least observed the minimal journalistic ethic of confirming these allegations with Dr. Saibaba, before publishing them. Dr. Saibaba has expressly stated that he neither knows, nor knows of anyone by the name of Mahesh Saikia, whose statements to the police allegedly identify Dr. Saibaba as a member of the State Committee of the CPI (Maoist). He has also categorically denied being a member of any State Committee of the CPI (Maoist). Further besides being a respected teacher and academic, Dr. Saibaba has insistently and consistently raised his voice against the military offensive that has been initiated against the tribal populations of India, as well as on a host of other issues. Further we, the undersigned, strongly condemn such measures, whether undertaken by the state or by purportedly independent media houses like Dainak Jagaran, with or without the connivance of the state. We stand in complete solidarity with our colleague, Dr. G.N. Saibaba, against the groundless and unprovoked defamation that this news report has carried out. We wish to record our protest in the strongest terms to the targeting of Dr. Saibaba in this manner, and demand that Dainik Jagaran should issue an unconditional apology for the report, and retract it immediately. And we demand that you, as the Home Minister of this country, control the unruly intelligence agencies who are trying to spread gossip and rumours with an intention to threaten the freedom of speech and critical dissent of individuals in the name

of war against terror. Please do add here your name, institutional affiliation and other details and send your consent to be a signatory of this representation. From this letter it reveals that this letter is written by accused no.6 Saibaba to Home Minister pretending that it was written by the professors of Delhi University where accused no.6 Saibaba was working as Professor for denying the allegations levelled against him to be a Member of banned organization CPI (Maoist).

496] In a letter at page no.203 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/leaflet Sujit Basu**, addressed to Dear Tara Prakash sent by Saibaba, it is clearly mentioned that - "Dear Tara Prakash, I understand that Sambhavana is not a Marxist disabled teachers' organisation. Organisations like Sambhavana should include all disabled teachers irrespective of what philosophy they believe in and Sambhavana is rightly doing so. I have no disagreement with you in this understanding. But discussions on all ideological positions can take place in an organisation like Sambhavana so that individual members take their own decisions and will feel free to express themselves. Further the ruling classes and their governments always portray the fighting people and their movements as creating anarchy and chaos with a view to suppress them. I am completely in favour of destabilising the authority of the exploitative authorities who oppress with rule of thumb. The ruling classes call the anti-establishment movements as anarchist. That is completely different from what I have discussed in my earlier response. The individuals who advocate for non-partisan politics, the so-called independent organisations without "external affiliation" and stand against party politics ultimately turn against organised

resistance of the oppressed and marginalised suffering people. This is the historical truth.” From this document it reveals that this letter was written by accused no.6 Saibaba to one Tara Prakash stating therein that to do concrete work not only disabled teachers' organization but also suggested to do the work about the deployment of Indian Army against Adivasis in Chhattisgarh.

497] In the document at page no.205 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/All other/I feel demoralised to act on any issue**, a letter dated 17 June 2003 addressed to **Comrade by Prakash** in which it is mentioned that “I feel demoralised to work. I am psychologically exhausted and it is because of my restricted movements I am discriminated against, though unwillingly for the UG interactions and strangely again, I proved to be more mobile than any one in the entire country as far the mass organizations are concerned not only in terms of quantity of work but also qualitatively and however, my physical disability has become my political Achilles Heel with regard to my proximity with party committees, which should not have been the case with a revolutionary party”. **This letter shows that 'Prakash'** is accused no.6 Saibaba.

498] It is further mentioned in the said letter that as “I have been facing inhuman discrimination in the socially oppressive society I was born into since my childhood, I felt liberated in the revolutionary circles and masses of our party influence”. From this document it reveals that the said document was written by accused no.6 Saibaba by using another name as “Prakash”.

499] In a letter at page no.206 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/Data/personal/To, with title TO written to Secretary Sub-Committee on Mass Organization (SUCOMO) CPI (Maoist) written by Prakash dated 2 December 2006**, it is mentioned that - Dear Comrade, I have been serving on the all India Fraction Committee under the Subcommittee on Mass Organization (SUCOMO) under the Central Committee of the Party since 1996. I am deeply painted by the treatment meted out towards me by some comrades all these years. Now I find myself in a more aggravated situation. I am not in a psychological condition to bear the situation. My health is also not cooperating to face the present aggressive attitude of these comrades towards me. Therefore, I hereby submit my resignation to my primary membership of the party and to the Fraction Committee. I also resign from all the committees of the Mass Fronts wherever I am a member. However, I would like to state here that I have no differences with the basic political and ideological line of the Party. I remain a supporter of the Party and serve the movement in whatever little way possible to me. I offer m apology for taking this decision at a time when I should have been doing more quality work in building the mass work I have been entrusted with by the Party. My decision of resignation to the Party membership and all Mass Fronts is final and non-negotiable. I will soon submit a detailed letter of resignation. **This shows that it is a resignation letter by accused no.6 Saibaba...**

500] A document at Page no.208 of Exh.267 having path **Ex-4/Cy-475-13-Ex-4/c/All other** is a letter addressed to **Dear Comrades by Prakash (i.e. accused no.6 Saibaba)** in which it is mentioned that “ A decade of work in the mass front has been

completed for me. Now I feel I may be given work in the direct Pt front that demands to go underground for which I am prepared. If my handicapness is unsuitable for such work, I am prepared for any job entrusted by the Pt. In such a case, my field may be changed to that of civil rights work. Only in case I will not fit for UG work. But in managerial and lisioning work. I also developed a feeling that I am condemned to stay in Delhi as long as I am in A3 in the present circumstances. I am forced to think by the circumstantial conditions that no breakthrough is possible at present in A3. It has developed some innate qualities of inertness. A major eventuality is needed to change the situation that may even require a total change. I donot want to waste any more time in my cadre life on this. From this document it reveals that the said document was written by accused Saibaba by using another name as Prakash.

501] The document at page no.210 of Exh.267 having path **Exh.4/31-12-12/Rdf Conference Press note final Day-2** taken out from the hard-disk Exh.4 having path **Exh.4/8 Oct 2012/RDF Conference Material/RDF Conference Press Note-Day 2**, titled as **Revolutionary Democratic Front (RDF)**, is a **Press Release** dated 23rd April 2012 about the Conference held at Hyderabad, Telangana which was written by accused no.6 **Saibaba**, and it is stated therein that G.N. Saibaba, the Deputy Secretary of RDF, a Bhumaiah of the Telangana Praja Front (TPF), alongwith Varavara Rao revolunary poet and Lenin Kumar, editor of Odiya cultural magazine Nishan, Jharkhand's Sharmila of Nari Mukti Sangh and others addressed the delegates of the RDF conference on its first day and it is further mentioned in the said document that A new All-India Committee has

been elected by the Conference consisting of eighteen executive members from 13 states and it is further mentioned in the said document that the first conference of RDF successfully concluded with the resolve to carry forward its stated goals of mobilising the people for struggles in the times to come.

502] From the document at page no.213 of Exh.267 taken out from the hard-disk Exh.4 having path **Exh.4/Nepal/copy of matter.zip.sda/matter/disen with Brt**, it reveals that it is regarding discussion with Birat Grp. Sept. 2010 and further stated that - “Even police force has advanced weapons compared to Nepal. So sophisticated weapons needed to fight against despotism and must face Indo-Bhutan mercenaries. Regional, national, socio-cultural, linguistic multiplicity much more complex of Nepal.

Personal documents of accused no.6 Saibaba was found in the electronic gadgets (Arts.1 to 41) seized from the house search of accused no.6 Saibaba.

503] Some personal documents are also found in the electronic gadgets Arts.1 to 41 i.e. CDs, DVDs, Pen-drives, hard-disks seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165) which are as under :-

504] On perusal of document at Art.150 taken out from the pen-drive (Exh.23) seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165) having path **Exh 23/ALLL/Accommodation Issue/Letters/ Representation before the**

Inquiry Committee, it reveals that it is a letter addressed to Prof. Anandakrishnan, Chairman Inquiry Committee and it is mentioned therein as follows -

“Looking into the allegations in connection with the recent selection of candidates to teaching post at CIEFL, Hyderabad, by the University Grants Commission 12th December 2006 wherein it is stated, I am a physically handicapped person with a severe deformity (90%). Both my lower limbs were affected by polio in my childhood. I cannot stand or walk on my own. I move in a wheelchair. With a great difficulty I could come up to the level of higher education. Presently I am a lecturer in a permanent position at Ram Lal Anand College, University of Delhi. I am deeply interested in teaching and studying literary and cultural forms and practices of our society. I am engaged in teaching and research in literary studies at the University of Delhi and pursuing for a PhD degree from The department of English, University of Delhi.”

505] On perusal of a document at Art.151 taken out from the pen-drive (Exh.23) seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165) having path **letter/document Exh 23/ALLL/Letter re Adhoc Appointment**, it reveals that it is a letter addressed to The principal Ram Lal Anand College University of Delhi Benito Juarrej Road, New Delhi 110021 and it is mentioned therein as follows -

“We would like to bring to your notice once again that a good number of classes, including two sections of Foundation Course, six sections of Application Language course of FYUP and several English Honours classes of Semester III and V remained unassigned at the Department of English.”

506] On perusal of a document at Art.152 taken out from the pen-drive (Exh.23) seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165) having path **Exh 23/ALLL/Letter to Narayana Academy**, it reveals that it is a letter addressed to Mr. Santosh Kumar Mishra, Centre Head (Kingsway Camp) 2nd Floor Mall Road, Near GTB Nagar Metro Station, Delhi, and it is mentioned therein as follows -

“My daughter, G. Manjeera (Admission No : 162:1801) joined your program ETYCP-2014 in May 2012. However, she could not cope up with the course beyond September 2012 due to several reasons. With your kind cooperation and counselling we have tried to continue her in the course” and below the letter name of accused Dr.G.N.Saibaba is mentioned.”

507] On perusal of a document at Art.153 taken out from the pen-drive (Exh.23) seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165) having path **Exh 23/ALLL/All/Letter to SBI**, it reveals that it is a letter addressed The Manager SBI, Delhi University Branch, and it is mentioned therein which is reproduced as follows -

“On 31 October a sum of Rs.5000/- was debited from my savings account (No.30577065300) twice, though I withdrew only once. In fact there are four entries on the same day in my pass book” and at the last, below “Yours truly” name of A.S. Vasantha Kumari is written.”

508] On perusal of a document at Art.154 taken out from the pen-drive (Exh.23) seized from the house search of accused no.6

Saibaba under seizure panchanama (Exh.165) having path **Exh 23/ALLL/All/Research Unit for political Economy**, it reveals that it is a letter addressed Girish Srnivasan Research Unit for Political Economy, Ground Floor, Sawant Marg, Colaba, Mumbai 400005, and it is mentioned therein which reproduced as follows -

509] “Apologies for delay in sending the payment for photocopying and postage charges. Due to hectic schedule I could not immediately send the cheque.” and below the letter name of accused no.6 G.N.Saibaba is written.

Documents in respect of foreign relations and correspondence of CPI (Maoist) India with CPI (Maoist) of other countries found in the electronic gadgets (Arts.1 to 41) seized from the house search of accused no.6 Saibaba.

510] Prosecution relied on the documents taken out from the electronic gadgets Arts.1 to 41 i.e. CDs, DVDs, Pen-drives, hard-disks seized from the house search of accused no.6 Saibaba under seizure panchanama (Exh.165) which are alongwith Exh.267 shows the incriminating material in respect of relations and correspondence of CPI (Maoist) India with CPI (Maoist) of other countries against the accused which are as follows:

511] From the letter dated 31 March 2005 at page no.13 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.4/All other/lawyer's tour of south Asia**, it is clear that it was written To all chapters and supporters wherein it is mentioned – the Statements of 2nd International Delegation to South Asia and it is stated that the

main purpose of this delegation was to investigate the current situation of the Nepali Revolutionary Leaders C. Prakash Gajurel (known as Comrade Gaurav) and Mohan Baidhya (known as Comrade Kiran) who are being held prisoner by the Indian government. It is further stated that “ the delegation also came to the conclusion that the arrest, mistreatment and imprisonment of 19 Nepali nationals in Patna, who were legally in India at the time of their arrest, is another politically motivated abuse of the rights of these prisoners. The Indian government is also charging them with “sedition” and “inciting to wage war against India” based solely on their political views and their admitted membership in or support for the Communist Party of Nepal (Maoist).

512] A document at Page no.57 of Exh.267 having path **Exh.4/c/for said/working Directory 201/New Folder/final months after correction/Manjeera/core** titled as “**Meeting of Core of A3/A4 on Oct 2nd and 3rd 2006**” contains various resolutions regarding the suggestions of demands for the campaign of building A3 and A4, mass movement, displacement movement and funds and budgets for the development of A3 and A4 committees of banned organisation CPI (Maoist) working in various States of India and it is mentioned that Prakash i.e. accused no.6 Saibaba alongwith his companion must take serious attempts at consultation on all A4 FC decisions and other matters concerning the organization. This document stating that “Regarding the Vice-Presidentship of A3, Joseph will continue till the conference and Prakash will be asked to take the responsibility due to his greater role in A3 and further stated that Prakash has agreed to take on the responsibility of A3 networking through the e-mail with

international contacts. In this regard Joseph will hand over all the contacts to him. From this letter it shows that international responsibility was given to accused no.6 Saibaba.

513] A document at page no.78 of Exh.267 having path **Exh.4/OLD EHD/OLD/All 12345/ILPS/Dear Arman, Exh.267** is a letter addressed to Dear Arman wherein it is mentioned that when accused no.6 Saibaba is in London, Holland and Birmingham during their discussion following proposals are agreed -

Some representatives from India from anti-displacement front, political prisoners and RDF, possibly anti- caste movement will join ILPS TIA.

An international team of ILPS to visit areas of anti-displacement movements in India in March 2008 to come out with a report for international propaganda. The team will also to visit Chhattisgarh in the area effected by Salwa Judum, an area of indigenous people most serious affected in a major way. Other important areas, among others, would be Nandigram and Singur West Bengal, Kalingnar, Jagatisgapur and Kashipur in Orissa, and Jharkhand. The team needs to in India for at least 15 days.

Followed by the team's report, an International Public Hearing may be conducted as suggested by Comrade Jose Maria Sison, with internationally renowned people as jury simultaneously from India and London sessions through video conferencing. But a section of the international jury be able present in India.

ILPS to aid and promote the formation of international Solidarity Committees supporting and taking up the issues of Indian Anti-displacement movement particularly in Europe and Americas to start with. The international monopoly corporate houses that directly displace, kill, maim, rape people in India are to be targeted in a big way through campaign.

Comrade Varavara Rao has agreed to participate in the TIA.500]

514] This document shows that there are some international programmes of ILPS organisation and at the end of the letter accused no.6 Saibaba has informed to contact some members at the end of each mail contained so that they will understand the importance of the organisation and at the foot of this letter the e-mail of accused no.6 Saibaba is given.

515] A document at page no.81 of Exh.267 having path **Exh.4/All old and new/others/international/dear GNSaibaba** is a letter on the letter head of ATIK (Avrupa Turkiyeli Isciler Konfederalasyonu), Turque and Europe addressed to accused no.6 G.N.Saibaba from Chairperson of International Relation Commission ATIK wherein it is mentioned that said ATIK launched a campaign for the solidarity with the Indian people and people's movement against Operation Green Hunt (OGH) a scheme of Indian Government and invited Senior Maoist leaders from India to Europe and also talked to Turkey about the joining of Maoist leaders. From this letter it reveals that accused no.6 Saibaba is an active member of CPI (Maoist) India and he is in contact and has relations with other Maoist organisations working in foreign countries.

516] A document at page no.92 of Exh.267 having path **Exh.4/OLDEHD/All others 2/Arrange/Azad matter/Communist/Movement** contains material against imperialism, against modern fascism, struggle, organize and construct the party written by

Communist Party Maoist-Italy, France, Turkey North Kurdistan and suggested that to install amid the rebel youth of the imperialist banlieues, constructing youth revolutionary organisms and to give support and orientation to the student struggles, immigrants, lodgement occupants, to the popular struggles on the territories against military bases. Strengthen and expand women's struggle, constructing a revolutionary proletarian feminist movement. To struggle against repression, in developing campaigns and Red Aid organisms. On the international level to support all anti-imperialist struggles and peoples' wars and further suggested to contribute to a new unity among communist parties on the basis on the proletarian internationalism, the assertion of Marxism-Leninism Maoism, the path to revolution. At the end of letter there is mention of Communist Party Maoist – Italy, Communist Party Maoist – France, Communist Party Maoist – Turkey North Kurdistan.

517] A document at Page no.114 of Exh.267 is an article published by Communist (Maoist) Party of Afghanistan on the occasion of Martyrdom of Comrade Azad, a Maoist Leader of India. The contents of the said document are reproduced as under :-

**On the Occasion of Martyrdom of Comrade Azad
Expressing solidarity with Communist Party of
India (Maoist)**

Comrade Azad, spokesperson for Communist Party of India (Maoist), was murdered on July 1st 2010. Let us honour his memory and continue on his path! Comrade Azad was a member of central committee and also a member of the politbureau of the Communist Party of India (Maoist). His death is a big loss for the CPI (Maoist), the Indian revolution,

the revolutions of the region, and also the global revolution. He would have played a very critical and decisive role at the current juncture: at a time when the reactionary Indian state on one hand has mobilized more than 250000 police and mercenary forces against the Maoist peoples war within the framework of a large military campaign called Operation Green Hunt, and on the other hand it is espousing a deceptive propaganda about "peace talks" and "ceasefire." His murder at the hands of Andhra Pradesh's special forces, and that even in another state, which is even illegal under the laws of the Indian state, illustrates the fact that the reactionary state is using the false propaganda around "ceasefire" and "peace talks" as a façade for hiding its anti-people brutal repression and for this purpose they would even break their own laws. The resistance of the masses under the leadership of CPI (Maoist) against "Operation Green Hunt" that spreads across twenty states out of 28 Indian states is a resistance against the comprador policies of the reactionary Indian state which is making possible the vast plunder and pillage of the natural resources of India by multinational corporations. In the process of the ongoing resistance, which continuously expands and spreads, the masses of people are selflessly giving sacrifices and also give tough blows to the vicious and repressive forces of the reactionary state. The officials of the reactionary Indian state and at its helm the Prime Minister, Manmohan Singh, since the last few years is continuously declaring that the Maoist peoples war is the biggest threat to the Indian state. The armed struggle and the current peoples war in India that is being led by CPI (Maoist) is the continuation of the Naxalite uprising that began a few decades ago in that country. Now this revolutionary war has spread across the vast and populous country and directly affects the lives of hundreds of millions of Indian masses, the martyrdom of comrade Azad, as one of the central and top leaders of the movement is considered an

important success for the reactionary and atrocious Indian armed forces. But, among the hundreds of millions of the revolutionary Indian masses, there are many more `Azads' and many other `Azads' will join the battle. The people's war in India can and should successfully overcome this loss and continue ahead until the total victory of the revolution. Communist (Maoist) Party of Afghanistan on the path of struggle for starting the peoples war in Afghanistan, whose specific character at the current juncture is the people's revolutionary national war of resistance against the imperialist occupiers and their puppet regime will commemorate comrade Azad and expresses its solidarity with CPI (Maoist) and the peoples war in that country on the occasion of this loss.

Communist (Maoist) Party of Afghanistan

July 15, 2010

518] A document at page no.136 of Exh.267 titled as "**Prabhatham will not die**" shows that the genocide in Sri Lanka on Tamils is the continuation of aggression on the fighting people of Pelestine, Afghanistan and Iraq and it is alleged that this genocide on the Eelam struggle under the leadership of V Prabhakaran was supported by Indian Government.

519] A document at Page no.137 of Exh.267 under the head of Office of the Prime Minister Transnational Government of Tamil Eelam, 875, Avenue of the Americas, Suite 1001, New York, NY 1001, USA, dated 19 February 2011 titled as "We share this Joyful moment with the people of Egypt!".

520] A document at Page no.139 of Exh.267 under the head of Office of the Prime Minister Transnational Government of Tamil

Eelam, 875, Avenue of the Americas, Suite 1001, New York, NY 1001, USA, dated 8 March 2011 titled as “Vehement condemnation of Despicable Attack on Member of Parliament Sivagunanam in Sri Lanka!”.

521] A document at Page no.224 of Exh.267 having path **Ex-4/C/Ritu 13 March/my documents/open letter.final Jul.A09** is a open letter to United Communist Party of Nepal (Maoist) from the Communist Party of India (Maoist) addressed to dear Comrade written by Central Committee CPI (Maoist), India dated 20 July, 2009 and on perusal of said letter it reveals that there were relations in between CPI (Maoist), India and United Communist Party of Nepal (Maoist). To that effect it is mentioned that - **in the name of the struggle against dogmatism, there have been serious deviations in the International Communist Movement (ICM), often going into an even greater, and more dangerous, abyss of right deviation and revisionism. In the name of creative application of Marxism, communist parties have fallen into the trap of right opportunism, bourgeois pluralist Euro-Communism, rabid anti-Stalinism, anarchist post-modernism and outright revisionism.** Right danger or revisionism in the ICM has emerged as the greatest danger in the period following the usurpation of the leadership of the CPSU and state power in the Soviet Union after the demise of comrade Stalin. Com Mao and other genuine revolutionaries had to wage a consistent ideological-political struggle against revisionism and reformism in the ICM and also within the CPC. However, despite the great struggle waged by com Mao and other Marxist Leninist revolutionaries all over the world against revisionism, it has been the

revisionists who have temporarily won and dominated the ICM in the contemporary world. The ideological-political debate over the creative application of MLM to the concrete practice of the revolution in Nepal has to be conducted with a correct grasp of this international struggle ever since the time of com Lenin, and particularly by Mao against Khrushchev revisionism.

522] Further CPI (Maoist) India suggested to conduct a debate within the Maoist camps world-wide and to that effect it is mentioned in the said letter that - We are sending this Open Letter to your Party so as to conduct a polemical debate both within your Party and the Maoist revolutionary camp worldwide. This step has become necessary because of the very serious developments that have taken place in the course of development of the revolution in Nepal that have a bearing on our understanding of imperialism and proletarian revolution as well as the strategy-tactics to be pursued by Maoist revolutionaries in the contemporary world; there is also serious deviation from the ideology of MLM. Hence these are no more the internal matters concerning your Party alone.

523] Further there is mention of Naxalbari in the said open letter by CPI (Maoist) India to the Comrades of CPI (Maoist) from other countries.

Incriminating documents found in electronic gadgets Arts.1 to 41 seized from the house search of accused no.6 Saibaba at Articles 147 to 164.

524] Article 147 having **Exh23/ALLL/Accommodation issues/Letters/ letter to Saibaba** is a letter addressed to accused no.6 Saibaba by Surendra Mohan in which it is mentioned that said Surendra Mohan cannot be part of the CPI (Maoist) program, as he never subscribed to violent resistance and he was taking initiative for peace which between the Government and the Maoists and he was proposing violence on both sides should come to an end. The contents of this letter clearly shows that CPI (Maoist) was promoting the activities of violence and hence he was not ready to work with CPI (Maoist).

525] Article 148 having path **Exh23/ALL123/college /Kuttyletters/open letter of Kutti** is a open letter addressed to Sabyasachi Panda wherein it is mentioned that, I was in central jail (Hydrabad) along with Modem Balakrishna (Central Committee Member) and Sakhamuri Appa Rao (martyr) in the same barrack. Balakrishna and Appa Rao underwent more than ten years in jail. Balakrishna was my guide and teacher. I am a Keralite born and brought up in Tamilnadu and studied Tamil (can't read and write my mother tongue that is Malayalam). Balakrishna used to share his experiences of the Guerilla Army of the erstwhile CPI (ML) (People's War). Guerilla Army fighters won't get chicken biriyani daily. They get whatever food the people offer. That is rice, mirch, tamarind and salt. With that they have to manage.

526] Article 149 having path **Exh 23/ALL123/ college/RLA Work Load/Tactics of intimidation by Jharkhand Govt. to dissuade future fact** is a document dated 29th May 2013 mentioning

tactics of intimidation by the Zarkhand Government wherein it is stated that, “We strongly condemn the absolutely arbitrary and unprecedented action of the Jharkhand police administration in detaining eight members of a CDRO (Coordination of Democratic Rights Organizations) fact-finding team while they were addressing a press conference in Ranchi. The team had just returned from a fact finding mission to Chatra, where ten members of the CPI (Maoist) had been supposedly killed in a long gun battle with the TPC, a splinter group actively supported by the state government, in March 2013”.

527] A document at Art.155 having path **ex. 4/31.12.12/rdf pdfi/resolution/EC Meeting decisions delhi** titled as, “**Revolutionary Democratic Front (RDF)**” All India EC Meeting 8 and 9th May 2007, Delhi. From the said document it reveals that there are short-forms of names of some persons who attended the said meeting and the name of accused no.6 Saibaba is mentioned as “S B” and in the said meeting homage was paid to the martyrs of RDF. The contents of the said document are reproduced as under :-

Revolutionary Democratic Front (RDF)

**All India EC Meeting
8 & 9th May 2007, Delhi**

Present: R K, S B, D P, APS, Ajay, Jeetan,
Chotan, Tinku, RCP, Sunil and Harpal Singh

Absent : Mukhu

51) Homage

Homage paid to the martyrs of various people's movements.

One minute silence was observed.

52) Co-option of New Members

Resolution on Co-option of New Members

Comrade RC Prasad, Secretary of Bihar Committee was proposed and co-opted as a member in the EC unanimously. A letter from the Bihar Committee was read out by the Secretary regarding the EC of the Bihar Committee about its decision to send him to the All India Committee.

Secretary proposed Harpal Singh, convenor of Rajasthan unit to be co-opted into EC as a member. The EC unanimously agreed.

53) New Units.

The Secretary reported that a 5-member committee of RDF was formed in Rajasthan with Harpal Singh as convenor.

In Maharashtra the local comrades expressed their inability to form a local unit of RDF at the moment.

In Kerala a banner has been started entitled Revolutionary People's Front. The local comrades want to invite an all India EC member to start initiate a discussion on perspective of RDF. This meeting also will include discussion on Nandigram with a speaker from West Bengal. Saibaba will go to Kerala from the EC.

In UP Poorvanchal Sanskritic Manch, Bharat Nau Jawan Sabha, Inqilabi Chatra Morcha and a Kisan Sanghatan are preparing to form RDF. The process has started.

54) Reports and Review

a) State Repression on Orissa Report

As per the decision of the earlier EC we could pursue and help a Fact-finding team of 6 members go to South Orissa to bring out facts. The team went and brought out a report.

b) Anti-Salwa Judum Campaign.

A team and an action programme was drawn but not implemented for some reasons.

c) Political Prisoners

Some reports and details were collected but not much progress was made on this issue so far. Now we have to plan afresh.

d) Naga Trip

Could not be done because the Naga organisations weren't in contact. Now it will be taken up as they have come into touch.

e) On Farmers Issues

In Bihar, Jharkhand, and Delhi limited wall-writing and leafleting was done.

West Bengal

- EC meeting took up a discussion on 20th Nov on the draft manifesto. On many points clarifications are sought from the EC. Any senior EC member should come and clarify the points.
- A convention was conducted on land issues.
- GPM participated in the all India labour strike. There was much debate about it.
- On 26th December GPM observed Mao's birth centenary in a hall meeting.
- Since December on Singur there were many actions through joint programme.
- Many programmes of protests through Sanghati Udyag (Solidarity Initiative) - having more than 30 organizations.
- Many forms of struggles through Singur Krishi Jami Raksha Committee – Kolkata based joint front.
- Many forms of protests through Paschim Bengal Krishi Jami Raksha Samithi.
- Many programme through Gana Unnayan Jan Adhikar Sangram Samiti – 7 Parties (PCC, Janatadal, Janadatal (Secular) Jamajwadi party and others)

+19 mass organizations: Chair Siddiquilla
Choudhary

- Part of Bhumi Uchhed Pratirodh Committee – Nandigram.

Punjab

f) Election boycott programme with 2000 people.

g) Bhagat Singh Shadat Divas at Hussainiwala with 2000 people.

Delhi

- Mostly joint programmes.
- Protest programme against Sadam Hussain's hanging
- 4000 leaflets on agriculture crisis distributed.
- Leaflets distributed on sealing issue.
- Bhagat Singh Sahadat Divas Programme.
- Protest dharnas organized two times before CPIM office
- A convention against SEZ in Gandhi Peace Foundation.
- May Day with 500-750 workers

Jharkhand

- No important programme
- Walling and pestering in some places on farmers' issues.
- Press release on bandh.
- March 8th programme by NMS in 21 places. Participation 200-2000 people.
- Participated in organizing the anti-displacement conference.

Bihar

- No programmes of RDF banner or constituents' banner the state not allowing.
- Some small programme on some joint fronts happened.
- A protest on Sadam Hussain's hanging
- On Afzal's death sentence on 10th December, a

ghosti was organized

- A press release on All India workers' strike.
- Jhopadpatti footpath dookandaar Sanghatan takes many protests.
- May Day through RDF – in Khagaria -2000 people participated.
- May Day in Nawada in 4 places.
- On farmers' issue walling was done in rural areas and 10000 leaflets distributed.

Secretary's Sum Up:

We need to develop state level units well, then only we will be able to do our programmes in a better way.

Vice-President's Remarks: Political programmes of RDF should be planned according to our manifesto not on adhoc basis or spontaneously.

55) EC Functioning and Work Division Among EC members

Resolution on EC Functioning and Development of the Organisation:

The all India EC discussed and analysed the weaknesses in its functioning and in implementing its planned activities. After discussing different points thoroughly the following decisions are taken:

- a) RDF's strength lies in its state units. So the first priority is to strengthen its state units and the constitute organizations in each state wherever the state units are already in existence;
- b) All EC members should also focus their attention in one or more states to develop state units;
- c) By taking up the people's burning issues in each state, our state units and their constituent organizations should go to the people and organize struggles by taking our politics to them;
- d) We should plan our programmes based on our manifesto concretely linking it up with the present

local problems of the people in each state;

e) The political action calls given by the all India EC should directly reflect the ground level problems of the people, wherein the local units can implement the calls by linking them with local burning issues of the people;

f) The all India EC members should work in close co-ordination with each other and particularly the office-bearers should also meet whenever needed to intervene into all major burning issues which come up time-to-time at all India level and at different level of states;

g) All issues that various EC members are involved in building struggles through different fronts should share various aspects with the entire EC so that the EC will have comprehensive idea about all activities;

h) A workshop will be conducted with the EC members of each state committee on organizational and political growth of the organization in connection with the RDF's manifesto and joint activities;

i) All reports from the states should be presented in written form in detail;

j) Press statements should be issued on all such burning issues immediately and they should sent to the state units and

k) In addition to other responsibilities in different fronts each EC member is already involved the specific State-wise responsibilities for building RDF are entrusted here as follows:

1. Bihar: RK along with RC Prasad
2. UP: RK+APS
3. Jh: Ajay+Jeetan
4. WB: SB+Chotan+Tinku

5. Delhi: SB+Sunil
6. Rajasthan: RK+Harpal
7. UK: Ajay
8. Kerala: SB
9. Punjab: DP+Mukhu
10. Maharashtra: DP
11. Orissa: Ajay+Jeeatan
12. Haryana: Ajay

Resolution on State Level Structures:

All the state units should drive the constitute organizations to take up peoples' issues and strengthen each organization.

Each state unit should take up membership drive through their constituent organizations and they should also give individual membership.

Future programme:

Resolution on Economic Blockade Programme

A month long programme of Economic Blockade will be observed starting from the Naxalbari Day, 23 May 2007 and culminating with 25 and 26 June 2007 on the occasion of Emergency Day against imperialist plunder and aggressive displacement through SEZs and other kinds of displacement.

An all India Leaflet will be issued immediately. The state units should take up this Economic Blockade programme by including immediate peoples' issues of their state and bring out the same leaflet or separate one. The Economic Blockade programme should involve local people on their issues.

The importance of Naxalbari uprising and the present Nandigram resistance should be highlighted as the people's forms of resistance and struggles. Different forms of resistance and propaganda should be creatively planned and taken up according to the convenience of the local units.

Resolution on 150 years of 1857 and Bhagat Singh's Birth Centenary Programme

150 years of 1857 and Bhagat Singh's Birth Centenary Year should be observed in all states between 10th May and 28th September 2007. We should join wherever PDFI organizes programmes. In places where PDFI is not there or not able to organize any programme, RDF should organize on its own banner or through joint banners.

We will participate in the 31st May programme in Delhi on the banner of PDFI. Some mobilization should be done as far as possible from Delhi. After this programme we should call for the meeting of the subcommittee of PDFI on this and try to convince the committee to organize the rest of the programmes on the banner of PDFI or PDFI and others as a joint programme.

Our Punjab unit has appealed to all organizations to hold an impressive programme at Hussainiwala on 28th September 2007 on the occasion of Bhagat Singh's birth centenary year. In connection with this programme the all India EC calls upon all state units and fraternal organizations to join the programme at Hussainiwala as far as possible for them depending on their convenience.

Resolution on State Repression on Revolutionary Organizations

All the state units will send the details of repression on revolutionary organizations by 10th June, 2007. After collecting this information, a booklet will be prepared by 15th July 2007 and a programme of action to resist the repression will be drawn.

After the booklet comes out, we will organize protest conventions in Kolkata, Delhi and other cities by involving democratic intellectuals and democratic organizations.

Resolution on Anti-displacement Issues

RDF will positively put forward and explain the limitations in fully involving the subcommittee of PDFI in a meeting of the subcommittee.

Tentative date for all India bandh is 29th October from our side. Finally the date has to be fixed after consultation with all organizations. To implement the bandh call, an appeal by prominent democrats has to be prepared and with this appeal we should approach different organizations and parties which are against displacement in any manner. We should also hold four regional meetings in Delhi, Kolkata, Mumbai and Hyderabad to get support from the organizations and parties.

RDF units should involve in the process taken up by the Vistaapan Virodhi Jan Vikas Andolan (VVJA) to form state units of this front. The state units of VVJA in Jharkhand, Orissa, West Bengal, Chhattisgarh, Andhra Pradesh and Maharashtra are to be formed immediately.

RDF will participate in the Kolkata Conference against SEZs and presents our perspective paper. Saibaba will prepare the paper and present it. We will also propose that there should only one anti-displacement front and hence we will firmly argue that the process of Kolkata Conference should form one front by emerging the both processes.

We will also argue that the perspective of such a front should be made in such a way that the NGO's wouldn't occupy its space.

West Bengal comrades will immediately meet the host organizers of the conference in Kolkata and discuss all aspects discussed in this EC meeting.

Resolution on Political Prisoners

The Secretary along with Anjani and Rona will form a team to immediately at Delhi and activate work on

Political Prisoners Committee. Jeetan and Chotan will also join this team in all India work of this committee.

Resolution on Anti-Salwa Judum Campaign

All RDF units and EC will help the process of the work in the campaign against Salwa Judum. We should co-operate with CATAS in its activities.

Resolution on Farmers' Issues and PDFI Activities.

RDF will work with PDFI on these issues as it is taking a major initiative on farm-sector crisis. It will send delegates and involve in the Patiala Kisan Panchayat on farm-sector issues on 24, 25 and 26 May 2007.

In UP, a Kisan Sammelan will be organized by PDFI on 16th June in Mainpuri, and on 17th June the founding conference of PDFI, UP in the same place. RDF should co-operate in these programmes.

Decisions taken in the earlier EC meeting on farmers' issues now will be done through PDFI.

For PDFI office and its functioning Saibaba will talk to Yova Bharat. There will be no residence and food preparations in the office. Delhi unit of RDF will find a person for this office.

Resolution on Magazine and Other Publications

The magazine should cover more struggle reports in different forms. We should collect more reports from the struggles. The magazine should be distributed more widely among the democrats and common people. The magazine should come out regularly. We should collect the returns regularly.

A booklet on Bastar's people struggle will be prepared and published by August 2007.

Jeetan will send material on Jharkhand struggles for another booklet and also for the magazine.

Resolution on Office

Office will be decided in consultation with Delhi unit of RDF.

Resolution on Funds

The state units which haven't paid their monthly regular contributions for the all India committee should pay in the next meeting.

Next Meeting

1 and 2 September in Kolkata

The End

528] From the above document it is clear that EC committee of RDF had taken review of work and steps to be taken by the Revolutionary Democratic Front (RDF) in all over India and future strategy was decided to strengthen their organisation and in Point no.5 at Sr.No.11, accused no.6 Saibaba was given respectability of W.B. (West Bengal), Delhi, Kerala.

529] A document at Art.156 having path **ex. 4/31.12.12/rdfpdfi/resolution/7thmeeting** titled as "REVOLUTIONARY DEMOCRATIC FRONT (RDF)" 7th Central Executive Committee Meeting which was held on 27-28 December 2007 at Delhi which was attended by accused no.6 Saibaba and other members. The contents of the said letter are reproduced as under :-

REVOLUTIONARY DEMOCRATIC FRONT (RDF)

7th Central Executive Committee Meeting
27-28 December 2007, Delhi

Attended by: *Raj Kishore, Darshan Pal, Sai Baba, Arjun Prasad, Jeetan, Tinku Da, R C Prasad, Ajay, Baldev Makkhoo*

Absent : *Khagen da, Harpal, DPM, Chottan Da, Amrit Rabha, and Krishnan*

Agenda:

- 1] Homage
- 2] Review of last meeting decision and Reports from all India and state
- 3] International Reporting
- 4] RDF state organisation situation and conference
- 5] PDFI
- 6] Future Tasks:
 - Anti Displacement Front*
 - Political Prisoners*
 - Indo-Naga people to people dialogue*
 - GPCR*
 - On Emergency day*
 - State Attack on Revolutionary Movement*
- 6] Funds and budget
- 7] Publications and Website
- 8] Others
- 9] Self criticism- Criticism

Resolution 1: To raise voice against state policy of brutal suppression of naxalite movement, a team of intellectual will be formed. All ECM will talk to intellectual for this team. A team of RDF ecm is formed including Saibaba, Rajkishore, Tinku Da. A Booklet on State repression will be published.

Resolution 2 : Review

1] Booklet on state repression was not published yet because reports of repression were not sent from states. Other programme was not taken due to this.

2] Political prisoner campaign has not moved ahead due to lack of preparation. A meeting to form a preparatory committee has been called on 13th January 2008 to organize All India conference to form Committee to Release Political Prisoner.

From this document it is clear that it was resolved to raise voice against State policy and a team of intellectual will be formed.

530] A document at Article 157 having path **ex. 4/31.12.12/rdfpdfi/resolution/ECResolutions/JointMeetingofAIPRF and SFPR 20-05-05_Modified** containing Resolutions of Joint Meeting of AIPRF and SFPR held on 20 May 2005 at Delhi. The contents of the resolutions of the meeting are reproduced as under :-

Joint Meeting of AIPRF and SFPR

Date: 20th May, 2005
Delhi.

Attendance:

From: AIPRF EC: Dr. Darshan Pal, G.N. Saibaba, Arjun Prasad Singh, Kumar Buradikatti, Gurmeet Singh, Raja Sarkel.

From SFPR EC: Raj Kishor, Tara Singh, Sunil, B. P. Rakshit, Jeetan.

Homage paid to all those martyrs who have laid down their live for the sake of establishing a new social order free from all kind of exploitation and oppression.

Self -introduction of each member done.

Saibaba and Raj Kisore, the secretaries of both AIPRF and SFPR briefed the process and the background of the discussions conducted between the delegations of organisations, which was aimed at merging the two organizations into a single one. He, as per the conclusions arrived at those meetings, proposed to merge the tow organizations into a single one. According to the understanding of those meetings, also he explained that the revolutionary politics, i.e. upholding the revolutionary movements that are going on across the country, propagating the revolutionary politics, **boycotting the parliamentary elections**, and thus showing the real

revolutionary path to the vast Indian masses, should be the political perspective of the new organization.

Resolution: 1

All the members present in the meeting unanimously resolved to unify AIPRF and SFPR into one organization with a new name Revolutionary Democratic Front (RDF). RDF shall work with a perspective of taking New Democratic Revolutionary politics into the broad masses of the country with the slogans like *Naxalbary Ekhi Rastha; Andhra Bihar, Jharkhand Chattisgarh Dikhata hain Rastha* and it shall work among the masses by taking up election boycott in order to project the new democratic political alternative as the only way for the liberation of the country and the people from imperialism and feudalism. RDF supports and strives to integrate with all democratic and anti-imperialist struggles of workers, peasants, women, dalits, nationalities, adivasis, youth etc.,

Today, i.e. 20th May 2005, we herewith constitute the new formation by merging both the ECs of AIPRF and SFPR and resolve to constitute all our lower committees by merging various units.

Reservation of Gurmeet, Darshan, Kumar and Arjun: RDF should **not participate in the parliamentary election** nor should it call for election boycott all the time. It may expose, boycott etc, depending upon the concrete situation of the time and place.

Resolution 2:

After merging both the ECs, an adhoc executive committee is constituted with 18 members including a President (Khagen Das), Vice President (Darshan Pal), Secretary (Raj Kishore), Assistant Secretaries (G N Saibaba, Sunil, Punna Rao) and Treasurer (Tara Singh). Other members: Arjun Prasad, Ajay (Haryana), Amrit Rabha (Assam), Krihanan (Tamil Nadu), Jitan Marandi (Jharkhand), Kumar

(Maharashtra), Shivam Kutty (Kerala), Vijay (Rajasthan), Tinku (West Bengal), Chotan Das (West Bengal), Ghoran (Orissa).

Resolution 3: The draft declaration cum press release placed in the meeting will be improved mainly in language and slightly in content by incorporating the suggestions and amendments different members made. Gurmeet will take the responsibility to do so and place it by today evening before the meeting will be over.

Resolution 4: A Press-meet should be held on 23rd May, at Mulakat Restaurant in New Delhi at 3 p.m. to declare the merge and the future political orientation of the new organization. The meet will be addressed by Raj Kisore, Dr. Darshan Pal, and Tara Singh and G.N. Saibaba and Sunil will be on the dais. After the press-meet, a small cultural programme will be performed outside the venue as a part of on going anti-repression campaign being carried out jointly by AIPRF and SFPR.

Resolution 5: We have taken an important decision of merging our two organizations into a single one and the political perspective of the old organizations has drastically been changed. For such an important meeting, we should have called all central level ECMs of the both organizations so as to involve all of them in the merger process. The decision not to call some members is not right. In the formation of the new committee should have been included all the existing members of the both organizations. If needed, new members could be co-opted and those who want to work in some other field could be relieved. While in the organizational merger at state level and other lower levels to be taken up henceforth, this mistake should be rectified.

Resolution 5: A circular should be issued by the all India EC to the lower committees explaining the merger and the immediate future tasks before us.

The technical details with regard to the name, structure and the way to merge etc, in the process of merging the organizations at lower levels could be worked out in accordance with the local dynamics prevailing. In the circular, we should give first preference to the merger of the organizations followed by the other activities. Other activities include mainly organizing programmes against the anti-peoples policies of the UPA government for which a central leaflet will be prepared, organizing a protest march in Delhi against the death penalty awarded to five peasants of Bihar and other activities concerning the local politics.

Resolution 5: For the coming one issue, 'Jan Pratirodh' will be brought out, as an organ of RDF, by the same existing editorial team but with only Arjun Prasad Singh's name as its editor, publisher and owner and the same AIPRF's address published. In the next EC meeting, the editorial board will be constituted and the address to be given in the magazine will be decided. Copies to be printed for the next issue are 1500. All the members of the EC must send the reports and articles to Arjun in due time.

Resolution 6: The next EC meeting will be held on 24th and 25th, August in Punjab. The arrangements for the same will be made by Tara Singh.

Yours Comrade in Struggle.....

Raj Kishore
Secretary
Adhoc Executive Committee
Revolutionary Democratic Front (RDF)

20th May, 2005
Delhi

531] From the said document it is clear that accused no.6 Saibaba is the founder of Revolutionary Democratic Front (RDF). From the contents of the said letter it is clear that accused no.6 Saibaba was the Secretary of AIPRF and Rajkishore is Secretary of SFPR and alongwith other members of AIPRF and SFPR it was unanimously resolved to merge AIPRF and SFPR into one new organization by name “Revolutionary Democratic Front (RDF)” with the slogans like “Naxalbary Ekhi Rastha”, “Andhra Bihar, Jharkhand Chattisgarh Dikhata hain Ratsa” and on its formation accused no.6 Saibaba was declared as Assistant Secretary of “Revolutionary Democratic Front (RDF)” and press-meeting was to be made about the merger of AIPRF and SFPR into “Revolutionary Democratic Front (RDF)” by Rajkishore, Darshan Pal and accused no.6 Saibaba and it was further resolved that magazine Janapratirodh will be brought as an organ of “Revolutionary Democratic Front (RDF)”. From perusal of the same it is clear that RDF is frontal organization of banned CPI (Maoist) organization.

532] Art.158 having path **ex. 4/31.12.12/rdf pdfi/resolution /AIPRF_SFPR_Question_of_merger(1)**, is a letter addressed to The Ec AIPRF, New Delhi written by AIPRF city committee West Bengal wherein it is stated “We know from your joint declaration that AIPRF and SFPR merged in a single organization named RDF”, and also stated “What specific practical experience AIPRF had gathered so that we can take the slogans like Naxal Bari EK Hi Rasta? 'Election Boy cot call' or 'Andhra-Bihar-Jharkhand-Chattisgarh Dikhata Hai Rsta' was not over constitutional slogans.”

533] A document at Article 159 having path **ex. 4/31.12.12/RDFConferencematerial/DRAFTMANIFESTOOF RDF amended by conference** is a revised draft as per EC suggestions titled as, “**Draft Manifesto of Revolutionary Democratic Front (RDF)**”. The contents of the said draft is reproduced as under :-

Revised draft as per EC suggestions

Rise

Resist

Liberate

Draft Manifesto of Revolutionary Democratic Front (RDF)

When British imperialism formally devolved power in 1947, the people of India hoped that they would have freedom and democracy and that imperialist and feudal exploitation and oppression would be a thing of the past. And their standard of living would improve. But their hopes and aspirations have not been fulfilled. Even after half a century not only is the poverty as acute it is increasing at a rapid rate with the current offensive of imperialism. Over the last decade starvation deaths and suicides, particularly in the backward rural areas, has reached a scale never witnessed before in post-1947 India. And together with this the Indian rulers have brought in draconian levels of repression, often worse than in colonial times.

Since the formal devolution of power, a few changes in India's political, economic and cultural spheres have been witnessed. The bourgeois parliamentary system, which is fake in essence, with all its varied forms, including an Assembly, Parliament, universal suffrage etc. have been placed and projected before the people, proclaiming that the masses could enforce their freedom and democratic rights through this system which is nothing but a false and bogus one.

After 1947, the Nehru Government, through an enactment, announced the abolition of the Zamindari system. But this act has not been effective in abolishing the Zamindari-Jotedari system i.e. could not stop semi-feudal exploitation and oppression. Feudal lords have got in their possession; thousands of acres of land and the peasants are subjected to medieval feudal exploitation. Semi-feudal exploitation and oppression bases upon brahmanical caste system has become an obstacle not only to the development of the agrarian economy but also to the industrial as well as social development of India. Therefore, apart from the peasantry, all strata of democratic people, including workers, students, youth, intellectuals, do have a contradiction with feudalism and it is sharpening with every passing day.

Feudalism, in order to continue to thrive in the face of the mighty anti-feudal struggles of the masses, has taken refuge in the lap of imperialism. The big comprador capitalists are also under the aegis of imperialism. They have also been compromising with feudalism from the very beginning.

Colonial exploitation and its rule did not come to an end after the so-called independence. The change that has actually occurred is that India has been transformed from a colonial, semi-feudal country, to a semi-colonial and semi-feudal one under a policy of neo-colonialism pursued by imperialism. The alliance of imperialism and the comprador bourgeoisie with brahmanical caste based feudalism is still in force and this very force is ruling the country.

After the transfer of power this alliance introduced some changes in land relations without affecting the interests of the landlords as far as possible. Consequently, even after 58 years of so-called independence the monopoly over land by big landlords persists. Despite various land reform Acts

— e.g. abolition of intermediary system of land tenure (zamindari, jagirdari, etc), land ceiling act, act for the security of tenancy right, acts for the protection of tribal land, etc — the landlords were allowed evade those acts providing enough time between enactment and implementation. The land reform programme thus remained a hoax. The vast majority of the rural poor remains deprived of the land and landless peasants and agricultural labourer still remain landless. In rural India inhuman exploitation continues to exist. The peasants are being exploited ruthlessly by the landlords/big landowners, usurers and merchants rendering the plight of the peasants more and more deplorable. Even the brutal forms of extra-economic coercion, like the bonded labour system, caste oppression and untouchability, etc are still in practice.

Imperialist agro-technology and so-called green revolution have resulted in an exorbitant increase in the cost of agricultural production. In many areas commercial crops like tea, fruits, etc. and pisciculture have been introduced instead of staple foodgrain production. The Transnational and comprador big bourgeois companies are controlling these at an ever increasing rate. Due to pressures of this clique the govt. of India has revoked even the nominal Land Ceiling Act. The new economic policy and the WTO have accelerated the process. Quality seeds, fertilizers, insecticides etc. are all beyond the reach of the poor and middle peasants. Reduction of subsidy for fertilizers at the dictates of the World Bank has come as a heavy blow to the peasants. Particularly the middle and poor peasants are the worst victims. The slogan “from farmhouse to the port” is the outcome of the market-oriented policy of the government. This policy is resulting in the eviction of those peasants who are engaged in agriculture mainly for their livelihood. The incidents of suicide committed by the commercial crops-growing peasants in different parts of the country are on the rise due to the condition of the peasant being severely steeped in the crisis. Besides this, the

food-crisis in India is gradually increasing. And all these are the outcome of the rotten semi-feudal and semi-colonial system.

Since the apparent devolution of power in 1947 the comprador bureaucratic bourgeoisie and big landlords have been uninterruptedly pursuing the policies dictated by imperialism. In the industrial sector foreign capital had in fact, begun increasing its dominance straightway, directly and also through their collaboration with big Indian enterprises. The ruling classes have been serving the imperialists as lackeys since the time of Nehru. And during the last quarter of the sixties they began to incline for acting as loyal agents of the erstwhile Soviet superpower. But since the eighties they began to tilt towards the US for economic assistance and after the total collapse of the USSR they became more and more dependent on America. At present America assumes the dominant position though the influence of the EU countries, particularly France and Germany, along with Japan and Russia, has been increasing. Since the early 1980s the government of Indira Gandhi has taken huge loans as well as large-scale foreign investment through MNC-TNC and from the IMF/ WB on hard terms and conditions. Subsequent governments have also received fabulous amount of loans from the IMF & World Bank, and in order to satisfy the needs of the imperialists they have to introduce a set of so-called new policies namely, the “new economic policy”, “new industrial policy”, “new textiles policy”, “new education policy”, etc.

In 1980 India's foreign debt read at Rupees 30,000 crores and by June of 1991 it registered a four-fold increase to reach the figure at Rs. 1,32,000 crores, and today it has come to an astronomical figure of Rs. 5,00,000 crores. The govt. of India has to pay Rs. 35,000 crores per annum as an interest on her external debt. At present every citizen of India has to bear the burden of external debt of worth more than Rs. 5,000.

Along with these there have been many trade agreements. In this way different imperialist countries, particularly America, have been exploiting India more severely; not only that, they are increasing their stranglehold to politically control India.

Following Mexico and Brazil, India has become the third biggest debtor country(?) in the oppressed countries of the World. Since the country has become entangled deeply in a debt-trap, even the nominal restrictions that prevailed in the past on the multinational and transnational companies have been totally withdrawn by the exploiting classes. Consequently, they have been given permission for the entry, in a big way, to several important sectors including mines, energy production and defence. In addition thousands of crores of public sector assets are being handed over at cheap rates to the multinationals and comprador big bourgeoisie.

The Indian government has taken loans from the World Bank on hard terms with derogatory conditionalities. The fatal consequence of this has also fallen upon the working class, resulting in the golden handshake, lay-off, retrenchment, and curtailment of real wages, as well as massive retrenchment of workers and a big difference in pay scale announced in the report of the sixth Pay Commission of the central government. Various types of draconian laws have been imposed to suppress the working class movement. Trade union activities and the minimum rights of workers have been limited more and more by de facto, declaring the workers' strikes as illegal. The number of educated unemployed figures more than five crores, while the unemployed and semi-employed is about 32 crores. Five lakh factories have been closed down. In India more than people have been living below the poverty line and 40 crore are illiterate. Large numbers of people do not have any opportunity for medical treatment; lakhs of people

have no dwelling houses at all.

In addition, brutal repression continues upon all democratic movements. The leaders and cadres of the trade unions and civil liberties' organizations and even journalists have been killed.

The people have been uninterruptedly fighting against all this exploitation and oppression. The peasantry and working class have fought many heroic battles and the students, youth, women, petty-bourgeoisie and intellectuals have waged many a movement. The enemies have butchered thousands of people; lakhs of people are arrested and imprisoned while innumerable people have been tortured. In spite of having scarified their self-interests and even dedicated their lives, the people have not yet achieved real independence and democracy. The fundamental problems of the people are yet to be solved.

The solution of the fundamental problems of the people is related to the revolutionary changes of the whole social system. So the mass struggles too cannot be separated and isolated from the revolutionary struggle for changing the social system. But the reformist and revisionist parties of our country have deflected the mass struggles to save the interests of imperialism and feudalism and led people's resentment towards the ballot box. They have confined the mass struggles only to the struggle for achieving the partial demands. But neither do they rouse the people in the spirit of the struggle for eradication of imperialism, feudalism and the present social system and for the establishment of democratic social system nor do they teach the people of the importance of the necessity to unite with these struggles.

After Telengana the great peasant movement in Naxalbari once again dealt a deathblow against reformism and revisionism. And it illuminated the

path of the Indian revolution. Naxalbari opened a new chapter in the history of the peasant struggle in India and held aloft the banner of agrarian revolution and the politics of seizure of state power.

The peasant struggle of Naxalbari was not merely the struggle for the seizure of land. It was the struggle of the people with the aim of seizure of political power for the abolition of the semi-feudal and semi-colonial system as well as for the establishment of all economic and political rights of the people, including that over land. It does symbolize the great political significance of the Naxalbari struggle. So, the struggle of Naxalbari bears not only a significance for the struggles of the poor and landless peasants but it also carries great significance as a struggle for the emancipation of all the anti-feudal and anti-imperialist people of India. For this reason the struggle of Naxalbari was able to stir and rouse the whole country and was successful to rally the greater section of the masses of the peasantry, working class, students, youth, women, intellectuals and all other sections of the democratic people on the basis of the slogan “Naxalbari Ek-Hi Rasta”. Today, the agrarian revolutionary torch of Naxalbari is shining more brightly in Telangana, Andhra, Jharkhand, Bihar, Dandakaranya, Odisha and some other parts in the country and is illuminating the path of Indian revolution.

The struggle of Naxalbari brought about a great revolution in the consciousness of the people — the consciousness for social revolution. In the sphere of struggle, it upheld a new orientation—the orientation of agrarian revolution. In linked the revolutionary mass struggle with the revolutionary struggle for social change. Today, various new forms and tactics of mass struggle have developed and extend to different parts of the country.

PRESENT POLITICAL SITUATION

Today, the imperialist system has plunged into a deep economic and political crisis. This crisis is deepening and becoming more and more acute in every passing day. This vindicates that the crisis in the world imperialist system is permanent, while the recovery is temporary and relative. At present the crisis of the imperialist system has been getting more and more acute in spite of massive intervention by the imperialist governments to come out of it. The governments of the imperialist countries have been continuing to shift the burden of the crisis onto the shoulder of the people of the backward countries like India. As a result, the economic crisis of our country is also deepening and becoming more and more acute every day.

The contradictions among the imperialist countries in the international arena are simultaneously reflected in India as well. Consequently, these contradictions are also reflected in the political parties of the exploiting classes, in the government and the administration and also in the police and military departments. Splits within the old political parties and fall of governments and the subsequent formation of new parties and governments are going on just like a house of cards. News of increasing sharpness of contradictions between army officers and ordinary army personnel and also between the police officers and the police personals are surfacing time to time. As a result of internal contradictions, all the organizations of the ruling classes are becoming gradually weaker. Both in the centre and in many states, governments by a single party having an absolute majority are absent. The coalition governments are functioning by manipulation only. The parliamentary parties like Congress, Janata Dal, BJP, Rastriya Janata Dal, Samata Party, Bahujan Samaj Party, Samajwadi Party, CPI, CPI (M), Telugu Desam, Akali Dal, AIADMK, DMK, AGP etc. are internally divided in numerous groups or lobbies due to inner contradictions and are isolated from the people.

In our country, the contradiction between imperialism and the majority of the Indian people and the contradiction between Brahmanical caste based feudalism and the greater masses of the people are intensifying day by day. Due to the contradictions among the imperialist powers, the deep economic and political crisis, and ever-increasing resistance struggle of the people, there is no sign of stability in the whole ruling system including the parliamentary system. Disorder and uncertainty are uninterruptedly prevailing and will continue to prevail in all the economic and political spheres of India.

INDIAN PARLIAMENTARY SYSTEM

This crisis expresses itself in the acute in-fights within the ruling class parties and permanent political instability in the entire ruling and parliamentary system. It renders more and more exposure of the parliamentary system — its politics and parliamentary ruling parties. The state machinery developed by the ruling classes consists of a corrupted bureaucracy, anti-people judiciary, a police force and a well equipped modern army and other armed forces. The role of the parliamentary system is to cover this ruthless rule and to delude the people. Ruling class parties and their sycophants project the parliamentary election as a system which people can use to assert their democratic rights. This false notion is also being exposed by the very acts of the ruling class themselves. There is unprecedented malpractice, widespread rigging and rampant corruption in all parliamentary and assembly elections. Elections are conducted by the force of muscle-power. This shatters the myth of the democratic character of the Indian parliamentary electoral system!

Today, the ministers and top leaders of different parliamentary parties have misappropriated crores

of rupees through innumerable scandals. Top state-leaders, MLAs and MPs, top administrative officers, and top army officers — none of them do anything for the interest of the Country or the 'People'. Rather their activities serve the interest of imperialism and feudalism only. The activities of these anti-people leaders have exposed the real character of independence and democracy of India. No democratic decision is ever found in any of the parliamentary parties nor can any bourgeois democracy be expected from them.

In the present situation, it is almost impossible to provide any reform or relief to the masses through the parliamentary system. (even if it make reform possible, it should be rejected) Even the process of judiciary is not consistent with the provisions of the Indian Constitution. The mass movements for the fulfilment of minimum demands of the people are brutally suppressed with lathi, bullets and bayonets. The consciousness of the people is rapidly developing about the bluff of the parliamentary system. In the areas of agrarian revolutionary struggles of Andhra, Jharkhand, Bihar and Dandakaranya the people have raised the slogan that the "boycott of elections is a democratic right". They have translated this slogan into a broad mass movement of the active boycott of elections. This movement has expanded to a wider area facing the onslaughts of the police and cadres of electoral parties. In the northeastern region, the people of the various nationalities of Assam, Tripura, Manipur, Nagaland and also of Kashmir etc. have advanced their liberation struggle defying the parliamentary path and boycotting the elections. In the course of election-boycott movement many new forms of struggle have been emerging.

DIVIDE AND RULE—AN EVIL DESIGN

The governments of the ruling classes have been adopting one after another anti-people policies to

come out of this severe economic and political crisis. As a result of this the plight of the people is becoming more and more miserable. In this condition anti-state struggles of the people have been developing in different parts of the country. The ruling class parties cannot find any viable slogan to hoodwink the people. They have therefore resorted to 'divide and rule' policies more and more, along with repressive measures to foil the anti-state united struggles of the people. Accordingly they have been hatching one after another sinister plots instigating casteism, racial hatred, communalism and religious fundamentalism, particularly Hindu fundamentalism. They have been trying their best to put people against the people. They have openly encourage Hindu fundamentalism and helped develop vicious Hindu fascist forces like the RSS, Bajrang Dal, VHP, and Shiv Sena. These fascist Hindu forces have time and again organised brutal pogroms, as in Gujarat, Kandhmal and danced a dragon like dance of death. The aim of the ruling classes is to turn the class struggle into a fratricidal war between communities.

This Hindu communalism is also directed against the dalit sections, Adivasis and women. The brutal Hindu fundamentalist forces help perpetuate and utilize the caste system, particularly Brahminical casteism, as another tool to instigate people in the on-going caste war. Thus they distract people from the struggle against the ruling classes.

SOCIAL OPPRESSION

In India the two most prominent aspects of social oppression are patriarchal oppression on women and caste oppression on the lower castes, particularly the despicable practice of untouchability against dalits.

Women

Women remain one of the most oppressed sections of society. Apart from the feudal and imperialist

exploitation, they also bear the burden of patriarchal oppression. Apart from the imperialist-feudal exploitation and oppression women are also subjected to male oppression and suppression through patriarchal institutions, like family, caste system, property relations and culture. Sexual harassment and other atrocities on women have increased in recent years, particularly because of so-called liberalization and imperialist Globalization and Consumerism. The so-called constitutional laws in providing equality to women have proved to be a hoax. The women masses, particularly the women from the landless and poor peasants are increasingly receptive to the revolutionary democratic politics and ideology. The fact is that “women represent half of the sky”. Without unleashing the fury of women as a mighty force of revolution, victory in revolution is impossible. Hence, the mobilization of particularly toiling women in the revolutionary struggle against imperialism and feudalism is a must. (add-Economic exploitation of women and the honour killing as a tool to keep caste based feudalism intact)

CASTE OPPRESSION & UNTOUCHABILITY

Besides the feudal and imperialist class exploitation and oppression the Dalit masses are also caught in the age-old vicious grip of the caste system. That is why they are also the victims of untouchability, caste discrimination and upper caste chauvinism. The attacks on Dalits by the upper caste landlords and their goons along with the state machinery have increased recently. Due to deeply ingrained casteist thinking, particularly against dalits, even amongst backward castes, in many parts of the country there have been a growing number of attacks by a rising section of new feudal lords of these backward castes against dalits. This is particularly manifest in those areas where feudal authority is threatened by the increasing assertion of dalits, especially of their landless and poor sections. Many are unable to

tolerate any rise in status, whether economic or educational of the dalits, or their increased assertion. The obnoxious caste system and casteism is continuously being perpetuated by the feudal ruling classes and later by the imperialism for thousand of years. They continue to use and instigate this system to also divide the working class, peasantry and other working people so that they may continue their class exploitation and oppression. They use it for derailing their actual struggle directed against imperialism, feudalism. Dalit section of the people is mostly the victim of these intrigues. Accordingly, the Dalits are being treated as second grade citizens. Even today 90 to 95% from among them are either landless and poor peasants or village labourers. Even today their struggles against the ruling classes for getting equal status in the society are being treated inhumanly and make victims of these vicious attacks by the ruling classes and their state machinery. These attacks are being manifested in the form of massacres and mass gang rapes.

IMPERIALIST & FEUDAL CULTURE

Rural India is dominated by a culture that protects, instigates and propagates superstition, casteism, untouchability, authoritarian concepts, patriarchy, and religious fundamentalism, along with other feudal concepts, customs and habits. This anti-people culture serves the interests of the landlords, usurers, merchants and other feudal/semi-feudal forces who dominate the rural economy. They ensure the persistence of this culture and also pave the way for decadent imperialist forces to perpetuate their domination over the people of the country. They also encourage the culture of the hatred for labour, autocracy, imperialist, imperialist slavery, blind greed, aimlessness, self-centeredness and ego, and a perverted culture.

Rampant propaganda of imperialist and feudal

culture is on the rise through the TV, radio, cinema, dance, song, drama, newspapers and various types of periodicals. Liquor, gambling and drugs are growing widely. The ruling classes, with the help of their propaganda machinery propagate this degenerate culture throughout the country. This ruling-class sponsored culture intends to destroy the sense of just and, human values, democratic and patriotic values, and rational and scientific ideas of the people.

Against this gloomy and degenerate culture spread by imperialists and feudal oligarchies, revolutionary masses have been consistently and gradually building up people's culture based on the consolidated people's movements against brutal feudal authority and inhuman imperialist exploitation. Slowly and gradually this centre of people's culture is taking shape in the areas of intense people's struggles of the Indian revolutionary movement.

OPPRESION ON NATIONALITIES

India is a vast multinational country comprising various oppressed nationalities and tribes. These nationalities are going through different stages of their development. India's present boundaries were drawn by British imperialists. The current "unity" is based on the subjugation of many people and nationalities to an arbitrary central authority. Hence, this unequal and reactionary "unity" is very fragile. In India today many nationality struggles in various parts of the country assuming various forms, including armed struggle, are going on and advancing. The overall picture reflects the rousing mood of the masses. The reactionary ruling classes and their imperialist chieftains, particularly the US imperialists, are desperately engaged in ruthlessly suppressing these struggles. The struggles of various nationalities, particularly the Kashmir, Naga, Assam, Manipur and other nationalities in the North Eastern

region are continuing the armed struggle against the Indian state. These struggles continue to strike powerful blows against the most repressive armed forces of the reactionary ruling classes. Until now over 90 thousands toiling people have been killed in Kashmir in the last 15 years alone. Millions of Indian armed forces are deployed in these nationalities to suppress their movements brutally under the iron heel of the military might, but even then the burning flames of these struggles could not be extinguished. The people of these nationalities are struggling not only for their identity but also for the just cause of achieving their honourable right of self-determination including the right to secession. It is the masses of toiling people particularly the peasantry who bear the largest burden of the oppression of a nationality. Undoubtedly it is true that this is the real material basis beneath these struggles, viewing from this angle also these nationality struggles can achieve genuine liberation and the right of self determination including the right to secession as a part of the larger struggle directed against the Indian ruling classes and their imperialist chieftains, particularly the US imperialists. The RDF unequivocally supports these nationality struggles and the struggle, for separate statehood and resolutely oppose the vicious attempts of the Indian ruling classes to suppress these nationality movements. While, firmly uniting with the people, each and every struggle of the nationalities should be supported if it is directed against the Indian state's oppression, repression and occupation.

INDIAN EXPANSIONISM

The expansionist policies of the comprador bureaucrat bourgeoisie has become a great threat to the security and integrity of the neighbouring countries of South Asia and their people. Through implementation of this policy the ruling classes of India intend to grab their market and sources of raw

materials. This expansionist policy has been backed and encouraged by the imperialist forces as they consider the Indian ruling classes as a time-tested medium for their exploitation and domination. Following this expansionist policy the Government of India annexed Sikkim, captured their markets and further intensified exploitation, rendering suffering to the Sikkimese people. They directly threatened Bhutan by sending the army into its territory and compelled the Bhutanese government to crush the nationality movements based there. In this suppression campaign the Bhutanese government had deployed the Bhutanese army which was utilized as cannon fodder. The nuclear blasts and launching of the Prithvi and Agni missiles were planned by the expansionist ruling classes to instil fear among the people of South Asian countries and subdue them.

They have also been using the SAARC primarily for the setting up a Free Trade Area to allow the free flow of goods from India, thereby seizing their markets. Of late, they also seek to use it for their so-called anti-terrorist policies throughout South Asia, to suppress people's and nationality movements in the region.

The ruling classes of India interfere in the internal affairs of Nepal and have taken all sorts of preparations to send the army into Nepal to suppress the revolutionary movement of the people, led by the Maoists, which has been surging ahead following the path of protracted people's war.

BRUTAL STATE REPRESSION AND RESISTANCE OF THE PEOPLE

The people of India have been plunged into ruthless economic exploitation and brutal political oppression. The ruling classes are unable to solve the problems of the people. Rather the problems are continuously increasing. Today the failure of this

ruling system has been clearly exposed even to the common people. So the people have demanded democratic changes. Yet the ruling classes are protecting their outdated structure on the strength of their guns. The contradiction between the demand for democratic changes and the outdated structure has become more and more sharp. First of all, the ruling classes have used force/violence indiscriminately. So the force/violence becomes a very important aspect of the political agenda. It cannot be denied that the ruling classes have imposed an undeclared war on the people of India.

The ongoing agrarian revolutionary struggles of Andhra, Jharkhand, Bihar and Dandakaranya and in other parts of the country too are the main targets of attack of the ruling classes. The militant struggles of the workers and the toiling masses and the struggles for the right to self-determination and other struggles of the people of various nationalities are also their targets of attack. The exploiting classes have deployed, apart from police, various types of Para-military forces like the CRPF, BSF, Commando forces and also vast military forces for the suppression of these struggles.

On the other hand, their need for sharpening the repressive state-machinery has increased manifold. In this context, they have brought-forth the POTA, a new and more draconian law than TADA, and the repeal of POTA by the UPA Govt. has no meaning since it was reincarnated in the form of the Unlawful Activities (Amendment) Act, 1965, with the very purpose of thwarting and repressing the rising tide of the genuine revolutionary people's movements, along with other people's movements and the nationality struggles as also those of the religious and other minorities. They have also started clamping down on the mass organizations of the people of Nepali origin, residing in India for their livelihood, by using this law. Many state governments of different brands, including Andhra

Pradesh, Chhatisgarh have brought forth their own anti-people laws of a similar nature, under different names and pretexts.

Apart from this, many state governments have been carrying on brutal repression through encirclement and suppression campaigns to arrest and exterminate the onward march of the people's revolutionary movements advancing along the just path of Protracted People's War directed against smashing the most exploitative, oppressive and completely undemocratic state system, representing imperialism and feudalism and thereby establishing a new democratic India, by advancing one step after the another. In their suppression campaigns, the police and other paramilitary forces are conducting combing operations by encircling the villages and thus torturing people on a mass scale. They demolish peasant's houses, looting everything in the name of decree, raping women and killing peasants by firing indiscriminately. They kill the sympathizers, activists and the leaders of the movement after arresting them in the false name of encounters. The killings of such brave sons and daughters of the people in fake encounters have become an undeclared law of the Indian ruling classes. Accordingly, the role of a judge and assassin has been assigned to the police forces. Moreover, they have established a "Joint command centre" of many states, under the direct command of the central Govt. to co-ordinate and carry out their vicious repression against these movements.

The police and military forces are suppressing the movements for self-determination and for democratic rights of the various nationalities. In various parts of the country, people belonging to politically economically and culturally backward nationalities, such as Uttarakhand, Jharkhand, Telanagana, Gorkhaland etc. are carrying out their struggles for liberation from extreme exploitation and repression. At present the struggle in the tribal

areas of the country has got a great momentum and reached a higher form with an aim to transform "Jharkhand into Lalkhand". The struggles of the nationalities in Kashmir, Nagaland, Manipur, Assam and Tripura are being subjected to inhuman oppression by the government of India. The Indian forces have killed over 90 thousands Kashmiris to suppress the movement of the people of Kashmir for self-determination. They have also butchered thousands of youth in Punjab with the false accusation of terrorism. In spite of all these, the struggles of the nationality people are marching forward.

The ruling classes are plunging even the ordinary mass movements of the Indian peoples into bloodshed. They have promulgated draconian laws to suppress the ordinary mass activities like rallies, public meetings, mass mobilizations and strikes of the workers etc. and also banned some mass organizations. In Andhra Pradesh, the workers of the Singareni coalmines have been tortured and attacked by the police for a long period of time and the leaders and activists of workers' movement have been killed in fake encounters. In Bihar, the peoples' movements against the verdict of death sentence on five peasants, allegedly linked with the Bara & Bhabhua case, had been ruthlessly suppressed by the police with lathis and bullets. In the struggling areas of Andhra, Jharkhand, Bihar and Dandakaranya as well as in the areas of the nationality struggle the mass movements on election boycott have faced severe attacks, let loose by the police and Paramilitary forces. The spontaneous movements of the people in Tamil Nadu, Karnataka, Maharashtra, West Bengal, Haryana, Rajasthan, Orissa and other States of the country, have also been ruthlessly suppressed by the state machinery. All these struggles of the people are continuously developing to the higher stage by combating these suppressions.

As the culmination of all these different styles and

forms of struggle of the people, an embryonic form of the new people's state has been manifested itself in Andhra, Jharkhand Bihar and Dandakaranya. The peasants of these areas have been launching these struggles on the basis of the slogan -"Land to the tiller" and "All powers to the Peasant Committee", and according to the law "where there is repression, there is resistance". The peasants are confiscating the land, removable properties, and arms and ammunitions of the landlords. They are promulgating and establishing their own law and authority. They are punishing the tyrants, zamindars, jotedars, ringleaders of hooligans, and the police agents after putting them on trial in the People's Courts. The peasants are waging a developed form of resistance struggle against the torture and onslaughts of the private armies of the landlords, and of the police and Para-military forces. In the areas of peasant struggle of Andhra, Jharkhand, Bihar and Dandakaranya, the clash between the police & Para-military forces and the people have become an every-day feature.

WHO ARE THE ENEMIES? WHO ARE THE FRIENDS?

Who are the enemies of the Indian people?

There is no doubt that imperialism is the enemy of the Indian people. They are plundering the immense wealth of our country and dictating terms in every sphere of our social life. Therefore, the imperialists of all countries, particularly US imperialism, are the enemies of the Indian people.

The comprador big bourgeoisie who have betrayed the interest of our country and people and have completely capitulated to the imperialists are also the enemies of the people.

In the countryside the zamindars, jotedars, usurers, moneylenders and big dishonest businessmen are

the enemies of the people.

In a word, imperialism, the comprador big bourgeoisie and feudalism are the main enemies of our country and the people.

Who are the friends of the Indian people?

The working class and the peasantry, especially the poor and landless peasants are the main force of the struggle against imperialist and feudal exploitation and oppression. They feel the most urgently necessity for the revolutionary change of society. The middle peasant is a resolute friend of this struggle. The rich peasant, as far as their contradiction with imperialism is concerned, is also an ally of this struggle. The students, youth, intellectuals, the petty-bourgeoisie like government and semi-government employees, teachers, lawyers, doctors, engineers, writers, artists and all other toiling masses are the friends and important forces of this struggle. The national bourgeoisie are a vacillating force but they are also our friends in anti-imperialist struggle.

OUR AIMS AND TASKS

The RDF desires that the people of India liberate themselves from the clutches of exploitation and oppression from imperialism, the comprador bourgeoisie and feudalism. The RDF wants the abolition of this exploitative and oppressive system. So it raises the slogan - "Rise", "Resist" and "Liberate" to create a new democratic India.

The RDF with its utmost capability will wage resolute struggle against feudal and imperialist exploitation, atrocities and oppression. If the struggle is not to be confined to the limits of the parliamentary sphere and if the revolutionary struggle is to be uninterruptedly continued, it will not be adequate to merely wage the struggle against

feudal and imperialist exploitation, atrocity and oppression only, rather we have to advance our thinking for building a revolutionary struggle for the total eradication of feudalism and imperialism. If we start our struggle against exploitation and repression with this spirit, the struggle will be more resolute and its power of resistances will be increased manifold. So, to rouse the people with the consciousness of resistance struggles and to make them really fit to participate in this struggle, the RDF upholds the path of Naxalbari i.e., the path of Andhra, Jharkhand, Bihar and Dandakaranya. The RDF will conduct intensive and massive propaganda highlighting this path and will help these struggles in every possible way.

NEW DEMOCRATIC INDIA

The RDF will build up various types of people's resistance struggles in support to those resistance struggles which are now going on to build a new democratic India, eradicating the exploitation and rule of imperialism and feudalism. Having coordinated all these struggles, the new democratic and independent India, in truest sense of the term, will be built up. On the basis of the above-mentioned spirit the RDF will build up powerful anti-imperialist and anti-feudal resistance movements with the aim of establishing a new democratic India. In this way the real power of ruling the country will come into the hands of exploited and oppressed people i.e. to the hands of the real democratic peoples of India. Following this path of struggle, RDF will build up new democratic politics, a new economy and a new culture in India, where imperialist and feudal exploitation and oppression will be eradicated. The people will enjoy real independence and democratic rights. The working class will become free from the exploitation of imperialism and the comprador bourgeoisie. The peasants will have their land, dignity and rights. The problem of unemployment, food, education and

health will be solved. The people will ensure their rights to live with dignity. The tortures on women will be stopped and the women will enjoy equal rights. Caste oppression and communalism will be abolished, and the social repression on the dalits, particularly untouchability, will come to an end. The people of different nationalities will achieve their emancipation from exploitation and oppression. A democratic and revolutionary culture of the people will be built up.

PROGRAMME

The RDF will organize and wage resistance struggles along the orientation of the above-mentioned aims and objectives on the basis of the following program:

1. The RDF will resolutely support all sorts of anti-feudal and anti-imperialist struggles of the people. In India, the working class and peasantry constitute the vast majority of the population. It is the anti-feudal and anti-imperialist struggles of the working class and peasantry, particularly of the poor and landless peasants, that lays the foundation for the revolutionary changes of the social system of India. The RDF will not only support all these struggles but extend all sorts of help and co-operation to develop them as well.

2. The RDF knows that in smashing the old and building a truly new India, the genuine people's revolutionary forces cannot utilize the parliamentary platform by any means in building the powerful people's revolutionary movement. Hence, from the very beginning, the RDF will not only oppose and expose this system, but also continue to build up the "Boycott Election" movement along with resolutely advancing the resistance struggle. RDF will build and continue to develop this movement on the basis of the slogan "Election boycott is a democratic right".

3. In India imperialism exists and rests on the base of feudalism. The RDF therefore, calls upon all the anti-imperialist resistance struggles to stand by the ongoing agrarian revolutionary struggles in Andhra, Jharkhand, Bihar, and Dandakaranya in order to abolish the feudal exploitation and oppression. Only in this way can we liberate ourselves also from the yoke of imperialist exploitation and oppression.

4. The RDF will exert its utmost effort to organize and wage widespread mass movement against imperialism and the conspiracies and machinations of the World Bank and IMF controlled by the imperialist forces, led by US imperialism. The RDF fights against the WTO regime being implemented in the country builds a struggle demanding the withdrawal of India from WTO in toto. and The RDF will also build up strong mass movements mobilising all anti-imperialist forces of the country against the policies of all the new imperialist-dictated policies like the “New Economic Policy”, “New Industrial Policy”, Retrenchment and Voluntary Retirement Policy through the “golden hand-shake”, etc. of the Indian government. At the same time it will expose the activities of different NGOs and the treacherous and pro-imperialist character of different reformist and revisionist parties.

5. The RDF will carry on resolute resistance struggles against price-rise, inflation, retrenchment, privatization, and corruption etc.

6. The RDF will organize and wage resistance struggle against imperialist and feudal culture.

7. The RDF will lend resolute support and provide with all sorts of help to the women’s movements in demand of their right to equality and against patriarchal domination, trafficking of women and young girls within India and abroad, rape and molestation, killing of brides, dowry system, and all

types of atrocities on women, etc. At the same time it will oppose bourgeois feminism and wholeheartedly support the movements launched for genuine women's liberation.

8. The RDF will resolutely support the mass movements against caste oppression and discrimination against the oppressed castes and particularly upon the dalits. It will vehemently oppose all forms of untouchability against dalits and support their fight for equal rights and for special privileges, including reservation for dalits and other backward castes.

9. The RDF will launch campaign for organizing a widespread public opinion against communalism, casteism, racial hatred, fundamentalism and religious fanaticism, particularly Hindu fanaticism. It will isolate and defeat the Hindu fascist forces; concentrate the attacks in particular on the BJP, RSS, VHP, Bajrang Dal, Shiv Sena and other Hindu chauvinist and fascist organisations. Support the struggle of the religious minorities against the Hindu chauvinist policies of the Indian State. The RDF will carry on resolute struggle against the "divide and rule" policy of the exploiting classes and parliamentary parties and also against their policy of harbouring communal riots. Simultaneously, the RDF will organize a widespread public opinion against all sorts of deception, bluff and instigation of the parliamentary parties and of all types of fundamentalist forces.

10. The RDF will support the students' movements in its demand of introducing a scientific education system against the existing semi-colonial and semi-feudal one. The RDF will resolutely support the student's movement against the new education policy of the govt. of India, against the privatization and commercialization of education and also in favour of their other democratic demands.

11. The organised sector of the working class in the country is still in the grip of revisionists. The growing revolutionary movement across the country began to show its impact on the workers. The workers face worst type of exploitation under the liberalisation, privatisation and globalisation. The fight of the workers against wage-cuts, contract labour, golden shake-hands, lock-outs, etc. is steadily gaining momentum. The revolutionary vanguard role of the working class will assume its place more and more in the context of the growing labour unrest in the country. The RDF shall involve in the working class struggles and try to bridge and amalgamate the fast developing struggles workers and peasants.

12. The RDF will not only lend resolute support to the struggles for establishing the right to self-determination of the people of all nationalities and to their movements for other democratic demands, but will also provide them all sorts of help.

13. Adivasis constitute 10% of Indian population. They have been continuously waging larger struggle against the colonial and imperialist occupation and appropriation of their forest, land and other natural recourses. Mining, industry, big dams and other projects brought out by the Indian ruling classes displaced millions of Adivasis from their native soil without any rehabilitation and providing any security to them. The recent onslaught on Adivasis reached highest proportions. Millions more are going to be displaced with large amounts of foreign capital entering these areas for exploitation of natural resources. The RDF stands for the complete rights of Adivasis on their forests and its produce. RDF is completely opposed to any kind of displacement Adivasis from their immediate environment and believes no amount of compensation can rehabilitate them.

14. The Indian ruling classes have been unleashing

barbarous state repression on the agrarian revolutionary struggles in Andhra, Jharkhand, Bihar and Dandakaranya as well as on the nationality movements and on the democratic movements of the people.

The RDF will resolutely lend support to the just struggles of these people and will organize and wage a resolute resistance struggle against the brutal state repression and white terrorism.

15. The RDF will lend resolute support to the anti-imperialist movement of the toiling masses of all strata including workers, peasants, students, youth, women, dalits, intellectuals, artists, writers, doctors, engineers, teachers, handicraft people, etc. Being attached as a part and parcel with these struggles, the RDF will advance towards the path of anti-feudal and anti-imperialist new Democratic Revolution to build up a happy, prosperous, independent and democratic India.

16. The RDF will extend resolute support to the revolutionary struggles of the working class, peasantry and other toiling masses and the liberation movements of the nationality people of all countries of the globe and wage a solidarity movement against the repression on these struggles. Besides it will resolutely support people's resistance struggle against expansionism of India and oppose the expansionist policy of India in the Indian sub-continent at the gesture of imperialism.

17. The RDF will continue to extend a resolute and practical support to all the revolutionary movements, including the genuine national liberation movements directed against the world imperialist system which are going on and developing and which may emerge in different parts of the globe. It will extend this support by using various methods and particularly organizing solidarity movements in their support and against

the repression on the movements of the Peruvian, Philippine, Turkish and Nepali people. It will lend particular support to the People's War in Nepal, directed not only against imperialism but also against Indian expansionism. As a part of it and separately, it will continue to expose and oppose Indian expansionism, nurtured by imperialism. This factor, along with some other factors, serves as the basis of closer relationship between the people and the revolutionary struggle of the two countries.

The people of India have been living under semi-colonial, semi-feudal rule for a long period of time. The state machinery is ruthlessly suppressing even the trade union type of ordinary movements of the people for minimum democratic demands. In such a condition, to fulfil and accomplish the higher tasks of the mass movements, and to meet with the needs for the development of struggle and organization, we constitute the RDF. So the leaders and cadres of the RDF must be politically determined, enthusiastic in sacrificing their self-interest and even dedicating their lives and to be bold enough to wage resistance struggles. Only then, we will be able to advance the resistance struggles in India.

Greater masses of democratic and progressive forces have to be involved in our programs. We must be well versed in adopting correct and flexible policies and methods in joint activities. The RDF will try its best to unite in the anti-imperialist and anti-feudal struggle with those individuals and organizations who oppose the parliamentary path, support the revolutionary struggles and oppose state repressions. The RDF will unite with others too in issue-based joint activities by forming a platform like "People's Action Committees". The RDF will unite with the world proletariat, oppressed countries, nations and people, and will fully support their anti-imperialist struggles and also build up solidarity movement in favour of these struggles.

We are going to form RDF to achieve an alternative to the persisting semi-feudal, semi-colonial rule, mobilising the vast majority of the people who aspire for a genuine democratic political setup, which ensures not only the democratic rights of the people but also the free and independent development of the economy. The RDF will stand whole-heartedly in support of the people's revolutionary struggles which are advancing and spreading to different parts of the country to fulfil such a mission.

The RDF will also support people's/national democratic movements throughout the world against the global imperialist system. It will organise solidarity movements in support of these movements.

Draft
Revolutionary Democratic Front (RDF)

CONSTITUTION

Article 1. Name of the Organisation

- a) Revolutionary Democratic Front (RDF) in English.
- b) Kratikari Janwadi Morcha (RDF) in Hindi

c) In different states the name of the organisation should be written in the respective languages but RDF should be kept within brackets.

Article 2. Logo and Flag of the Organisation

Colour of the flag is red. There is a symbol of clenched hand with a torn fetter in the middle of the flag. Above it are inscribed the words 'Rise', 'Resist' and 'Liberate' while 'RDF', the abbreviated name of the organization, is to be studded below. The size of the flag should be 2:3 in width and length.

Article 3. Area of work

The organisation has a perspective to work at all

India level by having committees formed at the level of all states in India.

Article 4. **Membership**

a) Any individual who attains the age of 18 and accepts the Manifesto and Constitution can join as a member. And the organisations, which accept the programme and constitution, can also join as members.

b) Imperialist/government funded organisations or individuals who are part of policy making of such organisations shall not be admitted as members.

c) Membership fee for all organisations—Rs. 1000/- per annum, for individual member—Rs.100/- per annum.

Article 7. **Organisational Structure**

a) A central executive committee of RDF will be formed. Delegates of representative organizations of different provinces will be elected as members of the central executive committee through the conference. Not more than 10% of any committee of RDF will have individuals as its members.

b) The representative organizations of different provinces of the RDF may have an independent name.

c) State units which function with a different name will write “ a State Unit of RDF’ under its name.

d) The central executive committee will lead the organization on the principle of consensus.

e) At the central level, there will be an All-India Executive Committee (EC). It will be elected by All-India conference.

f) There will be state level committees elected by the conferences.

g) The central executive committee will elect a president, vice-president, a secretary, three assistant secretaries and a treasurer.

Article 8. Meetings

a) The EC members of the All India Committee shall meet once in every three months.

Article 9. Rights and responsibilities of office-bearers

a) The president shall preside over the EC meetings and office-bearers' meetings.

b) The vice-president shall preside over these meetings in the absence of the president.

c) The general secretary in consultation with the president calls for the meetings of the office-bearers and the EC.

d) The joint secretaries help the general secretary and carries on the duties of the general secretary in his/her absence.

e) The treasurer keeps accounts and presents to the ECs, and to the conference.

f) The general secretary is the chief executive of the organisation.

g) The president is the chief spokesperson of the organisation.

Article 10. Discipline

a) RDF arrives at decisions democratically through majority vote in all committees.

b) All the lower committees shall implement the decisions of the All India committee.

c) From the platform of the organisation or any

united front, committee members at all levels shall express only the stand of the organisation.

d) Disciplinary action can be taken against those who act against the Manifesto and the Constitution of the organisation or the decisions of the committees. Efforts must be made to solve the problems internally through democratic processes. Expulsion from the organisation is the ultimate action, which can be awarded only after all precautions are strictly taken.

e) The differences and conflicts among the member organisations should not be openly expressed from the dais of RDF or any public dais.

Article 11. Magazine

a) On behalf of the organisation, an English magazine called *Peoples Resistance and* Hindi magazine called *Jan Prtirodh* should be brought out at the central level.

b) Organs in other languages may also be published

c) The Executive Committee shall appoint editorial board/s for the management of the magazines.

Article 13. Funds

a) For funds, the organisation should depend on the members, member organisations, and the people.

b) All publications should be self-supporting.

c) The All-India committee should acquire funds for its requirements, in cooperation with the state committees. The funds acquired by state committees shall be distributed in the ratio of 25:75 for all India, state committees.

Article 14. Change of Constitution

The Manifesto and the Constitution can be amended/changed if necessary by the all India Conference by 2/3 majority.

Article 15. Conference

The conference of the organization is to be held at an interval of three years, though the time limit may vary as per the specificity of the situation.

OUR AIMS AND TASKS

The RDF desires that the people of India liberate themselves from the clutches of exploitation and oppression from imperialism, the comprador bourgeoisie and feudalism. The RDF wants the abolition of this exploitative and oppressive system. So it raises the slogan - "Rise", "Resist" and "Liberate" to create a new democratic India.

The RDF with its utmost capability will wage resolute struggle against feudal and imperialist exploitation, atrocities and oppression. If the struggle is not to be confined to the limits of the parliamentary sphere and if the revolutionary struggle is to be uninterruptedly continued, it will not be adequate to merely wage the struggle against feudal and imperialist exploitation, atrocity and oppression only, rather we have to advance our thinking for building a revolutionary struggle for the total eradication of feudalism and imperialism. If we start our struggle against exploitation and repression with this spirit, the struggle will be more resolute and its power of resistances will be increased manifold. So, to rouse the people with the consciousness of resistance struggles and to make them really fit to participate in this struggle, the RDF upholds the path of Naxalbari i.e., the path of Andhra, Jharkhand, Bihar and Dandakaranya. The RDF will conduct intensive and massive propaganda highlighting this path and will help these struggles in every possible way.

In the said document aims and tasks of Revolutionary Democratic Front (RDF) are mentioned as under :-

AIMS AND TASKS

The RDF desires that the people of India liberate themselves from the clutches of exploitation and oppression from imperialism, the comprador bourgeoisie and feudalism. The RDF wants the abolition of this exploitative and oppressive system. So it raises the slogan - "Rise", "Resist" and "Liberate" to create a new democratic India.

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534] From the above aims and tasks, it is clear that RDF, a frontal organization of banned organization CPI (Maoist) upholds the path of Naxalbari i.e., the path of Andhra, Jharkhand, Bihar and Dandakaranya and it will conduct intensive and massive propaganda highlighting this path and will help these struggles in every possible way.

535] Further, from the said document it reveals that RDF followed Naxalbari which illuminated the path of the Indian revolution and opened a new chapter in the history of the peasant struggle in India and the struggle of Naxalbari brought a revolutionary mass struggle. Further RDF criticize against the Indian Judiciary by saying that judiciary is not consistent with the provisions of the Indian Constitution and in the areas of Andhra, Zarkhand, Bihar and Dandakarnya the people have raised the slogan that “boycott of elections is a democratic right” and this movement has expanded to a wider area facing the onslaughts of the police and cadres of electoral parties. Further, in the said draft below the head “Draft Revolutionary Democratic Front (RDF) Constitution” that – the name of organisation are - (a) Revolutionary Democratic Front (RDF) in English. (b) Krantikari Janwadi Morcha (RDF) in Hindi and (c) In different states the name of the organisation should be written in the respective languages but RDF should be kept with brackets.

536] Art.160 having path **ex 23/ALLL/Accommodation issue /Letters/Letter to the General Secretary of CPI Maoist**, is a letter addressed to the General Secretary Communist Party of India (Maoist) wherein further mentioned that “We are aware that this

military offensive has all the characteristics of genocide to have been launched on the tribal people of these regions and simultaneously targeted against your party and other people's organizations.” At the end of this letter the name of accused no.6 Saibaba is appearing.

537] Art.161 having path ex 4/6 Dec 2011/others/Fact finding report on the killing of CPI Maoist Politbureau member Kishenji titled as “Statement on the killing of CPI (Maoist) Polibureau member Kishenji” taken out from the hard-disk Exh.4, seized from the house of you accused under seizure panchanama (Exh.165) dated December 3, 2011 is a Fact Finding Report by Coordination of Democratic Rights Organization”, wherein it is observed that, “Considering the extent of the damage caused to the body against the rather undisturbed surrounding of the spot where the body lay raises our suspicion about the official version. The reported official version themselves suffer from inconsistencies. For eg. Whereas Chief Minister Mamta Bannerjee claimed that for three days a Kishanji and his companions were encircled and they were asked to surrender, but the villagers deny having heard any public announcement over loud speaker of any kind much less asking him to surrender. Mr Vijay Kumar DG of CRPF went on record on 25th November that Kishanji along with three others were killed in an encounter whereas only a single body was found! The reported number of bullets fired said to be several hundred in the course of 15-30 minute long encounter do not correspond to the spot where his body lay.” At the end of this fact finding report it is demanded as under :-

- 1] An independent judicial inquiry headed by a sitting or retired Supreme Court or High Court judge

into circumstances surrounding Kishanji's death.

2] Register a criminal case under section 302 I.P.C

538] Art.162 seized from the house of accused no.6 Saibaba under seizure panchanama (Exh.165) having path **ex 4/8 Nov, 2011/CRPP/CRPP Old Files/Brochure final/More messages Political prisoners**, is a letter addressed to The Principal Secretary (Home) Uttarakhand Government Dehradun which is sent by accused no.4 Prashant Rahi below that Maoist Prisoners Tamil Nadu is written and it is mentioned that, "We hope the Committee for the Release of Political Prisoners will work for the recognition of Political Prisoners and brings the right of freedom of Expression of opinions by the people without being threatened."

539] Art.163 seized from the house of accused no.6 Saibaba under seizure panchanama (Exh.165) having path **ex 4/CRPP/CRPP Old files/ Brochure final/ EDITED/Profile-Prashant Rahi-Edited**, is a document titled as "Prashant Rahi" with photograph of accused no.4 Prashant Rahi wherein it is mentioned about arrest of accused no.4 Prashant Rahi on 15thDec 2007 in Deharadun.

540] Art.164 having path **Ex-3/Ritu/All Downloads/Letter-2-All ILPS Member organisations 30-06-11(1)** is a letter addressed to All ILPS Member Organisations, and further stated that Dear Comrades and Friends, and also mentioned "In fact, the call for the ICC meeting of November 2009 was based on the request of the Deputy Chairperson of ILPS, GN Saibaba (accused no.6 Saibaba), from India. He had asked for this gathering in order to report on the

progress and to discuss the plans for a major international project to be hosted in India. This was a project that he was leading on behalf of the ILPS as the regional coordinator for South Asia and an officer of the ICC”.

Photographs showing the activities relating to RDF amongst the page Nos. 1 to 247 of Exh.267

1] In the photograph at page no.36 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.3/new folder (2)/all metters I/photos/11.5.07**, photo no.IMG_3162 a poster of DSU is seen regarding freedom for Kashmir, Nagalim, Manipur, Assam, Eelum, Palestine.

2] In the photograph at page no.38 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.3/new folder(II)/All metters I/photos/Utt.RDF convention photos/rdf**, photo no. 3827/3828, accused no.3 **Hem** Mishra is seen on stage singing song with instrument in convention of RDF Uttarakhand.

3] In the photograph at page no.39 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.3/new folder (2)/all metters I/photos/utt.rdf.convention photos.rdf** wife of accused no.4 **Prashant** Rahi, namely, Charulata is seen addressing the convention of RDF Uttarakhand.

4] In the photograph at page no.40 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.3/new folder (2)/all metters I/photos/crpp programmes**, photo no.4017, 4042, 4047 people are seen attending the programme of National Campaign Against Illegal Detention Organized by CRPP.

5] In photograph at page no.135 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/photos many/political programmes/convention on Tamils**, accused no.6 **Saibaba** is seen addressing from stage under the banner “The Unspoken Genocide: War crimes in Srilanka”.

6] In photograph at page no.143 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/photos-Tamil meeting photos**, accused no.6 Saibaba is seen sitting on stage in public meeting on the subject “STOP THE WAR OF GENOCIDE OF TAMILS IN SRILANKA”, held at Deputy Speaker,s Hall Constitution Club Rafi Marg Near Parliament Street New Delhi at 28th April at 3.00 p.m.

7] In the photograph at page no.145 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/all photos/photos sai/new folder-1**, photo no.File 023, 024, 027, accused no.4 **Prashant** Rahi is seen addressing a meeting of Revolutionary Democratic Front supported by Telangana Praja front.

8] In the photograph at page no.146 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/all photos/photos sai/new folder-1**, accused no.4 **Prashant** Rahi is seen addressing a meeting of Revolutionary Democratic Front alongwith accused no.6 Saibaba supported by Telangana Praja front.

9] In the photograph at page no.147 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/photos many/political programmes/21.5.2011, GPF meeting against army deployment**, photo no. 100_9582/9583, accused no.6 Saibaba is seen addressing public meeting under the banner Stop Army Encroachment in Bastar Oppose Indian States War on People, held at Gandhi Peace Foundation, New Delhi.

10] In the photograph at page no.148 of Exh.267 taken out from the hard-disk Exh.5 having path

Exh.5/All photos/Prachanda, photo no. 1405, accused no.6 Saibaba is seen along with Maoist leader of Nepal Prachanda and Rona Wilson and others.

11] In the photograph at page no.149 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/Prachanda**, photo no.100_1404, wife of accused no.6 Saibaba, namely Vasanta is seen along with Maoist leader of Nepal Prachanda.

12] In the photograph at page no.150 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/Prachanda**, photo no. 100_1399, accused no.6 Saibaba is seen along with Maoist leader of Nepal and Baburam Bhattarai.

13] In photograph at page no.151 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/CRPP conference photos**, photo no. DSCF7680, accused no.6 Saibaba is seen on stage in the conference of committee for the release of political prisoners.

14] In the photograph at page no.152 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/photos many/CRPP conference photos/pictures**, accused no.6 Saibaba is seen alongwith Rona Wilson.

15] In the photograph at page no.153 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/photos many/ political programmes/meeting/TIA ILPS**, accused no.6 Saibaba is seen on stage with some of the foreigners attending the 3rd International assembly of international league of People's Struggle ILPS held at Hongkong.

16] In the photograph at page no.154 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/photos many/political programmes/meeting/TIA ILPS**, accused no.6 Saibaba is seen alongwith some foreigner and one Indian lady Soma Sen.

17] In photograph at page no.158 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/4 Dec convention photos**, photo no.2544, accused no.3 Hem Mishra is seen sitting along with other audience.

18] In the photograph at page no.159 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/photos many/i phone photos**, photo no. 3172, accused no.3 Hem Mishra is seen attending a meeting along with Rona Wilson and Ajay Kumar.

19] In photograph at page no.160 of Exh.267 taken out from the hard-disk Exh.5 having path **Exh.5/All photos/photos many/iphone photos**, accused no.6 Saibaba is seen on stage.

Following are the personal photographs found in Arts.1 to 41 seized from the house search of accused no.6 Saibaba in which accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba are seen.

1] In the personal photograph having path **Harddisc ex 3/C/new folder (2)/All metters 1/Hem's photos/images**, accused no.3 Hem Mishra, which was found in possession of accused no.6 Saibaba and accused no.4 Prashant Rahi is there alongwith them.

2] In the personal photograph having path **Harddisc Exh.3/New folder (2)/All metters 1/Hem's photos/Images**, which was seized from accused Saibaba's house under panchanama at Exh.165 in which personal photograph of accused no.3 Hem Mishra, accused no.4 Prashant Rahi and accused no.6 are seen.

Photographs found in Kodak camera Art.30 seized from possession of accused no.3 Hem Mishra.

541] As discussed above, when the personal search of accused no.3 Hem Mishra was taken, from his possession Kodak camera alongwith charger was seized vide panchanama Exh.137 and to that effect the evidence of Investigating Officer P.W.11 Suhas Bawche and panch P.W.1 Santosh Bawne is clear and cogent and not shaken in cross-examination. The Kodak camera alongwith charger is part of muddemal property. Hence, at the time of recording statement u/s 313 of Cr.P.C. of accused no.3 Hem Mishra the camera of Kodak company was opened alongwith the charger (Art.30) before the court on the laptop of the Court in presence of the accused no.3 Hem Mishra, his Advocate Shri Gadling and Spl.PP Shri Sathainathan. In the camera in all there were eleven photos and all these photos were shown to the accused no.3 Hem Mishra and questions were asked to him on all these eleven photographs. The description of photographs are as under :-

- 1] In first photograph there are 3 memory cards of 8 GB, 32 GB and 16 GB of Sandisk company and some pendrives alongwith memory cards.
- 2] In second photograph there is face of small child around 5 years.
- 3] In third photograph rear view mirror of the car is seen.

4] Fourth photograph is blank,

5] In fifth photograph one girl around 15 to 20 years is seen.

6] In sixth photograph dash board of a car is seen.

7] In seventh photograph one person and a girl are seen.

8] In eighth photograph one carrybag of Accabo is seen.

9] In ninth photograph accused no.6 G.N. Saibaba is seen sitting on wheelchair,

10] In tenth photograph one girl approximately 15 to 20 years is seen.

11] In eleventh photograph map of India hanging wall clock is seen.

542] All the above photographs are existed in the internal memory of the said camera of Kodak company and the photographs in the camera before the Court were seen and relevant questions were put to the accused no.3 Hem Mishra and hence, in my opinion, as the original camera is before the Court and photographs were in internal memory, it can be read in evidence without the certificate u/s 65B of the Indian Evidence Act. Hence, in view of judgment of Apex court in

Anvar P.V. v. P.K. Basheer reported in AIR 2015 SC 180 certificate u/s 65B of the Evidence Act is not necessary.

543] At this juncture it is necessary to consider ratio laid down in the case of **Preeti Jain v. Kunal Jain and another reported in AIR 2016 Rajasthan 153** it is observed that -

Family Courts Act (66 of 1984), S.14 – Evidence Act (1 of 1872), Ss.65B, 122 – Family Courts proceedings – Admissibility of electronic records – Husband seeking to produce video clippings recorded through pin hole camera establishing wife's extra marital relationship – Benefit of privileged communications between husband and wife – Is not available in Family Court proceedings – Clipping from pin hole camera with hard disk memory is primary evidence – Thus compliance of S.65B of Evidence Act is not necessary.

Video-clips found in the electronic gadgets (Art.1 to 41) seized from the house search of accused no.6 Saibaba showing involvement of accused no.3 Hem Mishra, no.4 Prashant Rahi, no.6 Saibaba

544] After discussing the incriminating documents found in text form contained in electronic gadgets like memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra and Arts.no.1 to 41 seized from the house search of accused no.6 Saibaba, it is necessary to discuss the video-clips showing the activities of accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba.

Video-clips in electronic gadgets (Arts.1 to 41) seized from the house search of accused no.6 Saibaba under seizure panchanama Exh.165 in which accused no.6 Saibaba was seen

1] In video-clip having path **Exh.3/films/S1/RDF/1/video_TS, VTS _01_1** it is clear that accused no.6 Saibaba is seen taking part and others are singing song on death of Shankar and singing slogans Lal Salam Lal Salam.

2] In video-clip having path **Exh.3/films/S1/RDF/1/video_TS, VTS _01_1** venue and stage of 1st conference of RDF is shown and one banner is seen on which it is written as STOP OPERATION GREEN HUNT – RDF- WITHDRAW THE ARMED FORCES FROM BASTAR, ON THE GATE BANNER IT IS WRITTEN REVOLUTIONARY DEMOCRATIC FRONT(RDF) ALL INDIA1ST CONFERENCE 22-23 APRIL 2012 HYDERABAD TELANGANA, BELOW STAGE THERE ARE BANNERS SHAHID COMRADE NAGINAMAJHEE MANCH, ON STAGE THERE IS BANNER OF REVOLUTIONARY DEMOCRATIC FRONT(RDF) ALL INDIA 1ST CONFERENCE 22-23 APRIL 2012 SUNDARAYYA VIGNANA BHAWAN BAGHKINGAMPALLY HYDERABAD TELANGANA, and accused no.6 **Saibaba** is entering the venue amidst beats of drums.

3] In video-clip having path **Exh.3/films/S1/RDF/ 1/ video_TS, VTS _01_1** slogans are given for Shahid Sheshanna and people are singing

TUMKO LAL SALAM SATHI. In this video clip one lady Maa Malamma is unveiling memorial pillar for amar shahid and accused no.6 Saibaba is seen present and giving slogans.

4] In video-clip having path **Exh.3 /films /s1/RDF/1/ VIDEO_TS/VTS_01_2**, the dignitaries from different parts including accused no.6 G.N. Saibaba is seen on dais, and addressed as Dy. Secretary, RDF below the banner of RDF along with others.

5] In video-clip at path **Exh.3/films /s1/RDF /1/VIDEO_TS/VTS_01_3**, RDF magazine Janpratirodh is shown to audience by one of the sikh person sitting on the dais.

6] In video-clip having path **Exh.3/films/s1/RDF /1/ VIDEO_TS/VTS_01_1**, some gents and ladies raised the slogans as “Shahidonko Lal Salam, Navjanwadi Kranti Zindabad, Ek Hi Rasta Ek Hi Rasta Naxalbari Ek Hi Rasta..”

7] In video-clip having path **Exh.3/films/s1/RDF /2/ VIDEO_TS/VTS_01_1**, accused no.6 Saibaba is seen speaking about the Kashmiri peoples struggle for freedom and gave assurance that RDF is not only

supporting the movement but takes active part and their main concern is to liberate the Kashmir and further accused no.6 Saibaba have stated that the struggle for liberation of Kashmir and our liberation are the same.

9] In video-clip having path **Exh.3/films/s1/RDF/2/VIDEO_TS/VTS_01_1**, the dignitaries from different parts including accused no.6 G.N. **Saibaba** is seen on dais along with Sayad Gilani, and explaining about the manifesto of RDF and further accused no.6 **Saibaba** have seen supporting the Navjanvadi Kranti, further he have invited Arun Pareira to release the book SCRIPTING THE CHANGE WRITTEN BY ANURADHA GANDHY and has released the book.

10] In video-clip having path **Exh.3/films/s1/RDF/3/VIDEO_TS/VTS_01_3**, the dignitaries from different parts including accused no.6 G.N. **Saibaba** is seen on dais and speaking about Telangana and giving a call to give blood for creation of Telangana.

11] In video-clip having path **Exh.3/films/s1/RDF/3/ VIDEO_TS/VTS_01_1**, the dignitaries from different parts including accused no.6 Saibaba is seen on dais and speaking about the manifesto of RDF, report of las 7 years, the areas of working of

RDF and the purpose of RDF is to spread revolutionary ideology amongst the masses.

12] In video-clip having path **Exh.3/films/s1/RDF /3 /VIDEO_TS/VTS_01_3**, the dignitaries from different parts including accused no.6 Saibaba is seen on dais and have invited Rona Wilson to read out the message from Nagaland. Rona Wilson has read the message from Nagaland regarding the revolutionary struggle of the people of Nagaland, Assam, Kashmir Etc. and their support to RDF.

13] In video-clip having path **Exh.3/films/s1/RDF /3/ VIDEO_TS/VTS_01_4**, accused no.6 Saibaba is seen calling Comrade Kalyanrao to release the CD prepared by Jananatyia Mandali with title Dhruva Tara in the conference of RDF.

14] In video-clip having path **Exh.3/films/s1/RDF /4/ VIDEO_TS/VTS_01_2**, accused no.6 Saibaba is seen saying that the RDF completely reject the parliamentary system and use of parliamentary system and its electoral system and have further stated that RDF manifesto clearly establishes that this organization thinks that naxalvadi change the face of the politics of this country, the politics of Indians of continent will remain the same after

naxalbari apprising happened, so naxalvadi ek hi raasta, naxalvadi is only way is the central slogan as per the RDF and other statements regarding naxalbari.

15] In video-clip having path **Exh.3/films/s1/RDF/4/ VIDEO_TS/VTS_01_3**, accused no.6 Saibaba is seen sitting on the dais addressing the people and calling their suggestions on manifesto of RDF and various persons has spoken from the dais about manifesto.

16] In video-clip having path **Exh.9/my dvd/VTS_01_1** accused no.6 Saibaba seen addressing the meeting held on Kishanji where he also saying that he got inspiration from Kishanji and further the meeting is held under the banner फर्जी मुठभेड और हत्याके खिलाफ संयुक्त कन्वेंशन संदर्भ का किशनजी and near the banner one photograph of a person in naxal dress is seen.

17] In video-clip having path **Exh.9/my dvd/VTS_01_2** accused no.6 Saibaba is seen addressing the aforesaid meeting on Kishanji and accused no.6 Saibaba have offered tributes to Kishanji on behalf of RDF and stated that the RDF will continue with the revolutionary thoughts and mission of Kishanji.

18] In video-clip having path **Exh.7/Exh.7-1/(1)DVD/ 091204/VIDEO_TS/VTS_01_3** accused no.6 Saibaba is seen on the stage in the convention against war on people held at Speaker's hall Constitution Club Rafi Marg, New Delhi on 4th December 2009 by Forum Against War on People.

19] In video-clip having path **Exh.7/Exh.7-1/(1)DVD/ 091204/VIDEO_TS/VTS_01_3** accused no.6 Saibaba is addressing a meeting Convention against War on People held at Speaker's hall Constitution Club Rafi Marg, New Delhi on 4th December 2009 by Forum Against War on People and he have stated that comrades have financial problem and appeal to contribute for the forum.

22] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO_TS/VTS_01_1** armed naxals in uniform are seen walking in jungle and background sound of CPI (Maoist) Party spokesperson Aazad played and states that Maoism teaches us that self preservation is possible only through war.

23] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO_TS/VTS_01_2** armed naxals in uniform are seen coming for gathering for function in jungle and greeting each other also many red

banners are seen and on one banner it is seen the name comrade Janki (Anuradha Gandhi) Amar Rahe and further the gathered armed naxals and other peoples shouted the slogans as Bharat ki Communist Party Maowadi Zindabad, Bharat ki Nav Janwadi Kranti Zindabad and encounter by armed naxals in which police persons were killed is seen.

24] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO_TS/VTS_01_3** armed naxals in uniform are seen taking training and exercising in jungle and background sound of CPI (Maoist) party spokesperson Aazad played and he states about the CPI (Maoist) armed strength and their tactics and shows the interviews of one naxal about the Kudru ambush and CPI (Maoist) promotional video is seen how the ambush on police party is executed .

25] In the video-clip having path **Exh.16/(1) NAXILISTES/VIDEO_TS/VTS_01_1** armed naxals in uniform are seen walking in jungle and camping, attending public meeting showing naxal tactics in jungle.

26] In video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkal programme _2010/ Kutul_Maad/kutul bhoomkal_2010** armed naxals in uniform along with the villagers are seen

gathered in jungle to celebrate the 10th anniversary of Bhoomkal and they are shouting with the slogans as Lal Salam, Mahan Bhoomkal Zindabad, Mahan Bhoomkal Shahidonko Lal Salam and one armed naxal in uniform seen addressing to the gathering of around 2000 to 3000 peoples and armed naxals.

27] In video-clip having path **Exh.4/OLD EHD/OGH/DK MATTERS/Bhoomkal programme_2010/Vayanar_ EBT/ 1/ DSCN 4236**, armed naxals in uniform along with the villagers are seen gathered in jungle are shouting with the slogans as Jantana sarkar ko majbut karo,Dandkaranyako aadhar elakeme badal dalo,Bharat ki communist party maowadi zindabad.

28] In video-clip having path **Exh.4/OLD EHD/OGH/DK MATTERS/Bhoomkal programme_2010/Vayanar _EBT /2/ Bhoomakal_ 2010**, armed naxals in uniform along with the villagers are seen marching in jungle with red coloured banners and flags and some green coloured dressed girls seen dancing and singing on the stage and thousand villagers gathering along with armed naxals and one naxal speaks and many red coloured banners and pictures, naxal martyr monument is seen around there and armed naxals are dancing and one naxal takes video shooting of the dance.

29] In video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Com. Kumli martyrdom / DKVF On Com.Kumli funerals/ Kumli funerals** one naxal lady in uniform named Kumli is seen dead and other CPI (Maoist) naxal along with villagers performed her funeral.

30] In video-clip having path **Exh.4/OLD EHD/OGH/DK MATTERS/FILM/1**, some armed naxals in uniform are seen walking in jungles.

31] In audio folder having path **Exh.3/Ritu/from old comp 23 oct 2012/songs/DK CNM, Jharkhand abhen album_2010, Jung Ki Pukar, Kranti.gana, some songs, songs**, and hundreds of revolutionary naxal songs are there.

32] In folder at path **Exh.3/films**, it is seen that in this folder 100s of English and regional movies and videos are seen.

33] In video-clip having path **Exh.3/RDF Conference video/9DVD/VIDEO_TS/VTS_01_3**, accused no.6 Saibaba seen on RDF's first conference stage and requesting Rajkishore to declare the new panel of RDF and Rajkishore declares the new panel and called upon all the members on dais and these

members were fifteen in numbers standing and holding and raising their hands towards the audience alongwith accused no.6 Saibaba, one of the panel member.

34] In video-clip having path **Exh.3/RDF Conference video/9DVD/VIDEO_TS/VTS_01_4**, comrade Rajkishore is seen declaring new office bearers of the RDF and further comrade Varavararao declares as a President, comrade Ghantiprasadam as a Vice President and accused no.6 Saibaba is declared as a Joint Secretary along with comrade Jeetan Marandi who was in jail, also declares as a Joint Secretary, comrade Ajay as a Treasurer.

Video-clips in electronic gadgets seized from the house search of accused no.6 Saibaba under seizure panchanama Exh.165 in which accused no.3 Hem Mishra was seen.

(1) In video-clip having path **Exh.7/Exh.7-1/(1)DVD/ 091204/VIDEO_TS/VTS_01_1** accused no.3 **Hem** Mishra is seen in the audience of the meeting for Convention against War on People held at Speaker's hall Constitution Club Rafi Marg, New Delhi on 4th December 2009 by Forum Against War on People and Saibaba is sat on the dais.

(2) In video-clip having path DVD at Exh.11-1,2 accused No.3 Hem Mishra is seen taking active part and **singing** song to condemn the death of **Kishanji** (CPI-MAOIST Leader) and giving slogans Lal Salam.

(3) In video-clip having path Ex7/Ex-7-1/(10DVD_09204/ VIDEO_TS accused No.3 Hem Mishra is seen taking active part and singing song to condemn the death of Kishanji (Naxal Leader) and giving slogans Lal Salam.

(4) In video-clip having path Exh.3/Meetings/Jiten Convention Against Death Penalty/20 Dec 2011 Jiten Convention 2 Compressed version/convention disc 2/VIDEO_TS/VTS_01_3, accused No.3 Hem Mishra is seen alongwith a group of 10 to 12 young people and he is speaking from the podium regarding death sentence to Jiten Marandi and the song which was sung by Jitan Marandi and thereafter accused No.3 Hem Mishra along with the group have presented the said song.

(5) In video-clip having path Exh.3/Meetings/**Jiten** Convention Against Death Penalty/20 Dec 2011 Jiten Convention 2 Compressed version/convention disc 2/VIDEO_TS/VTS_01_4, accused No.3 Hem Mishra along with 10 to 12 young persons are seen presenting song on Jharkhand and thereafter he

made announcement regarding presenting a song in Punjabi.

(6) In video-clip having path Exh.3/Meetings/Jiten Convention Against Death Penalty/20 Dec 2011 Jiten Convention 2 Compressed version/convention disc 2/VTS_01_5, a person is addressing a gathering and accused No.3 Hem Mishra is seen taking photographs, the event is under banner Convention and Cultural Performance 20 December 2011 at India International Centre, New Delhi and in this programme accused No.6 G.N. Saibaba was also present.

(7) In video-clip having path Exh.7/Exh.7-1/(1)DVD/091204/ VIDEO_TS/VTS _01_1 accused No.3 Hem Mishra is seen in the audience of the meeting for Convention against War on People held at Speaker's hall Constitution Club Rafi Marg, New Delhi on 4th December 2009 by Forum Against War on People and accused No.6 Saibaba was found sitting on the dais.

Video-clips in electronic gadgets seized from the house search of accused no.6 Saibaba under seizure panchanama Exh.165 in which accused no.4 Prashant Rahi was seen.

(1) In video-clip having path **Exh.3/films/s1/RDF/2/VIDEO_TS/VTS_01_1**, accused no.6 **Saibaba** is seen on dais and accused no.4 **Prashant Rahi** is found sitting in the audience where one lady is giving slogans demanding return of Army from Kashmir and for liberation of Kashmir and accused no.4 **Prashant Rahi** is seen responding to the slogans.

(2) In video-clip having path **Exh.3/RDF conference videos/DVD_VIDEO_TS**, accused no. 4 **Prashant Rahi** is seen attending and participating in the convention of the first RDF conference held at Hyderabad in the year 2012 and further it is seen that accused no.6 **Saibaba** was addressing the people from the stage and there is a big hall having large audience and sitting capacity is around 500 is seen in the video and accused No.4 **Prashant Rahi** is seen sitting in the hall on the right side row having capacity around 500 people and accused no.6 **Saibaba** is seen addressing the meeting.

(3) In video-clip having path **Exh.3/films/s1/RDF/1/VIDEO_TS/VTS_01_2**, the dignitaries from different parts including **Shri G.N. Saibaba**, Dy. Secretary, RDF and accused No.4 **Prashant Rahi** were called on dais as comrade **Prashant Rahi** and thereafter he was seen below the banner of RDF on the dais along with others.

(4) In video-clip having path Exh.3/films/s1/Jeetan-1/video_TS/ VTS_01_1, accused No.4 Prashant Rahi is seen on the Dias alongwith 4 persons in which one lady by name Aparna, wife of Jeetan is seen addressing, below the banner of Jan Convention and she has stated that Jeetan was making documentary at the relevant time.

EVIDENCE IN RESPECT OF CDR OF MOBILE SIM OF ACCUSED NO.3 HEM MISHRA and ACCUSED NO.4 PRASHANT RAHI

545] To prove call records of SIM cards of accused no.3 Hem and no.4 Prashant, prosecution has relied on the evidence of :-

- i] Investigating Officer Suhas Bawche (P.W.11), and
- ii] Nodal Officer Ravi Khemraj Pardeshi (P.W.16).

Investigating Officer Suhas Bawche (P.W.11) in his examination at Exh.235 stated that during interrogation with accused no.3 Hem Mishra it was revealed that he was using mobile SIM bearing no. 9873877513 and he was in contact with accused no.6 Saibaba and accused no.6 Saibaba using mobile SIM no.8800100490 and further accused no.2 Pandu Narote and no.1 Mahesh Tirki were using mobile SIM no.9970061273, 9404834308, 9404463877 and 8860282590. He stated that he issued letter to Superintendent of Police, Gadchiroli at Exh.237 on 25.08.2013 and received CDR details of the above mobile SIM numbers on 31.08.2013 and on 31.08.2013

he opened CDR report received by him and after going through it he found location of mobile SIM bearing no.8800100490 belonging to accused no.6 Saibaba and mobile SIM bearing nos. 9873877513 & 8860601278 of accused no.3 Hem Mishra. He stated that on 09.01.2014 and 16.01.2014 he made correspondence to different mobile companies by letter Exh.262 for getting CDR of mobile SIM nos. 9873877513, 8860601278, 8800100490, 8394875017 and the said letter was sent through Superintendent of Police, Gadchiroli.

546] He was cross-examined by the learned defence counsel. In cross examination, he admitted that SIM cards of mobile handsets seized from accused no.2 Pandu Narote and no.1 Mahesh Tirki were sent for getting the CDR details and got the same but these are not filed on record. He denied that the tower location of accused no.2 Pandu Narote and no.1 Mahesh Tirki was at Gadchiroli district head quarter and therefore he had not filed said details. However, no questions were put in respect of CDR of mobile SIM numbers of accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba.

547] P.W.No.16 Ravi Khemraj Pardeshi is a Nodal Officer of Vodafone mobile company. This witness in his examination-in-chief at Exh.329 stated that since 2007 he has been serving as a Nodal Officer in Vodafone company. He knows Fransis Parera and he was working as Alternate Nodal Officer and in this case, Call details record of Cell no. 9873877513, 8860601278 and 8394875017 were produced by their company. Out of those numbers, the numbers 9873877513, 8860601278 were of Delhi and third number 8394875017 was from UP (West). The numbers of Delhi was in the name of accused no.3 Hem Mishra and third number 8394875017 was in the name of

accused no.4 Prashant Rahi. He identified CDR of mobile SIM nos. 873877513, 8860601278 and 8394875017. This witness identified the signature of Fransis Parera and seal of the company on CDR details at Exh.330, 331 and 332. Exh.330 is CDR of mobile SIM no. 9873877513. Exh.331 is CDR of mobile SIM 8860601278 and Exh.332 is CDR of mobile SIM 8394875017. He stated that the extracts of Exh.330, 331 and 332 were taken from server and to that effect certificate under section 65-B of Evidence Act was issued by Fransis Parera, Alternate Nodal Officer.

548] He identified his signature and seal of the company thereon and stated that the contents of Exh.330, 331 and 332 are correct. He stated that the contents of Exh.330, 331 and 332 are automatically generated and at the time of supplying SIM card they have obtained customer application form and Photo ID proof of concerned persons which he produced with his covering letter dated 6-4-2016. He stated that the copy of customer application form in respect of mobile no.8394875017 of accused no.4 Prashant Rahi is at Exh. 335, application form in respect of mobile SIM no. 9873877513 of accused no.3 Hem Mishra is at Exh. 336 and application form in respect of mobile SIM no. 8860601278 is of accused no.3 Hem Mishra is at Exh.337 and the CDR Exh.330, 331 and 332 and certificates under Sec.65B of Evidence Act were submitted along with letter dated 15-2-2014 at Exh.338.

549] This witness was cross-examined by the learned defence counsel. He admitted that his company has been asked to supply copies of CDR and SDR by the letter dated 23-2-2014 issued by

Superintendent of Police, Gadchiroli. He admitted that he cannot say whether SDR have been supplied alongwith the CDR and he did not make any enquiry whether CDR and SDR are required in the present case. He admitted that in the certificate Exh. 333 the name of the holder of mobile numbers is not mentioned and he cannot assign any reason for the same. He denied that they have not purposefully supplied SDR.

550] The prosecution has further examined one Engineer of B.S.N.L. Shri Rajneeshkumar Ratiram (PW.20) at Exh.359, who in his examination has stated that since 2012 he is serving as Sub Divisional Engineer in Bharat Sanchar Nigam Limited, Deharadoon and Superintendent of Police, Gadchiroli had asked him for CDR details of Mobile Sim no. 9411367099 and he had supplied the CDR details of the said Mobile Sim from 1st August 2013 to 5-9-2013 at Exh.360. He stated that he prepared certificate under Sec. 65B of the Evidence Act, 1872 in respect of CDR details of mobile Sim of 9411367099. According to him, print out of CDR details has been produced by fetching details from the server which is located at Chandigarh and the data of this Mobile Sim was stored in server automatically and he had taken print out of CDR details at Exh.360 and issued certificate u/s 65B of Evidence Act. He further stated that he forwarded the certificate and CDR details to Superintendent of Police, Gadchiroli by letter dated 22-2-2014 vide Exh. 362.

551] In his cross-examination by the learned defence counsel, he denied that he is deposing falsely that he had taken the CDR details of Mobile Sim no.9411367099, he has not prepared certificate

as per Section 65B of Evidence Act and he did not forward certificate and CDR details to S.P. Gadchiroli. The prosecution has not produced any evidence on record to show who was the owner of mobile SIM bearing no.9411367099, hence evidence of this witness is not much helpful to prosecution.

**EVIDENCE IN RESPECT OF CDR OF MOBILE SIM OF ACCUSED
NO.6 SAIBABA.**

552] The CDR of mobile SIM no.8800100490 of accused no.6 Saibaba has been admitted by defence at Exh.412, however, to prove the call records of mobile SIM of accused no.6 Saibaba the prosecution has relied on the evidence of following witnesses :-

- i] Investigating Officer Suhas Bawche (P.W.11) at Exh.235,
- ii] SDPO Ramesh Dhumal (P.W.23) at Exh.414 and
- iii] Nodal Officer Manoj Patil (P.W.22)

553] Investigating Officer Suhas Bawche (P.W.11) in his examination-in-chief at Exh.235 stated that during house search of accused no.6 Saibaba, some mobile numbers were revealed and therefore, he had issued letter to the office of S.P. Gadchiroli for obtaining the CDR of those numbers. He stated that three mobiles which were seized from the possession of accused no.6 Saibaba were opened in presence of panchas and the data contained in the mobile phone i.e. dial calls, received calls were noted and panchanama (Exh.203) to that effect was prepared on 18-9-2013 in the presence of panchas. He stated that he recorded statement of accused no.6

Saibaba on 9-1-2014 and on 16-1-2014 and made correspondence with the different mobile companies. He stated that he got certified copy of CDR along with certificate in sealed condition. He stated that he had received CDR from mobile companies from Superintendent of Police office on e-mail and taken out the print-outs of the same. There is no cross-examination on behalf of defence in respect of CDR of mobile SIM number of accused no.6 Saibaba.

554] Ramesh Dhumal (P.W.23) the Investigating Officer in S.C. No.130/2015 in his examination-in-chief at Exh.414 has stated that he had issued letter to mobile companies i.e. Airtel, Vodafone, BSNL for getting certified copies of CDR, SDR and CAF through Superintendent of Police, Gadchiroli and after getting the same, those are filed on record. During cross-examination he denied that he did not issue letter to Mobile companies i.e. Airtel, Vodafone, BSNL for getting certified copies of CDR, SDR, CAF and certificate under Sec.65(b) of Evidence Act through Superintendent of Police, Gadchiroli.

555] P.W.22 Manoj Patil, Circle Nodal Officer, Indian Airtail office, in his examination at Exh.411, stated that their company had received a letter from Superintendent of Police, Gadchiroli dated 28-2-2014 asking details of CDR in respect of mobile Cell no.8800100490 and the said letter was received by his colleague Stephen Menages who expired last year and under his signature the CDR details of mobile number along with 399 pages were supplied. He identified the signature of Stephen, on that letter at Exh.412 and stated that on all CDR there is a stamp of Indian Airtel and practice of

taking CDR details is that the Nodal Officer is having unique password number from which he searches. He stated that there is server of their company at Delhi and the data in the present case is directly taken out from the Delhi server and every nodal officer is having access to the server situated at different place like Delhi with unique password by which he can access the main server and from using that password he can access to the main server situated at Delhi and take out the CDR of particular mobile number along with its tower location. He stated that in CDR details the information regarding the cell number from which call is made along with the IMEI, number starting of call ending of the same, tower location code, the mobile number through which the call is made and the place from where call was received are mentioned. The tower location is mentioned in the column of "Cell ID" and CDR details are at Exh.413.

556] He stated that Customer Application Form at Exh.418 is in the name of accused no.6 Saibaba and photocopy of telephone bill (Exh.419) is also in the name of accused no.6 G.N. Saibaba. He identified Delhi University Identity Card (Exh.420) of accused no.6 Saibaba. He stated that from the CDR of above phone number it reveals that from time to time the accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba were in contact with each other. Learned defence counsels for accused nos.1 to 6 declined to cross-examine this witness.

557] As the defence has not disputed the evidence of P.W.22 Manoj Patil and admitted the CDR of mobile SIM bearing no. 8800100490 belongs to accused no.6 Saibaba and through the

evidence of P.W.16 Khemraj Pardesi the prosecution has proved that accused no.3 Hem Mishra filed two customer application forms separately for issuing mobile SIM card from Vodafone mobile company and the copies of the applications are produced by this witness. These copies bears photographs of accused no.3 Hem Mishra and his signatures thereon. These applications are at Exh.336 and 337. Evidence further shows that accused no.4 Prashant Rahi had applied vide customer application form at Exh.335 for grant of mobile SIM card, and that Vodafone mobile company issued the mobile SIM card no. 8394875017 to accused no.4 Prashant Rahi. The customer application form Exh.335 bears his photograph and signature. There is no cross examination by defence advocate on the point that accused no.3 Hem Mishra and no.4 Prashant Rahi did not file customer application forms (Exhs. 335, 336 and 337) and mobile SIM card bearing nos. 9873877513 and 8860601278 were not issued to accused no.3 Hem Mishra and mobile SIM card no. 8394875017 was not issued to accused no.4 Prashant Rahi. Hence, in view of the above admitted position it is necessary to see the last call details record of mobile SIM cards belonging to accused no.3 Hem Mishra, accused no.4 Prashant Rahi and accused no.6 Saibaba.

558] From call details (Exh.330) of accused no.3 Hem Mishra it reveals that accused no.6 Saibaba made phone calls from his mobile no. 8800100490 to accused no.3 Hem Mishra on his mobile nos. 9873877513 & 8860601278. The call details are as under :-

Sr. No.	Mobile Number of accused no.6 Saibaba	Mobile Number of accused no.3 Hem	Date	Call time	Duration

1	8800100490	9873877513	12-12-2012	18:52:28	0
2	8800100490	9873877513	12-12-2012	18:52:29	0
3	8800100490	9873877513	4-7-2013	21:10:32	0
4	8800100490	9873877513	4-7-2013	21:10:33	0
5	8800100490	9873877513	4-7-2013	21:10:34	0
3	8800100490	9873877513	5-7-2013	9:40:44	0
4	8800100490	9873877513	5-7-2013	9:40:46	0
5	8800100490	8860601278	8-7-2013	23:53:30	0
6	8800100490	8860601278	8-7-2013	23:53:43	0
7	8800100490	8860601278	9-7-2013	1:04:07	0
8	8800100490	8860601278	31-7-2013	12:41:20	0
9	8800100490	8860601278	31-7-2013	12:42:15	0
10	8800100490	8860601278	31-7-2013	12:43:54	0
11	8800100490	9873877513	3-3-2013	14:05:44	1
12	8800100490	9873877513	3-3-2013	14:05:51	1
13	8800100490	9873877513	3-3-2013	14:05:56	1
14	8800100490	9873877513	3-3-2013	14:06:05	1
15	8800100490	9873877513	8-4-2013	20:10:37	1
16	8800100490	9873877513	8-4-2013	20:10:42	1
17	8800100490	9873877513	8-4-2013	20:10:46	1
18	8800100490	9873877513	8-4-2013	20:10:51	1
19	8800100490	9873877513	4-7-2013	21:10:37	1
20	8800100490	9873877513	4-7-2013	21:10:42	1
21	8800100490	9873877513	4-7-2013	21:10:47	1
22	8800100490	9873877513	5-7-2013	09:43:21	1
23	8800100490	9873877513	5-7-2013	09:43:27	1

559] From call details (Exh.413) of accused no.6 Saibaba it reveals that accused no.6 Saibaba made phone calls from his mobile no. 8800100490 to accused no.4 Prashant Rahi on his mobile no. 8394875017 The call details are as under :-

Sr. No.	Mobile Number of accused no.6 Saibaba	Mobile No. of accused no.4 Prashant	Date	Call time	Duration
1	8800100490	8394875017	6-9-2012	0:08:41	0
2	8800100490	8394875017	6-9-2012	0:08:43	0
3	8800100490	8394875017	19-5-2013	0:32:18	0
4	8800100490	8394875017	19-5-2013	0:32:19	0
5	8800100490	8394875017	19-5-2013	10:56:08	0
6	8800100490	8394875017	19-5-2013	10:56:10	0
7	8800100490	8394875017	21-5-2013	12:03:19	0
8	8800100490	8394875017	3-6-2013	19:50:06	0
9	8800100490	8394875017	3-6-2013	19:50:07	0
10	8800100490	8394875017	3-6-2013	19:50:08	0
11	8800100490	8394875017	3-6-2013	19:50:10	0
12	8800100490	8394875017	3-6-2013	19:50:11	0
13	8800100490	8394875017	4-6-2013	19:53:42	0
14	8800100490	8394875017	4-6-2013	19:53:44	0
15	8800100490	8394875017	4-6-2013	19:53:46	0
16	8800100490	8394875017	4-7-2013	21:33:48	0
17	8800100490	8394875017	4-7-2013	21:34:29	0
18	8800100490	8394875017	4-7-2013	21:39:54	0
19	8800100490	8394875017	4-7-2013	21:39:55	0
20	8800100490	8394875017	4-7-2013	21:39:56	0
21	8800100490	8394875017	4-7-2013	21:39:56	0
22	8800100490	8394875017	4-7-2013	21:43:30	0
23	8800100490	8394875017	4-7-2013	21:43:31	0
24	8800100490	8394875017	4-7-2013	21:43:31	0
25	8800100490	8394875017	4-7-2013	21:43:32	0
26	8800100490	8394875017	5-7-2013	14:44:34	125
27	8800100490	8394875017	8-7-2013	17:58:17	0
28	8800100490	8394875017	8-7-2013	17:58:21	0

29	8800100490	8394875017	8-7-2013	17:58:24	0
30	8800100490	8394875017	8-7-2013	17:58:26	0
31	8800100490	8394875017	9-7-2013	19:27:18	0
32	8800100490	8394875017	9-7-2013	19:27:20	0
33	8800100490	8394875017	9-7-2013	19:27:21	0
34	8800100490	8394875017	30-7-2013	19:34:51	0
35	8800100490	8394875017	30-7-2013	19:34:51	0
36	8800100490	8394875017	30-7-2013	19:34:52	0
37	8800100490	8394875017	31-7-2013	17:48:13	0
38	8800100490	8394875017	31-7-2013	17:48:15	0
39	8800100490	8394875017	31-7-2013	17:48:16	0
40	8800100490	8394875017	31-7-2013	17:52:37	0
41	8800100490	8394875017	31-7-2013	17:52:38	0
42	8800100490	8394875017	31-7-2013	17:52:39	0
43	8800100490	8394875017	14-8-2013	10:21:46	0
44	8800100490	8394875017	14-8-2013	13:34:08	99

560] From call details (Exh.413) of accused no.6 Saibaba it reveals that accused no.3 Hem Mishra made phone calls from his mobile nos. 9873877513 & 8860601278 to accused no.6 Saibaba on his mobile no. 8800100490. The call details are as under :-

Sr. No.	Mobile Number of accused no.3 Hem	Mobile No. of accused no.6 Saibabai	Date	Call time	Duration
1	9873877513	8800100490	15-9-2012	22:23:56	0
2	8860601278	8800100490	8-7-2013	16:18:01	0
3	8860601278	8800100490	8-7-2013	16:27:56	94
4	8860601278	8800100490	8-7-2013	23:31:18	0
5	8860601278	8800100490	8-7-2013	23:52:41	0
6	8860601278	8800100490	8-7-2013	23:52:43	0

7	8860601278	8800100490	8-7-2013	23:53:02	0
8	8860601278	8800100490	10-7-2013	10:32:32	37
9	8860601278	8800100490	10-7-2013	10:37:48	26
10	8860601278	8800100490	31-7-2013	11:50:03	26
11	8860601278	8800100490	31-7-2013	13:49:30	0
12	8860601278	8800100490	31-7-2013	14:00:23	0
13	8860601278	8800100490	31-7-2013	14:00:42	0
14	8860601278	8800100490	2-8-2013	18:41:50	0
15	8860601278	8800100490	2-8-2013	18:46:53	0

561] From call details (Exh.413) of accused no.6 Saibaba it reveals that accused no.4 Prashant Rahi made phone calls from his mobile no. 8394875017 to accused no.6 Saibaba on his mobile no. 8800100490. The call details are as under :-

Sr. No.	Mobile Number of accused no.4 Prashant	Mobile No. of accused no.6 Saibabai	Date	Call time	Duration
1	8394875017	8800100490	7-9-2012	07:39:29	0
2	8394875017	8800100490	13-9-2012	10:56:32	0
3	8394875017	8800100490	13-9-2012	10:56:32	0
4	8394875017	8800100490	4-7-2013	21:29:10	0
5	8394875017	8800100490	4-7-2013	21:31:32	0
6	8394875017	8800100490	4-7-2013	21:31:36	0
7	8394875017	8800100490	4-7-2013	21:31:39	0
8	8394875017	8800100490	4-7-2013	21:31:42	0
9	8394875017	8800100490	4-7-2013	21:36:08	0
10	8394875017	8800100490	4-7-2013	21:37:59	0
11	8394875017	8800100490	5-7-2013	12:41:23	0
12	8394875017	8800100490	5-7-2013	12:46:25	0
13	8394875017	8800100490	5-7-2013	13:08:41	8
14	8394875017	8800100490	12-7-2013	07:12:20	0

15	8394875017	8800100490	12-7-2013	07:17:07	0
16	8394875017	8800100490	14-8-2013	10:25:11	0

Argument on CDR by Spl.PP.

562] Learned Spl. PP. Shri Sathianathan submitted that the CDR of mobile SIM card of accused no.3 Hem Mishra bearing nos. 9873877513 and 8860601278 and accused no.4 Prashant Rahi bearing no. 8394875017 were proved through the evidence of Nodal Officer Ravi Khemraj Pardeshi (PW.16), who in his examination stated that the CDR Exh.330, 331 and 332 were issued by his company under the signature of Fransis Parera, Alternate Nodal Officer and from the CDR report (Exh.413) it reveals that the last location of mobile SIM of accused no.3 Hem Mishra on 18th August 2013 was within Delhi University. The CDR of mobile of accused no.6 Saibaba bearing no. 8800100490 and CDR report is admitted by defence at Exh.413 and the cross-examination of P.W.No.22 Manoj Patil was declined by the defence and from CDR Report of accused no.3 Hem Mishra at Exh.330 it is clear that on 12.12.2012, 05.07.2013, 08.07.2013, 08.07.2013, 09.07.2013, 31.07.2013, 03.03.2313, 08.04.2013, 04.07.2013 and 05.07.2013 accused no.6 Saibaba made phone call from his mobile SIM no. 8800100490 to mobile SIM no. 9873877513 & 8860601278 of accused no.3 Hem Mishra. From CDR report of accused no.6 Saibaba at Exh.413 it is clear that on 06.09.2012, 19.05.2013, 21.05.2013, 03.06.2013, 04.06.2013, 04.07.2013, 05.07.2013, 08.07.2013, 09.07.2013, 30.07.2013, 31.07.2013 and 14.08.2013 accused no.6 Saibaba made phone call from his mobile SIM Card no. 8800100490 to mobile SIM no.

8394875017 of accused no.4 Prashant Rahi. Further, from CDR report of accused no.6 Saibaba at Exh.413 it is clear that accused no.3 Hem Mishra made phone calls to accused no.6 Saibaba on his mobile SIM Card no. 8800100490 on 15.9.2012, 8.7.2013, 10.7.2013, 31.7.2013 and 2.8.2013, and accused no.4 Prashant Rahi made phone calls to accused no.6 Saibaba on his mobile SIM Card no. 8800100490 on 13.9.2012, 4.7.2013, 5.7.2013 and 14.8.2013.

563] He submitted that on perusal of CDR details (Exhs.330 and 413), it is clear that the accused no.3 Hem Mishra, accused no.4 Prashant Rahi and accused no.6 Saibaba made phone calls to each other on several dates and were in contact with each other and this is important in view of denial by accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba in their statement under section 313 of Cr.P.C. that they had any connection with each other.

564] He submitted that through the evidence of Nodal Officer P.W.16 Ravi Pardeshi the prosecution has proved the customer application forms (Exh.336 and 337) submitted by accused no.3 Hem Mishra for issuance of mobile SIM cards with his photograph as photo ID and on that basis accused no.3 Hem Mishra was issued mobile SIM card bearing nos. 9873877513 and 8860601278 and on the basis of customer application form at Exh.335, mobile SIM card bearing no. 8394875017 was issued to accused no.4 Prashant Rahi. He submitted that the evidence of this witness on the point of issuing mobile SIM card nos. 9873877513 and 8860601278 to accused no.3 Hem Mishra and mobile SIM card bearing no. 8394875017 to accused no.4 Prashant Rahi and submission of customer application forms alongwith photograph as photo ID proof by accused no.3 Hem Mishra

and no.4 Prashant Rahi is not challenged by the defence and as such the prosecution has proved the fact that the mobile SIM card nos. 9873877513 and 8860601278 were belonging to accused no.3 Hem Mishra and mobile SIM card bearing no. 8394875017 was belonging to accused no.4 Prashant Rahi and from CDR Reports (Exhs.330 and 413) it is proved that they were in contact with each other.

Submission of Adv. Gadling for accused

565] The learned Advocate Shri Gadling for the accused submitted that the CDR of mobile SIM card nos. 8394875017, 9873877513 and 8860601278 can not be said to be proved through the evidence of PW.16 Ravi Pardeshi as Fransis Parera, Alternate Nodal Officer who signed CDR Exh.330 has not been examined.

Conclusion

566] At this juncture, it is necessary to consider the ratio laid down by the Hon'ble Supreme Court in the Judgment of **Anvar P. V. vs. P. K Basheer & Ors., reported in 2014(6) ALL MR 951 (SC)** and for proper appreciation, I propose to reproduce the relevant paragraphs no.19 to 24 of the said judgment, as under :

19. "Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65A of the Evidence Act, read with Sections 59 and 65B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65B of the Evidence Act.

That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.

20. In **State (NCT of Delhi) Navjot Sandhu alias Afsan Guru[1]**, a two Judge Bench of this Court had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerized records of the calls pertaining to the cellphones, it was held at Paragraph 150 as follows:

150. According to Section 63, secondary evidence means and includes, among other things, “copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies”. Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-Section (4) of Section 65B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.”

21. It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed under Section 65B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, under Sections 63 and 65, of an electronic record.

22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. *Generalia specialibus non derogant*, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in *Navjot Sandhu case (supra)*, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

23. The appellant admittedly has not produced any certificate in terms of Section 65B in respect of

the CDs, Exhibits P4, P8, P9, P10, P12, P13, P15, P20 and P22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground.

24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Section 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act. "(emphasized by me)

567] On careful reading of the above dictum, the Hon'ble Supreme Court has not disturbed the law laid down in *State vs. Navjyot Sandhu @ Afsan Guru (2005) 11 SCC 600* to the extent that where a responsible official had duly certified the document at the time of production itself and his signatures are identified in the court of law then it is in apparent compliance with the procedure

prescribed under Section 65B of the Evidence Act. These observations are preceded by the observations in Navjyot Sandhu's case in which there is clear mention that there was no certificate filed in the case under Section 65 B of the Indian Evidence Act. It is evident that what is overruled is the observations relating to the admissibility of electronic evidence as secondary evidence irrespective of the compliance with the procedure provided under Section 65 of Indian Evidence Act which is not the situation in case at hand.

568] In the present case the defence has not cross-examined investigating officer P.W.11 Suhas Bawche on the point that he did not issue letter to the different mobile companies for getting CDR through S.P. Gadchiroli. Further the defence has not challenged the evidence of investigating officer P.W.11 Suhas Bawche that accused no.3 Hem Mishra did not apply for mobile SIM Card numbers by filing customer application Forms at Exh. 336 & 337 and he received mobile SIM Card nos. 9873877513 and 8860601278. Further defence has not challenged the evidence of investigating officer P.W.11 Suhas Bawche that accused no.4 Prashant did not apply for mobile SIM Card number by filing customer application Form at Exh. 335 and he received mobile SIM Card no. 8394875017 which bear their signatures and photographs thereon. Hence, considering the unchallenged evidence of investigating officer P.W.11 Suhas Bawche on this point, prosecution has proved that mobile SIM bearing nos. 9873877513 and 8860601278 were issued to accused no. 3 Hem Mishra and mobile SIM bearing no.8394875017 was issued to accused no.4 Prashant Rahi. The Hon'ble Apex Court has not over ruled the ratio laid down in the case of State vs. Navjyot Sandhu @ Afsan Guru (2005) 11 SCC 600 to the extent that whether the responsible

official has duly certified the document at the time of production itself and his signature is identified in the court of law and then compliance of section 65-B of Evidence Act is made out. Hence, CDR reports at Exh.330 and 331 belonging to accused no.3 Hem Mishra and CDR Report at Exh.332 belonging to accused no.4 Prashant Rahi can be read in evidence.

569] In view of above, the call record details of mobile SIMs of Hem Mishra and Prashant Rahi filed on record at Exhs.330, 331 and 332 can be read in evidence.

570] Even assuming for the sake of argument that the CDR of mobile SIM card nos. 9873877513 and 8860601278 belonging to accused no.3 Hem Mishra and mobile SIM card no. 8394875017 belonging to accused no.4 Prashant Rahi have not been proved but from the evidence of Nodal Officer P.W.16 Ravi Pardeshi it is proved that accused no.3 Hem Mishra submitted the customer application forms (Exh.336 and 337) for issuance of mobile SIM cards with his photograph as photo ID and on that basis mobile SIM card bearing nos. 9873877513 and 8860601278 were issued to him and on the basis of customer application form at Exh.335 alongwith photograph ID submitted by accused no.4 Prashant Rahi, mobile SIM card bearing no. 8394875017 was issued to him. There is no cross-examination by the defence to P.W.16 Ravi Pardesi on this point.

571] Further, from the evidence of Nodal Officer P.W.22 Manoj Patil, it reveals that accused no.6 Saibaba has given customer application form at Exh.418 alongwith his photo ID at Exh.420 for

getting mobile SIM card and SIM card bearing no. 8800100490 was issued to accused no.6 Saibaba and CDR of SIM card no. 8800100490 is at Exh.413. The defence declined to cross-examine P.W.22 Manoj and further admitted the CDR of mobile SIM card bearing No.8800100490 of accused no.6 Saibaba.

572] From CDR, Exh.413 of accused no.6 Saibaba it is clear that on 06.09.2012, 19.05.2013, 21.05.2013, 3.06.2013, 4.6.2013, 4.7.2013, 5.7.2013, 8.7.2013, 9.7.2013, 30.7.2013, 31.7.2013 and on 14.8.2013 accused no.6 Saibaba made phone calls from his mobile SIM no.8800100490 to accused no.3 Hem Mishra on his mobile SIM no.9873877513 & 8860601278.

573] From CDR, Exh.413 it is clear that on 15.9.2012, 8.7.2013, 10.7.2013, 31.7.2013 and 2.8.2013 accused no.3 Hem Mishra made phone calls from his mobile nos. 9873877513 & 8860601278 to accused no.6 Saibaba on his mobile no.8800100490.

574] From CDR, Exh.413 it is clear that on 13.9.2012, 4.7.2013, 5.7.2013, 14.8.2013 accused no.4 Prashant Rahi made phone calls from his mobile no.8394875017 to accused no.6 Saibaba on his mobile no.8800100490.

575] According to the defence the alleged CDR of mobile SIM card nos. 9873877513 & 8860601278 of accused no.3 Hem Mishra and CDR of mobile SIM card no. 8394875017 of accused no.4 Prashant Rahi and mobile SIM card no. 8800100490 of accused no.6 Saibaba can not be believed as prosecution has not produced the

relevant IMEI number of mobile handset of accused no.3 Hem Mishra, accused no.4 Prashant Rahi and accused no.6 Saibaba. It is common knowledge that now-a-days even illiterate person would not use the same handset for doing illegal activities. In the present case accused no.6 Saibaba is a Doctor of Philosophy, accused no.4 Prashant Rahi is a Journalist and accused no.3 Hem Mishra is a student of Jawaharlal Nehru University, Delhi and they are highly qualified persons and these persons would not use the same handsets for making the call for illegal activities. Hence, non-production of IMEI numbers of mobile handsets from which the calls were made is not fatal to the prosecution and as such it is not the case of the prosecution that any handset was seized from the possession of accused no.3 Hem Mishra and accused no.4 Prashant Rahi.

576] In view of admitted CDR of mobile SIM card bearing no. 8800100490 belonging to accused no.6 Saibaba and unchallenged evidence of prosecution that SIM card mobile nos. 9873877513 and 8860601278 were supplied to accused no.3 Hem Mishra having customer application form at Exh.336 and 337 and mobile SIM card mobile no.8394875017 having customer application form at Exh.335 was supplied to accused no.4 Prashant Rahi, prosecution established the fact that accused no.3 Hem Mishra, accused no.4 Prashant Rahi and accused no.6 Saibaba were in contact with each other on their mobiles and the last tower location of mobile SIM of accused no.3 Hem Mishra, accused no.4 Prashant Rahi and accused no.6 Saibaba was at Delhi University campus on 18.8.2013 and this is an important in view of the defence of the accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba denied in their statements u/s 313 of Cr.PC.

that they were not knowing each other and they were never in contact with each other.

Activities of the FACEBOOK Account of accused no.3 Hem Mishra

577] According to the prosecution during the interrogation with accused no.3 Hem Mishra by Investigating Officer P.W.11 Suhas Bawache, it was revealed that the accused no.3 Hem Mishra was having his face-book account and he showed his willingness to open his face-book account. Thereafter, Investigating Officer P.W.11 Suhas Bawche called panch P.W.4 Shrikant Gaddewar at Police Station, Aheri and on computer installed at Police Station, Aheri, the accused no.3 Hem Mishra opened his facebook account in presence of panch P.W.4 Shrikant Gaddewar and the activities of the facebook account of accused no.3 Hem Mishra were seen and Investigating Officer P.W.11 Suhas Bawche took the screen-shots and thereafter print outs of the screen-shots of the activities of face-book account of accused no.3 Hem Mishra were taken in the Police Station in presence of P.W.4 Shrikant Gaddewar. To that effect panchanama at Exh.200 was prepared and copies of screen-shots of activities of face-book account of accused no.3 Hem Mishra (Articles no.A1 to A16) were annexed with the said panchanama.

EVIDENCE

578] To prove the above fact prosecution has relied on the evidence of the following witnesses :-

- 1] Panch witness P.W.4 Shrikant Gaddewar at Exh.198; and
- 2] Investigating Officer P.W.11 Suhas Bawche at Exh.235.

579] Panch witness P.W.4 Shrikant Gaddewar, in his examination at Exh.198 stated that on 26.8.2013 he was called in the Police Station, Aheri and accused no.3 Hem Mishra was present in Police Station, Aheri and accused no.3 Hem Mishra expressed his desire to open his facebook account and police told him that they wanted to take video shooting of the activities of face book account of accused no.3 Hem Mishra and at that time video-grapher was present in police station and accused no.3 Hem Mishra opened his face book account on the computer at Aheri Police Station and videographer took shooting of the proceeding. He stated that accused no.3 Hem Mishra opened his face-book account in front of them and he had seen all the activities on face-book account like time lines, post, friend list and DySP had taken print outs of the screen shots of activities of face-book account of accused no.3 Hem Mishra from the computer at Police Station and thereafter, video cassette (CD) of activities was prepared and cassette was sealed under the panchanama at Exh.199.

580] He stated that then police played the CDs of which shooting dated 26-8-2013 on computer at Police Station in his presence and they saw two persons namely Ajaykumar and Dona Wilson in the 'friend list' of face book account of accused no.3 Hem Mishra and both of them were identified by accused no.1 Mahesh Tirki and no.2 Pandu Narote. He stated that both the accused Pandu and Mahesh told in front of panchas and police that at the instance of Narmadakka they took accused no.3 Hem Mishra from Ballarsha

Railway station to Murewada and thereafter the CD was taken out from computer and it was put back in the same condition and it was sealed with labels and their signatures and to that effect panchanama (Exh. 200) was drawn, it bears his signature. He stated that printouts of the screenshots of facebook account of Hem Mishra were taken by Deputy Superintendent of Police Bawche in his presence by drawing panchanama dated 26.8.2013. He identified Art.no.A-1 to A-16 copies of screen shots before the court.

581] This witness was cross-examined by the learned defence Advocate. In the cross-examination he admitted that in panchanama Exh.199 the date 26.9.2013 is appearing for three times and in panchanama Exh.200 the date 29.9.2013 is appearing for three times. He admitted that in the panchanama dated 26.8.2013 there is no mention that accused no.3 Hem Mishra opened his face-book account on the computer at Aheri Police Station. He admitted that in the panchanama Exh.199 there is no mention about the fact that accused no.3 Hem Mishra was present in Police Station and there is no mention of the fact that Investigating Officer P.W.11 DySP Suhas Bawche was also present at the time of taking screen shots and he does not know why the said fact is not mentioned in panchanama Exh.199. He admitted that it is not mentioned in panchanama Exh.200 about the fact that when video shooting was taken on 26-8-2013 it was played and he does not know why the said fact is not mentioned in panchanama at Exh.200. He admitted that he read over the contents of panchanama at Exh.199 and it is not mentioned in panchnama that accused no.3 Hem Mishra opened his face book account on the computer in Police Station, Aheri in his presence. He

admitted that Video-grapher by name Rangu was resident of Aheri and he was already in police station when he had gone for panchanama in police station. He admitted that on Art. A/15 and A/16 'add friend' is written and 'friend' is not written.

582] He denied that panchanama Exhs.199 and 200 were not prepared in his presence and police obtained his signatures on blank papers and prepared false panchanamas and at the instance of police he deposed falsely. He denied that in his presence accused no.3 Hem Mishra never opened his face book account and Art.15 and 16 are not related to the face book account of accused no.3 Hem Mishra.

583] Investigating Officer P.W.11 Suhas Bawche in his examination stated that on 26-8-2013 it was revealed in the interrogation with accused no.3 Hem Mishra that he is using face book account, and therefore, he called panchas and in their presence accused no.3 Hem Mishra opened his face-book account on the computer of Police Station, Aheri and he had taken some print-outs of screen shots of activities of face-book account of accused no.3 Hem Mishra and video shootings of entire proceeding was taken in the presence of panchas and panchanama (Exh.199) to that effect was also prepared. After displaying the videograph the panchanama at Exh.200 was drawn in presence of panchas and accused.

584] In his cross-examination Suhas Bawche (P.W.11) has stated that by mistake the date 26.9.2013 and 29.9.2013 were mentioned in panchanama (Exh.199 and 200) instead of 26.8.2013 and 29.8.2013. Except this there is no cross examination on this point that on

26.08.2013 accused did not open face-book account on the computer at Aheri Police Station and activities of his face-book account was seen and print outs of screen shots were not taken under the panchanama Exh.199.

Submission of Spl.PP Sathainathan on activities of face-book account of accused no.3 Hem Mishra

585] The learned Spl. P.P. Shri Sathianathan submitted that the prosecution has proved the fact that accused no.3 Hem Mishra was maintaining facebook account and on 26.08.2013 during interrogation by Investigating Officer P.W.11 Suhas Bawche he showed his willingness to open his face-book account on computer at Aheri Police Station. Thereafter, panch witness P.W.4 Shrikant Gaddewar another panch was called in Police Station, Aheri and in Police Station, Aheri accused no.3 Hem Mishra opened his facebook account in presence of panch witness P.W.4 Shrikant Gaddewar and the activities of the facebook account of accused no.3 Hem Mishra were seen by panch P.W.4 Shrikant Gaddewar, another panch and Investigating Officer P.W.11 Suhas Bawche and print-outs of screen shots were taken at Art.A-1 to A-16 and the video-shooting of the said proceeding was taken and CD of said video-shooting was prepared. It is submitted that in the present case the video-grapher who recorded the videography of said proceeding is not examined and the CD was not produced on record and there are some mistakes in dates in panchanama at Exh.199, that is, instead of date 26.08.2013, date 26.09.2013 is mentioned, and that is not fatal to the prosecution case.

586] He submitted that on perusal of print-outs of the screen shots of activities of facebook account of accused no.3 Hem Mishra at Art. A-1 to A-16, it is clear that there are photographs and posts relating to naxal activities and the names of accused no.6 Saibaba and Rona Wilson (Maoist in Nepal) are appearing in the friend list of facebook account of accused no.3 Hem Mishra. He submitted that from the printouts of screenshot (Art.A9) it is clear that there is condemn the death penalty of Afzal Guru and “Red salute to the National Liberation struggle in Kashmir!” and from Art-A8 shows the contents “Kashmir was never part of India” and in Art-11 it is suggested that “Naxalism is the solution and Naxalbari is the only way. This shows that the accused no.3 Hem Mishra is active member of banned organisation CPI Maoist and its frontal organisation RDF and by posting and uploading such photographs having above mentioned comments he was promoting naxalism and inciting people to create violence and caused public disorder and disaffection towards Government established by law and the provisions of Sections 13, 18, 20, 38 and 39 of UAPA are also attracted against accused no.3 Hem Mishra.

Argument of Shri Gadling for the accused on face-book

587] On the other hand, learned Advocate Shri Gadling for the accused submitted that in panchanamas (Exh.199) the date is mentioned as 26.9.2013 and there are some scratches on it and after that overwriting is made and after that date 26.8.2013 is written and

this is not a mistake but it is clear that the said panchanama is antetimed. He submitted that P.W.4 Shrikant Gaddewar is a habitual panch witness of police. Further, panch witness P.W.4 Shrikant Gaddewar in his cross examination admitted that in the panchanama Exh.199 there is no mention that accused no.3 Hem Mishra was present in Police Station and he opened his face-book account on the computer at Aheri Police Station and then screen-shots of the activities of face-book account of accused no.3 Hem Mishra were taken in Police Station. Hence, the evidence of panch witness P.W.4 Shrikant Gaddewar and Investigating Officer P.W.11 Suhas Bawache is not worth to be relied upon.

588] He submitted that accused no.3 Hem Mishra never opened his face-book account in presence of Investigating Officer P.W.11 Suhas Bawche and panch witness P.W.4 Shrikant Gaddewar and no print-outs of screen shots of activities of face-book account of accused no. 3 Hem Mishra were taken out. To substantiate this defence he submitted that according to prosecution on 26.8.2013 accused no.3 Hem Mishra opened his face-book account by entering his username in presence of Investigating Officer P.W.11 Suhas Bawche and panch witness P.W.4 Shrikant Gaddewar on the computer of Aheri Police Station and print-outs of screen shots of activities of face-book account were taken out and those are filed on record at Arts.A1 to A16 and the videography of said proceeding was done and CD was prepared and panchanamas to that effect were prepared at Exh.199 and 200. He submitted that neither the videographer who conducted videography of the said proceeding was examined nor alleged CD prepared by P.W.11 Suhas Bawche of said proceeding was produced on record to prove the said aspect. Hence, adverse inference can be

drawn against the prosecution that no such panchanamas were drawn and nothing happened on 26.8.2013.

589] He invited attention of the Court on the print-outs of screen shots at ArtsA1 to A 16 and submitted that on each and every screen-shots the date 9-8-2013 is seen and therefore it can safely be said that the said screen-shots were taken on 9-8-2013 and not on 28.8.2013 as alleged by the prosecution. He submitted that this fact is also corroborated from the proposal of sanction which was sent to the Sanctioning Authority by Investigating Officer PW.11 Suhas Bawche and PW.23 Ramesh Dhumal wherein in the index of list of documents at serial nos.58 and 53 in front of entry of print-outs of screen-shots of face-book account of accused no.3 Hem Mishra the date is mentioned as 9-8-2013. He submitted that though panch witness PW.4 Shrikant Gaddewar in his examination stated that panchanamas (Exh.199 and 200) were drawn on 26.8.2013 and it bears his signatures, however both panchanamas bear the date 26.9.2013. From this, it is clear that panchanama was effected on 26-9-2013 as alleged by the prosecution.

590] He submitted that panch witness PW.4 Shrikant Gaddewar in his examination at para no.3 stated that police played the CD dated 26.8.2013 and on seeing the CD they saw the name of 2 persons in the friend list of face book account of accused no.3 Hem Mishra namely Ajaykumar and Dona Wilson. However, in cross-examination, this panch witness admitted that on print-outs of screen-shots Art. A/15 and A/16 'add friend' is written and 'friend' is not written. He also invited attention of the Court on print-outs of screen-shots Art.

A/15 and A/16 and submitted that in the Art. A/15 and A/16 before the name of Ajaykumar and Dona Wilson there is mention of 'add friend' and not 'friend' hence they are not added as friend. Hence, the contention of the prosecution is not believable that accused no.3 Hem Mishra has relations with Ajaykumar and Dona Wilson.

Conclusion on face-book activities of accused no.3 Hem Mishra

591] The prosecution relied on the copies of the print outs of screen shots of face-book account of accused no.3 Hem Mishra taken by P.W.11 Suhas Bawache, which are as follows :-

i] **Article-A1** reveals that name of accused no.3 Hem Mishra and his photograph is appearing as his profile.

ii] **Article-A2** reveals that below head following groups are appearing -

GROUPS

CCSEAS 10

Naxalbari the rev... 20+

JNU Uttarakhand

पत्रकार Praxis 13

Humanities Undergro20+

Mulnivasi Karmachari ...20+

भारतीय पत्रकार Indian ... 20+

Social Justice Forum 20+

Pahari Forum

Free Soni Sori and Li... 20+

AISA

2

Campaign against D..... 20+

Create Group.....

iii] **Article-A3** in all 12 photographs are appearing and in two photographs dead bodies of persons are lying and in one photograph appearing REPEAL UAPA and in two photographs accused no.3 Hem Mishra are appearing and there is photograph of one man and in one photograph “red salute” is mentioned and in another photographs it is mentioned that - The Four Year Undergraduate Programme!

iv] **Article-A4** reveals that it is in the name of accused Hem Mishra and he uploaded 12 photographs and in one photograph some matter is written below heading “Saffron Terror” and in another photograph some matter is written below heading “Release All Members of Kabir Kala Manch” and in two photographs accused no.3 Hem Mishra shown playing Dafli.

v] **Article-A5** reveals that it is in the name of accused Hem Mishra and he uploaded one photograph of pamphlet having picture of one lady and between the matter one slogan is written as, “Women hold up half the sky” - Mao.

vi] **Article-A6** reveals that accused no.3 Hem Mishra uploaded 12 photographs and in one photograph accused no.3 Hem Mishra shown alongwith other 3/4 persons and one lady is addressing from dais.

vii] **Article-A7** reveals that it is in the name of accused Hem Mishra and one Srirupa Bhattacharya tagged one photo – with Priya Darshan and Hem Mishra and in the photograph accused Hem Mishra is shown playing instrument (Dafli) with one lady.

viii] **Article-A8** reveals that it is in the name of accused no.3 Hem Mishra and one Parijat Pratik tagged one photo and in the said photograph accused Hem is shown standing near one person holding banner on which it is written as, “KASHMIR WAS NEVER PART OF INDIA” and one lady was holding mike nearby street.

ix] **Article-A9** reveals that it is in the name of accused no.3 Hem Mishra and Democratic Students Union uploaded one photo and accused no.3 Hem Mishra like this photo. In the said photograph one photo of Afzal Guru and the matter, “Condemn the murder of Afzal Guru!, Red salute to the national liberation struggle in Kashmir” is written and at the bottom there is mention as “Martyrs are not buried they are sown.”

x] **Article-A10** reveals that it is in the name of accused no.3 Hem Mishra and he uploaded 12 photographs and in one photograph it is written as, “Naxalism is not the problem but the solution!, Naxalbari Ek Hi Rasta”.

xi] **Article-A11** reveals that it is in the name of accused no.3 Hem Mishra and one Umar Khalid uploaded one photo and accused no.3 Hem liked this photo. In the said photograph it is written as, “The white man called you Bhagat Singh that day The black man calls you Naxalite today But everyone will call you The Morning star tomorrow – Sri Sri – NAXALISM is not The problem but the Solution! NAXALBARI EK HI RASTA! DSU.

xii] **Article-A12** reveals that it is in the name of accused no.3 Hem Mishra and he uploaded 12 photographs and on one photograph it is written as, “Freedom for Kashmir, Manipur, Nagalim, Elam Palestine !...”.

xiii] **Article-A13** reveals that in the 'friend list' name of six persons are appearing i.e. Pan Bohra, Kunal Pargai, Aneeb PA, Kanchan Joshi, Krishna Pophale and Priyanka Goswami.

xiv] **Article-A14** reveals that it is in the name of

accused no.3 Hem Mishra and in basic information column, in front of “political views” it is mentioned as “Marxist-Leninist-Maoist” and further in the column of “Contact Information” mobile No.9873877513 belonging to accused no.3 Hem Mishra is shown.

xv] **Article-A15** reveals that it is in the name of accused no.3 Hem Mishra and in the friend-list of face-book of accused no.3 Hem Mishra, the name of accused no.6 G Naga Saibaba is seen alongwith profile picture of photo of accused no.6 Saibaba.

xvi] **Article-A16** reveals that it is in the name of accused no.3 Hem Mishra and in the 'friend-list' of face-book of accused no.3 Hem, the name of one Rona Wilson is seen.

592] The evidence of panch witness Shrikant Gaddewar (P.W.4) and Investigating Officer Suhas Bawche (P.W.11) was challenged on the ground that panch witness Shrikant Gaddewar (P.W.4) is a habitual panch and there is no mention in the panchanama (Exh.199) that accused no.3 Hem Mishra himself opened his facebook account. Further, it is not mentioned in panchanama Exh.199 that activities of facebook account of accused no.3 Hem Mishra were seen and printouts of the screen-shots of facebook account were taken and the said printouts were not supported by certificate as required by Sec.65B of the Indian Evidence Act. However, there is no cross-examination to Investigating Officer Suhas Bawche (P.W.11) on the

point that he has not taken screenshots and printouts of the activities of facebook account of accused no.3 Hem Mishra and hence printouts were taken and to that effect panchanama was prepared at Exh.199.

593] It is well settled law that when the defence declined to avail opportunity to put his case in cross-examination on particular point then evidence tendered by witness cannot be rejected. At this juncture it is necessary to consider observations laid down by the Apex Court in para 8 in the case of **Sarwan sing v State of Punjab** reported in **AIR 2002 SC 3652** while dealing the case under TADA Act 1985 observed as under :-

8. Incidentally, in early nineties, terrorist activities were on peak in the border districts of Punjab and it has practically been an axiomatic truth in the area in question that no-one would in fact come out of the residential houses after dusk unless performed at 3'O clock in the morning. There exists no other evidence nor even there being any suggestion of existence of any other factor for such performed outing at 3 a.m. It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted. A decision of the Calcutta High Court lends support to the observations as above, (See in this context AEG Carapiet v. AY Derderian, AIR 1961 Calcutta 359 (PB. Mukherjee, J. as he then was)] (emphasis supplied)

594] Further, the Apex Court in case of **Gian Chand and others .v. State of Haryana** reported in **(2013) 14 Supreme Court Cases 420** while dealing the case under NDPS Act in para 15 observed as under :-

15. The defence did not put any question to the investigating officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.

595] In the above reported judgment it is further observed that non-examination of independent witness is not fatal to the prosecution case if case is proved otherwise and it was further observed that evidence of police officer can be relied if it is found to be reliable and does not suffer from infirmities.

596] The evidence of P.W.No.4 Shrikant Gaddewar reveals that when the face-book account was opened by accused no.3 Hem Mishra in presence of he himself and P.W.11 Suhas Bawche, and thereafter Investigating Officer P.W.No.11 Suhas Bawache taken out the printouts at the time of recording of panchanama to that effect at Exh.200 and video shooting of all the proceeding was done and CD was prepared. However, the evidence of Investigating Officer P.W.No.11 Suhas Bawache is silent on the point that printouts of the screenshots of activities on facebook account of accused no.3 Hem Mishra were taken at the time of drawing of panchanama at Exh.200. Further there is no mention in panchanama (Exh.200) that printouts of screen shots, facebook account of accused no.3 Hem Mishra were taken.

597] The printouts of the activities on facebook account of accused no.3 Hem Mishra are filed on record. They are at Arts.A1 to A16. The said print-outs do not bear the signatures of panch witness P.W.No.4 Shrikant Gaddewar and Investigating Officer P.W.No.11

Suhas Bawache. In the said print-outs (Arts.A1 to A16) the date is mentioned as 9.08.2013. It is important to note that in the bio set up of computer system, same time first month is mentioned and thereafter date and year is mentioned. It is the contention of the prosecution that the printouts were taken by P.W.No.11 Suhas Bawache on 08.09.2013. There appears to be substance in the contention of the prosecution because the evidence of Investigating Officer P.W.11 Suhas Bawache is silent on this point that print-outs of screen-shots were taken then and there at the time of drawing panchanama and there is no mention in panchanama (Exh.200) about the same. Had the print-outs were taken at the same time there would have been signatures of panch witness P.W.4 Shrikant Gaddewar and Investigating Officer P.W.11 Suhas Bawache on the said print-outs (Arts.A1 to A16) but their signatures are not appearing on the same. This shows that the print-outs were taken on subsequent date i.e. on 8.9.2013 by Investigating Officer P.W.11 Suhas Bawache from the computer installed at Aheri Police Station. If the said contention of the prosecution is accepted as there is no certificate attached by the Investigating Officer P.W.11 Suhas Bawache to the said printouts (Arts.A1 to A16) as required under Section 65-B of the Evidence Act, in view of this Arts.A1 to A16 cannot be taken into consideration and evidence of the prosecution witnesses on this point is liable to be discarded.

Case against accused no.4 Prashant & accused no.5 Vijay

598] It is the case of the prosecution that on 1.9.2013 police officers Rajendra Tiwari (P.W.14) Tiwari and Ramesh Yede (P.W.8) of Police Station, Chichgad, Dist. Gondia were patrolling in border area

of Chhattisgad near Rajnandgaon for search of accused Pahadsing who was wanted in Crime No.39/2011 of Police Station, Chichgad and at that time they received message on their mobile that the accused in Crime no.3017/2013 of Police Station, Aheri were in Raipur area and hence, they proceeded to Raipur and they came to know that the accused involved in crime no.3017/2013 had gone towards Devari by four wheeler vehicle and therefore, they had gone towards Devari and at Chichgad T-point they found accused no.4 Prashant Rahi and no.5 Vijay Tirki as per the description given to them and hence, they accosted them and took accused no.4 Prashant Rahi and no.5 Vijay Tirki to Aheri Police Station and handed over to P.W.11 PSI Bawche who arrested both accused and from the possession of accused no.4 Prashant Rahi eight papers relating Maoist literature and typed written papers in respect of undertrial prisoner Maoist leader Narayan Sanyal were seized under panchanama (Exh.179) and from possession of accused no.5 Vijay Tirki, the articles like pieces of paper (Art.131A to 131D), daily newspaper Dainik Bhaskar dated 1.9.2013 (Art.132) were seized under panchanama (Exh.179).

EVIDENCE

599] In order to substantiate this case the prosecution relied on the evidence of -

- 1] Police Inspector Rajendrakumar Parmanand Tiwari (P.W.14) at Exh.307
- 2] Head Constable Ramesh Yede (P.W.8) at Exh.223
- 3] Investigating Officer Suhas Bawche (P.W.11) at Exh.235
- 4] Panch witness Umaji Kisan Chandankhede (P.W.3) at

Exh.178

5] Muddemal Clerk of Aheri Police Station

Ganesh Rathod (P.W.13) at Exh.297

600] Rajendrakumar Parmanand Tiwari (P.W.14) was Police Inspector of Police Station Chichgad, Tah.Devri, District : Gondia. He was on patrolling alongwith Head Constable Ramesh Yede (P.W.8) at border area of Chhattisgad. In his examination at Exh.307 he has stated that on 1.9.2013 he had been to border area of Chhattisgad near Ranjnandgaon for search of accused Pahadsing who was wanted in Crime No.39/2011 of Police Station, Chichgad and he received message on mobile that the accused in Crime no. 3017/2013 of Police Station, Aheri were in Raipur area and so, he alongwith Police Constable P.W.8 Ramesh Yede proceeded to Raipur and he came to know that the accused involved in this case had gone towards Devari by four wheeler vehicle and therefore, they had gone towards Devari and at Chichgad-T point they found two persons as per the description given to them and hence, they took them into custody. The personal search of accused no.4 Prashant Rahi and no.5 Vijay Tirki was taken and in possession of accused no.4 Prashant Rahi papers of naxal literature were found. To that effect P.W.14 Rajendra Tiwari gave written report at Exh.241 in Devari Police Station. He stated that as per directions of P.W.11 Suhas Bawche, SDPO Aheri, they proceeded towards Aheri and reached Aheri on 2.9.2013 at 5.00 a.m. and they handed over those two persons i.e. accused no.4 Prashant and no.5 Vijay Tirki in the custody of SDPO Suhas Bawche (P.W.11) and entry to that effect was taken in Aheri Police Station.

601] This witness was cross examined by the learned defence counsel. In his cross-examination he admitted that at Chichgad-T point, there were tea stalls and pan shops and they did not make any arrest panchanama when the accused were arrested and the personal search of both the accused was not taken. He denied that both the accused were not arrested at Chichgad T-point and he had filed false report against them in Devri Police Station and he had not handed over them to Investigating Officer P.W.11 SDPO Suhas Bawche, Aheri. He denied that he arrested accused no.4 Prashant Rahi in Raipur Court.

602] Police Constable Ramesh Koluji Yede (P.W.8) was attached to Police Station, Chichgad, Tah.Devri, District : Gondia as Head Constable and was on patrolling duty alongwith P.W.14 Rajendrakumar Tiwari. In his examination at Exh.223 he has stated that on 1-9-2013 he was patrolling within the forest area situated near border of Chhattisgad and Maharashtra and at that time, P.W.14 Police Inspector Rajendrakumar Tiwari received message that the wanted naxals were proceeding towards Devari from Raipur, and therefore, they took vehicle towards Devri and halted vehicle at Devri on Chichgad T-point and at that place, P.W.14 PI Tiwari, himself and staff got down from the vehicle and they saw two persons were standing there. They enquired with those two persons, however, they gave evasive reply, and thereafter, on enquiry they told their names as Prashant Rahi and Vijay Tirki, hence, they were brought in Devri Police Station and entry to that effect was made in Police Station, Devri and thereafter P.W.14 PI Tiwari informed about the same to P.W.11 SDPO Bawche. He stated that P.W.11 SDPO Bawche told P.W.14

PI Tiwari to bring those accused to Aheri Police Station and thereafter on next day early in the morning they reached to Aheri Police Station alongwith accused no.4 Prashant and no.5 Vijay. Thereafter, P.W.14 PI Tiwari handed over accused no.4 Prashant and no.5 Vijay to P.W.11 SDPO Bawche.

603] This witness was cross-examined by the learned defence counsel. In his cross-examination, he admitted that they did not go to Aheri Police Station and he does not remember whether they had gone to SDPO office Aheri or Police Station, Aheri and they did not go to search Pahadsing on Chattisgad border on 1.9.2013. He denied that they had gone to Raipur Court. He admitted that at a distance of 300 feet of the T-point there are Pan-thelas and T-stalls and there is footpath of 50 feet adjacent to the road. He denied that he did not arrest any person on 1-9-2013 and he did not go to the T-point alongwith P.W.14 Rajendrakumar Tiwari and those persons were not taken to Aheri Police Station.

604] Umaji Kisan Chandankhede (P.W.3), the panch witness is examined at Exh.178. He in his examination has stated that he was called by Aheri police on 2-9-2013 and he went to the Police Station, Aheri at about 5.45 p.m. and at that time, police officer Shri Bawche (P.W.11) and two accused were present in the Police Station and police introduced him their names as Prashant Rahi and Vijay Tirki. He stated that police initially took personal search of accused no.4 Prashant Rahi and from his possession one money purse containing Rs.8,800/-, one visiting card, driving license, one Pan card, one Yatri card, one newspaper by name Dainik Bhaskar were seized under

the seizure panchanama (Exh.179). He further stated that thereafter police took personal search of accused no.5 Vijay Tirki and from his possession one mobile phone of silver colour, Rs.5,000/- cash, four pieces of paper on which phone numbers were written, daily news paper Dainik Bhaskar were seized under seizure panchanama (Exh.180).

605] This witness has identified the property seized in his presence from the personal search of accused no.4 Prashant Rahi. The said articles are -

- i] Driving license in the name of Prashant Rahi (Art.124),
- ii] Pan card in the name of Prashant Rahi (Art.125),
- iii] Yatri card (Art.126),
- iv] One purse (Art.127),
- v] One news paper Dainik Bhaskar, dated 1-9-2013 (Art.128),
- vi] Twelve visiting cards (Art.129),
- vii] One blue plastic file seized from the possession of accused Prashant (Art.130).

606] He further identified the property seized in his presence from the personal search of accused no.5 Vijay Tirki. The said articles are -

- i] Four pieces of paper collectively marked (Art.131A to 131/D)
- ii] One newspaper of Dainik Bhaskar dated 1-9-2013 (Art.132)

607] This witness was cross-examined by the learned defence counsel. In his cross-examination he admitted that he is an illiterate person and he cannot read and write Marathi and Hindi and he was

called in Aheri Police Station for cleaning the office premises for 20 to 25 times and before the incident he might have gone to Aheri Police Station for panchanama for 4 to 5 times to act as a panch and Aheri Police used to call him to act as a panch whenever they needed. He further admitted he had attended the Court for four to five times for evidence. He does not remember the date on which the panchanamas (Exh.179 and 180) were prepared. He denied that he acted as a panch for 20 to 25 times in respect of Aheri Police Station. He denied that no panchanama was effected in his presence on 2-9-2013 and he deposed falsely at the instance of police.

608] The Investigating Officer Suhas Bawche (P.W.11), Sub Divisional Police Officer, Aheri in his examination at Exh.235 has stated that on 2-9-2013 accused no.4 Prashant Rahi and no.5 Vijay Tirki were brought by P.W.14 API Tiwari and his staff of Police Station, Chichgad, Dist. Gondia to Police Station, Aheri and thereafter, he took personal search of the accused no.4 Prashant Rahi and no.5 Vijay Tirki and panchanamas were prepared and things found on their person were seized by him in presence of panchas vide Exh.179 and Exh.180. He stated that he arrested accused no.4 Prashant Rahi and no.5 Vijay Tirki and prepared arrest panchanamas (Exh.239 & 240) to that effect with the help of two panchas and on 2-9-2013 P.W.14 API Tiwari of P.S. Chichgad submitted report vide Exh.241 about the action taken by him in respect of two persons of Devari namely Ravi @ Prashant Rahi s/o N.B. Sangalika and Prasad @ Vijay Nan Tirki. Thereafter on 2-9-2013 he recorded statements of the raiding party who had brought accused no.4 Prashant Rahi and no.5 Vijay Tirki to Police Station, Aheri.

609] He stated that from the possession of accused no.5 Vijay Tirki on 2-9-2013, one mobile phone, cash of Rs.5,000/- and four chits with mobile numbers mentioned on it, one News Paper dated 1-9-2013 were seized under panchanama at Exh.179 and from the possession of accused no.4 Prashant Rahi, one money purse containing some cash, some visiting cards, one Yatri (travel) card, one railway ticket from Nizamuddin to Raipur, xerox copies of two newspaper, Dainik Bhaskar dated 1-9-2013, one transparent file of sky blue colour, some documents pertaining to arrest of naxal Narayan Sanyal, some documents concerning jail accused, three stapled documents total eight pages relating to naxal activities, Pan card in the name of accused no.4 Prashant Rahi were seized under panchanama at Exh.179.

610] He stated that one news was published on 19-9-2013 relating to naxal in Indian Express and the source of the news was reporter Ashutosh Bhardwaj and the contents of the said news were relating to accused no.4 Prashant Rahi. Xerox copy of news published in Indian Express is marked at Art.145 and the continuing page is marked at Art.145A. He stated that, on 5-10-2013 he sent E-mail (Exh.259) to reporter Ashutosh Bhardwaj from his official E-mail ID asking for source document on the basis of which he prepared the said news and said reporter sent e-mail and further attached the documents alongwith the mail which was received on 18-10-2013. He stated that during investigation he received certified copies of Nanakmatta Police Station, Udhamasingh Nagar District regarding filing of criminal cases against accused no.4 Prashant Rahi. They are in

respect of Crime no.134/07, P.S. Nanakmatta, Dist. Udhamsing Nagar. This witness identified all the articles which were seized from the possession of accused no.4 Prashant Rahi. These are -

- i] Driving license (Art.124),
- ii] Pan card (Art.125)
- iii] Yatri card (Art.126),
- iv] One brown coloured money purse (Art.127)
- v] One Dainik Bhaskar newspaper, dated 1-9-2013 (Art.128)
- vi] 12 visiting cards (Art.129)
- vii] One plastic file (Art.130) containing four envelopes with one railway ticket of Samta Express of Nizamuddin to Raipur, documents relating to naxal Narayan Sanyal,
- viii] Eight pages of literature in relation to naxal (Art.130A)

611] This witness further identified the articles which were seized from the possession of accused no.5 Vijay Tirki. These are -

- i] Pieces of paper (Art.131A to 131D),
- ii] Daily newspaper Dainik Bhaskar dt.1.9.2013 (Art.132)

612] This witness was cross-examined by the learned defence counsel at length. In his cross-examination he admitted that he had investigated other offences under UAPA prior to this offence and as per the provisions of UAPA within 48 hours seizure has to be reported to the designated authority. He admitted that he had not reported seizure within 48 hours to Designated authority but he had reported the same to Superintendent of Police and J.M.F.C. Aheri as the articles seized were not explosive substance but these are ordinary articles. He admitted that he did not give the copy of panchanama to accused no.5 Vijay regarding panchanama of seizure. He denied that he did not seize any articles in this case and hence he did not communicate the same to designated authority. He denied that nothing was seized

from the possession of accused no.4 Prashant Rahi and false panchanama was prepared to that effect. He denied that nothing was found in possession of accused no.5 Vjay and there is no concern of accused no.5 Vijay with the mobile numbers found in his possession.

613] Head Constable P.W.13 Ganesh Rathod, the Muddemal Clerk of Aheri Police Station in his examination at Exh.298 stated that on 2-9-2013 Mr. Bawche SDPO (P.W.11) deposited muddemal property seized from the possession of accused no.4 Prashant Rahi i.e. one packet containing amount of Rs.8819/-, pan card, yatri card, driving license and 12 visiting cards, Daily newspaper Dainik Bhaskar, one blue colour transparent plastic colour file containing documents of Narayan Sanyal, Railway ticket dated 31.8.2013 and eight pages of naxal literature in crime no.3017/2013 in the Malkhana.

614] He stated that P.W.11 Suhas Bawche had deposited property seized from the possession of accused no.5 Vijay Tirki i.e. one mobile of Intex company of silver colour, cash amount of Rs.5000/- and daily newspaper Dainik Bhaskar dated 1.9.2013 and four pieces of paper having some phone numbers in crime no.3017/2013 in the Malkhana of Aheri Police Station. The property was in sealed condition. The entry of the property seized from the possession of accused no.4 Prashant Rahi and no.5 Vijay Tirki was taken in Malkhana Muddemal Register of Police Station, Aheri at Exh.276B on dated 2.9.2013 at Sr.no.13 is as under :

Property seized from accused no.4 Prashant Rahi -

- i] one packet containing amount of Rs.8819/-, pan card, travel card, driving license and 12 visiting cards
- ii] Dainik Bhaskar news paper
- iii] one blue coloured plastic transparent file containing type written documents in connection with Maoist leader Narayan Sanyal, railway ticket dtd. 31.8.2013
- iv] Eight pages containing naxal literature in English language.

Property seized from accused no.5 Vijay Tirki –

- i] one silver colour Intex company mobile phone
- ii] cash amount Rs.5000/-
- iii] Four pieces of newspaper “Dainik Bhaskar” bearing some phone numbers. In column no.11, it is mentioned that said properties were deposited on 13.10.2015 in the Court.

615] This witness was cross-examined by the learned defence counsel. In his cross-examination he admitted that he cannot say without seeing register who deposited the property with him in which Crime number. He admitted that in the invoice challan it is not mentioned that property was sealed and make of the seal was not mentioned. He admitted that he did not make entry in writing about the fact that the clerk of the District court asked him to open

the seal while depositing the property. He admitted that there are some overwriting in the muddemal register made by him at two places and when the property was deposited in Malkhana, at that time, it was sealed and make of the seal was not mentioned. He denied that on 8-9-2013 he made entry at the instance of SDPO Shri Bawche. He denied that as the property was not in sealed condition and make of the seal was not mentioned, hence he did not mention the same in muddemal register.

Argument of Spl.PP. in respect of accused no.4 Prashant Rahi.

616] Learned Spl. P.P. Shri Sathianathan in respect of accused no.4 Prashant Rahi submitted that during the interrogation with accused no.3 Hem Mishra, involvement of accused no.4 Prashant Rahi was revealed. Investigating Officer P.W.11 Suhas Bawche came to know that accused no.4 Prashant Rahi was coming to Devri Chichgad area and this fact is stated by P.W.11 Suhas Bawche in his examination. Further, from the evidence of P.W.14 Rajendrakumar Tiwari it is clear that he received message from P.W.11 Suhas Bawche that two persons were coming to Devri Chichgad area who were required in Crime No.3017/2013 of Aheri Police Station and asked them to take search of them. In pursuance of the same P.W.8 Ramesh Yede and P.W. no.14 Rajendrakumar Tiwari while searching accused Pahadsing who was required in crime no.39/2011 of PS.Chichgad, they found two persons near Chichgad T-point as per description given to them in suspicious circumstances. On inquiry they did not give proper answers hence they accosted them and in their possession some documents relating to naxal literature were found. Thereafter,

P.W.8 Ramesh Yede and P.W.14 Rajendrakumar Tiwari came to Aheri Police Station by Government vehicle alongwith those two suspected persons and at about 5 a.m. they handed-over accused nos.4 Prashant and no.5 Vijay to P.W.11 S.D.P.O. Suhas Bawche. To that effect report was given by P.W.14 Rajendrakumar Tiwari at Exh.241.

617] He further submitted that from the evidence of P.W.11 Suhas Bawche and panch witness P.W.3 Umaji Chandankhede it is clear that personal search of accused no.4 Prashant Rahi was taken and from his possession driving license in the name of accused no.4 Prashant Rahi, Pan card in the name of accused no.4 Prashant Rahi, Yatri card, one purse, one news paper Dainik Bhaskar dated 1-9-2013, twelve visiting cards, one blue plastic file containing eight documents relating to naxal and maoist literature were seized.

618] The plastic file is marked at Article-130 and eight documents alongwith type written papers of under trial prisoner Maoist leader Narayan Sanyal found in the said file are marked at Article-130A and to that effect questions were put to accused no.4 Prashant Rahi in his statement u/s 313 of Cr.P.C. He further submitted that this fact is also proved from the evidence of panch witness Umaji Chandankhede (P.W.3) who stated in his examination about arrest of accused no.4 Prashant and seizure of articles from his possession and he admitted the contents of the panchanama (Exh.179). He submitted that though the date 18th August as stated by P.W.11 Suhas is mentioned instead of 28th August but because of loss of memory the date was wrongly written by P.W.11 Suhas Bawche.

619] He invited attention of the Court on eight documents collectively marked at Article-130A, document relating to “Brief Review of FC” in which the responsibilities of FC allotted to Jaddu and Chetan in the FC meeting were mentioned. He further relied on the document at Article-A21 seized from the possession of accused no.3 Hem Mishra in which the name “Chetan” is used in reference to accused no.6 Saibaba and in second paragraph of the said document there is reference of Jiten Murandi who is facing death penalty and this fact is also corroborated from video-clip found in hard-disc Ex.3 seized from the house search of accused no.6 Saibaba, accused no.4 Prashant Rahi was seen attending the said programme and in another video-clip at Ex.3 accused no.4 Prashant Rahi was seen on the dias.

620] He further invited attention of this Court on the document titled as “Resolution of CF meeting on 07.06.2013” at Art.130A wherein it was agreed that accused no.4 Prashant Rahi should be given one book stall at Delhi to facilitate proper maintenance and there are several photographs of accused no.4 Prashant Rahi which were found in the hard-disc seized from the house search of accused no.6 Saibaba while attending meetings, addressing gatherings which shows that he is in contact with accused no.6 Saibaba. He further invited attention of this court on photograph found in hard-disc (Ex.3) seized from the house search of accused no.6 Saibaba in which accused no.4 Prashant Rahi was seen on the stage under banner of RDF and in the video-clip found in hard-disc (Ex.3) seized from house search of accused no.6 Saibaba, accused no.4 Prashant Rahi was called on dais as comrade below the banner of RDF.

621] Learned Spl. P.P. Shri Sathianathan submitted that the CDR of mobile SIM card bearing no. 8394875017 of accused no.4 Prashant Rahi was proved through the evidence of Nodal Officer Ravi Khemraj Pardeshi (P.W.16), who in his examination stated that the CDR Exh.332 was issued by his company under the signature of Fransis Parera, Alternate Nodal Officer and from the CDR report it reveals that the last location of CDR of mobile SIM of accused no.4 Prashant Rahi on 18th August 2013 was within location of Delhi University and the CDR of mobile of accused no.6 Saibaba bearing no.8800100490 and CDR report is admitted by defence at Exh.413 and the cross-examination of P.W.No.22 Manoj Patil is declined by the defence and from CDR report of accused no.6 Saibaba at Exh.413 it is clear that on 06.09.2012, 19.05.2013, 21.05.2013, 03.06.2013, 04.06.2013, 04.07.2013, 05.07.2013, 08.07.2013, 09.07.2013, 30.07.2013, 31.07.2013 and 14.08.2013 accused no.6 Saibaba made phone call from his mobile SIM no. 8800100490 to mobile SIM no. 8394875017 of accused no.4 Prashant Rahi. Further, from CDR report of accused Saibaba at Exh.413 it is clear that accused no.4 Prashant Rahi made phone calls to accused no.6 Saibaba on his mobile SIM no. 8800100490 on 13.9.2012, 4.7.2013, 5.7.2013 and 14.8.2013. He submitted that CDR details (Exhs.330 and 413), the prosecution established that the accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba made phone calls to each other on several dates and were in contact with each other and this is important in view of denial of accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba in their statement under section 313 of Cr.P.C. that they had any connection with each other.

622] He submitted that through the evidence of Nodal Officer P.W.16 Ravi Pardeshi the prosecution has proved that mobile SIM card bearing no. 8394875017 was issued on the basis of customer application form at Exh.335 to accused no.4 Prashant Rahi. He submitted that the evidence of this witness on the point of issuing mobile SIM card bearing no. 8394875017 to accused no.4 Prashant Rahi and submission of customer application forms alongwith photograph as photo ID proof by accused no.4 Prashant Rahi, is not challenged by the defence and as such the prosecution has proved the fact that the mobile SIM card bearing no. 8394875017 was belonging to accused no.4 Prashant Rahi and from CDR Reports (Exhs.330 and 413) it is proved that accused no.4 Prashant Rahi and accused no.6 Saibaba were in contact with each other.

623] He submitted that from the above facts and evidence on record and from video-clips and CDR it is clear that accused no.4 Prashant Rahi is active member of banned organization CPI (Maoist) and its frontal organisation RDF and in criminal conspiracy with other accused he was communicating with people and he was inciting and instigating the people for committing violence and his involvement is established and therefore the ingredients of the offence punishable under Section 13, 18, 20, 38, 39 of UAPA r/w Sec.120B of the IPC are attracted against accused no.4 Prashant Rahi.

Argument of learned Advocate Shri Gadling for accused no.4 Prashant Rahi

624] Per contra, the learned Advocate **Shri Gadling** for the accused submitted that the evidence of panch witness P.W.3 Umaji

Chandankhede is silent on the point of seizure of article 130A from the possession of accused no.4 Prashant Rahi. He submitted that this witness never says that there were eight naxal pamphlets but he only says that said file contains railway ticket, xerox paper and empty envelope and indirectly this witness denied that blue plastic file contained eight naxal papers and this has been falsely planted by the investigating agency against accused no.4 Prashant Rahi. On perusal of panchanama Exh.180 it shows that it was started at 6.00 hours and completed at 6.30 hours on 2.9.2013.

625] He submitted that in para no.2 at Exh.307 of cross-examination of P.W.14 Rajendrakumar Tiwari he admitted that at Chichgad T-point, there are T-stalls, pan shops are situated and he did not make any arrest panchanama when the accused were arrested and he has not given any explanation as to why panchanama was not prepared at the spot and further the panch witness P.W.3 Umaji in his examination stated that panchnama was prepared in the evening time at 5-45 p.m. This shows that accused were not arrested on 1-9-2011 and further the time of arrest was also not mentioned in the station diary entry. This shows that the panchanama was not carried out on the spot as Investigating Officer wanted to plant concocted story of arrest and seizure of alleged articles i.e. naxal papers from the possession of accused no.4 Prashant Rahi. He submitted that from the evidence of this witness it is clear that on 1.9.2013 they were patrolling near Rajnandgaon situated on the Chhatisgarh border and according to P.W.8 Ramesh Yede they were patrolling in the forest area near border of Chhatisgarh. Hence, they had no occasion to come to Chichgad T-point.

Conclusion for accused no.4 Prashant Rahi

626] Investigating Officer P.W.11 Suhas Bawche in his examination stated that while interrogating with accused no.3 Hem Mishra he came to know about the involvement of accused no.4 Prashant Rahi and it was further revealed that accused no.4 Prashant Rahi was coming to Devri Chichgad-T point area. Hence, he informed this fact to P.W.8 Ramesh Yede and P.W.14 Rajendra Tiwari of Devri Police Station on their mobile phones with the description of the accused and P.W.8 Ramesh Yede and P.W.14 Rajendra Tiwari in their examination stated that while they were searching accused Pahadsingh in Crime No.39/2011 of Devri Police Station they came to know that accused no.4 Prashant Rahi required in Crime no.3017/2013 of Aheri Police Station had gone to Devri by four wheeler and therefore P.W.8 Ramesh Yede and P.W.14 Rajendra Tiwari had gone towards Devri and at Chichgad T-point where they found two persons in suspicious circumstances with the description given by P.W.11 Suhas Bawche hence they made inquiry with those persons and they did not give proper explanation of their presence there.

627] They took those persons in custody and they found naxal Maoist literature in their possession and they took them to Aheri Police Station on 2.9.2013 at 5.00 a.m. and handed-over those two persons to SDPO, Aheri P.W.11 Suhas Bawche and to that effect an entry was taken in Aheri Police Station. Investigation Officer P.W.11 Suhas Bawche stated that he took personal search of accused no.4 Prashant Rahi and no.5 Vijay Tirki and from the possession of accused

no.4 Prashant Rahi document containing eight pages relating to naxal Maoist literature and other articles were seized. Panch witness P.W.3 Umaji Chandankhede stated that panchanama was prepared in his presence and articles like Pan card, Yatri card, one purse, one news paper Dainik Bhaskar dated 1-9-2013, twelve visiting cards, one blue plastic file containing eight documents relating to naxal and maoist literature were seized from the possession of accused no.4 Prashant Rahi. The plastic file is marked at Article-130 and eight documents found in the said file are marked at Article-130A and to that effect questions were put to accused no.4 Prashant Rahi in the statement u/s 313 of Cr.P.C. This fact is also proved from the evidence of panch witness Umaji Chandankhede (P.W.3) who stated in his examination about arrest of accused no.4 Prashant and seizure of articles from his possession vide panchanama (Exh.179).

628] The evidence of P.W.8 Ramesh Yede, P.W.14 Rajendrakumar Tiwari, P.W.11 Suhas Bawche and panch P.W.3 Umaji Chandankhede was challenged on the ground that arrest panchanama in respect of accused no.4 Prashant Rahi and no.5 Vijay Tirki was not effected at Devri Chichgad T-point in presence of independent panch witnesses though available and station diary entry about handing over of accused no.4 Prashant Rahi and no.5 Vijay Tirki is also not produced on record. It is well settled that evidence of Police Officers cannot be discarded on the ground that they are Police Officers but if it is free from infirmities it can be believed. P.W.8 Ramesh Yede and No.14 Rajendra Tiwari in their examination clearly stated that when they had gone to Chattisgarh border area they received message on their mobile from SDPO, Aheri P.W.11 Suhas Bawche who informed

that accused required in Crime no.3017/2013 of Aheri Police Station were in Raipur area and therefore they proceeded toward Raipur and thereafter they came to know that the accused had gone towards Devri by four wheeler vehicle hence they went there and saw two persons with the description given to them by P.W.11 Suhas Bawche at Chichgad T-point in suspicious circumstances, hence, they made inquiry with those persons and they did not give proper explanation of their presence there. Hence, they took those two persons in custody and they found naxal Maoist literature in their possession and they took them to Aheri Police Station and handed over to SDPO, Aheri P.W.11 Suhas Bawche. Nothing is brought on record to disbelieve the evidence of these witnesses to discard their evidence on this point.

629] Investigating Officer P.W.11 Suhas Bawche in his examination clearly stated that accused no.4 Prashant Rahi and no.5 Vijay Tirki were brought to Aheri Police Station and he took their personal search and from the possession of accused no.4 Prashant Rahi articles like Pan card, Yatri card, one purse, one news paper Dainik Bhaskar dated 1-9-2013, twelve visiting cards, one blue plastic file containing eight documents alongwith type written papers of under trial prisoner Maoist leader Narayan Sanyal relating to naxal and maoist literature were seized in presence of panch witness P.W.3 Umaji Chandankhede. Though panch witness P.W.3 Umaji Chandankhede has not stated in his examination about the seizure of naxal literature from the possession of accused no.4 Prashant Rahi but from his cross-examination it is clear that he is an illiterate witness, hence, mere not deposing about the fact of seizure of naxal

literature and not mentioning in detail in panchanama at Exh.179 about the naxal literature is not a ground to disbelieve the evidence of panch witness P.W.3 Umaji Chandankhede.

630] PW.11 Suhas Bawche in his examination he stated that eight pages relating to naxal maoist literature were seized from the possession of accused no.4 Prashant Rahi under panchanama Exh.179 and the said eight pages seized from the possession of accused no.4 Prashant Rahi were deposited on the same day i.e. on 2.9.2013 with the Muddemal Clerk of Aheri Police Station P.W.13 Ganesh Rathod. Further P.W.13 Ganesh Rathod in his examination stated that he received property i.e. eight pages of naxal maoist literature at Art.130A and entry to that effect was taken in Muddemal Register at Exh.276B. Hence, prosecution has proved beyond reasonable doubt that accused no.4 Prashant Rahi alongwith accused no.5 Vijay Tirki was arrested at Devri Chichgad T-Point and they were brought to Aheri Police Station and thereafter their personal search was taken and eight pages of naxal Maoist literature alongwith other articles were found with accused no.4 Prashant Rahi.

631] Finding of personal documents i.e. driving license and Pan card with accused no.4 Prashant Rahi shows that his personal search was taken and he was arrested. Finding of incriminating article i.e. Yatri card (Art.126) shows that accused no.4 Prashant Rahi was going from Delhi to Raipur and finding of newspaper with him which was usually used by the members of CPI (Maoist) and its frontal organisation RDF as identification code to recognize each other shows that he was going to forest area to meet underground

naxals as alleged by the prosecution. Further accused no.4 Prashant Rahi was found in possession of one blue plastic file containing eight documents relating to naxal maoist literature which is marked at Article-130A and to that effect questions were put to accused no.4 Prashant Rahi in the statement u/s 313 of Cr.PC. but he denied this fact.

632] The evidence of Investigating Officer Pw.11 Suhas Bawche is clear on the point that eight documents relating to naxal Maoist literature were recovered from accused no.4 Prashant Rahi and this fact is mentioned in panchanama Exh.179 wherein it is stated that eight pages relating to naxal Maoist literature were seized from the possession of accused no.4 Prashant Rahi. Further from the evidence of Muddemal Clerk of Aheri Police Station P.W.13 Ganesh Rathod it is clear that he had deposited eight pages relating to naxal Maoist literature seized from the possession of accused no.4 Prashant Rahi and an entry to that effect is taken in Muddemal Register of Police Station, Aheri which is produced on record at Exh.276B. Nothing is brought on record by the defence to disbelieve the evidence of P.W.11 Suhas Bawche and P.W.13 Ganesh Rathod about seizure of eight pages from the possession of accused no.4 Prashant Rahi and depositing the same in Malkhana of Police Station, Aheri. As the documents were found in possession of accused no.4 Prashant Rahi and the questions were put to him in his statement recorded u/s 313 Cr.PC., but he denied that the documents marked as Articles 130A were seized from his possession. At this juncture, it is necessary to consider the ratio laid down in the case of **Ashish C. Shah v. M/s. Sheth Developers Pvt. Ltd. and Ors** reported in **2011 Cr.L.J. 3565** wherein it is

observed in para 12 that -

(E) Evidence Act (1 of 1872) , S.135 - Examination of witnesses - Prosecution can never ask accused to enter into witness box as witness of prosecution - It is against basic principles of criminal jurisprudence. (Para 12)

“Para 12. The learned Counsel for the petitioner vehemently contended that the document could not be admitted in evidence unless author of the same was examined before the Court and in support of this contention, he relied upon Vishwanath Rai v. Sachhidamand Singh, AIR 1971 SC 1949. In that case, witness of one party deposed that a letter written by one S to him had been received by him. The Supreme Court held that burden lies on other side to prove its allegation that the letter was not written by S or that it was written in collusion with S and the witness. However, the Supreme Court also held that the letter is relevant and admissible to the extent of the fact that S wrote such a letter to the witness with its contents. However, correctness of the contents of the letter would be proved only by examining S as a witness because he was the author. In the present case, the author and signatories of the above referred two letters are accused Nos. 1 and 2. The letters purporting to have been signed and sent by them were received by the Managing Director of the complainant and this fact is deposed to by witness Sharad Doshi. In view of this, if the accused persons allege that the said letters were not signed and sent by the accused persons, burden lies on them to prove the same. The contention of the learned Counsel that the contents of this document and the truth for the same cannot be proved without examining the author of the same is against the basic principles of criminal jurisprudence, because prosecution can never ask the accused to enter into witness box as a witness of prosecution. In fact, the accused cannot be called in the witness box even as defence witness unless he makes a written request for the same. Not only this, even in the statement

under Sec. 313, Cr.P.C. wherein the incriminating circumstances are required to be put to the accused to enable him to explain the same, the accused is not bound to answer those questions, though the Court may draw adverse inference against him if he keeps quiet. In such circumstances, to suggest that the document written by and signed by the accused could not be proved without examining the accused as witness of the prosecution is against the settled position of law and therefore this contention of the learned Counsel for the petitioner is liable to be rejected.

633] In view of above the eight documents relating to naxal literature and typed written documents (Arts.130A) found in possession of Prashant Rahi can be read in evidence.

Contents of Eight pages seized from the possession of accused no.4 Prashant Rahi alongwith other documents are as under :-

(1) The document is titled as “**Resolution of the CF meeting on 7.6.2013**”

On perusal of said document at **point no.8, page no.4** it is mentioned that – Rahi will be talked to take up the task of running the book staff in the capital to facilitate proper maintenance, distribution. Even though he will take this responsibility independently it would be better if this is done in coordination with the CF comrades. In this regard the Higher Committee will write to him.

(2) Further document titled as “**A Brief Review of FC functioning**” at page no.1 it is mentioned that -

At present a 5-member FC has been functioning. The members are Jaddu, Chetan, Preetilata, Vilas and Vivek. Two more members of the FC have been in jail for the last 3 years. One of them has been facing

death penalty. Though High Court acquitted him, Jharkhand Government had gone to Supreme Court. He is still languishing in prison under Crime Control Act which was promulgated after the High Court acquitted him. There is no provision for bail under this Act. One has to be in side prison for one year. The government may extend it for one more year also.

For the last three years the FC of A3 is functioning without any guidance from the CC or SUCOMO. The FC has been meeting regularly and chalking programmes and plans for all India activities. In the past four years (First year with the guidance of SUCOMO incharge though letters and in the past 3 years without any guidance) the FC has been taken up several programmes and initiatives.

Though the FC is constituted to work for the A3, it has been working as though it is a party committee because it looks after at least 3 Tactical United Fronts (TUFs) 3 other Mos and international work alongwith A3 itself. Each member of the FC is working for one TUF at least fully focussing on it. As a result, a number of tasks taken up by the FC remain unfulfilled and none of the TUFs is working fully in its strength. But at least we manage to put up bigger programmes or at least use our loud mouths against the state offensives. At the same time do not lose initiative in the TUFs and other joint activities.

In addition to the work in TUFs, it has been also doing the international work – campaigns and coordination earlier under the guidance of International Department now without any guidance continuing with what was decided previously.

To overcome the lack of separate FCs for the different TUFs, SUCOMO introduced core committee system 4 years ago into TUFs. For example anti-displacement front had a core committee with a

party members (Organizers) from 6 States initially. After good work in the beginning the member from Chh was withdrawn, members from JH and Orissa were arrested several times. Another member from WB was also arrested recently. Except in JH, there were no replacements and hence the coordination of the TUF work on anti-displacement suffered. As there was always a replacement from JH or the arrested Comrade got released and came back to the core, anti-displacement work developed to an extent and a good number of mass programmes have been conducted there.

SUCOMO also planned for a core committee for the TUF on Political Prisoners. But before it could be informed to all state, the CC incharges were arrested one after the other and SUCOMO's guidance stopped coming to the FC. Therefore, the proposed core committee could never take shape till today. The work suffered as only one Comrade who is taking sole responsibility could not cope up with enormous work. Only in four States units were formed as the lone comrade could get contacts in those four states and formed state level units. This comrade has been moving across the states do his best work possible on political prisoners. This also means all categories of political prisoners. But he is helped by non-party forces in a close coordination. Where state committees were formed local comrades are doing good work particularly in these four states and most of the arrested comrades in those states were attended to. These units also look after neighbouring states, played central roles in releasing as many comrades, apart from taking up good campaign.

(3) In para no.9 of this document it is mentioned that - This front get a boost if our FC member is released. The Comrade who is now working will have a great advantage with that comrade. These writers and artists made possible the campaign against death penalty given to our member. His

songs and writings were used in that campaign. Comrade Vivek continuously mobilised the writers and artists in the war against People Campaign, in the campaign against death penalty given to our comrade and life sentence given to our comrades Seema and Viswavijay.

The responsibilities of FC allotted to Jaddu and Chetan in the FC meeting are as follows :

The responsibilities of Jaddu : Incharge of workers organization. Jan Pratirodh and incharge of the state Units of Bihar, Punjab and Uttarakhand. Looks after party cells among the workers' union after the local party became defunct.

The responsibilities of Chetan : TUF on War against People, International work, People's Resistance, Incharge of State Units of West Bengal, Kerala and Delhi and responsible for taking up efforts to form A3 in Tamil Nadu.

634] On perusal of **Article No.A-21** of Exh.266 seized from the possession of accused no.3 Hem Mishra, the word “Chetan” is mentioned in reference to accused no.6 Saibaba and the duties which are given to Chetan relates to accused no.6 Saibaba and at the last para of page no.2 of this document the problem and weaknesses of FC were given and this FC has reference to the document at page no.29 of Exh.267 at point no.9 where the functioning of FC has been described and in para no.2 the word, “anti-displacement” was used in relates to Chetan and in respect of work of Jaddu he has been assigned the work of “Jan Pratirodh” magazine which is seized from the house search of accused no.6 Saibaba. P.W.6 Atul Avhad in his cross-examination admitted the suggestion of the defence that in maoist group every member has alias name and normally they use alias name. Here the name 'Chetan' has reference with accused Saibaba.

635] On perusal of Art.A-21 of Exh.266 it reveals in para no.1 that one of the member of FC is facing death penalty and in second paragraph of the said document it is mentioned that for the last three years the FC of A3 is functioning without any guidance from the CC or SUCOMO and the person referred in para no.1 is Jiten Murandi and this fact is also corroborated from video-clip found in video having path **Exh.3/Meetings/Jiten Convention Against Death Penalty/20 Dec 2011 Jiten Convention 2 Compressed version/convention disc 2/VTS_01_5**, seized from the house search of accused no.6 Saibaba wherein accused no.4 Prashant Rahi was seen attending the said programme and there is another video-clip regarding the death penalty of Jiten Murandi which is found in the hard-disc at Ex.3 having path **Exh.3/films/s1/Jeetan-1/video_TS/VTS_01_1**, which was seized from the house of accused no.6 Saibaba under panchanama Exh.165 and on seeing video it appears that accused no.4 Prashant Rahi was seen on the dais alongwith four persons in which one lady below her image the name Aparna, wife of Jeetan is written and she is addressing, below the banner of Jan Convention and she has stated that Jeetan was making documentary at the relevant time.

636] Further, from the document titled as “Resolution of CF meeting” on 07.06.2013 at Art.130A it reveals that there is resolution to form committee for release of political prisoners in which the name of accused no.4 Prashant Rahi is appearing and in the said document it was agreed that accused no.4 Prashant Rahi should be given one book stall at Delhi to facilitate proper maintenance, distribution and circulate the books and even though he will take this responsibility independently and it would be better if this is done in coordination

with the CF comrades and there are several photographs of accused no.4 Prashant Rahi which were found in the hard-disc seized from the house search of accused no.6 Saibaba while attending meetings, addressing gatherings and to that effect Question nos.131 to 136 were put to accused no.4 Prashant Rahi in his statement u/s 313 of Cr.PC. which shows that he is in contact with accused no.6 Saibaba.

637] Further, on viewing photographs found in hard-disc (Ex.3) seized from the house search of accused no.6 Saibaba having path **Exh.3/new folder (2)/All matters1/photos/A.P. RDF convention/photos no.DSC_0913**, in which accused no.4 Prashant Rahi was seen on the stage with banner on background of RDF and was standing holding book in his hand and in the backside accused no.6 Saibaba was found seating on the dais alongwith others, and in the video-clip found in hard-disc (Ex.3) seized from house search of accused no.6 Saibaba having path **Exh.3/films/s1/RDF/1/VIDEO_TS/VTS_01_2**, it is seen that the dignitaries from different parts including accused no.6 G.N. Saibaba, Dy. Secretary, RDF and accused no.4 Prashant Rahi were called on dais as comrade below the banner of RDF on the dais.

638] Besides these eight documents, from the personal search of accused no.4 Prashant Rahi following articles were seized -

- i] Dainik Bhaskar newspaper
- ii] One packet containing cash Rs.8819/-,
- iii] Pan-card
- iv] Yatri card
- v] Driving license of accused no.4 Prashant Rahi
- vi] One transparent plastic file containing the document a news published in Dainik Bhaskar newspaper in respect of Narayan Sanyal (A Maoist)

639] On perusal of document at page no.90 of Exh.267 it reveals that there is usual practice of naxals having path **Exh.4/All Sai/for study/latest/Vanja's** Articles taken out from the hard-disc (Ex.4) of accused no.6 Saibaba titled as “**I am convinced the Naxalites (Maoists) have a lot of support**” in which it is mentioned that a newspaper and bananas helped link up with Maoists and the Communist Party of India-Maoist (CPI-Maoist). From this document it reveals that in order to identify the members of CPI Maoist or RDF organisation by unknown person the unique identification i.e. Banana, Umbrella and newspaper were used.

640] Hence, in peculiar facts and circumstances of the case finding of daily newspaper Dainik Bhaskar can be considered as incriminating evidence against accused no.4 Prashant Rahi.

641] As discussed earlier the questions relating to incriminating evidence found against accused no.4 Prashant Rahi in 16 GB memory-card and electronic gadgets Arts.1 to 41 in the form text, photographs and video were put to accused no.4 Prashant Rahi in his statement u/s 313 Cr.P.C. and in view of Judgment of Apex Court in **Anvar P.V. v. P.K. Basheer [(2014) 10 SCC 473] : (AIR 2015 SC 180)** cited supra this is a primary evidence. The incriminating photographs and video-clips and text documents relating to accused no.4 Prashant Rahi found in the 16 GB memory-card of Sandisc company seized from the possession of accused no.3 Hem Mishra and electronic gadgets Articles 1 to 41 like CDs, DVDs, pen-drives, hard-discs seized from the house search of accused no.6 Saibaba is to be considered in evidence.

Following are the incriminating photographs of accused no.4 Prashant Rahi found in electronic gadgets Articles 1 to 41 like CDs, DVDs, pen-drives, hard-discs seized from the house search of accused no.6 Saibaba under seizure panchanama Exh.165.

a] In the photograph found in harddisc having path **EXH 5/C/all photos/photos sai/ New Folder I**, accused no.4 Prashant Rahi is seen addressing a meeting of Revolutionary Democratic Front along with accused no.6 Saibaba supported by Telangana Praja Front.

b] In the photograph found in harddisc having path **EXH 3 / C/new folder (2)/all metters (I) / photos / utt. rdf.** accused no.4 Prashant Rahi is seen along with delegates of the RDF conference Uttarakhand.

c] In the photograph found in harddisc having path **EXH 3/C/new folder(2)/all metters I/ photos utt. Rdf.,** convention Photos/rdf, accused no.4 Prashant Rahi is seen in convention of RDF Uttarakhand.

d] In the photograph found in hard-disc having path **EXH 5/C/all photos/photos sai/new folder-1,** accused no.4 Prashant Rahi is seen addressing a meeting of Revolutionary Democratic Front supported by Telangana Praja Front.

e] In the photograph found in harddisc having path **EXH 5 Data/C/all photos/photos Sai/New folder-1**, accused no.4 Prashant Rahi was found participating in a public meeting of Revolutionary Democratic Front (Krantikari Janwadi Morcha) along with co-accused no.3 Hem Mishra and no.6 Saibaba.

f] In the photograph found in hard-disc having path **3/C/new folder(2)/All metters 1/Hem's photos / images**, accused no.4 Prashant Rahi is seen alongwith accused no.3 Hem Mishra.

g] In the photograph found in hard-disc having path **Exh.3/new folder(2)/24-01-2012/ Janpratirodh** , in which accused no.4 Prashant Rahi was found sitting in group of 15-20 people alongwith one lady.

h] In the photograph found in harddisc having path **Exh.3/new folder(2)/Allmetters1/photos/A.PRDF convention/photos no.DSC_0913**, in which accused no.4 Prashant was present on the stage having banner of RDF in the backside and accused no.4 Prashant was standing holding book in his hand and accused no.6 Saibaba was also seen on the dais alongwith others.

I] In the photograph at page no.39 taken out from the hard-disc Exh.5 having path **Exh.3/new folder (2)/all matters I/photos/utt.rdf.convention photos.rdf**, wife of accused no.4 **Prashant Rahi** Charulata is seen addressing the convention of RDF Uttarakhand.

Following are the incriminating video-clips of accused no.4 Prashant Rahi found in electronic gadgets Articles 1 to 41 like CDs, DVDs, pen-drives, hard-discs seized from the house search of accused no.6 Saibaba under seizure panchanama Exh.165.

a] In the video clip found in harddisc having path **Exh.3/RDF conference videos/DVD_7/VIDEO_TS**, in which accused no. Prashant is seen attending and participating in the convention in the first RDF conference held at Hyderabad in the year 2012 accused no.6 Saibaba was seen addressing the people from the stage and **accused no.4 Prashant** is seen sitting in the hall having capacity around 500 people on the right side row and accused no.6 Saibaba is seen addressing the meeting.

b] In the video clip found in hard-disc having path **Exh.3/films/s1/RDF/1/VIDEO_TS/VTS_01_2**, dignitaries from different parts including accused no.6 Saibaba, Dy. Secretary, RDF and accused **no.4 Prashant Rahi** was called on dais as comrade Prashant Rahi and thereafter he was seen below the banner of RDF on the dais along with others.

c] In the video clip found in harddisc having path **Exh.3/films/s1/Jeetan-1/video_TS/VTS_01_1**, accused **no.4 Prashant Rahi** was seen on the dais alongwith four persons in which one lady by name Aparna, wife of Jeetan is addressing, below the banner of Jan Convention and she has stated that Jeetan was making documentary at the relevant time.

d] In the video clip having path **Exh.3/films/s1/RDF/2/VIDEO_TS/VTS_01_1**, accused no.6 **Saibaba** is seen on dais and accused no.4 **Prashant** Rahi is found sitting in the audience where one lady is shouting slogans demanding return of Army from Kashmir and for liberation of Kashmir and accused no.4 **Prashant** Rahi is responding to the slogans.

Following documents showing the activities of accused no.4 Prashant Rahi were found in the hard-disc seized in the house search of accused no.6 Saibaba under seizure panchanama Exh.165 :-

a] In the letter taken out from the hard-disc Exh.4 at Art.162 having path **ex 4/8 Nov**,

2011/CRPP/CRPP Old Files/ Brochure final/More messages Political prisoners, addressed to The Principal Secretary (Home) Uttarakhand Government Dehradun it is seen that it was sent by accused no.4 Prashant Rahi below that Maoist Prisoners Tamil Nadu is written.

b] In the document taken out from the hard-disc Exh.4 at Art.163 having path **ex 4/CRPP/CRPP Old files/Brochure final/EDITED/Profile-Prashant Rahi - Edited**, titled as “**Prashant Rahi**” with one photograph stating therein that accused Prashant Rahi is a senior journalist of Uttarakhand and it is a document about his arrest by the State police on 15thDec 2007 in Deharadun.

642] In the statement u/s 313 Cr.PC accused no.4 Prashant Rahi except bare denial has not given any specific explanation about his involvement in the programmes seen in the photographs, video-clips and documents.

643] The CDR of mobile SIM card no.8394875017 shows that it belongs to accused no.4 Prashant Rahi and the customer application form Exh.335 is proved through the evidence of Nodal Officer P.W.16 Ravi Khemraj Pardesi. The CDR of mobile SIM card no.8800100490 shows that it belongs to accused no.6 Saibaba and accused no.6 Saibaba admitted the evidence regarding call details of mobile SIM card no.8800100490 at Exh.413 filed on record. Nodal Officer P.W.22

Manoj Patil has stated in his examination about the fact that mobile SIM card no.8800100490 is belonging to accused no.6 Saibaba and he has filed call details of the same at Exh.413. On perusal of call details it reveals that accused no.6 Saibaba made phone calls to accused no.4 Prashant Rahi on 6.9.2012, 19.5.2013, 21.5.2013, 3.6.2013, 4.6.2013, 4.7.2013, 5.7.2013, 8.7.2013, 9.7.2013, 30.7.2013, 31.7.2013 and 14.8.2013. Further the call details at Exh.413 shows that accused no.4 Prashant Rahi made phone calls from his mobile no.8394875017 to the mobile no.8800100490 belonging to accused no.6 Saibaba on 13.9.2012, 4.7.2013, 5.7.2013 and 14.8.2013. However, accused no.4 Prashant Rahi denied that he has having any connection with accused no.6 Saibaba.

644] The charge-sheet was filed against accused no.4 Prashant Rahi at Uttarakhand of Nanakmatta Police Station, District : Udhamasingh Nagar in Crime no.134/07 for the offences punishable under Sections 121, 121A, 124A, 153B, 120B of the IPC and under Section 20 of UAPA. It is at Exh.264. From the above incriminating evidence which is proved beyond all reasonable doubt by the prosecution it is clear that accused no.4 Prashant Rahi is active member of RDF organisation, a frontal organisation of banned organisation CPI (Maoist) and he was found in possession of certain papers including eight printed pages alongwith type written papers of under trial prisoner Maoist leader Narayan Sanyal (**Article no.130A**) containing incriminating material in respect of activities of CPI (Maoist) banned organisation and its frontal organization RDF.

645] From the oral and documentary evidence, photographs, video-clips found in electronic gadgets (Arts.1 to 41) and 16 GB memory-card it is clear that accused no.4 Prashant Rahi is active member of RDF, a frontal organization of CPI (Maoist) banned organization and he was communicating with people and he was inciting and instigating the people for violence and his involvement is established that he is a member of banned organisation CPI (Maoist) and its frontal organisation RDF.

Submission of Ld.Spl.PP for accused no.5 Vijay

646] In respect of accused no.5 Vijay Tirki, learned Spl. P.P. Shri Sathianathan submitted that accused no.5 Vijay Tirki alongwith accused no.4 Prashant Rathi was arrested on 2.9.2013 at Chichgad T-point and then brought to Police Station, Aheri. From his personal search mobile handset of Intex company and the articles like newspaper matching with the standard code of naxals and members of banned organisation CPI (Maoist) and its front organisation RDF were seized under seizure panchanama and he had not given any satisfactory explanation for the same.

Submission of Advocate Shri Samaddar for accused no.5 Vijay

Tirki

647] The learned Advocate Shri Samaddar for accused no. 5 Vijay Tirki submitted that prosecution examined 4 witnesses i.e. P.W. 3 Umaji Chandankhede, P.W. 8 Ramesh Yede, P.W. 11 Suhas Bawche and P.W. 14 Rajendrakumar Tiwari. He submitted that according to P.W.

14 Rajendrakumar Tiwari, he came to know that the person to whom they were searching had gone towards Devari and thereafter, they had gone towards Devari and at Chichgad T point, he arrested accused no. 5 Vijay Tirki alongwith accused no. 4 Prashant Rahi and after arrest of accused persons, he proceeded towards Aheri from Devri. He further submitted that this witness has admitted in his cross-examination that at Chichgad T-point, there are T-stalls, pan shops are situated and he did not make any arrest panchanama when the accused were arrested and he has not given any explanation as to why panchanama was not prepared at the spot and as to why the personal search of both accused was not carried out. He submitted that there is no mention of seizure of any incriminating articles in panchnama at Exh. 180 found in possession of accused no. 5 Vijay Tirki.

648] He submitted that according to P.W. 8 Ramesh Yede, they took those two persons to Aheri Police Station and they reached to Aheri on the next day morning and handed over those two persons to investigating officer P.W. 11 Suhas Bawche. He further submitted that according to investigating officer P.W. 11 Suhas Bawche on 2-9-2013 accused no. 4 Prashant Rahi and accused no. 5 Vijay Tirki were brought by API Tiwari (P.W. 14) and his staff to Aheri Police Station from Police Station Chichgad and then personal search of accused no. 5 Vijay Tirki was taken and panchnama Exh. 180 was prepared. He submitted that on perusal of Exh. 180 it shows that there is mention of time of preparation of panchnama as 6-30 to 6-45 of 2-9-2013 and according to the time mentioned in all documents the time of 24 hours were taken. This shows that it was morning time and hence,

none of the witness can be believed on the point of arrest of accused no. 5 and seizure of any articles from his possession and there is no further investigation after arrest of the accused by investigating officer to connect the present accused with the crime. But Prosecution witness Umaji in his cross-examination admitted that panchanama was made in the evening at 5.00 p.m., this show that there are discrepancies in the evidence of prosecution witness and hence evidence can not be relied upon and he prayed for acquittal of accused no. 5 Vijay Tirki. In support of his submission he placed reliance on the judgment of **Ramu -v- State of Maharashtra reported in 2011 (1) Mh.L.J.(Cri.) 1461** wherein it is held that -

Penal Code, SS. 328 and 379 – Appellant convicted and sentenced for administering intoxicating substance to the complainant and committing theft – Appeal – There was material variance in the testimony of complainant and the other Pws on important aspects of the incident – There were infirmities and deformities in the search of the appellant and the seizure of the articles from the appellant – There was unexplained delay in sending the seized articles for CA – Possibility of tampering of the articles could not be ruled out – Testimonies of PW 5 and 6 were not related to the alleged incident – Prosecution case did not inspire confidence – Conviction and sentence of the appellant was erroneous and unsustainable – Appeal allowed. (Paras 28 and 30 to 33)

Conclusion for accused no.5 Vijay

649] According to the prosecution from the possession of accused no.5 Vijay Tirki a daily newspaper Dainik Bhaskar, four pieces of papers on which some phone numbers were written and mobile handset were seized and cash amount of Rs.5000/-.

650] The learned Advocate Shri Gadling and P. C.Samaddar for the accused submitted that there are discrepancies of making panchanama in respect of arrest of accused no.4 Prashant Rahi. Panchanama Exh.179 shows that it was prepared at 5.45 a.m., however, panch witness P.W.3 Umaji Chandankhede in his examination stated that panchanama was prepared in the evening time. It is to be noted that panch witness P.W.3 Umaji Chandankhede is an illiterate person and the panchanama in question was prepared on 2.9.2013 and the witness has deposed after a period of three years. Hence, merely because discrepancies about time as stated by panch witness P.W.3 Umaji Chandankhede it cannot be considered. He might have stated so because of loss of memory but his stray admission cannot be considered as fatal to the prosecution because other evidence i.e. Railway-Ticket from Delhi to Raipur, finding of identification code, personal documents of accused no.4 Prashant Rahi shows that he was proceeding from Delhi to Raipur and finding of Newspaper "Dainik Bhaskar" with accused no.5 Vijay Tirki of same date shows that he had been to Chichgad T-point to receive accused no.4 Prashant Rahi to have meeting with underground naxal Ramdar.

651] Further there is an entry made by P.W.14 Rajendrakumar Tiwari in station diary of Police Station, Devri about proceeding to Aheri and entry to that effect was taken in Police Station Devri at Exh.241 and after reaching at Aheri Police Station in early morning and they handed-over custody of accused no.4 Prashant and no.5 Vijay to P.W.11 Suhas Bawche and station diary entry to that effect was taken vide Serial no.6/2013 dated 2.9.2013 at Exh.275-C and time is mentioned in the station diary is 5.00 a.m. and thereafter Investigating Officer P.W.11 Suhas Bawche prepared panchanama in presence of panchas vide Exh.179 and 180 at about 6.15 a.m. After preparation of panchanama on the same day he deposited the said articles seized from the possession of accused no. 4 Prashant Rahi and accused no. 5 Vijay Tirki with witness Ganesh Rathod, the Muddemal Clerk on the same day. At this stage it is necessary to consider the ratio laid down by the Apex Court in the judgment of Bharwada Bhoginbhai Hirjibhai -v- State of Gujrat reported in AIR 1983 Supreme Court 753 wherein it is observed that -

(B) Evidence Act (1 of 1872, S.3 – Evidence – Appreciation of- Discrepancies – Overmuch importance cannot be given to minor discrepancies.

Overmuch importance cannot be given to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so when the all important “probabilities-factor” echoes in favour of the version narrated by the witnesses.

652] Even otherwise if it is taken that panch witness P.W.3 Umaji Chandankhede has made false statement the principle of “falsus in uno falsus in omni-bus” is not applicable in India as

observed by the The Apex Court in the case of Gunnana Pentayya vs. State of A.P. Reported in 2008 BHCCO 1910 in Criminal Appeal No.292 of 2006, decided on 20th August, 2008, in para 15 observed that -

E. Maxim “falsus in uno falsus in omnibus” – It has no application in India—Even if major portion of evidence found to be deficient, residue if found sufficient to prove guilt, conviction can be sustained.

653] From the above discussion of evidence of prosecution witnesses on the point of arrest of accused no.4 Prashant and no.5 Vijay at Chichgad T-point following circumstances have been proved beyond reasonable doubts.

1] On 1.9.2013 P.W.8 Ramesh Yede and P.W.14 Rajendrakumar Tiwari were on petrolling duty in the forest area of Chhattisgarh and border of Maharashtra. They received message on their mobile phone that accused in C.R.no.3017/2013 of Police Station, Aheri were in Raipur area and they were proceeding towards Devri from Raipur.

2] Thereafter P.W.8 Ramesh and P.W.14 Rajendrakumar proceeded towards Devri by four wheeler and when they reached there they came to know that wanted accused in C.R.no.3017/2013 proceeded towards Chichgad T-point. Thereafter they went to Chichgad T-point where they found two persons i.e. accused no.4 Prashant and no.5 Vijay in suspicious circumstances and their description was same as given to them by Aheri Police Station.

3] P.W.8 Ramesh and P.W.14 Rajendrakumar arrested accused no.4 Prashant and no.5 Vijay and they found in possession of accused no.4

Prashant papers relating to naxal literature. Hence, they took them to Chichgad Police Station and made station diary entry in Chichgad Police Station at Exh.275C which is filed on record on which time is mentioned as 5.00 p.m. and thereafter they proceeded to Aheri. To that effect letter is filed on record at Exh.241.

4] They reached to Aheri Police Station by four wheeler vehicle early morning on 02-09-2013 and they handed-over the custody of accused no.4 Prashant and no.5 Vijay to P.W.11 Suhas Bawche.

5] The evidence of P.W.11 Suhas Bawche shows that he took personal search of accused no.4 Prashant and no.5 Vijay and from possession of accused no.4 Prashant eight papers relating to naxal literature, type-written document, Dainik Bhaskar dated 1.9.2013, Yatri card from Delhi to Raipur and other articles were seized under the panchanama Exh.179 and from possession of accused no.5 Vijay Tirki Dainik Bhaskar dated 1.9.2013 and other articles were seized under the panchanama Exh.180 and the time mentioned in panchanama Exh.179 is 6.15 a.m. and the time mentioned in panchanama Exh.180 is 6.30 a.m.

6] The evidence of P.W.11 Suhas Bawche and P.W.13 Ganesh Rathod shows that on 2.9.2013 P.W.11 Suhas deposited articles seized from accused no.4 and 5 in the Malkhana of Aheri P.S. To that effect entry is at Exh.276B. In view of above unimpeachable evidence on record a stray admission given by panch witness P.W.3 Umaji that panchanama was prepared in evening time can not be considered.

654] The learned Advocate Shri Gadling and Samaddar further argued that panchanama (Exh.179) was not prepared on the spot at Chichgad T-point. But it is to be noted that as the offence against

accused is under UAPA and investigation is to be carried out by SDPO, hence as per direction of SDPO Investigating Officer PW.11 Suhas Bawche received on telephone the PW.14 Rajendrakumar Tiwari took accused no.4 Prashant Rahi and accused no.5 Vijay Tirki to Aheri. Hence, non-drawing of panchanama at Chichgad T-point regarding arrest of accused no.4 Prashant Rahi and accused no.5 Vijay Tirki on the spot is not fatal to the prosecution. The prosecution has proved beyond reasonable doubt that accused no.4 Prashant and no.5 Vijay were arrested on 1.9.2013 in evening and they were produced before PW.11 Suhas SDPO Aheri on 2.9.2013 at 6.15 a.m. and incriminating articles were seized from their possession under the panchanama Exh.179 and 180. Hence, the case law cited by learned Advocate Shri Gadling on behalf of accused no.1 to 4 and 6 in the case of **Pradeep Narayan Madgaonkar & ors vs State of Maharashtra 1995 SCC (Cri)708** cited supra and case law cited by learned Advocate Shri Samaddar on behalf of accused no.5 Vijay Tirki in the case of **Ramu -v- State of Maharashtra reported in 2011 (1) Mh.L.J.(Cri.) 1461** cited supra is not applicable to the facts of the present case and the prosecution has proved that accused no.4 Prashant and no.5 Vijay were arrested at Devri Chichgad T-point and they were produced before Aheri P.S. at about 6.15 a.m. and from their possession incriminating articles as discussed above were seized under seizure panchanama Exh.179 and 180.

SANCTION

655] Now it is necessary to see whether the sanction in respect of accused no.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi and no.5 Vijay Tirki in Sessions case no.13/2014 is validly accorded.

EVIDENCE

656] To prove grant of sanction for offences under UAPA in respect of accused nos.1 to 5 in Sessions Case No.13/2014, the prosecution has relied on the evidence of -

- i) Investigating Officer Suhas Bawche (P.W.11) at Exh.235; and
- ii) Sanctioning Authority Amitabh Rajan (P.W.19) at Exh.355

657] In this respect Investigating Officer Suhas Bawche (P.W.11) in his examination stated that on 1-2-2014 he issued letter for obtaining sanction to prosecute the accused in Crime No.3017/2013 under UAPA. The said letter is at Exh.265. The proposal was submitted to Addl.S.P. Aheri and through him, it was submitted to Government, Home Department, State of Maharashtra and he supplied all copies of charge-sheet along with the said proposal. On 15-2-2014 he received sanction order by Fax from Home Department, Mantralaya and after receiving the sanction order alongwith all papers, he filed charge-sheet against accused no. 1 to 5 in the court of JMFC Aheri. He received original copy of the sanction order dated 15-2-2014 on 24-2-2014 and submitted in the court on 26-2-2014. The said Sanction order is at Exh.17.

658] This witness was cross-examined by the learned defence counsel on this point of sanction. In cross-examination he admitted that there is no letter on record requesting sanction under his signature and permission was sought by Shrirame.

659] P.W.19 Dr.Amitabh Rajan is Additional Chief Secretary (Home), State of Maharashtra and Sanctioning Authority who granted sanction in Session Case no.13/2014. In his examination he has stated that his office received the proposal from Additional D.G. in-charge of Special Operation Maharashtra Police Directorate in relation to this crime on 7th February, 2014 and on the same day he sent it to Director of Public Prosecutor, Maharashtra State for independent assessment and opinion vide letter at Exh.356 and after getting the independent review from in-charge Directorate of Prosecution at Exh.358, he received the file on 14-2-2014 for according sanction along with all investigation papers, charge-sheet, calender of events and opinion of Director of Public Prosecutor and around 257 pages.

660] He took the said file to his home for study and read the same up to 14-2-2014 and after going through all investigation papers, particularly CFSL report, soft copies of the electronic data, hard copies of mirror images containing in the electronic gadgets Article 1 to 41, he came to the conclusion that there was conspiracy between accused no. 1 to 6 (Mahesh Tirki, Pandu Narote, Hem Mishra, Prashant Rahi, Vijay Tirki and G.N. Saibaba) by meeting of mind and they concealed their identity and he considered the confessional statements of Atram and the seizure of articles, 16 GB memory card, which was seized from accused no.3 Hem Mishra and

accorded sanction against accused no.1 to 5 (Mahesh Tirki, Pandu Narote, Hem Mishra, Prashant Rahi and Vijay Tirki) u/s 13, 18, 20, 38, 39 of UAPA and as accused no. 6 Saibaba was not arrested by that time, sanction was not accorded against him. Thereafter, he recommended the sanction and file was submitted to the Minister of Home for approval of the file and after receipt of the file from Home Minister, he issued Sanction Order at Exh.17.

661] This witness was cross-examined by the learned defence counsel. In his cross-examination he stated that he did not see any notes, but he had gone through the sanction order from the office of Ravindra Kadam, Inspector General of Police, Nagpur Range. He stated that it is not reflected in any document on record to show that the documents at Exh. 356, 357, 358, Exh. 17 and Exh. 16 were produced before him by DIG Mr. Ravindra Kadam. He admitted that it is not mentioned in Exh. 17 that he received the recommendation from Director of Public Prosecution and there is no mention that on 13-2-2014 file was submitted to Section Officer, Deputy Secretary Law and Secretary (Special), Home Department and thereafter on 14-2-2014 he received the file for according sanction alongwith all investigation papers, calender of events and opinion of Director of Public Prosecution and around 257 pages. He admitted that it is not mentioned in Exh. 17 that he took the said file at his home and he read the file in the early morning and in the afternoon session on 14-2-2014. He admitted that on 15-2-2014 at 2-00 p.m. the file was sent to Home Minister and it came from Minister at 11-30 p.m. to him in one sealed cover by one person from Minister and Shri R.R. Patil, the then Home Minister, of Maharashtra Government had sent the file to him and the said approval is still in the file pertains to the

Sanction (Exh.17) and it is not mentioned in the sanction order Exh.17 that they had ever received the approval from the Cabinet Minister. Witness voluntarily said that it is only signed by him. He admitted that then he went to the office and signed the sanction order on behalf of the State Government before 12-00 p.m. in the night.

662] He admitted that he had gone through the statement of accused no.1 Mahesh Tirki and no.2 Pandu Narote before according sanction which was taken before Magistrate and it is a part of the record that he came to the conclusion that on 22-8-2013 accused no. 1 Mahesh Tirki and no.2 Pandu Narote had been to Ballarsha Railway Station and he cannot remember whether it was in the statement of any witness. He admitted that considering the voluminous record, he cannot say that it is a part of statement of any witness and he could not point out the statement and according to him it is part of the case diary and he further admitted that he cannot say whether he came to the conclusion from statement of any witness to show that accused no.4 Prashant Rahi was the member of CPI Maoist. Witness voluntarily stated that he would confirm this fact from the record of the case and he cannot say from which record he came to such conclusion. He admitted that he came to conclusion that microchip was handed over to accused no.3 Hem Mishra by accused no.6 Saibaba from call records and there is no statement on record to show that accused no. 6 Saibaba had ever handed over microchip to accused no.3 Hem Mishra, however, witness voluntarily stated that he came to the conclusion from call record and CFSL report regarding 16 GB memory card and mirror images of electronic record seized from accused no.6 Saibaba. He admitted that there is no statement on

record to show that accused no. 6 Saibaba had directed accused no.3 Hem Mishra to go to Ballarsha, however, witness voluntarily stated that he came to the conclusion from call record and CFSL report regarding to 16 GB memory card and mirror images of electronic record seized from accused no.6 Saibaba. He admitted that there is no statement on record to show that accused no. 6 Saibaba gave Maoist documents to accused no. 4 Prashant Rahi to be delivered to the underground cadres of CPI Maoist in Abujamad forest, however, witness voluntarily stated that he came to the conclusion from call record and CFSL report regarding to 16 GB memory card and mirror images of electronic record seized from accused no.6 Saibaba.

663] He denied that he did not go through the process of according sanction and he did not go through any material and it is typed order placed by the police authority and he merely signed without application of mind. He denied that he deposed falsely that he received sanction order from Minister and thereafter he signed it. He denied that he had accorded sanction without application of mind and his office had fabricated the documents Exh. 356, 357, 358, Exh. 17 & Exh. 16 and police had prepared the sanction order and he had only signed on it. He denied that there was no role of accused no. 5 Vijay Tirki in the present case.

Sanction in respect of accused no.6 Saibaba in Sessions case no.130/2015

664] To prove grant of sanction to prosecute accused no.6 Saibaba for offences under UAPA in Sessions Case no.130/2015, the prosecution has relied on the evidence of -

- i) P.W.23 S.D.P.O. Ramesh Dhumal at Exh.414; and
- ii) P.W.18 Sanctioning Authority Kalyaneshwar Bakshi at Exh.345

665] P.W.23 is Ramesh Malhari Dhumal who was Dy.S.P. Aheri, in his evidence at Exh.414 has stated that he had received investigation in this Cr.No.3017/2013 on 16-6-2014 and on 3-2-2015 he sought sanction from the Home Department of State of Maharashtra for prosecuting the accused no.6 G.N. Saibaba through S.P. Gadchiroli. He received sanction from the Home Department and included the papers of sanction in the charge-sheet and filed supplementary charge-sheet against accused G.N. Saibaba on 30-11-2015.

666] This witness was cross-examined by the defence counsel on this point. In his cross-examination he denied that he did not get sanction from the Home Department and did not file supplementary charge-sheet against G.N. Saibaba on 30-11-2015.

667] Shri Kalyaneshwar Bakshi (P.W. 18) is Additional Chief Secretary, Home Department of State of Maharashtra in his examination at Exh.345 stated about procedure followed by him for grant of sanction in respect of accused no.6 Saibaba in Sessions Case no.130/2015. He stated that from 31st December, 2014 till date of his evidence he has been working as the Additional Chief Secretary, Home Department, State of Maharashtra, Bombay and in Crime no. 3017/2013 of Police Station, Aheri he received proposal for grant of sanction in respect of accused no.6 Saibaba. He stated that initially

said proposal was received to Deputy Secretary of his department and thereafter said proposal directly came to him for examination from Deputy Secretary and on 15.2.2015 his registry received proposal and thereafter, on 26-2-2015 he marked the said file to Director of Public Prosecutor, State of Maharashtra for independent review. The copy of the letter is at Exh.346.

668] He stated that on 4th March, 2015 he received the independent review from Director of Public Prosecutor along with covering letter at Exh.347 and the review report at Exh.348 and thereafter, he independently reviewed the proposal of sanction. He stated that he had gone through all the documents i.e. search warrant, investigation papers along with charge-sheet, CFSL report, hard copies certified by CFSL Bombay, all seizure panchanamas, arrest panchanamas of accused and all other papers of investigation which were submitted to him and thereafter, he had gone through all the papers and the independent review opinion submitted by Director of Public Prosecutor, Bombay. He stated that he read over the main pages of hard copies containing 247 pages and after going through documents, he subjectively satisfied that there was prima facie case against accused no.6 Saibaba for offence punishable u/s 13, 18, 20, 38 and 39 of the UAP Act 1967. Hence, he passed sanction order at Exh.349 for prosecution against accused no.6 Saibaba.

669] This witness was cross-examined by the learned defence counsel. In cross-examination he admitted that the number NAX 0214/CR-37 is a number of file related to the sanction order Exh.349 which was sought by SDPO Ramesh Dhumal (PW.23) on 3.2.2015. He admitted that he had not mentioned the reference of any letter

received from SDPO Aheri or S.P, Gadchiroli for seeking sanction (Exh.349). He did not recollect whether he had received Statement of Accused u/s 164 of Cr.P.C. for granting sanction. He admitted that Chapter-III of UAPA deals with activities of unlawful association and after going through the notification he came to know that CPI (Maoist) and their frontal organisation like Revolutionary Democratic Front (RDF) are declared as unlawful association. He stated that he had gone through all investigation papers along with charge-sheet, CFSL report and independent review by Director of Public Prosecutor. He admitted that he had taken charge of Additional Chief Secretary Officer on 31st December, 2014 and accorded sanction for the first time and he does not remember whether he has granted any sanction thereafter under UAPA.

670] He admitted that in sanction order it is not mentioned that he had referred investigation papers to Director of Public Prosecutor, Bombay for reviewing the aspect and he had considered his review report before according sanction. He admitted that he came across with the statements of prosecution witnesses showing that at the instance of accused no.6 Saibaba, accused nos.1 Mahesh and no.2 Pandu had gone to Ballarsha on 22.8.2013 but said fact is not reflected in the statements of any witness and it is reflected in the case diary. He admitted that he was supplied copy of sanction order issued by Amitabh Rajan in respect of other accused.

671] He denied that he did not receive any letter either from SDPO Aheri or from S.P, Gadchiroli for seeking sanction and he did not receive any charge-sheet or police papers before granting sanction. He denied that he did not go through the notification and

without going through the provision of law he accorded sanction against accused no.6 Saibaba. He denied that his department never addressed any letter to Director of Public Prosecutor for review and he did not receive any review report from them and it is not reflected in sanction order (Exh.349). He denied that he was given sanction order issued by Amitabh Rajan and hence, by deleting the name of other accused he added the name of Saibaba and present Sanction Order is issued mechanically without application of mind.

672] He denied that he did not receive proposal of sanction in respect of accused no.6 G.N. Saibaba and that the proposal first came to the Registration Department of Mantralaya, thereafter the said proposal is forwarded to the concerned desk and from concerned desk to Deputy Secretary and thereafter the proposal directly came to him for examination from Deputy Secretary and on 15-2-2015 registry did not receive the proposal and on 26-2-2015 he did not mark the said file to Director of Public Prosecutor for independent review. He denied that as per his oral direction his office has not forwarded the proposal to Director of Public Prosecutor for independent review before placing the same before him. He denied that on 4th March, 2015 he did not receive the independent review from Director of Public Prosecutor along with covering letter addressed to Jayant Bhoir and independent review is filed on record and it is duly attested by him. He denied that all documents including search warrant, investigation papers along with charge-sheet, CFSL report, hard copies of certified by CFSL Bombay, all seizure panchanamas, arrest panchanamas and all other papers were not submitted to him and he did not study the file and he did not go through all the documents. He denied that he did not go through the independent review given

by Director of Public Prosecutor, Bombay and did not read over the main pages of hard copies containing 247 pages and after going through documents, he did not satisfy that there is a prima facie case against accused for the offence punishable u/s 13, 18, 20, 38 & 39 of the UAP Act 1967 and he did not come to the conclusion that it is a fit case to grant sanction for prosecution against accused no.6 G.N. Saibaba and he did not pass the sanction order against accused no.6 G.N. Saibaba on 6th April, 2015.

673] Learned defence counsel Shri Gadling had filed an application at Exh.466 for calling of original record relating to grant of sanction in Sessions case no.13/2014 and Sessions case no.130/2015. The said application was allowed and prosecution was directed to produce original papers relating to grant of sanction in Sessions case no.13/2014 and Sessions case no.130/2015. In pursuance of said order prosecution has produced on record original papers relating to grant of sanction in Sessions case no.13/2014 and Sessions case no.130/2015. The said original files are filed along with list of documents at **Exh.474**. The original file relating to grant of sanction in respect of Sessions Case No.13/2014 against accused no.1 to 5 contains 1189 pages. The original file for grant of sanction in respect of Sessions Case No.130/2015 against accused no.6 Saibaba contains 377 pages.

Argument of Spl. P.P. Shri Sathianathan on Sanction

674] Learned Special PP. Shri Sathianathan submitted that the sanction was validly accorded in respect of accused no.1 to 5 in Sessions Case no. 13/2014 and in respect of accused no.6 Saibaba in

Sessions Case no.130/2015. He submitted that the provisions of Section 13, 18, 20, 38, 39 of UAPA read with Section 120-B of IPC are prima facie attracted against accused nos.1 to 6 and it is clear from the data contained in text, video-clips and photographs in electronic gadgets (Article 1 to 41) i.e. CDs, DVDs, pen-drives, hard-discs, memory-card seized from house search of accused no.6 Saibaba under seizure panchanama at Exh.165 and 16 GB memory card seized from the personal search of accused no.3 Hem Mishra under seizure panchanama at Exh.137 (Art. A-17 to A-21). The data contained in text form is relating to writings, letters addressed to Comrades, Secretary report, reports regarding meetings in respect of Revolutionary Democratic Front (RDF), a frontal organisation of banned organisation Communist Party of India (Maoist) and the said data contained in text, audio, video form was used by accused nos.1 to 6 for circulation to the underground naxal in forest area of Gadchiroli district for promoting and advocating the ideology of banned organisation CPI (Maoist) and its frontal organisation from RDF and thereby to create violence and incitement to the people and to cause public disorder. He submitted that this fact is also proved from the evidence of Raju Atram (P.W.9) and further from confessional statements of accused no.1 Mahesh and no.2 Pandu which is recorded by JMFC, Aheri, Nileshwar Vyas (P.W.12).

675] He submitted that the mirror copies of electronic data retrieved from electronic gadgets seized from the personal search of accused no.3 Hem Mishra and from the house search of accused no.6 Saibaba in the form of audio, video and text were sent to sanctioning authority by the Investigating Officer P.W.11 Suhas Bawche. P.W.18 Kalyaneshwar Bakshi and P.W.19 Dr.Amitabh Rajan in their

examination categorically stated that before grant of sanction they had gone through all incriminating materials supplied to them i.e. investigation papers, F.I.R., charge-sheets, statement of witnesses, panchnamas, confessional statements of accused no.1 Mahesh and no.2 Pandu, soft copies of data contained in text form in 16 GB memory-card at Exh.266 and the data contained in Page nos.1 to 247 which was collectively marked at Exh.267 and other documents and thereafter they came to the conclusion that there was prima facie case against accused nos.1 to 6 for the offence punishable under Sections 13, 18, 20, 38, 39 of UAPA read with Section 120-B of the IPC and sanction at Exh.17 was accorded after application of mind in respect of accused no.1 to 5 in Sessions Case no.13/2014 and thereafter sanction order (Exh.349) was accorded in respect of accused no.6 Saibaba in Sessions Case no.130/2015.

676] Spl.PP. Shri Sathainathan submitted that in the present case, two charge-sheets have filed by the prosecution. Investigating Officer P.W.11 Suhas Bawche filed original charge-sheet against accused no.1 to 5 and the sessions case was registered as Sessions Case no.13/2014 and thereafter P.W.23 PSI Ramesh Dhumal filed supplementary charge-sheet against accused no.6 Saibaba and Sessions Case No.130/2015 was registered. He submitted that in this matter initially FIR was lodged against accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra and during interrogation with accused no.3 Hem Mishra involvement of accused no.4 Prashant Rahi was revealed and accused no.4 Prashant Rahi was arrested along with accused no.5 Vijay Tirki and from interrogation with accused no.3 Hem Mishra and accused no.4 Prashant Rahi involvement of accused no.6 Saibaba was revealed and hence, subsequently accused

no.6 Saibaba was arrested. He further submitted that as accused no.6 Saibaba is think-tank and high-profile leader of banned organisation CPI (Maoist) and its frontal organisation RDF he could not be arrested because of agitation made by people and this fact is clear from the evidence of Investigating Officer P.W.11 Suhas Bawche. Investigating Officer P.W.11 Suhas Bawche in his examination clearly stated that during earlier occasion till 26.2.2014 they tried to arrest accused no.6 Saibaba and at that time, accused no.6 Saibaba called his party members and created law and order problem and hence, they could not arrest him earlier.

677] He submitted that Suhas Bawche (P.W.11) obtained the arrest warrant of accused no.6 Saibaba from JMFC, Aheri on 26.2.2014 and then accused no.6 Saibaba came to be arrested by P.W.11 Suhas Bawche after filing of the original charge-sheet in S.C.No.13/2014. He submitted that in Session case no.13/2014 proposal was sent by Suhas Bawche (P.W.11), SDPO, Aheri on 1.2.2014 and it was received by Home Department on 7.2.2014 and to that effect Suhas Bawche (P.W.11) in his examination deposed that he has sent proposal through Superintendent of Police, Gadchiroli on 1.2.2014. The said proposal was received by Home Department of Maharashtra on 7.2.2014 and further Dr.Amitabh Rajan (P.W.19) in his examination has stated that his office received the proposal from Addl. D.G. i/c of special operation Maharashtra Police Directorate in relation to grant of sanction against accused nos.1 to 5 in Sessions Case no. 13/2014 on 7th February, 2014 vide letter (Exh.356) and on the same day he sent it to Director of Public Prosecution, Maharashtra State for independent assessment and opinion and on 11.2.2014 his office received the independent review report (Exh.358) from I/c

Director of Public Prosecution, Maharashtra State along with covering letter (Exh.357) and on 15.2.2014 sanction (Exh.17) was accorded to prosecute accused nos.1 to 5 in Sessions Case no.13/2014.

678] He submitted that proposal for grant of sanction in respect of accused no.6 Saibaba in Sessions Case no.130/2015 was sought by Ramesh Dhumal (P.W.23) on 3.2.2015 and it was received by Home Department on 15.2.2015 and to that effect Ramesh Dhumal (P.W.23) in his examination deposed that on 3-2-2015 he sought sanction from Home Department of State of Maharashtra to prosecute the accused no.6 G.N. Saibaba. Further, on the point of according of sanction to prosecute accused no.6 Saibaba, Kalyaneshwar Bakshi (P.W.18) in his examination at Exh.345 stated that in Crime no.3017/2013 of Police Station, Aheri he received proposal for grant of sanction in respect of accused no.6 G.N. Saibaba and thereafter, on 26-2-2015 he marked the said file to Director of Public Prosecutor, State of Maharashtra for independent review vide letter at Exh.346 and on 4th March, 2015 he received the independent review from Director of Public Prosecutor along with covering letter at Exh.347 and the review report at Exh.348 and thereafter he independently reviewed the proposal of sanction and after going through all the documents he accorded sanction (Exh.349) and sent the same vide letter Exh.350.

679] Spl. PP. Shri Sathianathan further submitted that on perusal of proposal for sanction the sanctioning authority found that there was prim facie case against accused nos.1 to 6 and this fact is crystal clear from the schedule Exh.17 annexed to Sanction Order and in the schedule it is clearly mentioned that there was prima facie case against accused nos.1 to 6 but because of the fact that accused no.6

Saibaba was not arrested the sanction was not granted by that time. However, on perusal of said Schedule it reveals that prima facie case was found against accused no.1 to 6 for grant of sanction and it was never intention of the Government/Sanctioning Authority to refuse sanction to prosecute accused no.6 Saibaba. Hence, though sanction at Exh.349 against accused no.6 Saibaba was granted after framing of charge at Exh.66 in Session Case No.13/2014 because of subsequent arrest of accused no.6 Saibaba, the evidence of witnesses was recorded in presence of accused no.6 Saibaba and other accused persons. Hence, no prejudice is caused to accused no.6 Saibaba.

680] He submitted that the prosecution has filed application at Exh.151 on 14.12.2015 for recalling of P.W.1 Santosh Bawne as sanction order was filed by the Investigation Officer in Session Case no.13/2014. To that application accused no.1 to 6 have given no-objection and thereafter evidence of P.W.1 Santosh Bawne was again recorded afresh. The defence has not taken objection of absence of sanction while taking cognizance at the time of framing of charge and the matter had gone to High Court and Supreme Court. On the contrary, they have given no-objection for re-recording the evidence of panch witness P.W.1 Santosh Bawne. Hence, no prejudice is caused to the defence and in view of provisions of Section 465 of Cr.PC., the trial is not vitiated on these grounds. There was misconception of law in the mind of Sanctioning Authority that the arrest of accused no.6 is the precondition to grant sanction.

681] He submitted that, on perusal of schedule attached to sanction order at Exh.17 accorded by Amitabh Rajan (P.W.19) it reveals that Sanctioning Authority came to the conclusion that

accused nos.1 to 6 being the active members of banned organisation conspired together to aid and abet the terrorist activities of banned terrorist organisation called as Communist Party of India (Maoist) and its frontal organisation RDF and accused nos.1 and 2 maintained live contact with the underground members of CPI (Maoist) Narmadakka and at her instance went to Ballarsha to receive accused No. 3 Hem Mishra who is a member of banned terrorist organisation CPI (Maoist) and its frontal organization RDF and were taking them to forest area at Gadchiroli as directed by naxal lady Narmadakka for meeting with senior maoist cadre but they were arrested at secluded place near Aheri Bus Stand, and accused no.6 Saibaba handed over a micro-chip 16 GB memory card containing vital Maoist communications and other maoist documents in the encrypted form with intention to further the activities of terrorist organisation of CPI (Maoist) for circulation with underground naxal members in Abuzmad forest area and the schedule annexed to the sanction order clearly reveals that there was a prima facie case against accused no.6 Saibaba for the offence punishable u/s 13, 18, 20, 38, 39 of UAPA r/w Sec.120-B of IPC and there was no intention on the part of Government to refuse sanction at any point of time and it can be assumed from first sanction order at Exh.17 that there was a prima facie case against accused no.6 Saibaba and subsequent issuance of sanction order does not invalidate the satisfaction of the Sanctioning Authority about finding of prima facie case against accused no.6 for the offence punishable u/s 13, 18, 20, 38, 39 of UAPA. The Sanctioning Authority Kalyaneshwar Bakshi (P.W.18) granted sanction in respect of Sessions Case no.130/2015 to avoid technicalities after the arrest of accused no.6 Saibaba.

682] Spl.PP. Shri Sathainathan further submitted that at the time of granting sanction, the Sanctioning Authority is not supposed to evaluate the evidence but it has to consider only prima facie case and on going through the material placed before Sanctioning Authority especially, mirror-image, confession of accused nos.1 and 2 a prima facie case u/s 13, 18, 20, 38, 39 of UAPA was made out and the sanction is validly accorded in respect of accused nos.1 to 6 and he submitted that the first sanction order issued by Amitabh Rajan (PW.19) at Exh.17 should be considered as sanction for all the accused no 1 to 6 inspite of the fact that to avoid technicalities PW.18 Kalyaneshwar Bakshi accorded sanction vide Exh.349 in respect of accused no. 6 Saibaba.

683] He further submitted that under the provisions of Section 45(2) of the UAPA and by issuance of Government Notification No.TER-410-PK-216 dated 26th May, 2010, the Government of Maharashtra appointed the Director of Public Prosecutor is authorized to review the proposal for grant of sanction. As such Director of Public Prosecutor, Maharashtra State has been designated as an independent authority to review the proposal of sanction. Hence, compliance of Section 45(2) of UAPA has been made. However, there is delay of few days for grant of sanction in Sessions Case No.130/2015 that does not vitiate the trial as the provisions of these Rules are not mandatory and they are directory in nature. In support of his submission he placed reliance on the judgment of the Honourable High Court of Bombay in case of Mohammed Bilal Gulam Rasul Kagzi .vs. The State of Maharashtra and ors., Criminal Application No.1256 of 2011 decided on 19.12.2012.

684] He submitted that the offence punishable under Section 13 of UAPA which is falling under Chapter III of UAPA, the Assistant Chief Secretary (Home) is a competent authority to grant sanction and in support of his submission he relied on Government Gazette Notification dated 21st June, 2007 which is issued under the provisions of Section 45(i) of the Unlawful Activities (Prevention) Act 1967 (37 of 1967), whereby the Additional Secretary of Home Department were designated as competent authority to grant sanction for offence falls under chapter III of UAPA.

685] For all above grounds he submitted that a valid sanction has been granted by Sanctioning Authorities in respect of accused nos.1 to 6 by application of mind and after going through the material placed before them. In support of his submission he placed reliance on the judgment of **State (NCT of Delhi) vs. Navjot Sandhu (2005)** reported in **11 SCC 600** in which the Hon'ble Apex Court in Para No. 16 has considered procedure for according sanction wherein it has been held that the grant of sanction is an executive act and validity thereof cannot be rested in the light of principles applied to quasi-judicial orders.

Argument of Advocate Shri Gadling on the point of Sanction

686] On the other hand, learned Advocate Shri Gadling for accused nos.1 to 4 and 6 has submitted that in para no.1 of Exh.355 P.W.19 Dr. Amitabh Rajan has stated that he was Home Secretary, Maharashtra in the rank of Additional Chief Secretary (Home) from 14th March, 2012 till his retirement i.e. 31-12-2014 and his office

received the proposal from Addl. D.G. i/c of Special Operation Maharashtra Police Directorate in relation to this crime on 7th February, 2014 and when the Section Officer received the same, on the same day he sent it to Director of Public Prosecution, Maharashtra State for independent assessment and opinion vide Exh.356 was received by Director of Public Prosecution, Mumbai and on 11th February, 2014 his office received the independent review report from I/c Directorate of Prosecution, Maharashtra State under signature of Vidya Gundecha along with covering letter dated 11-2-2014 and the report dated 11-2-2014 vide Exh.357 and 358 respectively.

687] He submitted that in para no.2 of cross-examination this witness stated that the Deputy Secretary of Home (Special) has studied the file on 13.2.2014 and put up to Secretary of Law Home Special Maharashtra Government and thereafter on 14.2.2014 he received the file for according sanction. He submitted that this witness might have received the file on 14.2.2014 during working hours i.e. in between 10.30 a.m. to 5.30 p.m. in the office and thereafter he took the file for study to his home. If this is so, how he studied the file early in the morning on 14.2.2014. Hence, his evidence is false that he read the file on 14.2.2014. This witness has stated that he had gone through all the investigation papers particularly CFSL report, soft-copies of the electronic data, mirror images of hard copies containing the electronic gadgets and thereafter he came to conclusion that there is conspiracy between accused no.1 to 6. But the proposal of sanction which was sent by Aheri Police Station does not indicate that the CFSL report, soft-copies of the electronic data, mirror images of hard-copies were sent to PW.19 Amitabh Rajan.

688] He submitted that evidence of this witness reveals that 16 GB memory-card was sent to CFSL but the proposal of sanction does not indicate that 16 GB memory-card was sent to CFSL. The evidence of P.W.11 Suhas Bawche shows that he made proposal for grant of sanction against Accused nos.1 to 6 however, the evidence of P.W.19 Amitabh Rajan shows that he granted sanction in respect of accused nos.1 to 5 only and the sanction in respect of accused no.6 was withheld only on the ground that he was not arrested. It is well settled that cognizance is to be taken of the offence and not of offender and this shows that he is not knowing the provisions of law.

689) He submitted that from the letter sent by P.W.11 Suhas Bawche it shows that he has sent the draft sanction order along with calender event and the sanctioning authority has merely accorded the sanction and thereafter it was sent to Aheri Police Station by letter dated 6.4.2015 at Exh.350 asking them whether there any correction is to be made in the sanction order. This shows that the sanctioning authority has not applied the mind to the sanction in the case.

690] He submitted that in the schedule at Exh.17 it is mentioned that accused no.1 Mahesh and no.2 Pandu went to Ballarsha at the instance of naxal lady Narmadakka on 22.8.2014, however, in the confessional statement before the Magistrate, accused stated the date as 20-22 and in the sanction 22.2.2014 is mentioned. He submitted that this witness admitted in cross-examination that he cannot say whether he came to the conclusion from statement of any witness that accused no.4 Prashant Rahi was the member of CPI (Maoist).

691] He submitted that this witness came to the conclusion that microchip was handed-over to accused no.3 Hem Mishra by accused no.6 Saibaba but there is no such statement on record that accused no.6 Saibaba handed-over microchip to accused no.3 Hem Mishra to be handed-over to the underground naxal and this conclusion is baseless and not sustainable and hence, it shows that sanctioning authority has not applied mind while granting sanction.

692] He submitted that in para no.1 of cross-examination Exh.345 P.W.18 Kalyaneshwar Bakshi has stated that from 31st December, 2014 he was working as Additional Chief Secretary, Home Department, State of Maharashtra, Bombay and in Crime no. 3017/2013 of Police Station, Aheri he received proposal of sanction in respect of accused no.6 Saibaba and proposal first came to the Registration Department of Mantralaya, thereafter the said proposal was forwarded to the concerned desk and from concerned desk to Deputy Secretary and thereafter the proposal directly comes to him for examination from Deputy Secretary and on 15-2-2015 he received the proposal and on 26-2-2015 he sent file to Director of Public Prosecutor for independent review and on 4th March, 2015 he received the independent review from Director of Public Prosecutor vide Exh.348. He submitted that none of the prosecution witnesses have identified the signature of Director of Public Prosecution as such said document cannot be read in evidence. He submitted that the evidence of this witness clearly reveals that he had gone through all the investigation papers particularly CFSL report, soft-copies of the electronic data, mirror images of hard copies containing the electronic gadgets and thereafter he came to conclusion that there is conspiracy

between accused no.1 to 6. But the proposal of sanction which was sent by Aheri Police Station does not indicate that the CFSL report, soft-copies of the electronic data, mirror images of hard-copies were sent to this witness. This shows non-application of mind by Sanctioning Authority.

693] He submitted that P.W.No.18 Kalyaneshwar Bakshi admitted that there is no statement mentioned on record to show that accused no.6 Saibaba directed accused no.3 Hem Mishra to go to Ballarsha or there is no statement of any witness on record to show that accused no.6 Saibaba gave maoist literature to accused no.4 Prashant Rahi to handover to underground naxals in Abuzmad forest in Gadchiroli and it is evident from the fact that sanction order was forwarded by Aheri Police Station by keeping some spaces blank and said blank spaces were filled up by this witness and he sent the sanction order to Aheri Police Station. This shows that he never applied mind before granting sanction.

694] He submitted that there is nothing on record to show that all the documents were supplied to the Director of Public Prosecutor before independent review and independent review Exh.358 does not indicate that there is application of mind by Director of Public Prosecution.

695] He submitted that the sanction order Exh.17 issued by P.W.19 Amitabh Rajan in Sessions Case No.13/2014 and sanction order Exh.349 issued by P.W.18 Kalyaneshwar Bakshi in Sessions case no.130/2015 are cryptic and issued without application of mind and without considering the material placed before these Authorities.

There is no reference in both sanction orders (Exh.17 and 349) about the fact that these sanctioning authorities have gone through particular document before according sanction. The said sanction orders are issued in mechanical manner without application of mind.

696] He further submitted that there is no mention in sanction order (Exh.349) about the fact that the file was referred for independent review to Director of Public Prosecutor which is designated as an authority for independent review u/s 45 of UAPA. He further submitted that the sanction is not granted in both Session Case Nos.13/2014 and 130/2015 within the time prescribed by the provisions of Unlawful Activities (Prevention) Recommendation and Sanction of Prosecution Rules, 2008. He further submitted that there is no evidence on record to show that file was referred to the Home Minister and he accorded the sanction. As such the prosecution has not proved the fact that the competent authority has granted the sanction. As the prosecution has failed to prove that proper sanction was accorded against accused nos.1 to 5 in Sessions Case No.13/2014 and against accused no.6 Saibaba in Sessions Case No.130/2015, hence, he prayed for acquittal of all the accused.

697] In support of his submission defence counsel placed reliance on the following judgments -

1] Jagannath Maruti Tekade .vs. State of Maharashtra reported in 1991 MH.L.J 976, wherein it is observed that -

Sanction order must pass the requisite test of legality if there is no application of mind, the

sanction order is vitiated court will have to take judicial notice of the fact that in the

Government Setup the orders are often times drafted out by a department and put up to an authority for signature and, therefore, it would be extremely dangerous to conclude even if the sanction order is correctly or perfectly drafted, that the authority who signed it must have applied his mind in absence of deposing before the court that he had in fact done so.

2] Major Som Nath -vs- Union of India reported in **AIR 1971 SC 1910**, wherein it is observed that -

Essentials of sanction for a sanction to be valid it must be established that the sanction was given in respect of the facts constituting the offence with which the accused is proposed to be charged. Though, it is desirable that the facts should be referred to in the sanction itself, nonetheless if they do not appear on the face of it, the prosecution must establish aliunde by evidence that those facts were placed before the sanctioning authorities.

3] P.C. Joshi and Anr .vs. State of Uttar Pradesh reported in **AIR1961 SC 387**, wherein it is observed that -

Sanction Order ---- Requirement of ----- that Sanctioning authority must be shown to have applied his mind to the facts before giving sanction for prosecution Mere production of a document which sets out the name of the persons to be prosecuted and the provisions of the statute alleged to be contravened and purporting to bear the signature of an officer competent to grant the sanction where such sanction is a condition precedence to the exercise of jurisdiction does not invest the court with jurisdiction to try the offence. If the facts which constitute the charge do not

appear on the face of the sanction, it must be established by extraneous evidence that those facts were placed before the authority competent to grant the sanction and that the authority had applied his mind to those facts before giving sanction.

4] Rambhai Nathabhai Gadhvi and Ors. .vs. State of Gujrat reported in MANU/SC/0859/1997 : AIR 1997 SC 3475, wherein it is held that:

As the provision of TADA are more rigorous and the penalty provided is more stringent and the procedure for trial prescribed in summary and compendious, the Sanctioning process mentioned in Section 20A(2) must have been adopted more seriously and exhaustively than the sanction contemplated in other penal statutes. If there was no valid sanction the Designated court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction without a valid sanction, such action is without jurisdiction and any proceeding adopted there under will also be without jurisdiction. In the case of Manoranjan Prasad Choudary .Vs. State of Bihar (2005 XXX OCR (SC) 370, it is held that “it is also well settled proposition of law that where there is no sanction by the competent authority, the proceeding itself stands vitiated.” In view of the conclusions/ finding reached hereinabove, this court is of the considered view that, no cognizance could have been taken against the petitioners in the absence of any valid sanction of the prosecution and this regard, although sanction for prosecution had been obtained, yet the same was not based upon a review by a validly appointed authority to carry out “independent review of evidence” obtained in course of investigation.

Therefore, the very foundation for obtaining such sanction being not in consonance with law, the order of cognizance dated 16.7.2010 passed by the learned J.M.F.C. Banpur in G.R. Case no. 16 of 2010 ought to be quashed and this court directs accordingly. (Emphasis supplied)

5] **State of UP vs Babu Ram Upadhyaya AIR 1961 SC 751 Constitutional Bench** in which it is held that -

Rules, Regulations or bye-laws -Statutory Rules- Principles of Construction of- To be presumed as if in the Act- Valid aid of Construction

(2) The rules must be treated for all purposes of Construction or obligation exactly as if they were in the act and are to be of the same effect as if contained in the act, and are to be judicially noticed for all purposes of construction or obligation.

Conclusion on the point of Sanction

698] In order to appreciate the evidence adduced by on prosecution on the point of sanction, it is necessary to have look on the provisions of Section 45 of the UAPA. The provisions of Section 45 of UAPA are reproduced as under :-

45. Cognizance of offences –

(1) No Court shall take cognizance of any offence -

(i) Under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous of the Central Government or, as the case may be, the State

Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government. (emphasis supplied)

699] On 31/12/2008, The Unlawful Activities (Prevention) Amendment Act, 2008 (Central Act 35 of 2008) came into force whereby, Section 43 D and Section 45(2) were inserted in the UAP Act. It is also to be noted that The Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules 2008, came into force vide SO 3014 (E) dated 31.12.2008, published in Gazette of India, Extra., Pt. II, Sec. 3(ii) dated 31.12.2008. These rules were framed under Section 45(2) read with Section 52(2) (f) of the UAPA, 1967. The necessary script of the same can be given for ready reference as under:

THE UNLAWFUL ACTIVITIES (PREVENTION)
(RECOMMENDATION AND SANCTION OF
PROSECUTION) RULES, 2008

3. Time limit for making a recommendation by the Authority – The Authority shall, under sub section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government or, as the case may be, the State Government within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.

4. Time limit for sanction of prosecution – The central Government or, as the case may be, the State Government shall, under sub section (2) of section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority.

[1. Vide S. O. 3014(E), dated 31/12/2008, published in the Gazette of India, Ext. Pt. II, S. 3(ii), dated 31/12/2008. 2. Inserted by G.S.R. 224(E), dated 31/3/2009](emphasis supplied).

700] On perusal of provisions of section 45 UAPA it reveals that for offence under Chapter III of UAPA the Competent Authority for grant of sanction is Secretary's of the State Government who are Administrative in-charge of the Home Department. To that effect the Central Government has issued a Notification in the Gazette of India on 21 June 2007. The said notification is reproduced as under :-

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 21st June, 2007

S.O.1004(E) – In exercise of powers conferred by Section 45(i) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby authorizes the Secretaries of the State Governments and Union Territories and Administrations incharge of the

Home Department, to exercise the powers to sanction prosecution in respect of offences punishable under Chapter-III of the said Act triable by a Court in their respective States and Union Territories.

[F.No.1/17014/14/07-IS.VII]

L.C.GOYAL,

Jt.Secy.

Compliance of Sec.45(2) UAPA

The state of Maharashtra by notification in official gadgets designated Director of Public Prosecutor of State of Maharashtra as a authority for independent review the proposal of sanction under section 45(2) of UAPA. The said notification is reproduced as under :-

The Government of Maharashtra by order dated 28.5.2010 published in Maharashtra Government Gazette dated 28.5.2010, Extraordinary, Part 4-A, Page 1, Director of Public Prosecutor appoints as an Authority for independent review of proposal of sanction under UAPA. The said Government Notification is reproduced as under :

“In exercise of the powers conferred by sub-section (2) of section 45 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Government of Maharashtra, hereby appoints the Director of Prosecutions, Maharashtra State, to be the Authority to made an independent review of the evidence gathered in the course of investigation and to make a recommendation with a period of seven working days from its receipts, to the State Government.” (Order dt.26.5.2010, published in Mah. Government Gazette dt.28.5.2010)

The Maharashtra Government Rules of Business
General Administration Department
(Sachivalaya, Bombay 400 032, dated the 26th
June 1975

701] Further it is necessary to have look on the provisions of the Rules framed by the Maharashtra Government in exercise of the powers conferred by clauses (2) and (3) of Article 166 of the Constitution of India under the title of **“The Maharashtra Government Rules of Business General Administration Department”** (Sachivalaya, Bombay 400 032, dated the 26th June 1975. These Rules were framed by Maharashtra Government in exercise of the powers conferred by clauses (2) and (3) of Article 166 of the Constitution of India. Relevant Rules 5, 7, 12 and 13 are reproduced as under :-

Rule 5 :- The Governor shall on the advise of the Chief Minister allot among the Ministers the business of the Government by assigning one or more Departments or part of Departments to the charge of a Minister :

Provided that nothing in this rule shall prevent the assigning of one Department to the charge of more than one Minister.

Rule 7 :- Each Department of the Mantralaya shall consist of the Secretary to the Government, who

shall be the official head of that Department and or such other officers and servants subordinate to him as the State Government may determine:

Provided that -

- (a) more than one Department may be placed in charge of the same Secretary;
- (b) the work of a Department may be divided between two or more Secretaries.

Rule 12 :- All orders or instruments made or executed by on behalf of the Government of the State shall be expressed to be made by or by order executed in the name of the Governor.

Rule 13 :- Every order or instrument of the Government of the State shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary or such other officer as may be specially empowered in that behalf and such signature shall be deemed to be proper authentication of such order or instrument.

702] In the present case, the accused nos.1 to 6 have been charged for offence punishable u/s 13, 18, 20, 38, 39 of UAPA read with Section 120B of IPC and P.W. no.18 Amitabh Rajan and P.W. 19 Kalyaneshwar Bakshi in their examination stated that they issued sanction orders after going through the material placed before them and as such they are competent persons to issue and sign sanction

orders as per the provision of Rule 12 of The Maharashtra Government Rules of Business General Administration Department” (Sachivalaya, Bombay 400 032, dated the 26th June 1975 The sanction order in Sessions Case no.13/2014 in respect of accused nos.1 to 5 alongwith its Schedule are reproduced as under :-

SANCTION ORDER (EXH.17)

Home Department (Special),
Mantralaya, Madam Kama Road,
Mumbai – 400 032
Date: 15th February, 2014

No NAX 0214/C.R.37 /Spl-1B:- WHEREAS, it has been reported to the Government of Maharashtra that Mahesh Kariman Tiraki and Five others, (hereinafter referred to as “the said Accused persons”) as specified in Column 1 of the Schedule appended hereto (hereinafter referred to as “the said Schedule”) committed the offence as specified in Column 3 of the Schedule.

AND WHEREAS, it appears to the Government of Maharashtra that on the date and at the place mentioned in the said Schedule, the accused person have committed an offence (hereinafter referred to as “the said offence”) punishable under section 13, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (Amendment 2008) (hereinafter referred to as “the said Act”),

AND WHEREAS, after having fully examined the material placed before me and considering all facts, I am satisfied that it is necessary in the interest of justice that the accused persons should be prosecuted in the Court of competent jurisdiction for the said offences under Section 13, 18, 20, 38 and 39 of the said Act,

NOW, THEREFORE, in exercise of the powers conferred by Clause (ii) of sub-section (1) of section 45 of the said Act, sanction is hereby accorded to the prosecution against the arrested accused persons for taking cognizance of the offence by the Court of the competent jurisdiction.

Sd/-

(Dr. Amitabh Rajan)

Additional Chief Secretary to the Government of
Maharashtra Home Department

703] Further, Schedule annexed to the said sanction order (Exh.17) is reproduced as under :-

SCHEDULE

Particulars of accused person (i. e. name, address etc.) 1.	Police Station Crime Register No. and date 2.	Criminal acts of the accused persons 3.
<p><u>Arrested</u></p> <p>1) Mahesh Kariman Tiraki, age 24 yrs, at -Murewada, Tal. Etapalli, Dist. Gadchiroli</p> <p>2) Pandu Pora Narote, age 27 yrs. at -Murewada, Tal. Etapalli, Dist. Gadchiroli</p> <p>3) Hem Keshadatta Mishra, age 32 yrs. At-Kunjbargal, Post. Nagarkhan, Dist- Almora (Uttarakhand)</p> <p>4) Prashant Rahi S/o N. B. Sangalihar, age 54 Yrs. at 87, Chandrashekhar Nagar, Rishikesh, Deharadun (Uttarakhand)</p> <p>5) Prasad @ Vijay Nan Tiraki, age 30 yrs, at Beloda, P. S. Bande, Distt. Kanker (Chattisgarh)</p>	<p>P. Stn. Aheri C. R. No. 3017/2013 U/s 13, 18, 20, 38, 39 of Unlawful Activities (Prevention) Act, 1967 (Amendment Act 2008) Registered on date 22/08/2013 at 2130 hrs.</p>	<p>Accused persons mentioned herein column No. 1 entered into criminal conspiracy jointly and severally to aid and abet the terrorist activities of banned terrorist organisation called as communist party of India (Maoist). (Hereinafter referred to as CPI (Maoist)).</p> <p>They knew fully well that their acts will facilitate the commission of a terrorist act or any act preparatory to the commission of a terrorist act.</p> <p>In Pursuance of the said criminal conspiracy, accused mentioned at Sr. No. 1 and 2 maintained live contact with the underground member of CPI (Maoist) name Narmadakka and at her instance went to Ballarsha, Dist. Chandrapur on-22/08/2013 to receive the accused No. 3 who is a member of banned terrorist organisation CPI (Maoist) and both accused No. 1 and 2 were attempting to take the accused No. 3 to Abuzmad forest area as directed by Narmadakka for meeting with senior maoist cadre who are hiding in Abuzmad forest. Both accused No. 1 and 2 knew fully well</p>

<p><u>Yet to be arrested</u></p> <p>6) G. N. Saibaba, age 47 yrs, Warden House, Gwyer hall, Delhi University road, Delhi-7</p>		<p>that any such meeting of the underground member of banned terrorist organisation will facilitate the commission of terrorist acts.</p> <p>Accused at Sr. No. 5 in pursuance to his criminal conspiracy with the underground member by name Ramdar of CPI (Maoist) received the accused No. 4 who is also a member of banned terrorist organisation. CPI (Maoist) and as per the directions of Ramdar was attempting to take accused No. 4 to Abuzmad forest areas for meeting the senior Maoist cadres who are hiding in Abuzmad forest areas, knowing fully well that any such meeting of the underground members of banned terrorist organisation will facilitate the commission of terrorist act.</p> <p>Accused at Sr. No. 3, 4 and 6 entered into the criminal conspiracy amongst each other and in pursuance to the said conspiracy, accused No. 6 arranged meetings of accused No. 3 and 4 with the underground members of banned terrorist organisation. CPI (Maoist) Who are hiding in the Abuzmad forests.</p> <p>In furtherance of the said conspiracy, accused at Sr. No. 6 handed over a micro-chip SD memory card containing vital Maoist communications and other maoist documents in the encrypted form with intention to further the activities of terrorist organisation. CPI (Maoist) and asked accused</p>
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	<p>No.3 to go to Ballarshah and also told him that he will be received at Ballarshah by the representative of Narmadakka (i. e. accused No. 1 and 2) and will be taken to her where he should deliver the memory card to Narmadakka.</p> <p>Accused No. 6 also gave maoist documents to accused No. 4 to be delivered to the underground cadres of CPI (Maoist) in Abuzmad forests. Both accused No. 3 and 4 willfully carried memory cards and document with them and travelled from Delhi to deliver these things to senior maoist cadres as directed by accused No. 6. Accused No. 3, 4 and 6 Knew fully well that any such communications will facilitate the terrorist activities of CPI (Maoist)</p> <p>Accused No. 3, 4 and 6 with the intention to further the activities of CPI (Maoist) arranged their meeting with the underground members of CPI (Maoist) and thus supported the CPI (Maoist) to further its terrorist activities.</p> <p>Hence, accused have committed the offence punishable u/s. 13, 18, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967. (Amendment 2008).</p>
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By Order and in the name of the Governor of Maharashtra

(Dr. Amitabh Rajan)

Additional Chief Secretary to the Government of
Maharashtra
Home Department.

704] The sanction order in Sessions Case no.130/2015 in respect of accused no.6 Saibaba alongwith its Schedule are reproduced as under :-

SANCTION ORDER (EXH.349)

Home Department (Special),
2nd Floor, Main Building,
Mantralaya, Madam Kama Road,
Mumbai – 400 032
Date: 6th April, 2015.

No NAX 0214/C.R.37 (Part-II)/Spl-1B:- WHEREAS, it has been reported to the Government of Maharashtra that G.N. Saibaba (hereinafter referred to as “the said Accused person”) as specified in Column 1 of the Schedule appended hereto (hereinafter referred to as “the said Schedule”) committed the offence as specified in Column 3 of the Schedule.

AND WHEREAS, it appears to the Government of Maharashtra that on the date and at the place mentioned in the said Schedule, the Accused Person has committed an offence (hereinafter referred to as “the said offence”) punishable under section 13, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (Amendment 2008) (hereinafter referred to as “the said Act”),

AND WHEREAS, after having fully examined the material placed before me and considering all facts, I am satisfied that it is necessary in the interest of justice that the Accused Person should be prosecuted in the Court of competent jurisdiction for the said offences under Section 13, 18, 20, 38 and 39 of the said Act,

NOW, THEREFORE, in exercise of the powers conferred by Clause (ii) of sub-section (1) of section 45 of the said Act, sanction is hereby accorded to the prosecution against the arrested Accused Person for taking cognizance of the offence by the Court of the competent jurisdiction.

Sd/-

(K.P. Bakshi)

Additional Chief Secretary to the Government of
Maharashtra Home Department

705] Further, Schedule annexed to the said sanction order (Exh.349) is reproduced as under :-

SCHEDULE

Particulars of the accused person (I. e. name, address etc.) 1.	Police Station Crime Register No. and date 2.	Criminal acts of the accused persons 3.
<p style="text-align: center;"><u>Arrested accused</u></p> <p>G. N. Saibaba, age-47 yrs, Warden House, Gwyer hall, Delhi University road, Delhi-7</p> <p style="text-align: center;"><u>Already Chargesheeted</u></p> <p>1) Mahesh Kariman Tiraki, age 24 yrs, at Murewada, Tal. Etapalli, Dist. Gadchiroli.</p> <p>2) Pandu Pora Narote, age 27 yrs. at - Murewada, Tal. Etapalli, Dist. Gadchiroli</p> <p>3) Hem Keshadatta Mishra, age 32 yrs. At- Kunjbargal, Post. Nagarkhan, Dist-Almora (Uttarakhand)</p> <p>4) Prashant Rahi S/o N. B. Sangalika, age 54 Yrs. at 87, Chandrashekhar</p>	<p>P. Stn. Aheri C. R. No. 3017/2013 U/s 13, 18, 20, 38, 39 of Unlawful Activities (Prevention) Act, 1967 (Amendment 2008) Registered on date 22/08/2013</p>	<p style="text-align: center;">Arrested accused with chargesheeted accused mentioned in Column No. 1 of the Schedule entered into criminal conspiracy jointly and severally to aid and abet the terrorist activities of banned terrorist organisation Communist Party of India (Maoist).</p> <p>In pursuance of the said criminal conspiracy, already chargesheeted accused mentioned at Sr. No. 1 and 2 maintained live contact with the underground member of CPI (Maoist) by name Narmadakka and at her instance went to Ballarsha, Dist. Chandrapur on-22/08/2013 to receive the already chargesheeted accused No. 3 who is a member of banned terrorist organisation CPI (Maoist) and both already chargesheeted accused No. 1 and 2 were attempting to take the already chargesheeted accused No. 3 to Abuzmad forest area as directed by Narmadakka for meeting with senior maoist cadre who are hiding in Abuzmad forest. Both already chargesheeted</p>

<p>Nagar, Rishikesh, Deharadun (Uttarakhand)</p> <p>5) Prasad @ Vijay Nan Tiraki, age 30 yrs, at Beloda, P. S. Bande, Distt. Kanker (Chattisgarh)</p>	<p>accused No. 1 and 2 knew fully well that any such meeting of the underground member of banned terrorist organisation will facilitate the commission of terrorist acts.</p> <p>Already chargesheeted accused at Sr. No. 5 in pursuance to his criminal conspiracy with the underground member by name Ramdar of CPI (Maoist) received the already chargesheeted accused No. 4 who is also a member of banned terrorist organisation. CPI (Maoist) and as per the directions of Ramdar was attempting to take already chargesheeted accused No. 4 to Abuzmad forest areas for meeting the senior maoist cadres who are hiding in Abuszmad forest areas, Knowing fully well that any such meeting of the underground members of banned terrorist organisation will facilitate the commission of terrorist act.</p> <p>Already chargesheeted accused at Sr. No. 3, 4 and Arrested Accused are entered into the criminal conspiracy amongst each other and in pursuance to the said conspiracy, arrested accused arranged meetings of already chargesheeted accused No. 3 and 4 with the underground members of banned terrorist organisation. CPI (Maoist) who are hiding in the Abuzmad forests.</p>
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		<p>In furtherance of the said conspiracy, arrested accused handed over a micro-chip SD memory card containing vital maoist communications and other maoist documents in the encrypted form with intention to further the activities of terrorist organisation. CPI (Maoist) asked already chargesheeted accused No. 3 to go to Ballarshah and also told him that he will be received at Ballarshah by the representative of Narmadakka (I. e. already chargesheeted accused No. 1 and 2) and will be taken to her where he should deliver the memory card to Narmadakka.</p> <p>Arrested accused also gave maoist documents to already chargesheeted accused No. 4 to be delivered to the underground cadres of CPI (Maoist) in Abuzmad forests. Both already chargesheeted accused No.3 and 4 willfully carried memory cards and document with them and travelled from Delhi to deliver these things to senior maoist cadres as directed by arrested accused. Already chargesheeted accused No. 3, 4 and arrested accused knew fully well that any such communications will facilitate the terrorist activities of CPI (Maoist).</p> <p>Hence, accused have committed the offence punishable u/s. 13, 18, 20, 38</p>
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		and 39 of Unlawful Activities (Prevention) Act, 1967. (Amendment 2008).
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By order and in the name of the Governor of Maharashtra,

(K. P. Bakshi)
Additional Chief Secretary to the Government of
Maharashtra
Home Department.

706] The first ground on which the defence advocate Shri Gadling assailed the sanction orders (Exh.17 and 349) is that no material was placed before Sanctioning Authorities and that without going through the material placed before them, the sanction was accorded without the application of mind. On this point the admissions in cross-examination of P.W.18 Kalyaneshwar Bakshi and P.W.19 Amitabh Rajan were relied by the defence on the ground that before according sanction P.W.19 Amitabh Rajan met Ravindra Kadam and P.W.18 Kalyaneshwar Bakshi referred calendar events before entering into witness box. Further P.W.19 Amitabh Rajan admitted that he has discussed with Special Public Prosecutor before entering into witness box and in CFSL Report was not sent to P.W.No.18 Kalyaneshwar Bakshi. He stated in his evidence that he has gone through CFSL Report. Further according to P.W.18 Kalyaneshwar Bakshi he has come across with the Notification by which the RDF has been declared as a frontal organization of CPI (Maoist) but the said notification is not filed on record and P.W.18 Kalyaneshwar Bakshi came to know from the statement of prosecution witnesses that at the instance of accused no.6 Saibaba, accused no.1 Mahesh Tirki and

accused no.2 Pandu Narote had gone to Ballarshah, however this fact is not mentioned in the statement of any witness.

707] It is important to note that PW.18 Kalyaneshwar Bakshi in his examination stated that before issuing sanction order (Exh.349) against accused no.6 he had gone through all the documents i.e. search warrant, investigation papers along with charge-sheet, CFSL report, hard copies certified by CFSL Bombay, all seizure panchanamas, arrest panchanamas of accused and all other papers of investigation which were submitted to him. Further, another Sanctioning Authority P.W.19 Dr.Amitabh Rajan in his examination stated that before issuing the sanction order (Exh.17) against accused nos.1 to 5 he had gone through all investigation papers, particularly CFSL report, soft copies of the electronic data, mirror images of hard copies containing the electronic gadgets, Art. 1 to 41.

708] At the instance of Advocate for accused no.1 to 6 by order on application (Exh.478) original file regarding grant of sanction in S.C.No.13/2014 and 130/2015 were called and the prosecution has filed original record regarding grant of sanction in S.C.No.13/2014, it contains 1189 pages. On going through the note which was signed by Section Officer, Deputy Secretary, Under Secretary, Principal Secretary and Minister for Home, it reveals that before granting the sanction under UAPA the sanctioning authority had considered all investigation papers, statements of witnesses and opinion of Director of Public Prosecutor. The proposal of sanction in S.C.No.13/2014 was forwarded by Superintendent of Police, Gadchiroli alongwith following documents and case papers -

- i) Copy of FIR,
- (ii) Panchanamas,
- (iii) Calender events,
- (iv) Copies of screen shot of face-book account of accused no.3 Hem Mishra,
- (v) Copies of document contained in 16 GB memory card (Article A17 to A21),
- (vi) Eight pages relating to naxal literature seized from possession of accused no.4 Prashant Rahi and other investigation papers along with charge-sheet.

709] Further the Superintendent of Police, Gadchiroli had forwarded following documents alongwith sanction proposal in S.C.No.130/2015 :-

- (i) Copy of FIR,
- (ii) Copy of panchanamas,
- (iii) Calender events,
- (iv) Three pamphlets seized from the possession of accused no.1 Mahesh,
- (v) Copies of screen shots (Art.A1 to A16) of activities of face-book account of accused no.3 Hem Mishra,
- (vi) 247 pages retrieved from electronic gadgets seized from the house search of accused no.6 Saibaba,
- (vii) CDR of accused No.3 Hem Mishra, no.4 Prashant Rahi and accused no.6 Saibaba and
- (viii) all investigation papers were annexed.

710] On perusal of Schedule Annexed to both sanction orders (Exh.17 and 349) it is clear that role of each accused and facts have been considered before according sanction. The Schedule annexed to sanction orders clearly reflects that sanction orders were issued after going through the relevant material placed before both the sanctioning authorities. It is well settled principle of law that at the time of grant of sanction for prosecution the Sanctioning Authority is not supposed to evaluate the evidence but it has to see only prima facie case for which the accused is charged. At this juncture, it is necessary to consider the observations of **Apex Court in para 12 in the case of State of Maharashtra .v. Ishwar Piraji Kalpatri** reported in **AIR 1996 Supreme Court 722**, wherein it is observed that -

(B) Criminal P.C. (2 of 1974) , S.197 - Sanction for prosecution - According of - Making of statement while according sanction, that the officer signing order had personally scrutinised the file and had arrived at required satisfaction – Not necessary especially when order prima facie shows that there has been application of mind and that material on record has been examined by concerned officer before according sanction.

711] In view of the evidence led by the prosecution alongwith documents i.e. sanction orders (Exh.17 and 349) and schedule annexed to it clearly shows that before granting the sanction the sanctioning authority has considered all investigation papers supplied alongwith chargesheet and the copy of independent review and that there is no requirement of law that sanctioning authority must refer the documents on which they satisfied about the prima facie case

against the accused in the sanction order. The contention of the Advocate for defence that in sanction order the fact that “independent review was considered is not mentioned”, has no force.

Independent Review by Director of Public Prosecutor

712] As discussed above the Director of Public Prosecutor is designated as an authority to independent by review the sanction proposal under UAPA. Learned Counsel for accused by their application at Exh.478 had for the production of the copy of inward and outward register from the office of Director of Public Prosecutor After allowing the application by Court, the prosecution has furnished the copy of inward and outward register on record showing that the office of Director of Public Prosecutor had received proposal for independent review of sanction under UAPA in Sessions Case No.13/2014 and 130/2015. Further there is a oral evidence of P.W.18 Kalyaneshwar and 19 Amitabh Rajan to that effect.

Sanction against accused nos.1 to 5 in Sessions Case No.13/2014

713] On perusal of original file in respect of grant of sanction against accused nos.1 to 5 in Sessions Case No.13/2014 it reveals that the Superintendent of Police, Gadchiroli had sent proposal for according sanction in Crime No.3017/2013 on 2.2.2014 along with documents i.e. copy of FIR, panchanamas, calender events, copies of screen shot of face-book account of accused no.3 Hem Mishra, copies of document contained in 16 GB memory card (Article A17 to A21), eight pages relating to naxal literature seized from possession of accused no.4 Prashant Rahi and other investigation papers along with

charge-sheet to Additional Chief Secretary, Home Department and then Additional Chief Secretary, Home Department forwarded proposal to Director of Public Prosecutor, State of Maharashtra for independent review on 07.02.2014 and Jayant Bhoir, Section Officer forwarded the file to Director of Public Prosecutor on 07.02.2014 and thereafter in-charge Director of Public Prosecutor, Vidya Gundecha submitted independent review on 11.02.2014 (Exh.358) to the office of Additional Chief Secretary, Home, Desk Officer, Jayant Bhoir vide O.W. No.Opinion/79A/452/2014. After receipt of copy of independent review the Section Officer, Under Secretary, Under Secretary of Law, Secretary (Special), Additional Chief Secretary (Home) had gone through the proposal from 13.02.2014 to 15.02.2014, thereafter Additional Chief Secretary (Home) forwarded the same to Home Minister for approval and the Home Minister considered the material i.e. all documents sent along with the proposal for grant of sanction by Superintendent of Police, Gadchiroli and approved the said file by making note on it.

The note of Hon'ble Minister of Home is as under :-

“Discussed p/1181-1189/c [Draft] are submitted for approval. It is the fit case under UAPA.”

714] After approval of sanction order by Home Minister it was sent to Additional Chief Secretary, P.W.19 Dr. Amitabh Rajan, thereafter Additional Chief Secretary, (Home), State of Maharashtra accorded sanction (Exh.17) on 15.02.2014 against accused no.1 to 5 under section 13,18,20,38,39 of UAPA and the same was sent to Superintendent of Police, Gadchiroli on 15.02.2014 itself vide letter O.W.NAX0214/C.R.37/Spl.1B.

Sanction against accused no.6 Saibaba in Sessions Case

No.130/2015

715] On perusal of the original file in respect of accused no.6 Saibaba in Sessions Case No.130/2015, it reveals that Sub Divisional Police Officer, Aheri P.W.23 Ramesh Dhumal sent the proposal through the Superintendent of Police to D.I.G. for according sanction in Crime No.3017/2013 against accused no.6 Saibaba on 04.02.2015 alongwith said proposal documents i.e. FIR, panchanamas, calender events, three pamphlets seized from the possession of accused no.1 Mahesh, copies of screen shots (Art.A1 to A16) of activities of face-book account of accused no.3 Hem Mishra, 247 pages retrieved from electronic gadgets seized from the house search of accused no.6 Saibaba, CDR of accused No.3 Hem Mishra, no.4 Prashant Rahi and accused no.6 Saibaba and all investigation papers were annexed. Thereafter Deputy D.I.G. through D.I.G. (Nagpur) forwarded the said proposal to DG (Special), Mumbai on 06.02.2015 and DG, Mumbai forwarded the same to P.W.18 Kalyaneshwar Bakshi, Additional Chief Secretary (Home) on 21.02.2015 and thereafter the said proposal was received by Home Department on 24.02.2015.

716] After receipt of the said proposal the same was sent for independent review by Shri Jayant Bhoir, Section Officer, Maharashtra Government to Director of Public Prosecutor vide letter dated 26.02.2015 at Exhibit 346 under the signature of Jayant Bhoir and Director of Public Prosecutor considered the proposal and gave opinion of independent review (Exh.348) regarding the grant of sanction for prosecution and it was sent to the Home Department on 4th March 2015 and to that effect there is Outward Register entry

No.Opinion/79A/541/15 and alongwith it, the opinion letter dated 4.3.2015 (Exh.347) was forwarded and after receipt of copy of independent review, the Section Officer, Under Secretary, Under Secretary of Law, Secretary (Special), Additional Chief Secretary (Home) gone through the proposal and thereafter the Home Minister considered the material i.e. all documents annexed along with the proposal for according sanction. Thereafter on 6th April, 2015 P.W.18 Kalyaneshwar Bakshi, Additional Chief Secretary, Home Department, State of Maharashtra, Bombay accorded sanction (Exhibit 349) against accused no.6 Saibaba under section 13, 18, 20, 38, 39 of UAPA and thereafter the said sanction was sent to Superintendent of Police, Gadchiroli along with covering letter (Exh.350).

717] At this juncture, it is necessary to consider the observations of **Apex Court** in para 8 in the case of **State of Madhya Pradesh .v. Jiyalal reported in AIR 2010 SC 1451**

(B) Prevention of Corruption Act (49 of 1988, S.19 – Evidence Act (1 of 1872), S.114 –
Sanction to prosecute – Proof – Order passed by Magistrate in course of performing official duty – Presumption attaches to such order – Examination of Magistrate – Not necessary. (Para 8)

The observation contained in para 8 is reproduced as under -

“It was also not justified by the learned single Judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The

sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bonafide manner. It was of course opened to the respondent to question the genuineness of validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to examine as a witness by the prosecution.”

718] Further it is necessary to consider the ratio laid down by the Apex Court in the case of State through Inspector of Police, A.P. vs. K. Narasimhachary reported in (2005) 8 Supreme Court Cases 364 wherein it is observed as under :

A. Evidence Act, 1872 – S.47 – Provision under, as to relevancy of opinion of any person acquainted with handwriting of the person by whom the document in question is supposed to be written or signed – Applicability of – Order of Sanction for prosecution issued in the name of Governor and authenticated by Secretary to Government – Authenticity of, never question – High Court was not called upon to form an opinion as to by whom the said order of sanction was written and signed – PW 6 was not examined as an Expert or was required to give his opinion as regards the correctness or otherwise the signature of Secretary – Held, High Court wrongly applied Section 47 – It erred in holding that sanction order was not proved in accordance with law. (Paras 14 and 15)

(B.) Evidence Act, 1872 – Ss. 74 and 78 – Public document (in this case, order of sanction

for prosecution issued in the name of Governor and authenticated by Secretary to Govt.) - Authenticity of, not challenged before trial Court - Held, respondent could not be permitted to question the admissibility of the said document for the first time before the appellate court - Prevention of Corruption Act, 1988, S. 19 (Para 13)

719] As paper relating to grant of sanction are public document and the act of granting the sanction was done by public servant in discharge of his public duty in the ordinary course of public business, the presumption is that the said act has been done lawfully attached to it, unless rebutted by other side.

720] In view of above the opinion issued by Director of Prosecution, in the Session Case no.13/2014 at Exh.357 and Session Case no.130/2015 at Exh.348 were in the discharge of performing public duty. Hence it is not necessary to prove the signature of Director of Prosecution in it. Hence, there is no force in the argument of defence counsel that if signature is not proved, document cannot be said to be proved.

Whether P.W.No.18 Kalyaneshwar Bakshi and P.W.No.19 Amitabh Rajan are competent to issue and sign the sanction order (Exh.17 and Exh.349)

721] As discussed above the Maharashtra Government Rules of Business General Admission Department Rule 13 empowers the Secretary, Additional Secretary, Joint Secretary, Deputy Secretary and

Under Secretary or Asst. Secretary as or such as other officer especially empowered on behalf of the Government to sign the instrument and in view of this the sanctioning authority P.W.No.18 Kalyaneshwar Bakshi and P.W.19 Amitabh Rajan signed the order. P.W.No.19 Amitabh Rajan in his examination clearly stated that after perusal of proposal of sanction the file was referred to Minister of Home of State of Maharashtra and as per (Rule 5) of the Maharashtra Government Rules of Business the Governor of the State of Maharashtra allot amongst the minister business of government by assigning one or more Departments or part of Departments to the charge of a Minister and as such the Home Minister is the Government. The Sanction order issued by both P.W.No.18 Kalyaneshwar Bakshi and P.W.No.19 Amitabh Rajan in first two para clearly reveals that the file was referred to the Government for grant of sanction and government satisfied that sanction should be granted. Hence, P.W.No.18 Kalyaneshwar Bakshi and P.W.No.19 Amitabh Rajan in view of power conferred on them by Rule 13 as discussed above signed the sanction order after obtaining the Government assents. This shows that the Government has accorded the sanction for prosecution against accused no.1 to 6 in S.C.No.13/2014 and 130/2015. Further at the instance of accused by passing order on Exh.466 dated 3.1.2017 original file relating to grant of sanction in Sessions Case Nos.13/2014 and 130/2015 were called and on perusal of note in file no.NAX0214/Pra.Kra.37/Part-II (Home) relating to grant of sanction in Sessions Case No.13/2014 and on perusal of note in file no.NAX0214/Pra.Kra.37 (Home) relating to grant of sanction in Sessions Case No.130/2015 it reveals that the sanction order was approved by the Home Minister, as such the prosecution has proved

that the government has accorded sanction for offence under UAPA in Sessions Case No.13/2014 and 130/2015.

722] The next ground on which the defence assailed the sanction orders in Session Case no.13/2014 against accused nos.1 to 5 and in Sessions Case no.130/2015 against accused no.6 Saibaba is that those orders were not granted within the prescribed period as required by provisions of **The Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008**. In the present case, from the evidence of Investigating Officer P.W.no.11 Suhas Bawche that in Sessions Case no.13/2014 it is clear that he moved the proposal for grant of sanction on 1.2.2014 through Additional Superintendent of Police, Aheri. The evidence of P.W.19 Dr.Amitabh Rajan is clear that he received proposal for according sanction on 07.02.2014 and thereafter the sanction order was received by P.W.11 Suhas Bawche on 15.2.2014. The proposal for sanction in S.C.No.130/2015 was sought by P.W.23 Dhumal through S.P. Gadchiroli on 3.2.2015 and thereafter P.W.18 Kalyaneshwar Bakshi accorded sanction on 06.04.2015 and therefore in S.C.No.13/2014 there is no delay in receiving the sanction. In Case No.130/2015 there is delay of more than 30 days in obtaining the sanction.

723] Further the learned Spl. PP. Shri Sathianathan relied on Judgment in case of **Mohammed Bilal Gulam Rasul Kazi-vs-The State of Maharashtra and ors., Criminal Application No.1256 of 2011 decided on 19.12.2012** .

The facts of the case are as under :-

1] In the above mentioned case F.I.R. was lodged against applicant on 21 August, 2008 under the provisions of UAPA. On 9 February, 2010 the sanction was sought from Government for prosecuting the applicant and sanction was accorded on 27 August, 2010. In the mean time file was referred for independent review to Director of Public Prosecutor, State of Maharashtra and Director of Public Prosecutor, Maharashtra recommended to accord sanction by letter dated 11 April, 2010.

2] There was a delay of seven months for sanction as required under Rule 3 and 4 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008. While considering the delay of seven months, the Hon'ble High Court observed that it is well settled, statutes are to be fairly construed and faithfully applied keeping in tune with legislative intent. The legislative intention behind amended, which were effected on 31.12.2008 was considered in para 11 of the said judgment, which is reproduced as under -

11. The statement of objects and reasons while presenting the bill for amendment in UAP Act referred by the Central Government on 15th December 2008 illustrate that keeping in view that India has been a front runner in the global fight

against terrorism, its commitment in terms of the United Nations Security Council Resolution 1373 dated 28th September 2001 and the resolve not to allow any compromise in the fight against terrorism the Unlawful Activities (Prevention) Act 1967 was amended to make provisions to deal with terrorism and terrorist activities.

It is also stated :-

“There have been significant developments since then at the national and the international level. Terrorist incidents and activities sponsored from across the burdens, in various parts of India and elsewhere, continue to cause concern. Hence, the legal framework for dealing with such activities, including measures related to financing of terrorism, has been further reviewed. The administrative Reforms Commission in its Report 'Combatting Terrorism – Protecting by Righteousness' has also made various recommendations in this regard. Suggestions in this respect have also been received from various other sources.”

12. There cannot be a quarrel that provisions of section 45 of UAP Act read in juxtaposition in section 42 of the said Act are mandatory in its character, however, as stated earlier, Rules 3, and 4 cannot be so branded.

13. Section 45(2) is introduced as a resolution of 2008 amendment, the time limit and sanction from the authority and review are checks the Legislature desired to avoid false prosecution. The measures of the checks are the administrative exigencies, procedural supervision meant to speed up the administrative process after investigation on the basis of which the prosecution has to be launched. Any fall out in adhering the time schedule does not make out a case for breach of either of the compliance of section 45(2). It has to

be shown, the delay has led to the denial of right, conferred upon the accused. There is no such situation as the State desired prosecution and it was placed before the authority for review and then needs to be recommended. The defect or irregularity in official compliance has no adverse bearing on the competence of the sanction in terms of section 45(2) of the said Act.

14. It is again well settled, the term 'shall' appearing in the statute or 'rule' at times can be interpreted as 'should' and the admission as may, for that purposes, Legislation intents and scheme of the Legislation provides pivotal direction. Of course, there should not be gross delay or recklessness on the part of the State in complying the procedural obligation.

724] In view of observations made by Bombay High Court in the case of **Mohammed Bilal Gulam Rasul Kazi-vs-The State of Maharashtra and ors. (Cited supra)**, it is clear that provisions of section 3 and 4 of the Prevention of Unlawful Activities Act, are directory and delay caused in granting sanction is not fatal to the prosecution case. In the present case, notes of sanction for accused no.6 Saibaba was dated 31 December, 2014 to Home Department and sanction was accorded on 06-04-2015. There was delay of 3 months and it was not shown that any kind of prejudice, by non according the sanction within stipulated time, was caused to accused no.6 Saibaba. Hence, mere delay of more than 30 days for issuance of sanction order in S.C. no.130/2015 is not a ground to vitiate the proceeding against accused no.6 Saibaba.

725] The another important aspect which though not argued, in my opinion it is necessary to discuss in respect of sanction order

(Exh.349) in Sessions Case No.130/2015 granted against accused no.6 Saibaba. In the present case accused no.6 Saibaba was arrested after filing of charge-sheet against accused no.1 to 5 in Session Case No.13/2014 and by that time no sanction was issued against accused no.6 Saibaba and charges were framed against accused nos.1 to 6 at Exh.66 on 21.2.2013 and the sanction order was issued against accused no.6 Saibaba is dated 6.4.2015 (Exh.349) and as such it is to be seen whether the trial against accused no.6 Saibaba is vitiated and failure of justice has been caused to the accused no.6 Saibaba.

726] It is important to note that as the Sessions Case No.130/2015 and Sessions Case No.13/2014 are arising out of the same incident hence my learned predecessor Shri D.R.Shirasao passed order below Exh.1 on 14.12.2015 in Sessions Case No.130/2015 for trying both the Sessions Case No.130/2015 and Sessions Case No.13/2014 together. Thereafter, the prosecution has filed an application at Exh.151 in Sessions Case no.13/2014 stating that the supplementary charge-sheet was filed against accused no.6 Saibaba subsequent who is arrest and filing of charge-sheet in Sessions Case No.13/2014 and that on 27.10.2015 prosecution examined panch witness P.W.no.1 Santosh Bawne and other witnesses were to be examined and in view of that fact, the prosecution prayed for recalling of panch witness P.W.no.1 Santosh Bawne. To the said application initially formal objection was taken by Advocate Shri Gadling for accused on 14.12.2015 but thereafter accused no.1 to 6 have given no objection for examining panch witness P.W.no.1 Santosh Bawne afresh. Hence this witness was recalled and his evidence was taken afresh.

727] It is necessary to consider the provisions of **Section 465 of the Code of Criminal Procedure** which reproduced as under :

465. Finding or sentence when reversible by reason of error, omission or irregularity.

*(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any **sanction** for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.*

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

728] On going through the above provisions it is clear that the court was not supposed to stay the proceeding on the ground of absence of sanction.

729] At this juncture, it is necessary to consider observations made in para no.22 by the Apex Court in case of **State of Madhya Pradesh v. Boraji and Ors reported in JT 2001 (7) SC 55**. The para no.22 in the said judgment is reproduced as under :

“22. The bar against taking cognizance of certain offences or by certain courts cannot govern the question whether the court concerned is “a court of competent jurisdiction”, e.g. courts are debarred from taking cognizance of certain offences without sanction of certain authorities. If a court took cognizance of such offences, which were later found to be without valid sanction, it would not become the test or standard for deciding whether that court was “a court of competent jurisdiction”. It is now well settled that if the question of sanction was not raised at the earliest opportunity the proceedings would remain unaffected on account of want of sanction. This is another example to show that the condition precedent for taking cognizance is not the standard to determine whether the court concerned is “a court of competent jurisdiction”.

730] In the case of Kapbuaia vs. Union Territory of Mizoram reported in 1984 Criminal Law Journal NOC 189 (Gau.), Gauhati High Court observed as under :-

(B) Unlawful Activities (Prevention) Act (37 of 1967) S. 17 – Sanction to prosecute – Mere irregularity in sanction will not vitiate trial.

731] In the present case, the evidence of Investigating Officer P.W.11 Suhas Bawche reveals that he had been to Delhi to arrest accused no.6 Saibaba but he could not arrest accused no.6 Saibaba because he was high-profile leader and till 26.2.2014 when they tried to arrest accused no.6 Saibaba at that time, he called his party members and created law and order problem and hence, they could not arrest him earlier. Thereafter, Suhas Bawche (P.W.11) obtained

permission and arrest warrant of accused no.6 Saibaba from JMFC, Aheri on 26.2.2014 and then accused no.6 came to be arrested by Investigating Officer P.W.11 Suhas Bawche and on the same day he was remanded to MCR and thereafter he was sent to jail. On perusal of first sanction order issued by Amitabh Rajan (P.W.19) at Exh.17 and Schedule annexed thereto it reveals that the prima facie case against accused no.6 Saibaba was made out under Section 13, 18, 20, 38, 39 r/w 120-B IPC and in the schedule the role of accused no.6 Saibaba was mentioned and lastly in the schedule it is mentioned that all accused have committed the offence punishable u/s.13, 18, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967, (Amendment 2008).

732] There was no intention on the part of the Government to withhold sanction against accused no.6 Saibaba but because of only misconception of law in the mind of Sanctioning Authority P.W.19 Amitabh Rajan as accused no.6 Saibaba was not arrested a subsequent sanction order was issued by P.W.no.18 Kalyaneshwar Bakshi at Exh.349. As discussed above, it is important to note that as accused nos.1 to 6 have given no objection to the application filed by prosecution for recalling panch witness P.W.no.1 Santosh Bawne at Exh.151, he was recalled and his evidence was taken afresh. The evidence of all 23 witnesses was taken in presence of accused no.6 Saibaba and the detailed statement u/s 313 Cr.P.C. containing 410 questions were put to him. Even assuming for the sake of argument that the sanction order was issued after framing of charge but as the evidence of all witnesses was taken in presence of accused no.6 Saibaba and all incriminating evidence was put to the accused no.6 Saibaba u/s 313 of Cr.P.C. and even in view of provisions of section

464 of Cr.P.C., absence of sanction order before framing of charge is also not a ground to vitiate the trial unless failure of justice is occasioned.

733] In the present case there is nothing on record to show that failure of justice was occasioned to accused no.6 Saibaba by not obtaining sanction order before framing of charge and further no grievance has been made by the accused at the earliest opportunity. Hence, in view of judgment of Apex Court in case of **State of Madhya Pradesh v. Boraji and Ors reported in JT 2001 (7) SC 55** cited supra, trial is not vitiated on the ground of production of sanction order subsequently because the role of accused no.6 Saibaba was already made out in first sanction order issued by P.W.19 Amitabh Rajan and prima facie case was found against him and there was no intention on the part of Government to withhold sanction against accused no.6 Saibaba, but it was withheld only on misconception of law on the ground that he was not arrested by that time.

734] On going through the facts and evidence and legal position in the present case the prosecution has proved that valid sanction was accorded in Sessions Case no.13/2014 against accused nos.1 to 5 for the offence punishable under Sections 13, 18, 20, 38, 39 of UAPA read with Section 120B of IPC and in Sessions Case no.130/2015 against accused no.6 Saibaba for the offence punishable under Sections 13, 18, 20, 38, 39 of UAPA read with Section 120B of IPC.

CONSPIRACY AND UAPA

735] In the present case, the accused no.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi, no.5 Vijay Tirki and no.6 Saibaba have been charged for the offences punishable under sections 13, 18, 20, 38 and 39 UAPA read with section 120-B of I.P. Code. Hence it is necessary to discuss law of conspiracy along with the provisions of UAPA together.

Argument of learned Special P.P. Shri Sathianathan for the State on Law of Conspiracy and UAPA

736] The learned Special P.P. Shri Sathianathan, for the State submitted that the electronic material contained in CDs, DVDs, hard-discs, pen-drives recovered from the house of accused no.6 Saibaba shows that he is an active member of RDF, which is frontal organization of CPI (Maoist) a banned organization under UAPA. He specifically submitted that the electronic material which is incriminating and which was supplied by accused no.6 Saibaba to accused no.3 Hem Mishra was to be supplied to the underground naxal Narmadakka for creating violence and to advocate, abet or incite the commission of unlawful activities to create public disorder with intention to threaten the unity, integrity and security of India. He further submitted that the accused No.1 Mahesh Tirki, accused No.2 Pandu Narote and accused No.5 Vijay Tirki were supplying important information to underground naxal Narmadakka at Abuzamad and they were arranging meeting with the underground naxal persons to support the banned terrorist organization CPI (Maoist) with intention to further activities of the CPI (Maoist).

737] He further submitted that from the transcripts of the documents annexed to CFSL report Exh.267 containing the pages no. 87, 88, 89, 205, 206, 207, 208 shows that accused no.6 Saibaba wrote letter to his superiors in the name of Prakash by hiding his identity. Further he has also made a Press Release by his original name G.N. Saibaba at page no.210 of Exh.267 which was recovered from the hard-disc. From that document, it can be gathered that he is Assistant Secretary of RDF, which is frontal organization of CPI (Maoist) banned organization under UAPA and from the documents retrieved from the electronic gadgets (Arts.1 to 41) i.e. CDs, DVDs, hard-discs, pen-drives seized from the house search of accused no.6 Saibaba under panchanama Exh.165 i.e. Page nos.1 to 247 of CFSL report Exh.267. It is clear that they are relating to maoist literature belonging to Communist Party of India (Maoist) a banned organization and by which accused used to incite the people to become member of said banned organization by involving in terrorist act and supporting the ideology of CPI (Maoist) a banned organization. Those documents were retrieved from the electronic gadgets recovered from the house of accused no.6 Saibaba under seizure panchanama Exh.165 and all material was used by accused no.6 Saibaba for circulation. He submitted that the documents (Arts.A17 to A21) retrieved from 16 GB memory-card seized from the personal search of accused no.3 Hem Mishra under panchanama at Exh.137 shows the disaffection towards Government of India and a kind of incitement to the people to join the banned organization CPI (Maoist) and to create public disorder furthering the terrorist activities by way of armed struggle.

738] He submitted that the said electronic material were handed over by accused no.6 Saibaba to accused no.3 Hem Mishra for circulation to be given to underground naxal Narmadakka at Abuzamad and for that purpose accused Hem Mishra had come to Aheri and he was arrested there along with accused no.1 Mahesh Tirki and accused no.2 Pandu Narote. The intention behind the circulation of said naxal literature and letters was to create violence and incite the people and to spread disaffection towards Government established by law and to further the activities to commit or advocate, abet or incite the people to create public disorder with intent to threaten the unity, integrity, security or sovereignty of India and further to arrange the meetings to work out the strategies to advocate, propagate, mobilize, incite and abet people for violence by spreading disaffection against the Government and hence provisions of Section 13 and 18 of UAPA are attracted against accused nos.1 to 6.

739] Learned Spl.PP. Shri Sathainathan further submitted that accused no.1 Mahesh Tirki, No.2 Pandu Narote and accused no.3 Hem Mishra were arrested at secluded place at Aheri bus stand and accused no.1 Mahesh Tirki & No.2 Pandu Narote were knowing accused no.3 Hem Mishra and they were sent by absconding naxal accused Narmadakka to take accused no.3 Hem Mishra to meet her and this fact was corroborated by the evidence of P.W.9 Raju Poriya Atram who in his examination stated that accused no.2 Pandu Narote took him to naxal Narmadakka and thereafter Narmadakka handed over him cash amount of Rs.5 Lacs in the packet and on 29-5-2013 he reached Ballarsha Railway Station at 10-00 a.m. and thereafter two unknown persons came there and accused no.2 Pandu went to them

and discussed with them and thereafter accused no.2 Pundu took the money packet from him and gave it to one person out of them.

740] Learned Spl.PP. Sathainathan further submitted that after arrest of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra at secluded place in suspicious condition near Aheri Bus Stand and they were brought to Aheri Police Station and from the personal search of accused no.1 Mahesh Tirki incriminating articles three naxal pamphlets at Article Nos.139, 140 and 141 were seized and from the personal search of accused no.2 Pandu Narote incriminating articles like Platform ticket of Ballarsha railway station, Lokmat Marathi newspaper and umbrella were seized and umbrella and newspaper are used by the members of banned organisation CPI (Maoist) and its frontal organisation RDF as identification code for members to recognize the identity. Further, the contents of pamphlet (Art.139) issued by Bhakapa (Maowadi), (Gadchiroli Division) shows that there was oppose to the Government policies implemented in the Gadchiroli district i.e. implementation of Surjagad Project and Green Hunt Operation showing hatred towards the Government. On perusal of contents of pamphlet Art.141 it reveals that it was published by Bhartachi Communist Party (Maowadi), Maharashtra Rajya Samiti titled as 'राख सांभाळुन ठेवा राख झालेल्यांची, संपत्ती नाही लढाई अजुन खैरलांजीची' and at the end it is mentioned that 'खैरलांजी हत्याकांडाच्या सुत्रधारांना पाठीशी घालणारे, पोलिसांद्वारे दलितांच्या हत्या करणारे, दलितांत दहशत पसरविणारे महाराष्ट्र शासन मुर्दाबाद !.. नवजनवादी क्रांति झिंदाबाद' and appealed people to protest against Maharashtra Government.

741] He submitted that accused No.1 Mahesh Tirki and accused No.2 Pandu Narote were circulating the information to the underground naxalites and found inciting and abetting the people for violence by spreading disaffection against the Government. From the possession of accused no.3 Hem Mishra 16 GB memory-card of Sandisk company containing naxal and maoist literature in the form of text was seized. From the confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote it is clear that they had been to Ballarsha Railway-station for three to four times to receive the members of banned organisation CPI (Maoist) and its frontal organisation RDF to take them at Abuzamad forest area to meet the underground naxals and accordingly on 22.8.2013 accused no.3 Hem Mishra a member of banned organisation CPI (Maoist) and its frontal organisation RDF came from Delhi at Ballarsha railway-station and accused no.1 Mahesh Tirki and no.2 Pandu Narote took him to Aheri. This shows that accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra are active members of banned organisation CPI (Maoist) and its frontal organisation RDF.

742] He submitted that during interrogation with accused no.3 Hem Mishra the involvement of accused no.4 Prashant Rahi was revealed and on 1.9.2013 when police officers Rajendra Tiwari (P.W.14) and Ramesh Yede (P.W.8) of Police Station, Chichgad, Dist. Gondia were patrolling in border area of Chhattisgad near Rajnandgaon for search of accused Pahadsing who was wanted in Crime No.39/2011 of Police Station, Chichgad and at that time they received message on mobile phone that the accused in Crime no.3017/2013 of Police Station, Aheri were in Raipur area and so,

they proceeded to Raipur and they came to know that the accused involved in crime no.3017/2013 had gone towards Devari by four wheeler vehicle and therefore, they had gone towards Devari and at Chichgad T-point they found accused no.4 Prashant Rahi and no.5 Vijay Tirki as per the description given to them and hence, they accosted them and took accused no.4 Prashant Rahi and no.5 Vijay Tirki to Aheri Police Station and handed over to P.W.11 SDPO Bawche who arrested both accused and from the possession of accused no.4 Prashant Rahi eight papers relating Maoist literature were found and the same were seized under seizure panchanama (Exh.179) and from possession of accused no.5 Vijay Tirki, the articles like pieces of paper (Art.131A to 131D), daily newspaper Dainik Bhaskar dt.1.9.2013 (Art.132) were seized under panchanama (Exh.179). The above information is admitted under section 27 of Indian Evidence Act contrary not clear.

743] He submitted that during interrogation with accused no.3 Hem Mishra and no.4 Prashant Rahi involvement of accused no.6 Saibaba was revealed and Investigating Officer Suhas Bawche (P.W.11) got search warrant from the Magistrate P.W.12 Nileshwar Vyas and effected search of the house of accused no.6 Saibaba at Delhi in presence of panch witness Jagat Bhole (P.W.2) and during his house search extensive electronic gadgets (Arts.1 to 41) like CDs, DVDs, pen-drives, hard-discs were seized.

744] He submitted that from the letter at Art.A21 retrieved from the 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra it reveals that two young persons who are young amongst them would come and those two

persons are accused no.3 Hem Mishra and no.4 Prashant Rahi and accused no.3 Hem Mishra was circulating the said documents to the underground naxals and accused no.5 Vijay Tirki had come to receive accused no.4 Prashant Rahi to meet the underground naxal Ramdar and from the personal search of accused no.5 Vijay Tirki incriminating article newspaper Dainik Bhaskar which is used by naxals as identification code.

745] He further submitted that finding of several documents, photographs, video-clips in the hard-discs seized from the house search of accused no.6 Saibaba and from the CDR of mobile SIM cards of accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba prosecution has established the link between accused nos.1 to 6 and it shows that they were in contact with each other.

746] He submitted that from the confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote recorded by the Magistrate P.W.12 Nileshwar Vyas, it reveals that accused no.1 Mahesh Tirki and no.2 Pandu Narote at the instance of lady naxal Narmadakka had been to Ballarsha Railway-station to receive accused no.3 Hem Mishra and thereafter they were found taking him to forest area in Gadchiroli district to meet underground naxals and they were arrested near Aheri bus stand. He submitted that accused no.5 Vijay Tirki had come to receive accused no.4 Prashant Rahi at Devri Chichgad T-point for taking him to meet underground naxal Ramdar and they both were arrested at Devri Chichgad T-point. This shows that accused no.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi, no.5 Vijay Tirki and no.6 Saibaba have 100% conspired with each other and the object of conspiracy is proved.

747] The learned Spl. P.P. Shri Sathainathan submitted that in order to establish the link of all the accused with each other prosecution mainly relied on following documents :-

1] In order to prove that accused no.6 Saibaba is using pseudo name "Prakash" and he made correspondence with Comrades of CPI (Maoist), prosecution has relied on document at page no.17 of Exh.267 in which it is mentioned that Prakash failed to finalise the draft of programme and when the draft almost finalised the hard disk of Prakash's computer got crashed and in CFSL report (Exh.267) on the last page it is mentioned that the hard-disc in Ex.1 could not be detected in the Cyber Forensic Scientific Laboratory and hence data could not be retrieved from the hard-disc and the said hard-disc is the same as referred at page no.17 of Exh.267. Hence, it is clear that said crashed hard-disc was sent to CFSL Bombay alongwith other electronic devices (Art.1 to 41) and it could not be opened in the Cyber Forensic Scientific Laboratory. Hence, it reveals that the name "Prakash" mentioned in the Secretary's report at page no.17 of Exh.267 is nothing but accused no.6 Saibaba and further it is admitted by P.W.6 Atul Avhad in Maoist group members has alias name and they normally use alias name.

2] From Article-A21 of Exh.266 found in 16 GB memory-card of Sandisk Company seized from the possession of accused no.3 Hem Mishra it reveals that accused no.6 Saibaba is the important link between the Indian banned organization CPI (Maoist) and international fraternal organizations which are working under the guidance and directions of CPI (Maoist), India and he is playing a pivotal role for strengthening the organizations working under CPI (Maoist) and its frontal organizations RDF. This has relation with document at page no.1 of Exh.267 found in the hard-disk (Exh.4) seized from the house search of accused no.6 Saibaba under seizure panchanama Exh.165.

3] From the document at page no.86 of Exh.267 which is a document addressed to Dear Comrade Arman by accused no.6 Saibaba by his pseudo name as “Prakash” in which he lastly suggested to develop the anti-imperialist forces to the maximum possible and further stated that their strength is no doubt limited but focus it in a direction to give maximum results.

4] From document at page no.78 of Exh.267 having path **Exh.4/OLD EHD/OLD/All 12345/ILPS/Dear Arman, Exh.267** which is a letter written to Dear Arman wherein it is mentioned that

international organizations are working at the instance of banned organization CPI (Maoist) and its frontal organization RDF.

5] A document at page no.81 of Exh.267 having path **Exh.4/All old and new/others /international/dear GNSaibaba** addressed to accused no.6 Saibaba by Ufuk Berdam, Chairperson of the International Relation Commission ATIK shows the international relationship with CPI(Maoist) in foreign of accused no.6 Saibaba.

6] A document at page no.92 of Exh.267 having path **Exh.4/OLDEHD/All others 2/ Arrange /Azad matter/Communist/ Movement** is written by Communist Party Maoist-Italy, Communist Party Maoist-France and Communist Party Maoist-Turkey North Kurdistan shows the international relationship of CPI(Maoist) India.

7] A document at Page no.224 of Exh.267 having path **Ex-4/C/Ritu 13 March/my documents/open letter.final Jul.A09** is a Open Letter addressed to Dear Comarade from the Communist Party of India (Maoist) and from this letter it shows that there was correspondence in between Central Committee CPI (Maoist) India and Communist Party Nepal (Maoist).

8] From the document at Page no.10 of Exh.267 titled as “**CPBhutan (MLM) Bikalp**” it is clear that there were correspondence with Communist Party Bhutan (Maoist) by CPI (Maoist), India.

9] From the documents at page no.137 and 139 of Exh.267 under the letter head “**Office of the Prime Minister Transnational Government of Tamil Eelam, 875 Avenue of the Americas, Suite, New York, USA** found in the hard-disc seized from the house search of accused no.6 Saibaba shows the international connection and link between Comrades of CPI (Maoist) of international organizations with CPI (Maoist).

10] The document at page no.208 of Exh.267 addressed to Dear Comrades written by accused no.6 Saibaba by pseudo name “Prakash” in which accused no.6 Saibaba was given responsibilities of Delhi and North India.

11] In the document at page no.119 of Exh.267 and on 9th page of this document strategy of Maoist and interview with accused no.6 Saibaba is mentioned.

12] The document titled as “**Draft Manifesto of Revolutionary Democratic Front (RDF)**” at Art. 159 having path **ex. 4/31.12.12/RDF Conference material/DRAFT MANIFESTO OF RDF amended by conference** and at page no.10 of this document “**Aims and Tasks**” of RDF were given.

13] The document Art.147 having path **Exh23/ALLL/Accommodation issues/Letters/letter to Saibaba** written by one Surendra Mohan to accused no.6 Saibaba in which it is mentioned that he cannot be part of the CPI (Maoist) program, as he never subscribed to violent resistance.

748] The learned Spl. P.P. Shri Sathainathan has relied on the following photographs to prove the conspiracy against accused No.3, 4 & 6 :-

1] In the photograph at page no.148 of Exh.267 accused no.6 Saibaba is seen with Prachanda, the leader of CPI (Maoist) Nepal.

2] In the photograph at page no.150 of Exh.267 Prachanda is seen with accused no.6 Saibaba.

3] In a photograph at page no.143 accused no.6 Saibaba is seen on left side of the dais alongwith other eight persons.

4] In a photograph at page no.144 of Exh.267 banner of “Krantikari Janwadi Morcha” is appearing and in the said programme accused no.3 Hem Mishra is standing on the stage addressing to people and accused no.6 Saibaba is seen on the right side of the stage.

5] In a photograph at page no.135 of Exh.267 accused no.6 Saibaba is seen addressing from stage under the banner of “The Unspoken Genocide: War crimes in Srilanka”.

6] In a photograph at page no.143 of Exh.267 accused no.6 Saibaba is seen in public meeting under the banner of “STOP THE WAR OF GENOCIDE OF TAMILS IN SRILANKA”, held at New Delhi.

7] In a photograph at page no.160 of Exh.267 wherein accused no.6 Saibaba is seen on stage.

8] In a photograph at page no.158 of Exh.267 accused no.3 Hem Mishra is seen.

9] In a photograph at page no.38 of Exh.267 accused no.3 Hem Mishra is seen singing a song with Dafli.

10] In a photograph at page no.152 of Exh.267 accused no.6 Saibaba is seen alongwith Nepal Maoist leader Rona Wilson.

11] In a photograph at page no.150 of Exh.267 accused no.6 Saibaba is seen with Maoist leaders of Nepal i.e. Baburam Bhattarai and Nepal Maoist leader Prachanda.

12] In a photograph at page no.148 accused no.6 Saibaba is seen with Nepal Maoist leader Prachanda.

13] In a photograph at page no.147 accused no.6 Saibaba is seen addressing the public meeting under the banner of "Stop Army Encroachment In Bastar!".

749] The learned Spl. P.P. Shri Sathainathan has relied on the following video-clips found in electronic gadgets (Arts.1 to 41) seized from the house search of accused no.6 Saibaba under seizure panchanama Exh.165 in which the accused no.3 Hem Mishra and accused no.4 Prashant Rahi were seen. They are as under :-

1] In video-clip having path Exh.7/Exh.7-1/(1)DVD/ 091204/VIDEO_TS/VTS_01_1 accused no.3 Hem Mishra is seen in the audience of the meeting for Convention against War on People held

at New Delhi on 4th December 2009 by Forum Against War on People and accused no.6 Saibaba is sat on the dais.

2] In video-clip having path **Exh.3/films/s1/RDF/2/VIDEO_TS/VTS_01_1**, accused no.6 Saibaba and accused no.4 **Prashant** Rahi is found sitting in the audience where one lady is shouting slogans demanding return of Army from Kashmir and for liberation of Kashmir.

750] Finding of above video-clips and photographs found in the hard-disc of accused no.6 Saibaba, it is clear that accused no.3 Hem Mishra, accused no.4 Prashant Rahi and accused no.6 Saibaba were having relations amongst them.

751] He submitted that in the present case there are six arrested accused and three absconding accused by name lady naxal Narmadakka, Ramdar and Rajesh and the evidence in totality clearly established that there was conspiracy between accused nos.1 to 6 alongwith absconding accused which clearly shows from the documents contained in electronic gadgets (Arts.1 to 41) seized from the possession of accused no.6 Saibaba and 16 GB memory-card from the possession of accused no.3 Hem Mishra and three pamphlets seized from the possession of accused no.1 Mahesh Tirki and the daily newspaper Dainik Bhaskar seized from the possession of accused no.2 Pandu Narote and accused no.5 Vijay Tirki and the documents 8 pages at Art.130A found in possession of accused no.4 Prashant Rahi.

He submitted that the confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote clearly demonstrate the role of absconding lady naxal leader Narmadakka, Ramdar and Rajesh. He submitted that since 1996 accused no.6 Saibaba, joint Secretary of AIPRF was active member of banned organization and from time to time banned organisations merged into other organizations RDF and hatched conspiracy with Raj Kishor, Secretary of SFPR and subsequently from time to time with other organisations and accused No.1 to 6.

752] He submitted that considering the huge electronic material regarding the programmes, pamphlets, correspondence, agenda, audio and video clips of such banned organization of terrorists gang and arranging the meetings and supporting the ideology of CPI (Maoist) a banned organization clearly shows that accused no.1 Mahesh Tirki, accused no.2 Pandu Narote, accused no.3 Hem Mishra, accused no.4 Prashant Rahi, accused no.5 Vijay Tirki and accused no.6 Saibaba were the active members of banned organization CPI (Maoist) and its frontal organization RDF. Hence, considering the facts and circumstances of the case it is clear that all the accused nos.1 to 6 were found in contact with each other and they committed criminal conspiracy and committed the offences punishable u/s 13, 18, 20, 38 and 39 of UAPA read with Section 120B of IPC and hence he prayed for conviction of accused No.1 to 6.

753] In support of his submission he placed reliance on the judgment of Apex Court in case of Vijayan v. State of Kerala reported in 1999 Supreme Court Cases (Cri) 378 wherein it is held that -

F. Penal Code, 1860 – Ss. 120-B and 302 – Criminal conspiracy – Prosecution must establish a connection between alleged conspiracy and act done pursuant to the said conspiracy.

Argument of Advocate Shri Gadling for the accused on Law of Conspiracy and UAPA

754] Per contra, the learned Advocate Shri Gadling for accused submitted that for the application of Section 20 of UAPA it is not sufficient that organisation is to be declared as Terrorist Organisation but it has to be proved by the prosecution that the said organisation is involved in terrorist act. There is no oral or documentary evidence on record to show that the CPI (Maoist) and its frontal organisation RDF are a terrorist organisation and bare reading of Section 20 of UAPA reveals that mere membership of banned organisation is not sufficient unless it is proved that organisation is involved in terrorist act as defined under Section 15 of UAPA. He submitted that even assuming for the sake of argument that accused are connected with CPI (Maoist) organisation still prosecution has not adduced any oral or documentary evidence showing that CPI (Maoist) and RDF is involved in any sort of terrorist activities.

755] He submitted that provisions of TADA and POTA (repealed) are in para-materia with provisions of UAPA since repeated and the observations of Apex Court while deciding case is under TADA is all very much applicable to decide the case under UAPA. In support of his submission he placed reliance on the case of **Kalp Nath Rai vs. State reported in (1997) 8 Supreme Court Cases 732** wherein it is observed that -

A. Terrorist and Disruptive Activities

(Prevention) Act, 1987 – S.3(5) (as inserted by Act 43 of 1993), S. 3(1), (2) and (3) – Essential requirements of S.3(5) – Expression “terrorist act” in S.3(5) – Meaning of – Held, includes conspiracy to commit terrorist act or abetment, incitement, etc. of such acts – Acts enumerated in sub-section (3) cannot be delinked from those specified in sub-section (1) – In absence of any evidence to show that terrorist gang of which accused were members committed any terrorist act after commencement of amended Act 43 of 1993 conviction cannot be sustained.

There are two postulates in sub-section (5). First is that the accused should have been a member of “a terrorists gang” of 'terrorists' organisation” after 23.5.1993. Second is that the said gang or organization should have been involved in terrorist acts subsequent to 23.5.1993. Unless both postulates exist together Section 3(5) cannot be used against any person.

It would be illogical to delink the acts enumerated in sub-section (3) from those specified in sub-section (1) for the purpose of understanding the meaning of “terrorist act” indicated in Section 3(5).

756] He submitted that amendment to Section 15 and 16 of UAPA were effected in the year 2008, the prosecution has to prove that after amendment in the year 2008 the accused are the members of banned terrorist organisation and it is not sufficient to prove that sometimes in past accused were members of banned organisation i.e. before the amendment in the year 2008.

Conclusion on Law of Conspiracy and UAPA

757] The accused Nos.1 to 6 being the members of banned terrorist organization CPI (Maoist) and its frontal organization RDF hatched criminal conspiracy and the object of the said conspiracy was to create violence, to cause public disorder and to spread disaffection towards the Central Government and the State Government and in pursuance of the said criminal conspiracy accused nos.1 to 6 were found in possession of printed naxal literature, circulating information which is promotional literature of terrorist organization in the form of booklets, pamphlets, correspondence, writings, reports of the meetings, letters, e-mails, speeches in audio, video and text formats contained in electronic gadgets like CDs, DVDs, pen-drives, hard-discs, memory-cards and found using the same for circulation amongst the members of banned organisation CPI (Maoist) and its frontal organisation RDF and other persons for creating violence and causing public disorder.

758] In order to prove the conspiracy between accused persons for the offence punishable under sections 13, 18, 20, 38 and 39 of UAPA read with Section 120B of IPC prosecution has relied on several text documents, video-clips and photographs seized from house search of accused no. 6 Saibaba and naxal pamphlets Arts. no.139 to 141 seized from the personal search of accused no.1 Mahesh Tirki, eight papers relating to naxal literature seized from the personal search of accused no.4 Prashant Rahi at Exh.130A and Arts.A17 to A21 text documents found in the 16GB memory-card seized from the personal search of accused no.3 Hem Mishra. In order to determine the act of each accused in the conspiracy it is necessary to see what role is played by each accused while carrying out the object of conspiracy.

Role of accused no.6 Saibaba

759] During interrogation with accused no.3 Hem Mishra and accused no.4 Prashant Rahi, the involvement of accused no.6 Saibaba was revealed and thereafter Investigating Officer Suhas Bawche (P.W.21) sought permission from JMFC Aheri Vyas (P.W.12) for taking house search of accused no.6 Saibaba at Delhi and after taking the permission he alongwith Maharashtra police went to Delhi on 12.9.2013 and with the help of police staff of Moris Nagar Police Station at Delhi and in presence of panch witness Jagat Bhole (P.W.2) search of the house of accused no.6 Saibaba was conducted and from his house search extensive electronic gadgets CDs, DVDs, pen-drives, memory cards, hard-discs (Art no.1 to 41) and other articles like magazine "Janapratirodh", one print-out, photograph of lady naxal with gun, book by name "Prashembabu Maowadi Nahi Hain", book-let with title "People's Hero Comrade Kishanji, one magazine "The arrested" regarding banned organization CPI (Maoist) and its frontal organization RDF were seized under panchanama at Exh.165.

Accused no.6 Saibaba is founder of RDF.

760] Following are the text documents, video-clips and photographs found in the electronic gadgets (Arts.1 to 41) CDs, DVDs, pen-drives, hard-discs seized from the house search of accused no.6 Saibaba under seizure panchanama Exh.165, which show the role of accused no. 6 Saibaba. The text documents were retrieved by CFSL, Bombay and the text documents contain 247 pages. Those were certified by CFSL, Mumbai and filed alongwith CFSL report Exh.267.

The text documents Arts.A17 to A21 retrieved and certified by CFSL, Mumbai are filed vide CFSL report Exh.266, further at the time of recording statement of accused u/s 313 of Cr.P.C. the text documents not forming part of pages 247 were shown to accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba on the laptop of the Court and those were compared from the soft copies supplied to defence displayed on their laptop and as per the application of defence at Exh.246 print-outs of those documents were taken and one copy of each document was given to the defence and the prosecution. These documents are at Arts.147 to 164:-

1] Article 157 having path **ex.**

4/31.12.12/rdfpdfi/resolution/

ECResolutions/JointMeetingofAIPRF and SFPR

20-05-05_ Modified titled as **Joint Meeting of**

AIPRF and SFPR. In the said document it is

mentioned that accused no.6 Saibaba attended the

meeting as a Secretary of AIPRF alongwith Raj

Kishore, Secretary of SFPR and in the said meeting

as per Resolution 1 it was resolved to unify AIPRF

and SFPR into one organisation with a new name

“Revolutionary Democratic Front (RDF)” and RDF

shall work with slogans like “Naxalbary Ekhi

Rastha, Andhra Bihar, Jharkhand Chattisgah

Dikhata hain Rastha” and thereby merged AIPRF

and SFPR into Revolutionary Democratic Front

(RDF) and to that effect press conference was

conducted by accused no.6 Saibaba and Rajkishore

who were the Secretaries of both AIPRF and SFPR. Further it is mentioned in this document that “Revolutionary Democratic Front (RDF)” accepted the ideology of CPI (Maoist) and there are several letters found in the electronic gadgets 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra and Arts.1 to 41 CDs, DVDs, pen-drives, hard-discs seized from the house search of accused no.6 SAibaba written by the members of CPI (Maoist) to their comrades.

2] The document at page no.1 of Exh.267 having path **Exh4/rdf/june 2012/conference material/RDF first conference/ Secretary's report final unamended** titled as “Revolutionary Democratic Front (RDF)” First Conference of the Revolutionary Democratic Front (RDF) dated 22-23 April, Sundaraiya Veigyan Bhavan, Hyderabad, Telangana addressed to Comrades and Friends starting the word 'Red salute' to all delegates in which it is mentioned that in 2005 two organizations i.e. All India Peoples' Resistance Forum (AIPRF) and Struggling Forum for Peoples' Resistance (SFPR) merged into Revolutionary Democratic Front (RDF) which was declared on 23rd May (Naxalbari Day) in a Press Conference in Delhi and it is further mentioned in this document that “In the current period of world economic crisis

and the political turmoil, the political and organizational responsibilities of RDF have become even more important. In 2005, keeping in mind the existent economic, political and social conditions and after analyzing the material condition of the anti-imperialist anti-feudal mass movements, the two organizations All India People's Resistance Forum (AIPRF) and Struggling Forum for People's Resistance (SFPR) merged to form Revolutionary Democratic Front (RDF).”

3] There is photograph of accused no.6 Saibaba appearing in the conference dated 22-23 April having path **Exh.3/new folder(2)/allmetters1/photos/rdfconvention** at Sr.No. DSC0653 at page no.33 of Exh.267 in which accused no.6 Saibaba is seen addressing to the people under the banner of **Revolutionary Democratic Front (RDF)**, All India First Conference 22, 23 April 2012 held at **Sundarayya Vignana Bhavan at Hyderabad, Telangana** and below that “Turn the prevailing world economic crisis into revolutionary crisis, Stop operation green hunt. Withdraw the armed forces from Bastar” is written. From this, it is clear that accused no.6 Saibaba is the founder member of RDF.

4] There is video-clip having path **Exh.3/films/S1/RDF/1/ video_TS, VTS _01_1**

which was seized from the house of accused no.6 Saibaba under panchanama Exh.165 in which the venue and stage of 1st confrence of RDF is shown in which one banner is seen having contents STOP OPERATION GREEN HUNT – RDF- WITHDRAW THE ARMED FORCES FROM BASTAR, ON THE GATE BANNER IT IS WRITTEN REVOLUTIONARY DEMOCRATIC FRONT(RDF) ALL INDIA1ST CONFERENCE 22-23 APRIL 2012 HYDERABAD TELANGANA, and the banners showing the contents SHAHID COMRADE NAGINAMAJHEE MANCH, and in the said video-clip accused no.6 Saibaba is seen entering the venue amidst beats of drums.

5] There is a document at page no.210 of Exh.267 titled as “**Revolutionary Democratic Front (RDF), The First All India Conference**”. It is 'press release' dated 23 April 2012. The address of conference mentioned in the document is “**Sundarayya Vignana Bhavan at Hyderabad, Telangana**” and it was written by accused no.6 Saibaba in the capacity of Deputy Secretary of RDF, a frontal organisation of CPI (Maoist).

761] The accused no.6 Saibaba was initially acting as Assistant Secretary of RDF and this fact is reflected in the document at Art.157 titled as “**Joint Meeting of AIPRF and SFPR**” and it is clear from the

Resolution no.2 of the said document that the accused no.6 Saibaba was declared as a **Assistant Secretary** of RDF.

762] Thereafter accused no.6 Saibaba was acting as Deputy Secretary of RDF and this fact is clear from the following documents -

1] From the document at page no.119 of Exh.267 taken out from the hard-disc Exh.4 having path **Exh.4/OLD EHD/OLD/All 12345** titled as “**Maoist Strategy in India**” with Sub title “**An interview with G.N.Saibaba**”, it is clear that accused no.6 G.N. Saibaba is designated as the **deputy secretary** of the Revolutionary Democratic Front, an all Indian Federation of revolutionary organizations.

2] The document at page no.210 of Exh.267 titled as “**Revolutionary Democratic Front (RDF), The First All India Conference**” is a Press Release dated 23 April 2012 held at Hyderabad, Telangana in para 2 of the document it is mentioned that accused no.6 Saibaba is a Deputy Secretary of RDF, which is a frontal organisation of CPI (Maoist).

763] Thereafter accused no.6 Saibaba was designated as Joint Secretary of RDF and to that effect it is necessary to look have on the following videos -

1] From the video-clip having path **Exh.3/RDF Conference video/9DVD/VIDEO_TS/VTS_01_4**, it is seen that comrade

Rajkishore is seen declaring new office bearers of the RDF and further comrade Varavarara's declared as a President, comrade Ghantiprasadam as a Vice President and accused no.6 Saibaba is declared as a **Joint Secretary** along with comrade Jeetan Marandi who was in jail, further Rajkishore declared Comrade Ajay as a Treasurer of RDF.

764] The document at page no. 41 of Exh. 267 having path **Exh.4/Oct.2010/people res/material on JP/interview with G.N. Saibaba** is an interview of accused no.6 Saibaba. From this document it is clear that accused **no.6 Saibaba** has given said interview in the capacity of Vice-President of Revolutionary Democratic Front on the “**Revolutionary and Democratic Movements in India**” by Ka Franka.

765] In the video-clip having path **Exh.3/RDF Conference video/9DVD/ VIDEO_TS/VTS_01_3**, accused no.6 Saibaba was seen on RDF's first conference stage and requesting Rajkishore to declare the new panel of RDF and Rajkishore declares the new panel and called upon all the members on dais and these members were fifteen in numbers standing and holding and raising their hands towards the audience alongwith accused no.6 Saibaba, one of the panel member.

Accused no.6 Saibaba has drafted the constitution of RDF

766] The accused no.6 Saibaba has drafted constitution of RDF and this fact is clear from the document at Article 159 having path **ex.4/31.12.12/RDFConferencematerial/DRAFTMANIFESTO OF**

RDF amended by conference. From this document it is clear that it is a revised draft as per EC suggestions titled as, “**Draft Manifesto of Revolutionary Democratic Front (RDF)**” and it is clear that accused no.6 Saibaba prepared draft manifesto of RDF and he is founder of RDF and this fact is also clear from the document at page no.17 of Exh.267 and from the document at page no.17 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.22/recovered folder/folder 003/Secretary's report**, titled as **Secretary's report** regarding **review of RDF work since its formation** it shows that responsibility of preparation of draft manifesto was given to accused no.6 Saibababa.

Prakash is nothing but accused no.6 Saibaba

767] Following are the documents showing that Prakash is nothing but accused no.6 Saibaba -

1] The document at page no.17 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.22/recovered folder/folder 003/Secretary's report**, titled as **Secretary's report** regarding **review of RDF work since its formation** shows that responsibility of preparation of draft manifesto was given to accused no.6 Saibababa and the contents of the same are reproduced as under -
“Prakash failed to finalise the programme and constitution of A4 by incorporating amendments accepted in the conference. The inordinate delay

had happened because of several reasons. First of all he made several revisions of the draft with the help of TM/BDS and RR. This took a lot of time. After this when the draft almost finalised, the hard disk of Prakash's computer got crashed. He made several efforts to retrieve the data but couldn't retrieve it. Mean while Prakash was not well and he faced several problems. comrade Jaddu advised Prakash to redo the finalisation of the draft without handing over this work to anyone else. Prakash tried to do the work but couldn't complete it." According to prosecution four hard-discs were seized from the house search of accused no.6 Saibaba and those were sent to CFSL, Mumbai for examination. CFSL, Mumbai examined the same and one hard-disc could not be detected. This fact is mentioned in CFSL, report Exh.267. The hard-disc which was not detected is the same of which reference has come in document at Page no.17 of Exh.267.

2] From the letter (**Art.A21**) of Exh.266 addressed to **Comrade by one Jaddu and Prakash** dated 1st August 2013 it is clear that demand of fund of Rs.2 Lacs was made for meeting the expenses of banned organisation and the said letter was written by "Jaddu and Prakash" to "Dear Comrades". As discussed above "Prakash" is nothing but accused no.6 Saibaba and the said text

document was found in the 16 GB memory-card seized from personal search of accused no.3 Hem Mishra vide panchanama Exh.137.

3] The letter at page no.206 of Exh.267 taken out from the hard-disc Exh.4 having path **Exh.4/Data/personal** addressed to **Secretary Subcommittee on Mass Organization (SUCOMO) CPI (Maoist) written by Prakash dated 2 December 2006**, in which it is mentioned that accused no.6 Saibaba has been serving on the all India Fraction Committee under the Subcommittee on Mass Organization (SUCOMO) under the Central Committee of the Party since 1996 and he is deeply painted by the treatment meted out towards him by some comrades all these years and he finds himself in a more aggravated situation and not in a psychological condition to bear the situation. His health is also not cooperating to face the present aggressive attitude of these comrades towards him and therefore, he submitted his resignation of his primary membership of the party and to the Fraction Committee and he also resigned from all the committees of the Mass Fronts wherever he was a member. Lastly, he offered apology for taking this decision at a time when he should have been doing more quality work in building the mass work entrusted with by the Party. His decision of

resignation to the Party membership and all Mass Fronts is final and non-negotiable and he would soon submit a detailed letter of resignation. This shows that it is a resignation letter by accused no.6 Saibaba and it bears his pseudo name "Prakash" and his physical condition is reflected in the said letter.

4] Further Prakash is nothing but accused no.6 Saibaba is crystal clear from the wording of the document at page no.208 of Exh.267 having path **Ex-4/Cy-475-13-Ex-4/c/All other** which is a letter addressed to **Dear Comrades by Prakash (i.e. accused no.6 Saibaba)** in which it is mentioned that because of handicapness accused no.6 Saibaba is unsuitable for the work of organization.

5] In the document at Article 150 retrieved from the hard-discs seized from the house search of accused no.6 Saibaba which was written by accused no.6 Saibaba addressed to Professor Anandkrishnan shows that he (accused no.6 Saibaba) was physically handicapped person with a severe deformity (90%) and his both lower limbs were affected by polio in his childhood and he cannot stand or walk on his own and he move in a wheelchair.

6] From the documents having path **Exh.5/Saibaba/accommodation issue 2013/Manjeera passport, PH Certificate** retrieved from

the hard-discs seized from the house search of accused no.6 Saibaba it shows that in these documents the Identity card of St. Xavious Senior Secondary School, 4, Rajnivas Marg, Delhi of G.Manjeera and her parent's name is Mr. G.N. Saibaba (Accused no.6 Saibaba) and Mrs. A.S. Vasanta (wife of accused no.6 Saibaba) are written, also certificate for physically handicapped person issued by All India Medical Sciences, New Delhi, Department of Physical Medicine and Rehabilitation on 09/07/2003 in the name of accused no.6 **Saibaba** is seen.

768] It is also the defence of the accused that every member of CPI (Maoist) group has alias name. To that effect suggestion was also given to the informant P.W.6 Atul Avhad in his cross-examination and he admitted that every member of CPI (Maoist) group has alias name and they normally used their alias name.

769] Hence, it is clear that accused no.6 Saibaba was using his pseudo name as "Prakash" in his letter correspondence to the Comrades of banned organisation CPI (Maoist) and its frontal organisation RDF and hence the contention of the defence that the letters written in the name of Prakash were not written by accused no.6 Saibaba cannot be accepted.

Following are the incriminating documents found in electronic gadgets (Arts.1 to 41) seized from the house search of accused no.6 Saibaba showing his activities in RDF

1] A document at Page no.41 of Exh.267 having path **Exh.4/Oct.2010/people res/material on JP/interview with G.N.Saibaba** is an **Interview of accused no.6 Saibaba**, Vice-President of Revolutionary Democratic Front on the “**Revolutionary and Democratic Movements in India**” by Ka Frank in which accused no.6 Saibaba stated that he started working in an anti imperialist organization formed at the all India level called All India Peoples' Resistance Forum (AIPRF) and the AIPRF in 2005 merged with other similar organizations to form Revolutionary Democratic Front (RDF) and its members are being branded as having links with CPI (Maoist) just because it also believes in revolutionary transformation of Indian Society. Hundreds of its functionaries either suffer in prisons or work in different forms. He further stated regarding the fact of strengthening and expanding the party and to struggle against repression in developing campaigns and unlawful organization and lastly to support all anti-imperialist struggles and peoples' wars on the international level. He replied to one of the question that the RDF believes that militant mobilization of basic classes of the people is the only way to democratize the South Asian Subcontinent and RDF also involves in building and participating in the larger United Fronts of different democratic and anti-imperialist forces in the country. From this

document it is clear that accused no.6 Saibaba is the founder member of RDF, frontal organization of banned organization CPI (Maoist) and he has link with CPI (Maoist).

2] In another interview at page no.119 of Exh.267 taken out from the hard-disc Exh.4 having path **Exh.4/OLD EHD/OLD/All 12345** titled as **“Maoist Strategy in India”** with Sub title **“An interview with G.N.Saibaba”**, accused no.6 Saibaba stated that he is the **deputy secretary** of the Revolutionary Democratic Front, an all Indian Federation of revolutionary organizations and further stated that the Maoist are following the new democratic method proved by China under the leadership of Mao that the revolutionary movements must put priority on working in the areas where the state is weak. The Maoists work in the backward regions to smash the local government and establish people's power. They build bases in these backward areas. This doesn't mean that they don't also work in the cities. In fact, in the party congress in January/February 2007 they decided to increase their work in the urban areas. They have produced a new document concerning work in the urban areas that analyses the work done the last thirty years. This document sets out a strategy for developing the work in the urban areas.

770] In the said interview accused no.6 Saibaba said that the Maoists do work in the urban areas among the working classes and the middle classes. This has secondary importance. The primary importance is to capture the villages first and develop the armed struggle with peasants as the main force and with the working class as the leadership. This means not just the physical workers but those of the people that have the proletarian ideology and without properly of their own Maoists do combine legal and the illegal struggles as far as there is space in legal means available. Whatever little legal space there is, it's being used to the maximum extent possible. But the ruling classes don't allow thee use legal means and different institutions of democracy. Participating in elections is not the only way to participate in legal and urban spaces. Even boycotting elections is a highly political activity, which is another way of participating politically within the given democratic space that exists in India. First of all the Maoists are concentrating on gaining power for the people to build people's democratic revolutionary institutions. When this is achieved in large areas they will get more space in the urban centers and institutions.

771] It is further mentioned in the interview in Note 2 that the following is a closer description of the communist movement in India today according to accused no.6 **Saibaba** and there are three different main streams of the revolutionary movement like (a) CPNmaoist – peoples war (b) Cpi(ml)naxalbari, ct and others are also Maoist and close to the Maoists. Also CPRCML, Red Flag, Communist Revolutionary Platform, CCICP(ml), CPI(ml)central team, CPM (ml)new democracy. These are all small, but they have a mass base.

They partake in mass struggles but do not follow a correct track. They follow a right deviationist line. CP(ml)liberation is now fast turning to revisionism, a fairly large party. There are no left revisionist groups remaining. There used to be Lin Biao groups, they hardly exist anymore.

772] Further accused no.6 Saibaba stated in the said interview that the last stream i.e. (c) of the revolutionary movement is mentioned in above document is that Communist League(ml) split from the CPI(ml) originally in the 1970s.They believe that India is capitalist. They split into five different groups. They are very small. They work in urban areas. They are petty bourgeois. They constitute a democratic voice in the country today. They voice the urban democratic intellectuals. In the said interview accused no.6 Saibaba gave detailed history of organisation of CPI (Maoist) and its frontal organisation RDF right from 1970.

773] From the document Article-130A which was found in possession of accused no.4 Prashant Rahi is relating to “**Brief Review of FC**” in which the responsibilities of FC allotted to Jaddu and Chetan in the FC meeting were mentioned. Further document at Article-130A seized from the possession of accused no.4 Prashant Rahi shows that the person named “Chetan” was given responsibility of West Bengal, Kerala and Delhi and this fact is corroborated from the contents of Art.155 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba tiled as “**Revolutionary Democratic Front (RDF), All India EC Meeting held on 8 and 9th May 2007, Delhi**” in which it is stated that the responsibilities of

West Bengal, Kerala and Delhi was given to accused no.6 Saibaba, and hence, it is clear that accused no.6 Saibaba is also known as “Chetan”.

Following are the incriminating video clips found in the hard-disc seized from the house search of accused no.6 Saibaba showing his activities in RDF.

1] In the video-clip having path **Exh.9/my dvd/VTS_01_1** accused no.6 Saibaba is seen saying that he got inspiration from Kishanji and in the said video accused no.6 Saibaba seen addressing the meeting held on the tribute on the death of Kishanji where he is seen saying that he got inspiration from Kishanji and further the meeting is held under the banner फर्जी मुठभेड और हत्याके खिलाफ संयुक्त कन्वेंशन संदर्भ का किशनजी.

2] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO_TS/VTS_01_1** armed naxals are seen walking in jungle and background sound of CPI (Maoist) Party spokesperson Aazad played and states that Maoism teaches us self preservation is possible only through war and shows the interviews of some naxals.

3] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO_TS/VTS_01_2** armed naxals are seen coming for gathering for function in jungle and

greeting each other also many red banners are seen and on one banner it is seen the name comrade Janki (Anuradha Gandhi) Amar Rahe and further the gathered armed naxals and other peoples shouted the slogans as Bharat ki Communist Party Maowadi Zindabad, Bharat ki Nav Janwadi Kranti Zindabad and further encounter by armed naxals in which police persons were killed is seen.

4] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO_TS/VTS_01_3** armed naxals in uniform are seen taking training of firing in jungle and background sound of CPI (Maoist) party spokesperson Aazad played and he states about the CPI (Maoist) armed strength and the interviews of one naxal in uniform about the Kudru ambush and CPI (Maoist) promotional video is seen how the ambush on police party is executed.

5] In video-clip having path **Exh.16/(1) NAXILISTES/ VIDEO_TS/VTS_01_1** armed naxals in uniform are seen walking in jungle and camping, attending public meeting showing naxal tactics in jungle.

6] In video-clip having path **Exh.4/OLD EHD/OGH/DK MATTERS/Bhoomkal**

programme_2010/Kutul_ Maad/ kutul bhoomkal_2010 armed naxals in uniform along with the villagers are seen gathered in jungle to celebrate the 10th anniversary of Bhoomkal and they are shouting with the slogans as Lal Salam, Mahan Bhoomkal Zindabad, Mahan Bhoomkal Shahidonko Lal Salam and one armed naxal seen addressing to the gathering of around 2000 to 3000 peoples and armed naxals.

7] In video-clip having path **Exh.4/OLD EHD/OGH/DK MATTERS/Bhoomkalprogramme_2010/Vayanar_ EBT/1/DSCN4236**, armed naxals in uniform along with the villagers are seen gathered in jungle are shouting with the slogans as Jantana sarkar ko majbut karo,Dandkaranyako aadhar elakeme badal dalo,Bharat ki communist party maowadi zindabad.

8] In video-clip having path **Exh.4/OLD EHD/OGH/DK MATTERS/Bhoomkal programme_2010/Vayanar_ EBT /2/Bhoomakal_2010**, armed naxals in uniform along with the villagers are seen marching in jungle with red coloured banners and flags and some green coloured dressed girls seen dancing and singing on the stage. Further around 2 to 3 thousand villagers gathering along with armed

CPI (Maoist) naxals and one naxal speaks and many red coloured banners and pictures, naxal martyr monument are seen and CPI (Maoist) armed naxals are dancing and one naxal takes video shooting of the dance.

9] In video-clip having path **Exh.4/OLD EHD/OGH/DK MATTERS/Com.Kumli martyrdym/DKVF On Com.Kumli funerals / Kumli funerals** one naxal lady named Kumli is seen dead and other CPI (Maoist) naxal in uniform along with villagers performed her funeral.

10] In video-clip having path **Exh.4/OLD EHD/OGH/DK MATTERS/FILM/1**, some armed naxals in uniform are seen walking in jungles.

11] In audio folder having path **Exh.3/Ritu/from old comp 23 oct 2012/songs/DK CNM, Jharkhand abhen album _2010**, Jung Ki Pukar, Kranti.gana, **some songs, songs**, containing hundreds of revolutionary naxal songs are seen.

13] In video-clip having path **Exh.3/films/s1/RDF/2/ VIDEO_ TS/VTS_01_1**, the dignitaries from different parts including accused no.6 G.N. Saibaba is seen on dais along with Sayad Gilani, and explaining about the manifesto of RDF and further

accused no.6 Saibaba have seen supporting the Navjanvadi Kranti, further he have invited Arun Pareira to release the book SCRIPTING THE CHANGE WRITTEN BY ANURADHA GANDHY and has released the book.

14] In video-clip having path **Exh.3/films/s1/RDF/3/VIDEO_TS/VTS_01_3**, the dignitaries from different parts of India including accused no.6 G.N. **Saibaba** are seen on dais and speaking about Telangana and giving a call to give blood for creation of Telangana.

16] In video-clip at path **Exh.3/films/s1/RDF/1 /VIDEO_TS/ VTS_01_3**, RDF magazine Janpratirodh is shown to audience by one of the sikh person siting on the dais. Said magazine Janpratirodh was seized from the house search of accused no.6 Saibaba.

17] In video-clip having path **Exh.3/films/s1/RDF/1/ VIDEO_TS/VTS_01_1**, some men and women raised the slogans as “Shahidonko Lal Salam, Navjanwadi Kranti Zindabad, Ek Hi Rasta Ek Hi Rasta Naxalbari Ek Hi Rasta..”

18] In video-clip having path **Exh.3/films/s1/RDF/4/VIDEO_TS/VTS_01_3**, accused no.6

Saibaba was seen sitting on the dias addressing the people and calling their suggestions on manifesto of RDF and various persons have spoken from the dias about manifesto. This fact is clear from document at Page no.1 of Exh.267 Secretary's Report of Revolutionary Democratic Front, document at Art.A20 of Exh.266 and in document Art.161 having path **ex 4/6 Dec 2011/others/Fact finding report on the killing of CPI Maoist Politbureau member Kishenji** titled as "Statement on the killing of CPI (Maoist) Polibureau member Kishenji" there is reference of Kishenji who was CPI (Maoist) leader.

Following are the letters found in the hard-disc seized from the house search of accused no.6 Saibaba and 16 GB memory-card showing the correspondence of accused no.6 Saibaba with the Comrades of CPI (Maoist) -

1] A document **Art.A20** of Exh.266 is a letter addressed to **Comrade General Secretary, The CPI (Maoist) by Mahesh** written by accused no.4 Prashant Rahi who was charge-sheeted in Uttarakhand court by alias name 'Mahesh' which was reflected from the charge-sheet (Exh.264) in which name of accused no.4 Prashant Rahi is mentioned as Prashant Sanglikar @ Prashant Rahi @ Navin @ Mahesh Da @ Sima s/o Narayan Babaji Sanglikar.

2] A document at page no.86 of Exh.267 having

path **Exh.4/researchwork/IMP/ Research Work/ Research plan/ personnel/ personnel/personnel final /personal /contacts/final reply to Arman letter by Saibaba** is a letter addressed to Dear Comrade Arman (AIPRF) by accused no.6 Saibaba.

3] A letter at page no.87 of Exh.267 taken out from the hard-disc Exh.4 having path **Exh.4/all Old and new/news-is** addressed to **concerned comrades** dated 20.12.2010 sent by accused no.6 Saibaba by alias name Prakash and entire team.

3] A letter at page no.88 of Exh.267 addressed to Dear Comrade written by accused no.6 Saibaba by alias name Prakash and entire team.

4] A document at Page no.97 of Exh.267 having path **Exh.4/8 Oct 2012/120610-DK/Martyrs Day-Eng** titled as Communist Party of India (Maoist) written by Gudsa Usendi, Spokesperson, Dandakaranya Special Zonal Committee, CPI (Maoist) headed by “**Observe Martyrs Week From July 28 to August 3! Red Homage to Our Party’s Fore-founders and Beloved Teachers Comrades Charu Mazumdar and Kanhai Chatterjee!**”

5] A document at page no.205 of Exh.267 taken out from the hard-disc Exh.4 having path **Exh.4/All**

other/I feel demoralised to act on any issue, is a letter dated 17 June 2003 addressed to Comrade by Prakash.

6] A letter at page no.206 of Exh.267 taken out from the hard-disc Exh.4 having path **Exh.4/Data/personal/To, with title TO written to Secretary Sub-Committee on Mass Organization (SUCOMO) CPI (Maoist) written by Prakash dated 2 December 2006, is addressed to Dear Comrade by accused no.6 Saibaba in alias name Prakash.**

7] A document at Page no.208 of Exh.267 having path **Ex-4/Cy-475-13-Ex-4/c/All other** is a letter addressed to **Dear Comrades by Prakash (i.e. accused no.6 Saibaba).**

8] A document at Page no.224 of Exh.267 having path **Ex-4/C/Ritu 13 March/my documents/open letter.final Jul.A09** is a open letter to United Communist Party of Nepal (Maoist) from the Communist Party of India (Maoist) addressed to dear Comrade written by Central Committee CPI (Maoist), India dated 20 July, 2009.

Accused no.6 Saibaba was designated as Chief Coordinator between CPI (Maoist) and International Fraternal Organization connected with CPI (Maoist), India

774] Accused no.6 Saibaba was designated as Chief Coordinator between International Fraternal Organization connected with CPI (Maoist), India and this fact is clear from the following documents in text form -

1] From the document at page no.17 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.22/recovered folder/folder 003/Secretary's report**, titled as **Secretary's report regarding review of RDF work since its formation**, it is mentioned that "The whole house rejected Joseph and reiterated that Prakash should be the chief co-ordinator. All of them unanimously said that if Prakash wouldn't accept there should be no chief co-ordinator. The presidium ruled that despite Prakash's rejection, he had to do it because the whole house expressed confidence in him. Finally Prakash agreed to the resolution". From this letter it is clear that Prakash i.e. accused no.6 Saibaba was elected as chief co-ordinator to build up Communist Organizations throughout the country and with international relations who was actively involved in activities of CPI (Maoist) to further the activities of said organisation."

[ii] A document at Page no.57 of Exh.267 having path **Exh.4/c/for said/working Directory 201/New Folder/final months after correction /Manjeera/**

core titled as “Meeting of Core of A3/A4 on Oct 2nd and 3rd 2006” contained various resolutions regarding the suggestions of demands for the campaign of building A3 and A4, mass movement, displacement movement and funds and budgets for the development of A3 and A4 committees of banned organisation CPI (Maoist) working in various States of India and it is mentioned that Prakash i.e. accused no.6 Saibaba alongwith his companion must take serious attempts at consultation on all A4 FC decisions and other matters concerning the organization. In this document it is mentioned that “Regarding the Vice-Presidentship of A3, Joseph will continue till the conference and Prakash will be asked to take the responsibility due to his greater role in A3 and further stated that Prakash has agreed to take on the responsibility of A3 networking through the e-mail with international contacts. From this letter it shows that international responsibility was given to accused no.6 Saibaba.

Relations of accused no.6 Saibaba with International Fraternal Organisations

775] Further from the following documents relating to international correspondence, it is clear that accused no.6 Saibaba is Chief Co-ordinator of CPI (Maoist), India and other fraternal

organisation of other countries and he has taken responsibility for communication with international relations by e-mails and letters and to that effect several documents filed on record showing that accused no.6 Saibaba is main leader and was acting as a coordinator for moist group of Communist Party of India and other fraternal organisations of foreign countries.

[i] From the letter dated 31 March 2005 at page no.13 of Exh.267 taken out from the hard disc Exh.4 having path **Exh.4/All other/lawyer's tour of south Asia**, it is clear that it was written To all chapters and supporters wherein it is mentioned that – the Statements of 2nd International Delegation to South Asia in which it is stated that the main purpose of this delegation was to investigate the current situation of the Nepali Revolutionary Leaders C. Prakash Gajurel (known as Comrade Gaurav) and Mohan Baidhya (known as Comrade Kiran) who are being held prisoner by the Indian government. It is further stated that “ the delegation also came to the conclusion that the arrest, mistreatment and imprisonment of 19 Nepali nationals in Patna, who were legally in India at the time of their arrest, is another politically motivated abuse of the rights of these prisoners. The Indian government is also charging them with “sedition” and “inciting to wage war against India” based solely on their political views and their admitted

membership in or support for the Communist Party of Nepal (Maoist).

[iii] A document at page no.78 of Exh.267 having path **Exh.4/OLD EHD/OLD/All 12345/ILPS/Dear Arman, Exh.267** is a letter addressed to Dear Arman wherein it is mentioned that when accused no.6 Saibaba was in London, Holland and Birmingham during their discussion some representatives from India from anti-displacement front, political prisoners and RDF, possibly anti-caste movement will join ILPS TIA and an international team of ILPS to visit areas of anti-displacement movements in India in March 2008 to come out with a report for international propaganda. The team will also to visit Chhattisgarh in the area effected by Salwa Judum, an area of indigenous people most serious affected in a major way. Other important areas, among others, would be Nandigram and Singur West Bengal, Kalingnar, Jagatisgapur and Kashipur in Orissa, and Jharkhand. Further ILPS to aid and promote the formation of international Solidarity Committees supporting and taking up the issues of Indian Anti-displacement movement particularly in Europe and Americas to start with. Further this document shows that there are some international programmes of

ILPS organisation and at the end of the letter accused no.6 Saibaba has informed to contact some members so that they will understand the importance of the organisation and at the foot of this letter the e-mail of accused no.6 Saibaba is given.

[iv] A document at page no.81 of Exh.267 having path **Exh.4/All old and new/others/international/dear GNSaibaba** is a letter on the letter head of ATIK (Avrupa Turkiyeli Isciler Konfederalasyonu), Turque and Europe addressed to accused no.6 G.N.Saibaba from Chairperson of International Relation Commission ATIK wherein it is mentioned that said ATIK launched a campaign for the solidarity with the Indian people and people's movement against Operation Green Hunt (OGH) a scheme of Indian Government and invited Senior Maoist leaders from India to Europe and also talked to Turkey about the joining of Maoist leaders. From this letter it reveals that accused no.6 Saibaba is an active member of CPI (Maoist) India and he has relations with other Maoist organisations working in foreign countries.

[v] A document at page no.92 of Exh.267 having path **Exh.4/OLDEHD/All others 2/Arrange/Azad matter/Communist/ Movement** in which the

recitals were shown against **imperialism, against modern fascism, struggle, organize and construct the party** written by Communist Party Maoist-Italy, France, Turkey North Kurdistan and suggested that to install amid the rebel youth of the imperialist banlieues, constructing youth revolutionary organisms and to give support and orientation to the student struggles, immigrants, lodgement occupants, to the popular struggles on the territories against military bases and further strengthen and expand women's struggle, constructing a revolutionary proletarian feminist movement. To struggle against repression, in developing campaigns and Red Aid organisms. On the international level to support all anti-imperialist struggles and peoples' wars and further suggested to contribute to a new unity among communist parties on the basis on the proletarian internationalism, the assertion of Marxism-Leninism Maoism, the path to revolution. At the end of letter there is mention of Communist Party Maoist – Italy, Communist Party Maoist – France, Communist Party Maoist – Turkey North Kurdistan.

[vi] A document at Page no.114 of Exh.267 titled as **“On the Occasion of Martyrdom of Comrade Azad Expressing solidarity with Communist Party of India (Maoist)”** is an article published by Communist (Maoist) Party of Afghanistan on the

occasion of Martyrdom of Comrade Azad, a Maoist Leader of India. The contents of the said document shows that Comrade Azad, spokesperson for Communist Party of India (Maoist), was a member of central committee and he played a very critical and decisive role at the current juncture: at a time when the reactionary Indian state on one hand has mobilized more than 250000 police and mercenary forces against the Maoist peoples war within the framework of a large military campaign called Operation Green Hunt.

[vii] A document at page no.136 of Exh.267 titled as “**Prabhatham will not die**” shows that the genocide in Sri Lanka on Tamils is the continuation of aggression on the fighting people of Pelestine, Afghanistan and Iraq and it is alleged that this genocide on the Eelam struggle under the leadership of V Prabhakaran was supported by Indian Government.

[viii] A document at Page no.137 of Exh.267 is under the head of Office of the Prime Minister Transnational Government of Tamil Eelam, 875, Avenue of the Americas, Suite 1001, New York, NY 1001, USA, dated 19 February 2011 titled as “We share this Joyful moment with the people of Egypt!”.

[ix] A document at Page no.139 of Exh.267 is under the head of Office of the Prime Minister Transnational Government of Tamil Eelam, 875, Avenue of the Americas, Suite 1001, New York, NY 1001, USA, dated 8 March 2011 titled as “Vehement condemnation of Despicable Attack on Member of Parliament Sivagunanam in Sri Lanka!”.

[x] A document at Page no.224 of Exh.267 having path **Ex-4/C/Ritu 13 March/my documents/open letter.final Jul.A09** is a open letter to United Communist Party of Nepal (Maoist) from the Communist Party of India (Maoist) showing the relations in between CPI (Maoist), India and United Communist Party of Nepal (Maoist). Further there is mention of Naxalbari in the said open letter by CPI (Maoist) India to the Comrades of CPI (Maoist) from other countries.

Photographs and video-clips showing the international relations of accused no.6 Saibaba

776] Further, following photographs which show the international relations of accused no.6 Saibaba with the fraternal organisation working in other countries.

1] In the photograph at page no.152 of Exh.267 taken out from the hard-disc Exh.5 having path **Exh.5/All photos/photos many/CRPP conference photos/pictures**, accused no.6 Saibaba is seen alongwith Rona Wilson.

2] In the photograph at page no.153 of Exh.267 taken out from the hard-disc Exh.5 having path **Exh.5/All photos/photos many/ political programmes/meeting/TIA ILPS**, accused no.6 Saibaba is seen on stage with some of the foreigners attending the 3rd International assembly of international league of People's Struggle ILPS held at Hongkong.

3] In the photograph at page no.154 of Exh.267 taken out from the hard-disc Exh.5 having path **Exh.5/All photos/photos many/political programmes/meeting/TIA ILPS**, accused no.6 Saibaba is seen alongwith some foreigner and one Indian lady Soma Sen.

4] In video-clip having path **Exh.3/films/s1/RDF /3 /VIDEO_TS/VTS_01_3**, the dignitaries from different parts including accused no.6 Saibaba is seen on dias and has invited Rona Wilson to read out the message from Nagaland. Rona Wilson has read the message from Nagaland regarding the revolutionary struggle of the people of Nagaland, Assam, Kashmir Etc. and their support to RDF.

777] From all above documents, video-clips, photographs it is clear that accused no.6 Saibaba is the founder of RDF and he drafted the constitution of RDF and he was acting as a Chief Coordinator between CPI (Maoist) India and other fraternal organizations of other

countries and he was active member of RDF and made several correspondence to members of banned organization CPI (Maoist) and RDF.

Role of accused no.3 Hem Mishra

778] Accused no.3 Hem Mishra was found in suspicious circumstances alongwith accused no.1 Mahesh Tirki and no.2 Pandu Narote and from his possession 16 GB memory-card of Sandisc company was found containing incriminating articles Art.A17 to A21 and Kodak camera with charger containing 12 photographs in internal memory of camera.

1] The document at **Art.A17** in Hindi language addressed to **Lal Salam by J.V.** shows that it is in respect of Jana Sanghathan and Jana Andolan and suggested to interfere in the problems which were going on in the organization. Further, on perusal of document at **Art.A18** in Hindi language addressed to **Jan Sanghathan and Sanyukta Morcha by N.R.B.** it reveals that there were suggestions to make effort about strengthening and expanding the party and to struggle against repression, in developing campaigns and unlawful organization and lastly to support all anti-imperialist struggles and peoples' wars on the international level. Further, from the contents of the said document it is clear that there was a **revolution by the Communist**

Party of India (Maoist) and they were struggling armed rebellion against the Government and it is the great achievement developed in the form of Krantikari Jana Andolan.

2] The document at **Art.A18** is also in Hindi language is addressed to Jan Sanghathan and Sanyukta Morcha by N.R.B., it reveals that there were suggestions to make effort about strengthening and expanding the party and to struggle against repression, in developing campaigns and unlawful organization and lastly to support all anti-imperialist struggles and peoples' wars on the international level. Further, from the contents of the said document it is clear that there was a revolution by the Communist Party of India (Maoist) and they were struggling armed rebellion against the Government and it is the great achievement developed in the form of Krantikari Jana Andolan. From the said document it is clear that N.R.B., a part of banned organization CPI (Maoist) and its frontal organization RDF were trying to furthering their terrorist activities like armed rebellion against the Government through PLGA and Krantikari Jana Aandolan all over the country.

3] A document at **Art.A19** retrieved from the 16 GB memory-card of Sandisk company seized from

the possession of accused no.3 Hem Mishra is a letter addressed to Dear friends Red Salute by Sahyadri State Committee of Maharashtra CPI (Maoist) titled as – **Oppose the Government's ongoing war against the people of Gadchiroli district.** In the said document detail history

alongwith date and time regarding killing of around 17 naxals in encounter by Gadchiroli police is given as under :-

1] On 4.4.2013 five maoists were killed near Batpar village.

2] On 20.1.2013 police killed six maoists namely Shankar Lakda, a member of Divisional Committee, Mohan Kowase, Acm, Vinod Kodape Acm, Geeta Usendi, Platoon Deputy Commander, Juru Mattami and Raju Gavde at Govindgaon village.

3] On 12.4.2013 at village Sindesur police encircled and indiscriminately fired on a jan sabha (public meeting) killing 6 people namely Sukhdev, Varlu Gave and Kalidas Duru Hidko and Comrade Kailash a member of Tippagarh area committee was killed when he came down to save the people.

Further around 35 incidents of beating of naxals/members of CPI (Maoist) at the hands of Gadchiroli police are given. In the said document it is further mentioned that around 10000 police staff alongwith modern weapons like AK47, LMG, SLR

are equipped, however, the PLGA on the other hand having old weapons like Bharmar and axe. In the said letter appeal was made to fight against paramilitary forces, commando forces to stop Green Hunt Operation launched by the Government. Lastly, in the said document it is stated that mass movement and armed struggle both are equally important and are necessary for the revolution.

4] The document **Art.A20** addressed to **Comrade General Secretary, The CPI (Maoist) by Mahesh** reveals that it was written by accused no.4 Prashant Rahi who was charge-sheeted in Uttarakhand court by alias name 'Mahesh' in which he had shown his position about expelling him from the party as he was giving secrete information to the police i.e. enemy of the banned organization CPI (Maoist). He has mentioned in the said letter that “I learnt, a few days after I was released, that I have been expelled from the party. The said decision to expel me was taken summarily, without telling me what I was accused of. There was no question of their having given me a chance to defend myself, or to explain anything. It was a purely unconstitutional act. The party has much to do to regain its losses and improve its organisational and mass practice (essentially, tactics) and I am ever willing to continue giving my level best. Of course, I can manage on my own for the time being, and am

also trying to help my other close comrades to preserve the party spirit in the hope of reunity/reorganisation. I am also quite confident, now that I have had the opportunity to face the ordeal of arrest, torture, and solitary confinement for prolonged period, uncertainties, and all that, that even with such enormous Central losses I can be part of the overall process of rebuilding, even if I have to do without the rightful collective at the committee level. From the above document it is clear that accused no.3 Hem Mishra and accused no.4 Prashant Rahi are conspired together to carry out the object of conspiracy.

5] From document at **Art.A21** addressed to **Dear Comrade “Red Salve” written by Jaddu and Prakash** in which the demand of Rs.3 Lakhs for the expenditure of Conference, Rs.2 Lakhs for publishing books, Rs.2.5 Lakhs for loan to be cleared, Rs.1 Lakh for senior comrade's, Rs.4 Lakhs to run the activities, total Rs.13 Lakhs was made. From the contents of the said letter it reveals that there are many activities amongst the members of banned organization and letters to that effect were issued by accused no.6 Saibaba from time to time and from this letter which shows that demands of fund for the progress of organization was made and this letter was found in the 16 GB memory-card seized from the possession of accused no.3 Hem

Mishra which shows the relations between accused no.6 Saibaba and accused no.3 Hem Mishra.

6] The camera of Kodak company (Art.30) was seized from accused no.3 Hem Mishra under panchanama (Exh.137) and in the internal memory of said camera eleven photographs were found and in one of the photograph accused no.6 Saibaba is seen sitting on wheelchair. Hence, finding of photograph of accused no.6 Saibaba in the internal memory of Kodac camera seized from the possession of accused no.3 Hem Mishra, itself shows that they both were knowing to each other and were in relation.

7] In the internal memory of Kodak camera there is photograph of 16 GB, 18 GB and 32 GB memory-card which shows that the members of banned organisation are using electronic gadgets as a mode for communication of vital information to comrade to comarde.

Following are the incriminating photographs found in the hard-disc seized from the house search of accused no.6 Saibaba in which the accused no.3 Hem Mishra was seen. The said incriminating photographs are as under :-

1] In photograph having path **Harddisc EXH 3 /C/new folder (2)/all metters I/photos utt. rdf. Convention Photos/rdf**, accused no.3 Hem Mishra

is seen on stage singing song with instrument in convention of RDF Uttarakhand.

2] In photograph having path **EXH 3/C/new folder(2)/ all metters (i) /photos / utt. rdf.** accused no.4 Prashant Rahi is seen along with delegates of the RDF conference Uttarakhand and accused no.3 Hem Mishra is seen participating in that conference.

3] In photograph having path **Harddisc EXH 5 /data/ C/all photos / photos many/ i-phone photos,** accused no.3 Hem Mishra is seen attending a meeting along with Rona Wilson and Ajay Kumar.

4] In photograph having path **Harddisc EXH 5 /Data/C/all photos/ 4 Dec. convention photos,** accused no.3 Hem Mishra is seen attending a meeting.

5] In photograph having path **Harddisc EXH 3 /C/new folder (2)/all metters I/photos utt. rdf. Convention Photos/rdf,** accused no.3 Hem Mishra is seen on stage singing song with instrument in convention of RDF Uttarakhand.

6] In photograph no.(3827) found in hard-disc there is banner of red colour having word Vartaman

and in front of the banner there are 8 persons and accused no.3 Hem Mishra is singing song with Dough.

7] In photograph having path **EXH 3 /C/new folder(2)/all matters (i)/photos /utt. rdf.** the accused no.3 Hem Mishra and accused no.4 Prashant Rahi are seen along with delegates of the RDF conference Uttarakhand.

8] In the photograph having path **Harddisc ex 3/C/new folder (2)/All matters 1/Hem's photos/images** personal photograph of accused no.3 Hem Mishra and accused no.4 Prashant Rahi were appearing.

Following are the video-clips found in the hard-disc seized from the possession of accused no.6 Saibaba and accused no.3 Hem Mishra was seen attending meeting. The said incriminating video-clips are as under :-

1] In video-clip having path **Exh.7/Exh.7-1/(1)DVD/ 091204/VIDEO_TS/VTS_01_1** accused no.3 **Hem** Mishra is seen in the audience of the meeting for Convention against War on People held at Speaker's hall Constitution Club Rafi Marg, New Delhi on 4th December 2009 by Forum Against War on People alongwith Saibaba who is sitting on the dais.

2] In video-clip having path at **Ex7/Ex-7-3/ (10DVD_ 091204/VIDEO_TS** accused no.3 Hem Mishra is seen while taking photographs with the help of camera and one person is addressing with the help of speaker and he was seen moving in the row between two peoples and around 30 to 40 people in left side row and 30 to 40 people in right side row under the banner of “Convention against War on people, Forum Against War on People”. It is important to note that Kodak camera was seized from the possession of accused no.3 Hem Mishra under panchanama Exh.137.

3] In video-clip from DVD at Exh.11-1,2 accused no.3 Hem Mishra is seen taking active part and singing song to condemn the death of Kishanji (CPI-MAOIST Leader) and giving slogans Lal Salam.

4] In video-clip having path **Ex7/Ex-7-1/ (10DVD_ 09204/VIDEO_TS** accused no.3 Hem Mishra is seen taking active part and singing song to condemn the death of Kishanji (Naxal Leader) and giving slogans Lal Salam.

5] In video-clip having path **Exh.3/Meetings/Jiten Convention Against Death Penalty/20 Dec 2011 Jiten Convention 2 Compressed version/convention disc**

2/VIDEO_TS/VTS_01_3, accused no.3 Hem Mishra is seen alongwith a group of 10 to 12 young people while singing the song and the song which was sung by Jitan Marandi and thereafter he along with the group have presented the said song.

6] In video-clip having path **Exh.3/Meetings/Jiten Convention Against Death Penalty/20 Dec 2011 Jiten Convention 2 Compressed version/convention disc 2/VIDEO_TS/VTS_01_4**, accused no.3 Hem Mishra along with 10 to 12 young person are seen presenting song on Jharkhand and made announcement regarding presenting a song in Punjabi.

7] In video-clip having path **Exh.3 /Meetings/Jiten Convention Against Death Penalty/20 Dec 2011 Jiten Convention 2 Compressed version/convention disc 2/VTS_01_5**, one person is seen addressing a gathering and accused no.3 Hem Mishra is seen taking photographs, the event is under banner Convention and Cultural Performance 20 December 2011 at India International Centre, New Delhi, in this programme accused no.6 Saibaba is also present.

8] In video-clip having path **Exh.7/Exh.7-1/(1)DVD/091204/VIDEO_TS/VTS_01_1** accused no.

3 Hem Mishra is seen in the audience of the meeting for Convention against War on People held at Speaker's hall Constitution Club Rafi Marg, New Delhi on 4th December 2009 by Forum Against War on People and accused no.6 Saibaba is sitting on the dias.

779] From the CDR report of mobile SIM number 9873877513 at Exh.330 and mobile SIM number 8860601278 at Exh.331 belonging to accused no.3 Hem Mishra, it reveals that on 12.12.2012, 05.07.2013, 08.07.2013, 08.07.2013, 09.07.2013, 31.07.2013, 03.03.2313, 08.04.2013, 04.07.2013 and 05.07.2013 accused nos.3 Hem Mishra and no.6 Saibaba were in contact with each other. Further, from CDR report of accused Saibaba at Exh.413 it reveals that accused no.3 Hem Mishra made phone calls to accused no.6 Saibaba on his mobile SIM no. 8800100490 on 15.9.2012, 8.7.2013, 10.7.2013, 31.7.2013 and 2.8.2013. This shows that accused no.3 Hem Mishra and accused no.6 Saibaba were in contact with each other.

780] The material on record i.e. documents (Arts.A17 to A21), finding of photograph of accused no.6 Saibaba in the internal memory of camera of accused no.3 Hem Mishra, CDR details (Exhs.330, 331 and 413) and the conduct of the accused no.3 Hem Mishra shows that accused no.3 Hem Mishra is the active member of banned organisation CPI (Maoist) and its frontal organisation RDF and was circulating the important information in the form of electronic data in 16 GB memory-card in respect of banned organisation CPI (Maoist) to the underground naxal in Gadchiroli district and from the document

at Art.A19 found in 16 GB memory-card seized from the possession of accused no.3 Hem Mishra in respect of armed rebellion further shows that he is an active member of banned organisation CPI (Maoist).

Role of accused no.4 Prashant Rahi

781] During interrogation with accused no.3 Hem Mishra involvement of accused no.4 Prashant was revealed and accused no.4 Prashant Rahi alongwith accused no.5 Vijay Tirki was found at Chichgad-T point Devri in suspicious condition and from his possession incriminating articles like Yatri card, newspaper by name Dainik Bhaskar and document Art.130A containing eight pages relating to banned organisation CPI (Maoist) alongwith the type written papers of Maoist leader Narayan Sanyal were seized and reference to that effect with the name of Maoist leader Narayan Sanyal is also found in Page no.1 of the document at Exh.267 titled as “**Secretary's Report**” which was recovered in the hard-disc seized from the house search of accused no.6 Saibaba. Those documents are as under -

1] The document Article-130A which was found in the possession of accused no.4 Prashant Rahi is relating to “**Brief Review of FC**” in which the responsibilities of FC allotted to Jaddu and Chetan in the FC meeting were mentioned. Further document at Article-130A seized from the possession of accused no.4 Prashant Rahi shows that the person named “Chetan” was given responsibility

of West Bengal, Kerala and Delhi and this fact is corroborated from the contents of Art.155 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba tiled as “**Revolutionary Democratic Front (RDF), All India EC Meeting held on 8 and 9th May 2007, Delhi**” in which the responsibilities of West Bengal, Kerala and Delhi was given to accused no.6 Saibaba, and hence, it is clear that accused no.6 Saibaba is also known as “Chetan”.

2] Further in the said document responsibilities of FC are mentioned and the responsibilities allotted to Jaddu and Chetan in the FC meeting are written as under -

The responsibilities of Jaddu : Incharge of workers organization. Jan Pratirodh and incharge of the state Units of Bihar, Punjab and Uttarakhand. Looks after party cells among the workers' union after the local party became defunct.

The responsibilities of Chetan : TUF on War against People, International work, People's Resistance, Incharge of State Units of West Bengal, Kerala and Delhi and responsible for taking up efforts to form A3 in Tamil Nadu.

782] On perusal of the contents of the document at Art.130A it reveals that the name 'Jaddu' i.e. incharge of workers organisation Jan Pratirodh and reference of Jaddu has also come in Article No.A21

found in 16GB memory-card which was seized from the possession of accused no.3 Hem Mishra while he was carrying it to underground naxals in forest area of Gadchiroli district and the duties which are given to Chetan relates to accused no.6 Saibaba and in the last para of page no.2 of this document the problem and weaknesses of FC functioning were given and reference to that effect was given in document titled as 'Review of RDF work since its Formation' i.e. Secretary's report found in the hard-disc seized from the house search of accused no.6 Saibaba and filed on record at page no.29 of Exh.267 at point no.9 where the functioning of FC has been described and in para no.2 the word, "anti displacement" was used in relates to Chetan and the work assigned to Jaddu in respect of "Jan Pratirodh" magazine is mentioned in the document at Art.130A found in possession of accused no.4 Prashant Rahi. Further, "Jan Pratirodh" magazine was seized from the house search of accused no.6 Saibaba.

783] From the said document it is clear that accused no.4 Prashant Rahi was given task of running Book Stall in the Capital to facilitate proper maintenance, distribution. Even though he will take this responsibility independently and he was directed to do this work in coordination with CF Comrades.

784] From document **Art.A20** addressed to **Comrade General Secretary, The CPI (Maoist) by Mahesh** it reveals that it was written by accused no.4 Prashant Rahi who was charge-sheeted in Uttarakhand court by alias name 'Mahesh' in which he had shown his displeasure about expelling him from the party on the ground that he gave secrete information to the police i.e. enemy. In the said letter he has mentioned that "I learnt, a few days after I was released, that I

have been expelled from the party. The said decision to expel me was taken summarily, without telling me what I was accused of. There was no question of their having given me a chance to defend myself, or to explain anything. It was a purely unconstitutional act. The party has much to do to regain its losses and improve its organisational and mass practice (essentially, tactics) and I am ever willing to continue giving my level best. Of course, I can manage on my own for the time being, and am also trying to help my other close comrades to preserve the party spirit in the hope of reunity/reorganisation. I am also quite confident, now that I have had the opportunity to face the ordeal of arrest, torture, and solitary confinement for prolonged period, uncertainties, and all that, that even with such enormous Central losses I can be part of the overall process of rebuilding, even if I have to do without the rightful collective at the committee level.

Following are the incriminating photographs found in pages 1 to 247 of Exh.267 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba in which photograph of accused no.4 Prashant Rahi is seen -

1] In photograph having path **EXH 5/C/all photos/photos sai/new folder-1**, accused no.4 Prashant Rahi is seen addressing a meeting of Revolutionary Democratic Front supported by Telangana Praja Front.

2] In photograph having path **harddisc EXH 5 Data/C/all photos/ photos Sai/ New folder-1**, it is

seen that accused no.4 Prashant Rahi is seen participating in a public meeting of Revolutionary Democratic Front (Krantikari Janwadi Morcha) further accused no.3 Hem Mishra and no.6 Saibaba are also participating the said meeting.

3] A photograph having path **harddisc 3/C/new folder (2)/All matters 1/Hem's photos/images**, is personal photograph of accused no.3 Hem Mishra and accused no.4 Prashant Rahi.

Following video-clips found in hard-disc seized from the house search of accused no.6 Saibaba in which accused no.4 Prashant Rahi is seen -

1] In video-clip having path **Exh.3/RDF conference videos/ DVD_7/VIDEO_TS**, accused no.4 Prashant Rahi is seen attending and participating in the convention in the first RDF conference held at Hyderabad in the year 2012 and accused no.6 Saibaba was addressing the people from the stage.

2] In video-clip having path **Exh.3/RDF conference videos/ DVD_9/VIDEO_ TS/VTS_01_3.VOB**, accused no.6 Saibaba is seen addressing that the existing panel of Revolutionary Democratic Front (RDF) has been dissolved and new panel has been formed in respect of which accused no.6

Saibaba requested Rajkishore to announce the new panel of RDF and Rajkishore has made announcement of the names of the panel in which comrade G.N. Saibaba (accused no.6), comrade Jitan Marandi, comrade Varavararao, Comrade Chandrakala and others are named as panel members.

3] In a video-clip having path **Exh.3/films/s1/RDF/1/ VIDEO_ TS/VTS_01_2**, the dignitaries from different parts including accused no.6 Saibaba, **Dy. Secretary**, RDF and accused no.4 Prashant Rahi were called on dais as comrade Prashant Rahi and thereafter accused no.4 Prashant Rahi was seen below the banner of RDF on the dias along with others.

4] In a video-clip having path **Exh.3/ films/s1 /Jeetan-1/video_TS/VTS_01_1**, accused no.4 Prashant Rahi is seen on the dais alongwith four persons in which one lady below her image the name Aparna, wife of Jeetan is written is addressing, below the banner of Jan Convention and she has stated that Jeetan was making documentary at the relevant time.

785] From CDR report of accused no.6 Saibaba at Exh.413 it is clear that on 06.09.2012, 19.05.2013, 21.05.2013, 03.06.2013,

04.06.2013, 04.07.2013, 05.07.2013, 08.07.2013, 09.07.2013, 30.07.2013, 31.07.2013 and 14.08.2013 accused no.6 Saibaba made phone call from his mobile SIM no. 8800100490 to mobile SIM no. 8394875017 of accused no.4 Prashant Rahi. Further, from CDR report of accused Saibaba at Exh.413 it is clear that accused no.4 Prashant Rahi made phone calls to accused no.6 Saibaba on his mobile SIM no. 8800100490 on 13.9.2012, 4.7.2013, 5.7.2013 and 14.8.2013.

786] On perusal of above documents, photographs, evidence on record, video-clips and CDR, it is clear that accused no.4 Prashant Rahi is an active member of banned organisation CPI (Maoist) and its frontal organisation RDF and from the contents of all documents Art.130A it reveals that accused no.4 Prashant Rahi alongwith other accused were trying to release the prisoners who are senior leaders of CPI (Maoist) i.e. Narayan Sanyal, Comrade Shila, Comrade Kobad Gandhi, Comrade Amberda in the cadre of naxal movement and to form defence committee for their release on behalf of organization suggesting formation of center at Dehli. Finding of eight pages (Art.130A) alongwith the typed written pages in respect of maoist Narayan Sanyal in which it is mentioned that “माओवादी सान्याल समेत आठ बंदी अनशन पर” with accused no.4 Prashant Rahi clearly shows that accused no.4 Prashant Rahi is the active member of banned organisation CPI (Maoist) and its frontal organisation RDF. It is important to note that the reference of Narayan Sanyal was also found at Page no.1 of the document at Exh.267 titled as “Secretary Report”.

Role of accused no.5 Vijay Tirki

787] The prosecution has proved the fact that on 2.9.2013 accused no.4 Prashant Rahi and no.5 Vijay Tirki was found in suspicious circumstances at Chichgad T point and they were caught and brought by API Tiwari (PW 14) of Police Station, Chichgad, Dist. Gondia to Police Station, Aheri. Before that they made entry in Station Diary at Exh.275C in Chichgad Police Station District : Gondiya and in Aheri Police Station, personal search of accused no.4 Prashant Rahi and accused no.5 Vijay Tirki was taken, and from the possession of accused no.5 Vijay Tirki alongwith other articles daily newspaper Dainik Bhaskar dated 1.9.2013 was seized. Further from the personal search of accused no.4 Prashant Rahi the Yatri card and other articles Dainik Bhaskar Newspaper dated 1.9.2013 was seized under the seizure panchanama at Exh.179 dated 2.9.2013 and immediately on the same day seized property was deposited with the Muddemal Clerk of Aheri Police Station P.W.13 Ganesh Rathod and entry to that effect was immediately taken in Muddemal Register at Exh.276B on the same day. Finding of newspaper clearly shows that the said was used by member of banned organisation as identification code to recognize them. From this it is clear that accused no.5 Vijay Tirki had been to Chichgad to receive accused no.4 Prashant Rahi, and to take him safely in forest area Gadchiroli to have meeting with underground naxal Ramdar.

Role of accused no.1 Mahesh Tirki and no.2 Pandu Narote

788] That on 22.8.2013 accused nos.1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra were arrested at near Aheri Bus

Stand at secluded place and personal search of accused nos.1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra was taken by Police Officer P.W.10 Anil Badgajar and from the personal search of accused no.1 Mahesh Tirki incriminating documents i.e. three naxal pamphlets Arts.139 to 141 alongwith his personal documents were seized and from the possession of accused no.2 Pandu Narote umbrella i.e. identification code used by the members of banned organisation CPI (Maoist) alongwith incriminating articles were seized and the same were deposited with muddemal Clerk of Aheri Police Station P.W.13 Ganesh Rathod and an entry to that effect was immediately taken in Muddemal Register at Exh.276A on the same day.

789] In the Confessional Statements, accused no.1 Mahesh Tirki and no.2 Pandu Narote stated that prior to the incident they had supplied material things like torch, meal to the naxals and they received money for the same and at the instance of lady naxal Narmadakka before the incident for two to three times and they had been to Ballarsha railway to receive the members of banned organisation to have meetings with underground naxals and on 29th May, 2013 at the instance of lady naxal Narmadakka accused no.1 Mahesh Tirki and no.2 Pandu Narote alongwith P.W.9 Raju Atram gave amount of Rs.5 lac to the members of CPI (Maoist) who came from Delhi to Ballarsha. This fact is corroborated from the evidence of P.W.9 Raju Atram. On the date of incident they had been to Ballarsha for receiving accused no.3 Hem Mishra who came from Delhi on 20-22.8.2013 and thereafter took him to Aheri bus stand and they were arrested at secluded place near Aheri bus stand and thereafter they were arrested.

790] From naxal pamphlets (Arts.139 to 141) seized from the possession of accused no.1 Mahesh Tirki it reveals that -

i] **Art.139** is a pamphlet issued by Bhakapa (Maowadi), (Gadchiroli Division) making allegations against the decision of the Government to destroy the life of Aadiwasis and shows that there was oppose to the Government policies implemented in the Gadchiroli district i.e. implementation of Surjagad Project and Green Hunt Operation showing hatred towards the Government.

ii] **Art.140** is a pamphlet issued by Bhumkal Johar Te Dandakaryanya Special Zonal Committee, Bhakapa (Maowadi), titled as, “Amar Shahidirku Lal Salam”

iii] **Art.141** is a pamphlet issued by Bhartachi Communist Party (Maowadi), Maharashtra Rajya Samiti titled as ‘राख सांभाळुन ठेवा राख झालेल्यांची, संपली नाही लढाई अजुन खैरलांजीची’ and at the end it is mentioned that ‘खैरलांजी हत्याकांडाच्या सुत्रधारांना पाठीशी घालणारे, पोलिसांद्वारे दलितांच्या हत्या करणारे, दलितांत दहशत पसरविणारे महाराष्ट्र शासन मुर्दाबाद !.. नवजनवादी क्रांति झिंदाबाद’

791] Further, on perusal of record “Navjanwadi Kranti Jindabad” mentioned in Art.141 is a slogan used in many videos of

RDF conference found in hard-discs, CDs, DVDs, pen-drives which were seized from house search of accused no.6 Saibaba which shows that he was also active member of RDF, a frontal organization of banned organization CPI (Maoist).

792] From the possession of accused no.2 Pandu Narote the articles like Umbrella and newspaper which was usually used by naxal as identification code to recognize each other were seized. This fact is corroborated by the letter found in hard-disc seized from house search of accused no.6 Saibaba at page no.90 of Exh.267 having path **Exh.4/All Sai/for study/latest/Vanja's** titled as **“I am convinced the Naxalites (Maoists) have a lot of support”** in which it is mentioned that “A newspaper and bananas helped link up with Maoists”.

793] On perusal of above documents and evidence on record it is clear that accused no.1 Mahesh Tirki and no.2 Pandu Narote at the instance of lady naxal Narmadakka had been to Ballarsha Railway Station to receive member of CPI (Maoist) i.e. accused no.3 Hem Mishra and they were taking accused no.3 Hem Mishra who was found in possession of 16 GB memory-card containing the naxal literature (Article-A17 to A21) for supplying the same to the underground naxals in Gadchiroli District. The accused no.1 Mahesh Tirki was found in possession of three naxal pamphlets (Arts.139 to 141) and on perusal of Art.139 containing matter opposing for implementation of Surjagad project and against the development in rural area. Accused no.2 Pandu Narote was also found in possession of Newspaper and Umbrella which are the identification code used by members of banned organisation to recognize each other. Hence, it is

clear that both accused no.1 Mahesh and no.2 Pandu are active members of banned organization CPI (Maoist) and its frontal organization RDF.

RDF is frontal organization of CPI (Maoist)

794] It is important to note that from 22 June 2009 the Communist Party of India (Maoist) and all its frontal organizations have been declared as terrorist organization. Now it is necessary to see whether the Revolutionary Democratic Front (RDF) is frontal organization of Communist Party of India (Maoist).

795] On perusal of Secretary's Report at page no.1 of Exh.267 having path **Exh4/rdf/june 2012/conference material/RDF first conference/ Secretary's report final unamended** titled as **"Revolutionary Democratic Front (RDF)"** First Conference of the **Revolutionary Democratic Front (RDF) dated 22-23 April, Sundaraiya Veigyan Bhavan, Hyderabad, Telangana** addressed to **Comrades and Friends** by Red salute to all delegates, it reveals that members of RDF is concern with CPI (Maoist) and they took an active part in releasing members of CPI (Maoist). From the said document it is clear that RDF made agitations, protest, dharnas and marches against the arrest of comrade Narayan Sanyal who is member of CPI (Maoist) and campaign was organized on the unconditional release of political prisoners like comrades Sushil Roy, Pattipawan Halder and others and bandh call was given by RDF, when Maoist leader comrade Sheela Devi was arrested and all India convention against war on people was organized in context of declaration of operation green

hunt. This shows that RDF is a frontal organization of CPI (Maoist).

Video-clips no.1 to 5 are as under:-

1] From the video-clip having path **Ex7/Ex-7-1/(10DVD_09204 /VIDEO_TS** it is clear that accused no.3 Hem Mishra is seen taking active part and singing song to condemn the death of Kishanji who is leader of CPI (Maoist).

2] From video-clip having path **Exh.3/Meetings/Jiten Convention Against Death Penalty/20 Dec 2011 Jiten Convention 2 Compressed version/convention disc 2/VIDEO_TS /VTS_01_3**, accused no.3 Hem Mishra is seen alongwith a group of 10 to 12 young people and accused no.4 Prashant Rahi are speaking from the podium regarding death sentence to Jiten Marandi, who is a member of CPI (Maoist).

3] In the video-clip having path **Exh.9/my dvd/VTS_01_1** accused no.6 Saibaba seen saying that he got inspiration from Kishanji and in the said video accused no.6 Saibaba seen addressing the meeting held on Kishanji where he also saying that he got inspiration from Kishanji and further the meeting is held under the banner **फर्जी मुठभेड और हत्याके खिलाफ संयुक्त कन्वेंशन संदर्भ का. किशनजी** and near the banner one photograph of a person in naxal dress is seen.

4] In video-clip having path **Exh.9/my dvd/VTS_01_2** accused no.6 Saibaba is seen addressing the aforesaid meeting on Kishanji and accused no.6 Saibaba has offered tributes to Kishanji on behalf of RDF and stated that the RDF will continue with the revolutionary thoughts and mission of Kishanji.

5] In video-clip having path **Exh.3/films/ s1/RDF/4/VIDEO_TS/VTS_ 01_3**, the accused no.6 Saibaba was seen sitting on the dias addressing the people and calling their suggestions on manifesto of RDF and various persons has spoken from the dias about manifesto. This fact is clear from document at Page no.1 of Exh.267 Secretary's Report of Revolutionary Democratic Front, document at Art.A20 of Exh.266 and in document Art.161 having path **ex 4/6 Dec 2011/others/Fact finding report on the killing of CPI Maoist Politbureau member Kishenji** titled as “**Statement on the killing of CPI (Maoist) Polibureau member Kishenji**” there is reference of Kishenji who was CPI (Maoist) leader.

The above video-clips no.1 to 5 were found in the hard-disc seized from the house search of accused no.6 Saibaba.

796] A document at **Art.A19** of Exh.266 retrieved from the 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra, is a letter addressed to Dear friends Red Salute by Sahyadri State Committee of Maharashtra CPI (Maoist) titled as “Oppose the Government's ongoing war against the people of Garhchiroli district ! Condemn the brutal attacks on people, mass leaders and people's warriors. Propose the happening massacres in the name of encounters and take initiative to put forth the Government's cruelty before society!”. This shows that RDF is having deep concern with CPI (Maoist).

797] A document **Art.A20** of Exh.266 retrieved from the 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra, is a letter addressed to Comrade General Secretary, The CPI (Maoist) by Mahesh written by accused no.4 Prashant Rahi who was Charge-Sheeted in Uttarakhand court by alias name 'Mahesh'. This shows that accused no.4 Prashant Rahi is connected with CPI (Maoist).

798] From the document Art.159 of Exh.267 having path **ex. 4/31.12.12/RDF Conference material/DRAFT MANIFESTO OF RDF amended by conference** found in hard-disc seized from the house search of accused no.6 Saibabai titled as, “**Draft Manifesto of Revolutionary Democratic Front (RDF)**” in which it is constituted below the head “Draft Revolutionary Democratic Front (RDF) Constitution” that – the name of organisation are - (a) Revolutionary Democratic Front (RDF) in English. (b) Krantikari Janwadi Morcha (RDF) in Hindi and (c) In different states the name of the

organisation should be written in the respective languages but RDF should be kept with brackets. Further, this document shows that there is popular slogan of RDF is "Naxalbari Ek Hi Rasta". This shows that RDF is also concern with CPI (Maoist) and following are the letters, documents addressed to Comrades to Comrades by the members of banned organization which are found in the hard-disc seized from the house search of accused no.6 Saibaba.

799] A document at Page no.97 of Exh.267 having path **Exh.4/8 Oct 2012/120610-DK/Martyrs Day-Eng** titled as **Communist Party of India (Maoist) written by Gudsa Usendi, Spokesperson, Dandakaranya Special Zonal Committee, CPI (Maoist)** headed by "Observe Martyrs Week From July 28 to August 3! Red Homage to Our Party's Fore-founders and Beloved Teachers Comrades Charu Mazumdar and Kanhai Chatterjee!

800] A letter at page no.206 of Exh.267 taken out from the hard-disc Exh.4 having path **Exh.4/Data/personal/To, with title TO written to Secretary Sub-Committee on Mass Organization (SUCOMO) CPI (Maoist) written by Prakash dated 2 December 2006**, addressed to Dear Comrade by accused no.6 Saibaba.

801] A document at Page no.224 of Exh.267 having path **Ex-4/C/Ritu 13 March/my documents/open letter.final Jul.A09** is a open letter to United Communist Party of Nepal (Maoist) from the Communist Party of India (Maoist) addressed to dear Comrade written by Central Committee CPI (Maoist), India dated 20 July, 2009.

802] The document Page no.103 of Exh.267 is a Resolution of Government of Andhra Pradesh titled as “**Government of Andhra Pradesh Abstract**” written by Minnie Mathew, Chief Secretary to Government reveals that Revolutionary Democratic Front (RDF) formed with the merger of All India People's Resistance Forum (AIPRF) and Struggling Forum for People's resistance (SFPR) in May 2005, is a part of Tactical United Front. Contents of the said document clearly reveals that in exercise of the powers conferred by sub section (1) of section 3 of the Andhra Pradesh Public Security Act, 1992 (Andhra Pradesh Act 21 of 1992), the Government of Andhra Pradesh, hereby, declare the Revolutionary Democratic Front (RDF) a front organization of Communist Party of India (Maoist) as an unlawful association.

803] The document at **page no.107 of Exh.267** which is a Gazette Notification of Home Department of Orissa Government dated 20th June 2006 wherein it is mentioned that Revolutionary Democratic Front (RDF) subserving the interests and objectives of the Communist Party of India (Maoist), has been indulging in the unlawful activities and lastly, by this Notification, Orissa Government declared the **Revolutionary Democratic Front (RDF)** to be an unlawful association with immediate effect.

These above two Notifications banning RDF were found in the hard-disc seized from the house search of accused no.6 Saibaba.

804] This shows that the members of RDF are working hard for the release of members of CPI (Maoist) continuously. It is important to note that Government of Andhra Pradesh and Orissa have banned

the Revolutionary Democratic Front (Front). The Central Government has declared CPI (Maoist) and all its frontal organisation as Terrorist Organisation by issuing official Gazette no.954 w.e.f. 22.6.2009. Hence, there is no need to issue separate notification by State of Maharashtra declaring RDF as a Terrorist Organisation or Unlawful Association.

805] Finding of several letters, correspondence by members of CPI (Maoist) to Comrade by accused nos.1 to 6 to members of CPI (Maoist) clearly shows that RDF is frontal organization of CPI (Maoist).

CONSPIRACY

806] The offence of criminal conspiracy under Section 120-A is a distinct offence. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another; amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant fact is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the

conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.

807] As conspiracy is the primary charge against the accused, we first advert to the law of conspiracy its definition, essential features and proof.

808] Section 120A defines criminal conspiracy as under :

"Definition of criminal conspiracy When two or more person agree to do, or cause to be done,

(1) An illegal act, or

(2) An act which is not illegal by illegal means,

such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation : It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

809] It is clear from the above noted definition of "criminal conspiracy". that the three essential elements of offence of conspiracy

are (a) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished; (b) a plan or scheme embodying means to accomplish that object; (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means. Thus, the gist of offence of criminal conspiracy is an agreement to break the law.

810] Sections 120A and 120B were brought on the statute book by way of Criminal Law Amendment Act, 1913. Earlier to the introduction of Sections 120A and 120B, conspiracy per se was not an offence under the Indian Penal Code except in respect of the offence mentioned in Section 121A. In the Objects and Reasons to the Amendment Bill, it was explicitly stated that the new provisions (120A & B) were "designed to assimilate the provisions of the Indian Penal Code to those of the English Law.."

811] Thus, Sections 120A & 120B made conspiracy a substantive offence and rendered the mere agreement to commit an offence punishable. Proof of a criminal conspiracy by direct evidence is not easy to get and probably for this reason Section 10 of the Indian Evidence Act was enacted. It reads as under :"

"Things said or done by conspirator in reference to common design :- Where there is reasonable ground to believe that two or more persons have

conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

812] Thus, the substantive section of the Indian Penal Code i.e. Section 120A adumbrated thereon Section 10 of the Indian Evidence Act give us the legislative provisions applicable to conspiracy and its proof. After survey of the case law on the point, following legal principles pertaining to the law of conspiracy can be conveniently culled out :

The Apex Court in case of Yash Pal Mittal v. State of Punjab, AIR 1977 Supreme Court 2433 has observed that -

The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are coparticipants in the main object of the conspiracy. It is not necessary that all conspirators should agree to the

common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. But then there has to be present mutual interest. Persons may be

members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy. Since a conspiracy is generally hatched in secrecy, it would quite often happen that there is no evidence of any express agreement between the conspirators to do or cause to be done the illegal act. For an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. The offence can be only proved largely from the inference drawn from acts or illegal omission committed by the conspirators in pursuance of a common design. The prosecution will also more often rely upon circumstantial evidence. It is not necessary to prove actual meeting of conspirators. Nor it is necessary to prove the actual words of communication. The

evidence as to transmission of thoughts sharing the unlawful design is sufficient. Surrounding circumstances and antecedent and subsequent conduct of accused persons constitute relevant material to prove charge of conspiracy [Shivnarayan Laxminarayan Joshi v. State of Maharashtra, AIR 1980 Supreme Court 439; Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra, AIR 1981 Supreme Court 1062; and Kehar Singh v. State AIR 1988 Supreme Court 1883]

A conspiracy is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are

agreed to be finalised or done, attempted or even frustrated and vice versa.

Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the coconspirators. In short, the section can be analysed as follows :

(1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy;

(2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other;

(3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them;

(4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour [Sardar Sardul Singh v. State of Maharashtra, AIR 1957 Supreme Court 747, (2001)7 SCC 596]

Conclusion

813] To prove the charge of criminal conspiracy, prosecution is required to be established two or more persons have agreed to do or caused to be done an illegal act or legal act by illegal means. There should be intention of one accused to commit crime and joining hands with others having the same intention. If pursuant to the criminal conspiracy the conspirators commit several offences then all of them will be liable for offences even if some of them have not actively participated in the commission of the offences. Further, there must be a meetings of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

814] To prove the offence of conspiracy against accused nos.1 to 6 prosecution has relied on the documents seized from the possession of accused no.1 Mahesh Tirki i.e. pamphlets (Art. 139 to 141), documents at Art.130A seized from the possession of accused no.4 Prashant Rahi, documents retrieved from 16 GB memory-card of Sandisk company at Arts.A17 to A21 of Exh.266 seized from the personal search of accused no.3 Hem Mishra and documents, Photographs, Video-Clips found in the electronic gadgets (Arts.1 to 41) at Page nos.1 to 247 and Arts.147 to 164 of Exh.267 seized from the house search of accused no.6 Saibaba, confessional statements of

accused no.1 Mahesh Tirki and no.2 Pandu Narote and CDR details of mobile SIM of accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba.

815] Now it is necessary to see whether the prosecution has proved the offence of conspiracy against accused no1. Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi, no.5 Vijay Tirki and no.6 Saibaba for commission of offence punishable under Sections 13, 18, 20, 38, 39 of the UAPA read with Section 120B of IPC beyond reasonable doubt.

816] To prove this aspect the incriminating document at Art.157 found in hard-disc seized from the house search of accused no.6 Saibaba under panchanama Exh.165 needs to be considered at this stage.

817] A document at Article 157 found in hard-disc seized from the house search of accused no.6 Saibaba titled as “**Joint Meeting of AIPRF and SFPR**”. From the said document it is clear that AIPRF and SFPR merged into Revolutionary Democratic Front (RDF) and to that effect press conference was taken and accused no.6 Saibaba declared that AIPRF and SFPR merged into Revolutionary Democratic Front (RDF) and new organisation Revolutionary Democratic Front (RDF) came in existence from 20th May 2005 and accused no.6 Saibaba is the founder of RDF. The relevant portion of the said document i.e. Resolution No.1 is reproduced as under :-

Resolution : 1

All the members present in the meeting unanimously resolved to unify AIPRF and SFPR into one organization with a new name Revolutionary Democratic Front (RDF). RDF shall work with a perspective of taking New Democratic Revolutionary politics into the broad masses of the country with the slogans like *Naxalbary Ekhi Rastha; Andhra Bihar, Jharkhand Chattisgah Dikhata hain Ratsha* and it shall work among the masses by taking up election boycott in order to project the new democratic political alternative as the only way for the liberation of the country and the people from imperialism and feudalism. RDF supports and strives to integrate with all democratic and anti-imperialist struggles of workers, peasants, women, dalits, nationalities, adivasis, youth etc.,

Today, i.e. 20th May 2005, we herewith constitute the new formation by merging both the ECs of AIPRF and SFPR and resolve to constitute all our lower committees by merging various units.

818] The document at Art.159 found in hard-disc seized from the house search of accused no.6 Saibaba titled as “**Draft Manifesto of Revolutionary Democratic Front (RDF)**” is a manifesto of Revolutionary Democratic Front (RDF). This Draft of RDF is prepared by accused no.6 Saibaba.

From the above document it is clear that accused no.6 Saibaba is founder of RDF and he has prepared the draft of constitution of RDF.

819] The prosecution has proved is that the accused no.6 Saibaba entered into conspiracy with accused no.3 Hem Mishra and

accused no.4 Prashant Rahi and at the instance of accused no.6 Saibaba, accused no.3 Hem Mishra proceeded from Delhi to forest area of Gadchiroli district to meet underground naxal Narmadakka and he left Delhi on 19.8.2013 and accused no.3 Hem Mishra possessed 16 GB memory-card of Sandisk company containing important text documents (Arts.A17 to A21 of Exh.266) which were to be given underground naxal lady Narmadakka. Then accused no.3 Hem Mishra came to Ballarsha Railway-Station where accused no.1 Mahesh Tirki and no.2 Pandu Narote met him and they took accused no.3 Hem Mishra and proceeded to forest area Gadchiroli via Aheri and they came by bus to Aheri and when they were standing in secluded place near Aheri bus stand they were caught by police on 22.8.2013. The personal search of accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra was taken. From the possession of accused no.3 Hem Mishra 16 GB memory-card of Sandisk company alongwith other articles was seized. In the 16 GB memory-card of Sandisk company the important document is at Art.A21. In order to appreciate the contention of the prosecution the said document is again reproduced here.

Dear Comrade,
Red Salutes!

We have sent letters and reports several times, but we have not received any reply in the last eight months. Especially after the arrest of the comrade who was guiding and coordinating with us, we have not received any reply.

This situation has made our organisation and many activities around our organisation difficult to go ahead. Without the guidance of the CC it is most difficult for an all India organisation to take up

important steps, particularly our organisation is playing a central role in coordinating many activities. Now that we have announced our all India conference, it becomes even more difficult to take many decisions without consulting you. Our conference has been postponed several times in the past due to the arrests and other obstructions. This is known to you.

We had sent several times letters mentioning the issues relating to international relations and the problems arose therein. We don't even know if you have received these letters. But we have not received any reply so far from you. We had taken some decisions due to the urgency. For instance, signing the letters that were circulated. Now we have a meeting to take decisions further. We have been asking the international fraternal organisations to wait and suspend all work till we get guidance from you. But this cannot go like this for more time.

We have to decide about the new body of our organisation. We plead with you to arrange a proper channel to communicate with us and call at least two among us, who are young from among us to hear all the reports and pending issues.

We have received 1.5 lakhs once and 75 thousand at another time so far after the arrest of the comrade. But we incurred several lakhs of rupees on the continuous programmes and activities. We have incurred a loan of 2.5 lakhs as of now. Every passing day brings in new expenditure. We do collect funds but the range of our activities is so very high that we are not in a position to meet all expenses through collections.

We urgently need funds under the following heads:
Prisoner comrades' health and other legal charges on cases (we are looking after here): 2 laks.

Conference (apart from what we can be collected):
3 Lakhs.

Books we are publishing now: 2 lakhs.

(For more books we could collect 1 lakh) But need 2 lakhs more to publish the remaining books.

Loan to be cleared: 2.5 lakhs.

One arrested senior comrade's life partner needs at least 1 lakhs here.

For our team (next 6 months) to run ourselves and activities planned we need 4 lakhs at least.

Therefore we need a minimum of 13 lakhs immediately to meet various urgent needs and activities.

Money apart, we need many of the important decisions to be taken. We are in a position to advance on many fronts. But before taking any new step, we need to discuss with you. We request you to arrange to call these two comrades as soon as possible.

With rev. greetings. – Jaddu and Prakash
1 August 2013.

820] On going through the above document it is clear that it is address to Dear Comrades by Jaddu and Prakash and it is dated 1st August 2013. As already discussed in the earlier part of the judgment “Prakash” is nothing but accused no.6 Saibaba. This shows that the said letter was addressed by accused no.6 Saibaba to the underground naxals. The contents of para 3 of the said letter shows that accused no.6 Saibaba was communicating state of affairs of RDF to underground naxals and in para 4 of the said letter further reveals that there was idea to form new body of organisation and they had decided to sent two young persons. According to prosecution the two young persons means accused no.3 Hem Mishra and accused no.4

Prashant Rahi who were to come forest area in Gadchiroli district with all reports and pending issues and seeking direction for further action. Further, in para 5 of the letter demand of total amount of Rs.13 lakhs was made for meeting expenses on different heads.

821] From above letter it is clear that accused no.6 Saibaba addressed this letter to underground naxals and said letter was being carried out by accused no.3 Hem Mishra in 16 GB memory-card. This shows that accused no.6 Saibaba conspired with accused no.3 Hem Mishra and accused no.4 Prashant Rahi and they both were proceeding to forest area of Gadchiroli district to have meeting with underground naxals and they were found circulating the vital information to the underground naxals. Besides that there is ample evidence on record to show that accused no.3 Hem Mishra and no.4 Prashant Rahi have conspired with accused no.6 Saibaba for doing unlawful acts and this fact is clear from the finding of several photographs and video-clips of accused no.3 Hem Mishra and no.4 Prashant Rahi in the hard-disc seized from the house search of house no.6 Saibaba. Further, from the CDR of mobile SIM card of accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba it is clear that they were in contact with each other and their last contact was on 18.8.2013. The letter at Art.A21 is dated 1st August 2013 and accused no.3 Hem Mishra was arrested on 22nd August 2013. There is proximity between the date of arrest and date of the letter.

822] As already discussed the accused no.1 Mahesh Tirki and no.2 Pandu Narote had come to Ballarsha railway-station to receive the accused no.3 Hem Mishra and they were having unique

identification code i.e. umbrella, newspaper spec case which were used by the members of banned organisation as identification code to recognize each other and this fact is reflected in the document at page no.90 of Exh.267 having path **Exh.4/All Sai/for study/latest/Vanja's Articles** taken out from the hard-disc seized from the house search of accused no.6 Saibaba titled as **“I am convinced the Naxalites (Maoists) have a lot of support”** in which it is mentioned that a newspaper and bananas helped link up with Maoists and the Communist Party of India-Maoist (CPI-Maoist).

823] From the confessional statement of accused no.1 Mahesh Tirki and no.2 Pandu Narote it is clear that at the instance of naxal lady Narmadakka they had been to Ballarsha railway-station for 3/4 times to receive members of banned organisation and to have a meeting with underground naxals. Further, from the confessional statements of accused no.1 Mahesh Tirki it is clear that earlier to the incident he had given meals and important things like torch to the underground naxals and further from the possession of accused no.1 Mahesh Tirki three naxal pamphlets (Arts.139 to 141) were seized. This shows that accused no.1 Mahesh Tirki and no.2 Pandu Narote are active members of CPI (Maoist) and its frontal organisation RDF and role of accused no.1 Mahesh Tirki and no.2 Pandu Narote was to receive members of banned organisation from Ballarsha railway-station and to take them safely in forest area of Gadchiroli to have meeting with underground naxals.

824] As reflected in para 4 of the letter Art.A21 of Exh.266 found in 16GB memory-card seized from the possession of accused

no.3 Hem Mishra that two amongst them were coming to hear all the reports and pending issues. This shows that accused no.4 Prashant Rahi at the instance of accused no.6 Saibaba proceeded from Delhi to Raipur to have meeting with underground naxals in the forest area of Gadchiroli district and accused no.5 Vijay Tirki came at Chichgad T-point to receive accused no.4 Prashant Rahi for taking him safely to the forest area of Gadchiroli district to have meeting with underground naxal Ramdar. Finding of daily newspaper "Dainik Bhaskar" in possession of accused no.4 Prashant Rahi and no.5 Vijay Tirki clearly show that accused no.5 Vijay Tirki had come to receive accused no.4 Prashant Rahi. Hence, in view of above it is clear that accused nos.1 to 6 have conspired with each other for doing unlawful acts and as such the offence of conspiracy is established by the prosecution against accused nos.1 to 6.

825] At this juncture it is necessary to consider the ratio laid down by the Apex Court in case of **Yash Pal Mittal v. State of Punjab**, **AIR 1977 Supreme Court 2433** wherein it is observed that -

The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to

achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

826] In view of above judgment it is not necessary that all conspirator must know each and every detail of conspiracy and it is not necessary that all conspirators must know each and every details of conspiracy and at the same time they may join with other conspirators at any time before the consummation of the intended objective and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

827] In view of above it is necessary to see the facts of the present case. In the present case the role of accused no.2 Pandu Narote and no.5 Vijay Tirki is limited. Their job was to receive the members of banned organisation and to take them safely to have

meeting with underground naxal in forest area of Gadchiroli district. They were not knowing the details of conspiracy but they are conspirator in the main object of conspiracy. Further it was not necessary for accused no.2 Pandu Narote and no.5 Vijay Tirki that they should have agreed for the common purpose at the same time. They joined with the conspirator with accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba after consummation of intended objective. Even though they are equally liable for the act of accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba though they were not knowing what role was to be played by accused no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba.

828] In respect to accused no.1 Mahesh Tirki his role was not limited only to take the members of banned organisation in forest area of Gadchiroli to have meeting with underground naxal but he was also found in possession of three naxal pamphlets Art.139 issued by Bhakapa (Maowadi), (Gadchiroli Division) making allegations against the decision of the Government to destroy the life of Aadiwasis, Art.140 issued by Bhumkal Johar Te Dandakaryanya Special Zonal Committee, Bhakapa (Maowadi), titled as, "Amar Shahidirku Lal Salam" and pamphlet Art.141 issued by Bhartachi Communist Party (Maowadi), Maharashtra Rajya Samiti titled as 'राख सांभाळुन ठेवा राख झालेल्यांची, संपली नाही लढाई अजुन खैरलांजीची' and at the end it is mentioned that 'खैरलांजी हत्याकांडाच्या सुत्रधारांना पाठीशी घालणारे, पोलिसांद्वारे दलितांच्या हत्या करणारे, दलितांत दहशत पसरविणारे महाराष्ट्र शासन मुर्दाबाद !.. नवजनवादी क्रांति झिंदाबाद' and he possessed the same for circulating the same to underground naxals and to people in Gadchiroli district to cause the people to resort for

violence and to cause public disorder and to create disaffection towards Government of Maharashtra.

829] The accused no.3 Hem Mishra at the instance of accused no.6 Saibaba proceeded from Delhi to have meeting with underground naxals in the forest area of Gadchiroli district for discussing important issues relating to the organisation of RDF and he possessed the letters in text forms contained in electronic gadget 16 GB memory-card. Besides this there are several photographs and video-clips showing that he had taken active part in the meetings conducted by RDF.

830] The accused no.4 Prashant Rahi was designated as a member of RDF when new body was formed on 22-23 April, 2012 and to that effect there is a video clip having path path **Exh.3/RDF Conference video/9DVD/VIDEO_TS/VTS_01_4**. Further there are several video clips wherein he was seen taking part in the meetings conducted by RDF. Further he was found in possession of 8 documents containing naxal literature.

831] With respect to accused no.6 Saibaba there is evidence on record showing that he is a founder of RDF and he drafted the constitution of RDF. He was designated as Chief Coordinator between CPI Maoist India and fraternal organizations of other countries and from document at page no.210 of Exh.267 it is clear that he held post of Assistant Secretary, further from document at page no.119 of Exh.267 it is clear that he was designated as Deputy Secretary, from the video-clip having path **Exh.3/RDF Conference video/9DVD/VIDEO_TS/VTS_01_4**, it is clear that he was Joint Secretary of RDF and from the document at page no. 41 of Exh. 267

it is clear that he is Vice President of RDF.

832] From the house search of accused no.6 Saibaba extensive electronic gadgets (Arts.1 to 41) CDs, DVDs, pen-drives, hard-discs containing electronic data around 3 TB in the form of text documents, video-clips and photographs were seized and the said text documents are letters, correspondence, minutes of meetings and video-clips relates to meetings of RDF and accused no.6 Saibaba is to be found as a founder of RDF and he is think tank of RDF organisation and high profile leader and he assisted the organisation in furtherance of their unlawful/terrorist activities as defined under Section 15 of UAPA wherein people have been exhorted to armed rebellion.

The Unlawful Activities (Prevention) Act, 1967

833] Terrorism is a problem not only in India but all over the world. In order to combat the Terrorist Activities for the first time the Parliament enacted the UAPA in the year 1967. The statement of objects and reasons of that enactment discloses that the committee appointed by the National Integrity Council recommended for imposition of certain reasonable restriction on the rights of the citizens; in the interest of sovereignty and integrity of India (1) such as freedom of speech and expression, right to assemble peacefully and without arms and right to form associations and unions; and accordingly the Constitution 16th Amendment Act was passed. It is in that background that the U.A.P. Act was brought into existence. In the preamble of that Act, the words "terrorist activities" were included in the year 2004.

834] The scheme of the U.A.P. Act is that the State and Central Governments are conferred with the powers to declare certain associations whose activities are found to be a threat to the sovereignty of the State; as unlawful. The acts undertaken by such prohibited associations are made punishable under the Act. Chapters-III and IV of that Act prescribe the punishments for the offences mentioned therein. This enactment does not contemplate any special procedure, to be followed for trial of the offences defined therein, much less did it provide for creation of any special Courts. In other words, the jurisdiction of the ordinary Criminal Courts functioning under the Code of Criminal Procedure is kept intact and the ordinary procedure is to be followed.

835] The said act was amended from time to time as follows :

- 1.The Unlawful Activities (Prevention) Amendment Act, 1969;
2. The Criminal Law (Amendment) Act, 1986 ;
- 3.The Delegated Legislation Provisions (Amendment) Act, 1986 ;
- 4.The Unlawful Activities (Prevention) Amendment Act, 2004,
- 5.The Unlawful Activities (Prevention) Amendment Act, 2008
- 6.The Unlawful Activities (Prevention) Amendment Act, 2011
- 7.The Unlawful Activities (Prevention) Amendment Act, 2012.

836] Communist Party of India (Maoist) and its frontal organisation have been declared as Terrorist Organisation under notification no. 954, dated 22.06.2009 issued under UAPA.

Argument of Advocate Shri.Gadling for the accused on NIA

837] The learned Advocate Shri Gadling for the accused submitted that in the present case the offence is registered against the accused under the provisions of UAPA and the Central Government has enacted the National Investigation Agency Act, 2008 and the offences under UAPA were declared as a scheduled offence in the said Act and as per provisions of Section 6 of the said Act, on receipt of information relating to any Scheduled Offence the officer-in-charge of the said Police Station has to forward the report to the State Government forthwith and State Government in turn has to forward the report (FIR) to Central Government and the Central Government is an competent authority to decide whether the offence is a Scheduled Offence and it is to be investigated by N.I.A. The provisions of National Investigation Agency Act, 2008 has been made to protect the innocent persons being prosecuted for any false case and the provisions of National Investigation Agency Act, 2008 has to be read harmoniously and after registration of the offence Investigating Officer Suhas Bawche (P.W.11) has not forwarded the FIR to the State Government and State Government in turn has not forwarded the same to the Central Government by virtue of provisions of Section 6 of National Investigation Agency Act, 2008 and the entire investigation carried out by the prosecution is illegal and as mandatory provisions as contemplated under Section 6 of the

National Investigation Agency Act, 2008 have not been followed, hence serious prejudice has been caused to the accused. In support of his submission he placed reliance on the judgment in the case of **Bahadur Kora vs. State of Bihar reported in 2015 Cri.L.J. 2134.**

838] Per contra, the learned Spl. P.P. Shri Sathianathan submitted that the State Government has power to investigate and file charge-sheet though the offence punishable under UAPA are declared as scheduled offence under National Investigation Act 2008.

Conclusion

839] In order to decide whether there is breach of mandatory provisions and whether the National Investigation Authority alone has power to investigate the offence under UAPA which are declared to be scheduled offence under National Investigation Act 2008 and whether the non-compliance of provisions of Section 6 of National Investigation Act would vitiate the trial in the present case. It is necessary to have look on the provisions of Section 6 of National Investigation Act 2008 which is reproduced as under :-

6. Investigation of Scheduled Offences.—

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

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

(3) On receipt of report from the State Government,

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

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

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

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

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

840] On going through the provisions of Section 6 of National Investigation Act 2008 two eventualities are provided when the investigation can be taken up by National Investigation Authority.

I] When the State Government forward the report to Central Government as

required by Section 4 in respect of
scheduled offence and

II] When the State Government can suo-motu take investigation in respect of scheduled offences falling under the provisions of National Investigation Act 2008. In the present case none of the above two eventualities had arisen. The Investigating Officer has not forwarded report under Section 6 of National Investigation Act 2008 and in turn the State Government has not forwarded the same to Central Government nor the State Government has suomotu taken the investigation of scheduled offence under the National Investigation Act 2008.

841] In the above reported judgment in case of **Bahadur Kora vs. State of Bihar reported in 2015 Cri.L.J. 2134** cited supra, the Full Bench of Patna High Court in Para 41 observed as under :

41. It has already been mentioned that in these cases not a single step referable to S. 6 or 7 were taken either by the State Government or by the Central Government or by the N.I.A. Therefore, simply because an offence punishable under the Unlawful Activities (Prevention) Act, 1967 was alleged, the investigation and trial of such cases cannot be brought under the purview of the Act.

842] Further, the observations made by Full Bench of Patna High Court in above case in paras 18, 19 and 20 are important. These are reproduced as under :-

18. If one goes by the scheme of the Act, the most important step happens to be the one of entrustment of the investigation of the case to the N.I.R. under sub-section (5) of S. 6. Once a decision is taken by the Central Government to direct the N.I.A. to investigate the offences, the provisions of the Act would apply, in the context of investigation as well as the trial.

19. The powers of the State Government, in respect of such offences, is virtually subjugated. This is evident from S. 10, which reads as under :-

"10. Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any scheduled offence or other offences under any law for the time being in force."

20. A reading of this section discloses that the powers of the State Government to investigate and prosecute any scheduled offence or other offences would remain intact, unless otherwise provided for under the Act. In other words, if the investigation is entrusted to N.I.A., the power of the State to investigate and prosecute the scheduled offences, ceases.

843] On going through the provisions of Section 10 of National Investigation Agency Act, 2008 if the investigation is taken up by National Investigation Agency then the only jurisdiction of State Government to investigate and prosecute the scheduled offence under UAPA is taken away and none of the eventuality has arisen here.

844] In view of the Judgement of Full Bench of Patna High Court the Sessions Court has power to try the offences under the UAPA if the investigation was done in pursuance of power conferred under Section 43 of UAPA when investigation is not directed by Central Government to State Government under UAPA.

845] Further the accused has not able to show any prejudice caused to them or to occasion of failure of justice has taken place by non-compliance of mandatory provisions of 6A of National Investigation Agency Act, 2008. At this juncture, it is necessary to consider the ratio laid down by the Apex Court in the judgment of **Munnalal vs. State of U.P. reported in 1964 Supreme Court 28** in which it is observed that -

(A) Prevention of Corruption Act (2 of 1947) , S.5A - Provision is mandatory - Investigation in violation of the provision is illegal - Trial is however not vitiated in absence of miscarriage of justice.

Held that though the letter of S. 5A of the Act was complied with its spirit was not, for in reality there was no investigation by the officer authorised under that section and the real investigation was by a sub-inspector of police who was never authorised. S. 5A is mandatory and not directory and an investigation conducted in violation thereof is illegal. Even if however there was irregularity in the investigation and S. 5A was not complied with in substance, the trials could not be held to be illegal unless it was shown that miscarriage of justice had been caused on account of the illegal investigation. There was no miscarriage of justice in these cases at all due to the irregular investigation. As a matter of fact on the alternative case put forward by the accused the substance of the prosecution case was practically admitted by him and he merely pleaded certain mitigating circumstances. No objection was taken at

the trial when it began and it was allowed to come to an end.

846] In view of above the investigation of offence by State police in virtue of Section 37 of UAPA and filing of charge-sheet by Sub Divisional Police Officer (P.W.21) P.W.11 Suhas Bawche and by non-compliance of mandatory provisions of Section 6(1) of the National Investigation Agency Act, 2008, the contention of the learned Advocate Shri Gadling for the accused to vitiate the trial has no force.

**Argument of Advocate Shri.Gadling for the accused on Sec.24, 25
of UAPA**

847] The learned Advocate Shri Gadling for the accused further submitted that according to the prosecution from the possession of accused no.3 Hem Mishra 16 GB Memory-Card was seized and thereafter Investigating Officer P.W.11 Suhas Bawche had obtained search warrant from the Magistrate P.W.12 Nileshwar Vyas for the house search of accused no.6 Saibaba and from the house search of accused no.6 Saibaba several electronic devices like CDs, DVDs, pen-drives, hard-discs were seized. He submitted that as per provisions of Section 24A of UAPA which has been amended by UAPA in the year 2013 the word, “any property” is inserted in the heading of the Chapter V where any property which form proceeds of terrorism and intended to be used for terrorism can not be seized without the permission of Director General of Police and seizure has to be informed within 48 hours to the Designated Authority.

848] He submitted that on perusal of record and evidence it is clear that seizure of the property alleged to be seized from the accused no.3 Hem Mishra and no.6 Saibaba is not informed within 48 hours to the Designated Authority. He invited attention of the Court to the evidence of P.W.11 Suhas Bawche who in his cross-examination admitted that he has not reported seizure of the property within 48 hours to Designated authority and explanation given by him is that he thought that the articles seized were not explosive substance but these were ordinary articles and hence he did not report seizure to his superior authority. He submitted that even if for the sake of argument seizure of 16 GB memory-card seized from the possession of accused no.3 Hem Mishra was surprise but the house search of accused no.6 Saibaba was preplanned, that is, it was taken after taking the search warrant from the Magistrate P.W.12 Nileshwar Vyas. He submitted that Investigating Officer P.W.11 Suhas Bawche wanted to plant said property i.e. CDs, DVDs, pen-drives, hard-discs to show the seizure of the same from the house search of accused no.6 Saibaba and hence he has not followed the mandatory provisions of Section 24 and 25 of UAPA and as such serious prejudice has been caused to the accused. On above two grounds prosecution launched against the accused has to be dropped.

Conclusion

849] In order to decide this controversy it is necessary to consider the provisions of Chapter V and Section 25 of UAPA which are reproduced as under :-

Chapter V

Forfeiture of Proceeds of Terrorism [or any Property Intended to be Used For Terrorism]

Section 25 of UAPA - Powers of investigating officer and Designated Authority and appeal against order of Designated Authority. —

(1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places

it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism; or

(b) it forms the whole or part of the resources of a terrorist organisation:

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation .—

For the purposes of this sub-section, “cash” means—

(a) coins or notes in any currency;

(b) postal orders;

(c) traveller's cheques;

(ca) credit or debit cards or cards that serve a similar purpose;

(d) banker's drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

850] On going through the above provisions, it is clear that the seized property should be proceeds of terrorism or such property which is intended to be used for terrorism. On going through the provisions of Section 25 of UAPA it reveals that the word “property” is used sometime with respect to cash, currency note, cheques, banker's drafts. This means the property which is intended to be used for terrorism in view of Section 25(5)(a) having some value in money then only provisions of Section 25 of UAPA got attracted which could be used for terrorism and with the help of this the terrorist act would be done. In the present case, the property seized is 16 GB memory-card, newspapers, railway platform tickets, umbrella, CDs, DVDs, pen-drives, hard-discs etc. which can not be considered as a property which would be proceeds of terrorism or any property intended to be used for terrorism. Hence, the contention of the learned Advocate Shri Gadling for the accused that provisions of Section 25 are applicable in this case have no force and cannot be taken into consideration and the said property like 16 GB memory-card, CDs, DVDs, pen-drives, hard-discs etc. can not be considered as a property proceeds of terrorism and property intended to be used for terrorism. These electronic gadgets were used by the members of banned organization CPI (Maoist and RDF) as a mode of communication between them and these electronic gadgets cannot be consider as a proceeds of terrorism.

Arguments of Adv.Shri Gadling for the accused

on Sec.43, 43-A, 43-B & UAPA.

851] The learned Advocate Shri Gadling for the accused

vehemently argued that the mandatory provisions of Section 43, 43A and 43B of UAPA have not been followed and there is an illegality in carrying out the investigation and that itself vitiates the trial. He submitted that the accused no.1 Mahesh, no.2 Pandu and no.3 Hem Mishra were arrested by PSI Atul Avhad (PW.6) and FIR was registered by station diary incharge of Police Station, Aheri ASI Narendra Dube (PW.15). The personal search of the accused no.1 Mahesh, no.2 Pandu and no.3 Hem Mishra was taken by Police Inspector Anil Badgujar (PW.10) who is not a Police Officer in the rank of Deputy Superintendent of Police or equivalent of his rank. It was argued that mandatory provisions of Section 43, 43A and 43B of UAPA have not been complied and on this point itself accused are entitled for acquittal.

Conclusion

852] In the present case from the evidence of PSI Atul Avhad (PW.6), PI Anil Badgujar (PW.10), ASI Narendra Dubey (PW.15) and panch witness PW.1 Santosh Bawne it reveals that accused no.1 Mahesh, no.2 Pandu and no.3 Hem Mishra were found in suspicious circumstances at secluded place near Aheri bus stand and on inquiry with them by Police Officer PSI Atul Avhad (PW.6) they gave unsatisfactory answers hence they were arrested and they were taken to Police Station, Aheri and their personal search was taken in presence of panch witness Santosh Bawne (PW.1) and from the possession of accused no.1 Mahesh, incriminating articles i.e. three naxal pamphlets (Arts.139 to 141), platform ticket of Ballarsha railway-station dated 28.5.2013 were found and from the possession

of accused no.2 Pandu, incriminating articles platform ticket of Ballarsha railway-station, newspaper and umbrella were found and from the possession of accused no.3 Hem Mishra incriminating articles 16 GB memory-card of Sandisc company, railway-ticket from Delhi to Ballarsha, Sahara newspaper were found. From the evidence of PI Anil Badgujar (P.W.10) it reveals that after that as the offence is falling under UAPA the investigation was handed-over to Deputy Superintendent of Police P.W.11 Suhas Bawche. In order to deal with the controversy posed by defence counsel Shri Gadling, it is necessary to have look on the provisions of Section 43, 43A and 43B of UAPA. Section 43, 43A and 43B are reproduced as under :-

Sec.43] *Officers competent to investigate offences under Chapters IV and VI Notwithstanding anything contained in the Code, no police officer,*

(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946, (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank, shall investigate any offence punishable under Chapter IV or Chapter VI.

43A. Power to arrest, search, etc. - *Any officer of the Designated Authority empowered in this behalf,*

by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.]

43B. Procedure of arrest, seizure, etc -

(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer in charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.]

853] On perusal of above provisions it reveals that under Section 43 of UAPA, Deputy Superintendent of Police or a Police Officer of equivalent rank is designated as competent person to investigate offence under UAPA.

854] On perusal of Sections 43A and 43B which were introduced by way of amendment to the UAPA w.e.f. 31.12.2008 any officer of the designated authority empowered in that behalf by general or special order of the Central Government and State Government were declared to be competent person to investigate, arrest and make search and seizure in the case.

Under Section 2(d) the definition of Designated Authority is given which is reproduced as under :-

Section-2 (d) “Designated Authority means such officer of the central government not below the rank of joint Secretary to that government, or such officer of the state government not below the rank of secretary to that government, as the case may be, as may be specified by the central government or the state government, by notification published in the *official gazette*.

855] The provisions of Section 43A and 43B are different from Section 43 where Deputy Superintendent of Police is Designated Authority as a competent person to investigate offence under UAPA. The facts in the case in hand are that in the month of August 2013, API Atul Avhad (P.W.6) attached to Special Branch, Gadchiroli got secret information that accused no.1 Mahesh and no.2 Pandu were working for prohibited banned organization CPI (Maoist), hence they started keeping watch on their activities and on 22.8.2013 accused no.1 Mahesh, no.2 Pandu alongwith accused no.3 Hem Mishra were found in suspicious circumstances at secluded place near bus stand, Aheri hence API Atul Avhad (P.W.6) arrested them and they were

taken to Police Station, Aheri and in presence of panch witness P.W.1 Santosh Bawne and PI Anil Badgujar (P.W.10) personal search of each accused was taken and from their personal search incriminating articles were seized under panchanama (Exh.137) and FIR was registered at Aheri Police Station by PI P.W.10 Anil Badgujar and thereafter further investigation was handed-over to Investigating Officer P.W.11 Deputy Superintendent of Police Suhas Bawche who is empowered to investigate the offence under UAPA by virtue of provisions of Section 43 of UAPA. Hence, merely because the offence was registered by Police Inspector P.W.10 Anil Badgujar and he took personal search of accused nos.1 Mahesh Tirki, no.2 Pandu Narote and no.3 Hem Mishra and prepared panchanama Exh.137 that is not a ground to vitiate the trial in this case. At this stage, it is necessary to consider the ratio laid down by **Andhra Pradesh High Court** in the judgment of **Akula Bhoomaiah .v. State of A.P. reported in 2013 CRI.L.J. 1198** in which it is held that -

(A) Unlawful Activities (Prevention) Act (37 of 1967), S.43 – Charges of supporting terrorist organization – Registration of crime by Inspector of Police – Validity – Plea raised by accused persons that officer of rank of A.C.P. was prescribed for purposes of investigation by virtue of S. 43 – Not tenable – Crime was only detected and reported by Inspector – No further investigation was taken up by Inspector – Thus, registration of crime did not offend S. 43 of Act. (Para 4)

856] Further, in view of the judgment of Apex Court in the judgment of **Munnalal vs. State of U.P. reported in 1964 Supreme Court 28** cited supra the trial is not vitiated if some part of the investigation was not conducted by officer of rank of SDPO as

envisaged under Section 43 of UAPA.

857] It is to be noted that by virtue of provision of Sec.43-C of UAPA, Deputy Superintendent of Police is competent to investigate any offence punishable under chapter IV and VI of UAPA. At this juncture, it is necessary to consider the observation of full Bench of Patna High Court in the case of **Bahadur Kora V.State of Bihar, reported in 2015, CRI.L.J.2134**, para 46-B of this judgment is reproduced as under -

46-B - We therefore hold that the cases even where offences punishable under the provisions of U.A.P.A. are alleged shall be tried by the Courts as provided for under the Cr.P.C. and not in accordance with the special procedure, under the Act unless -

- (i) the investigation of such cases is entrusted by the Central Government to the N.I.A. and
- (ii) the N.I.A. transfers the same to the investigating agency of State Government.

858] In view of this the investigation carried out by SDPO Suhas Bawche is legal and proper and this Court has jurisdiction to try the present case for offence under UAPA, as investigation was not interested to N.I.A. by Central Government and N.I.A. did not transfer to State Government. Hence, there is no substance in the defence argument that investigation is not carried out by competent officer and the trial is not vitiated on this point.

859] Now, it is necessary to see whether the prosecution has established the case against accused no.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi, no.5 Vijay Tirki and no.6 Saibaba and what ingredients of the offences punishable under Section 13 of UAPA read with Section 120B of the IPC are attracted against them.

Argument of Shri Gadling Advocate for the accused on Section 13 of UAPA

860] The learned Advocate Shri Gadling for the accused submitted that Section 13 of UAPA deals with the activities carried by unlawful association. Section 3 of UAPA deals with unlawful association and Chapter 6 of UAPA deals with terrorist organisation. There is difference between organisation and association and CPI (Maoist) and RDF are organization and not association and Section 13 of UAPA relates to unlawful association and hence the contention of the defence is that the ingredients of Section 13 of the Act are not attracted and sanction could not have been granted for prosecution under Section 13 of the UAPA. This shows that sanction was granted without application of mind. He submitted that there is no notification to that effect issued by the Central Government u/s 3 of UAPA. Declaring RDF is a an unlawful association.

861] The related provisions are reproduced as under:-

Sec.13 – Punishment for unlawful activities – (1)

Whoever -

- (a) takes part in or commits, or
- (b) advocates, abets, advises or incites the

commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

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

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

2. Definitions.

(1) In this Act, unless the context otherwise requires, :-

(o) "**unlawful activity**", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the

Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India ;

(p) "**unlawful association**" means any association,

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir ;

862] In order to see whether the ingredients of the offence punishable under Section 13 of UAPA are established, it is necessary to scrutinize the documents seized from the possession of accused no.1 Mahesh Tirki i.e. naxal pamphlets (Art. 139 to 141), text documents Arts.A17 to A21 retrieved from 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra and documents, photographs, video-clips found in the

electronic gadgets (Arts.1 to 41) at Page nos.1 to 247 and Arts.147 to 164 of Exh.267 seized from the house search of accused no.6 Saibaba brought on record by the prosecution.

863] From the document at Art.157, it is clear that members of AIPRF and SFPR merged into one organization with a new name Revolutionary Democratic Front (RDF) shall work with a perspective of taking New Democratic Revolutionary politics into the broad masses of the country with the slogans like *Naxalbary Ekhi Rastha; Andhra Bihar, Jharkhand Chattisgah Dikhata hain Rastha* and it shall work among the masses by taking up election boycott in order to project the new democratic political alternative as the only way for the liberation of the country and the people from imperialism and feudalism and RDF supports and strives to integrate with all democratic and anti-imperialist struggles of workers, peasants, women, dalits, nationalities, adivasis, youth etc.

864] The document at page no.17 of Exh.267 having path **Exh.22/recovered folder/folder 003**, titled as “**Review of RDF work since its Formation**”, shows that in the present situation, it is almost impossible to provide any reform or relief to the masses through the parliamentary system. (even if it make reform possible, it should be rejected) Even the process of judiciary is not consistent with the provisions of the Indian Constitution. Hence, from the said document it reveals that there is mention of rejection of parliamentary democracy which shows the disaffection against the Central Government and State Government established by law.

865] On perusal of contents of pamphlet Art.139 issued by Bhakapa (Maowadi), (Gadchiroli Division) shows that there was oppose to the policies of the Government which were being implemented in the Gadchiroli district i.e. implementation of Surjagad Project and Green Hunt Operation shows hatred towards the Government and on perusal of contents of pamphlet Art.141 it reveals that it was published by Bhartachi Communist Party (Maowadi), Maharashtra Rajya Samiti titled as 'राख सांभाळून ठेवा राख झालेल्यांची, संपत्ती नाही लढाई अजुन खैरलांजीची' and at the end it is mentioned that 'खैरलांजी हत्याकांडाच्या सुत्रधारांना पाठीशी घालणारे, पोलिसांद्वारे दलितांच्या हत्या करणारे, दलितांत दहशत पसरविणारे महाराष्ट्र शासन मुर्दाबाद !.. नवजनवादी क्रांति झिंदाबाद' and appealed people to protest Maharashtra Government and accused no.1 Mahesh Tirki found circulating the information to the underground naxals and found inciting people and abetting the people for violence by spreading disaffection against the Government.

866] In video-clip having path **Exh.3/films/s1/RDF/3/VIDEO_TS/VTS_01_3**, in the hard-disc seized from the house search of accused no.6 Saibaba it is seen that the dignitaries from different parts including accused no.6 G.N. Saibaba are seen on dais and speaking about Telangana and giving a call to give blood for creation of Telangana. From this video it is clear that accused no.6 Saibaba was inciting the people to give blood for creation of Telangana and this shows that they are instigating the people to fight and to wage war against the Government showing disaffection and this fact is also clear from the document i.e. Press Release at Page no.210 of Exh.267 titled as "Revolutionary Democratic Front (RDF), the first all India

Conference on 22-23 April, 2012 held at Hyderabad, Telangana” found in the hard-disc seized from the house search of accused no.6 Saibaba.

867] In video-clip having path **Exh.3/films/s1/RDF/4/ VIDEO _TS/VTS_01_2**, accused no.6 Saibaba is seen in RDF conference saying that the RDF completely reject the parliamentary system and use of parliamentary system and its electoral system and further stated that RDF manifesto clearly establishes that this organization thinks that naxalvadi change the face of the politics of this country, the politics of Indians of continent will remain the same after naxalbari uprising happened, so naxalvadi ek hi raasta, naxalvadi is only way is the central slogan as per the RDF and other statements regarding naxalbari. Contents of this letter shows that accused no.6 Saibaba is not only opposing the Government but supporting for the implementation of RDF manifesto contending therein that naxalbari Ek Hi Rasta and it is clear that RDF has rejected the use of parliamentary system and its electoral system by promoting and propagating communist ideology and accused no.6 Saibaba has taken active part to strengthen the people in the RDF organisation by showing disaffection towards the Government of India.

868] In the video-clip having path **Exh.3/films/s1/ RDF/2/VIDEO_TS/VTS_01_1** accused no.6 Saibaba is seen speaking about the kashmiri peoples' struggle for freedom of Kashmir and gave assurance that RDF is not only supporting the movement but takes active part and their main concern is to liberate the Kashmir from India and further he stated that the struggle for liberation of Kashmir and liberation of RDF are the same.

869] In the video-clip having path **Exh.3/films/s1/RDF / 2/VIDEO_TS/VTS_01_1**, accused no.6 Saibaba was seen on dias and accused no.4 Prashant Rahi was sitting in the audience where one lady was shouting slogans demanding return of Army from Kashmir and for liberation of Kasmir and accused no.4 Prashant Rahi is responding to the slogans.

870] A photograph at page no.36 of Exh.267 taken out from the hard-disc Exh.3 seized from the house search of accused no.6 Saibaba having path **Exh.3/new folder (2)/all metters I/photos/ 11.5.07**, is a poster in which it is written that "Free for Kashmir, Nagalim, Manipur, Assam, Eelum, Palestine".

871] According to defence there is nothing on record to show that the CPI (Maoist) and its frontal orgainzation RDF is banned. However, the Apex Court in the case of **Redaul Husain Khan v. National Investigation Agency reported in 2010(1) SCC 521** wherein it is held that merely because an organization has not been declared as an unlawful association it cannot be said that said organization could not have indulged in terrorist activities. Hence, non-declaration of organization as banned does not fatal to the prosecution.

872] From the above text documents, video-clips, photographs and Arts.139 to 141 seized from possession of accused no.1 Mahesh Tirrki and the principle underlined under the offence of conspiracy accused nos.1 to 6 have committed offence punishable u/s 13 of UAPA read with 120B IPC as accused no.1 Mahesh Tirki and no.6

Saibaba found showing their disaffection towards Government of India and State of Maharashtra.

Argument of Advocate Shri Gadling for the accused on Section 18 of UAPA

873] The learned Advocate Shri Gadling for the accused submitted that even assuming for the sake of argument that some speeches made by accused persons but in pursuance of the said speeches no overt act was done and the said speeches were not made with intention to create disorder or incite the people for violence. Hence, provisions of Section 18 and 20 of UAPA are not applicable in this case. In support of his submission he placed reliance in the case of **Balwant Singh vs. State of Punjab reported in (1995) 3 SCC 214**, wherein it is held that -

A. Penal Code, 1860 – Ss.124-A and 153-A

– Applicability – Raising of certain casual slogans by two individuals a couple of times without any other overt act and without any intention to create disorder or to incite people to violence – People in general not affected by such slogans and they carried on with their normal activities – Held, in facts and circumstances of the case, Ss.124-A or 153-A not attracted.

874] He further placed reliance in the case of **State of Bihar vs. Smt. Shailabala reported in AIR 1952 SC 329** wherein it is held that -

A leaflet, entitled “Sangram” or struggle, was written in high-flown Bengali prose with a large mixture of poetic expressions borrowed at random from the writings of some well-known poets of Bengal. The object of the writing as far as could be gathered from the leaflet was to give a poetic or

idealistic picture of what is meant and connotated by 'struggle' or revolution. The aim and end of 'struggle', as stated in the leaflet, was to wipe out "oppression, injustice or wrong" which is "pervading all over the world from the past to the future", and it was only after all wrongs, injustice and oppression have perished that a new world would be built up.

Held that in the absence of any evidence whatsoever for connecting the leaflet with any agitation or movement at the time it was written in the locality and in the face of the failure of the State Government to prove the attendant circumstances and the actual background of the publication it could not be held that the leaflet fell within the mischief of S.4(1)(a) and that no security order could be passed against the keeper of the press under that Section.

875] Now it is necessary to see whether the prosecution has proved the case against accused for the offence punishable u/s 18 of UAPA. Section 18 of UAPA is reproduced as under :-

876] **Sec.18. Punishment for conspiracy, etc.** - Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

877] The learned Advocate Shri Gadling for the accused has relied on the judgment of **Balwant Singh vs. State of Punjab reported in (1995) 3 SCC 214**, wherein the Apex Court while

dealing with Section 124A of the Indian Penal Code has observed that the casual slogan by individuals without any intention to commit the crime or violent activities would not entail penal consequences u/s 124A of IPC. So far as applicability of the ratio laid down by Honourable Apex Court in the Balwant's case (cited supra) to the present case is concerned, it would be proper to interpret Article 19 of the Constitution of India in its correct perspective. It must be noted that Article 19 of the Constitution of India provides Right to Freedom of Speech and Expression and to form association to only citizens of India and to the Members of registered Political Parties. It is important to note that the preamble and object of Prevention of Unlawful (Activities) Act, 1967 is to put reasonable restrictions on the 'Right to Freedom of Speech and Expression' and to form association and organisation on the terrorist acts and that is why the Central Government has enlisted CPI (Maoist) and its frontal organisation like RDF as terrorist organisation w.e.f. 22.6.2009. If right of freedom guaranteed under Article 19 of the Constitution of India is allowed to be extended to these terrorist organisations then it would defeat the very object of Prevention of Unlawful (Activities) Act, 1967. Hence, accused nos.1 to 6 who are involved in the terrorist activities perpetrated by banned organisation CPI (Maoist) and its frontal organisation RDF can not claim right to freedom of speech and expression and to form association under Article 19 of the Constitution of India, which is available to ordinary citizen of India or members of registered political parties and not to the members of terrorists organization and they cannot claim the said right in the capacity of terrorists organization.

878] At this stage it is necessary to consider the ratio laid down in the judgment of Asit Kumar Sen Gupta -v- State of Chhattisgarh in 2012, Cri.L.J.(NOC) 384 (Chh) : MANU/CG/0622/2011 wherein it is observed that -

Unlawful Activities (Prevention) Act (37 of 1967), Ss. 18, 39(2) –Charge of Sedition – Proof – Accused found exciting and encouraging people to wage war against the Government by armed rebellion – Loads of naxal literature seized from possession of accused – Accused used to invite people to join CPI (ML) People – War and CPI (Maoist) organizations – Conviction of accused for offences charged proper.

879] The facts of the case are that the accused Asit Kumar Sen Gupta is appellant and was charged for the offences punishable under Section under Section 124-A of the IPC; under Sections 8(1), 8(3) & 8(5) of the Chhattisgarh Vishesh Jansuraksha Adhiniyam, 2005 (for short ‘the Act of 2005’) and under Section 18 & 39(2) of the Unlawful Activities (Prevention) Act, 1967 (for short ‘the Act of 1967’) as amended by the Act of 2004.

880] The allegations against the appellant was that he used to The appellant used to visit the people and used to incite and provoke them to join Communist Party of India (Maoist) to bring a Government headed by Maoist by throwing out the present capitalist Government by armed rebellion. He used to brief them about the naxal activities while opposing the Government established by law.

881] The appellant was living in tenant premises and during investigation the house of the appellant was searched and from his house extensive naxal literature in the form of letters written by members of banned organization to their Comrades starting with words “Red Salute”, minutes of meeting, points of debate in meeting, letters by the General Secretary to its comrades, louding of Terrorist/Naxal/Maoist activities in India, the ultimate goal of maoist/Naxal of wresting powers of revolutionary means in India, the ultimate goal of maoist/Naxal of wresting powers of revolutionary means in India were seized. Further computer and CPU were also seized from the house search of the appellant and said computer and CPU were sent to Forensic Laboratory, Hyderabad. From the said computer and CPU belonging to appellant Forensic Laboratory, Hyderabad retrieved data and transcript was available for this. It is necessary to reproduce para no.56 and 57 of this judgment:-

56. In Volume III of the paper books which have been prepared from the material stored in the CPU of the computer belonging to the appellant, minutes of special conference of CPI (ML) People’s War is available. The document contains views of the delegates and formation of new Central Committee. It speaks of military strategy or path of the Indian Revolution which is the path of protracted people’s war i.e. liberating the countryside first through areawise seizure of power, establishing guerrilla zones and base areas and then encircling the cities and finally capturing power throughout the country. The document further declares “It should be pointed

out that destruction of the enemy is the primary object of war and self-preservation the secondary, because only by destroying the enemy in large numbers can one effectively preserve oneself. Therefore attack, the chief means of destroying the enemy, is primary, while defence, a supplementary means of destroying the enemy and a means of self-preservation, is secondary. In actual warfare the chief role is played by defence much of the time and by attack for the rest of the time, but if war is taken as a whole, attack remains primary.” This document is at page 706 of Volume-III of the paper books. At page 716, list of martyrs of the people’s war of Nepal is provided. Elsewhere in the volume, support provided by the CPI (ML) People’s War and MCC from India has been greeted by the banned Nepali Maoist.

57. Volume-V of the paper books is transcript of the material by the Central Forensic Laboratory stored in the CPU found from the possession of the appellant which contains the documents regarding building and development of People’s Guerilla Army in India at page 1102. The press release issued by the CPI (Maoist) on 4-12-2004 is available at page 1138. This press release has been issued by “Ganapati, General Secretary, Central Committee (Provisional) of CPI (Maoist). The name of this Ganapati is found in two other letters which this Court has already

discussed in the preceding part of this judgment. At page 1141 of Volume V of the paper books, the details of meeting of the Joint Central Committee held in September, 2004 is provided and the points of differences for the debate in the forth coming Congress of the CPI (Maoist) have been highlighted. This document is dated 10-10-2005. Elsewhere also, the activities, minutes, points of debate etc. of the meeting of CPI (Maoist), a terrorist organization as also a banned organization are contained in this volume. In most of the documents, the revolutionary path undertaken by the Maoist which are popularly known as Naxalites waging Guerrilla war in the interior forest areas of the State has been appreciated and louded. The appellant claims himself to be a writer and has also published a book namely 'A World to Win', the only issue of which was published probably in the year 2006, though the entire book is conspicuously silent as to the date of publication or the date of printing etc. Neither before nor after this issue, any other issue of the magazine has ever seen the light of the day and this fact is candidly admitted by the appellant in his examination.

882] In view of above evidence available on record, Honourable High Court of Chhatisgarh upheld the conviction of the appellant for the offence punishable under Section punishable under Sections 8(1),

8(3) & 8(5) of the TADA of 2005 and Sections 18 and 39 (2) of the UAPA of 1967.

883] The facts of the present case is that from the possession of accused no.1 MAHESH Tirki naxal pamphlets Arts.139 to 141 were seized, from the possession of accused no.3 Hem Mishra 16 GB memory card containing incriminating text documents Arts.A17 to A21 and Kodak camera alongwith charger alongwith other articles were seized under panchanama Exh.137. From the possession of accused no.4 Prashant Rahi eight pages relating to naxal activities were seized under panchanama Exh.179. From the house search of accused no.6 Saibaba extensive electronic gadgets Arts.1 to 41 CDs, DVDs, pen-drives, hard-discs containing incriminating data in the form of text, video-clips and photographs were seized under panchanama Exh.165. The seized electronic gadgets were sent to CFSI, Mumbai. The CFSI, Mumbai retrieved the data contained in above electronic gadgets and the transcripts in respect of data contained 16 GB memory card are filed on record at Arts.A17 to A21 alongwith CFSI report Exh.266 and transcripts in respect of electronic data Arts.1 to 41 CDs, DVDs, pen-drives, hard-discs and the transcripts in respect of data contained in electronic data Arts.1 to 41 CDs, DVDs, pen-drives, hard-discs are filed on record at Page nos.1 to 247 alongwith CFSI report Exh.267.

884] In order to see whether the ingredients of the offence punishable under Section 18 of UAPA are established, it is necessary to scrutinize the documents seized from the possession of accused no.1 Mahesh Tirki i.e. naxal pamphlets (Art. 139 to 141), text

documents Arts.A17 to A21 retrieved from 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra and documents, photographs, video-clips found in the electronic gadgets (Arts.1 to 41) at Page nos.1 to 247 and Arts.147 to 164 of Exh.267 seized from the house search of accused no.6 Saibaba brought on record by the prosecution.

i] **Art.139** is a pamphlet issued by Bhakapa (Maowadi), (Gadchiroli Division) making allegations against the decision of the Government to destroy the life of Aadiwasis and shows that there was oppose to the Government policies implemented in the Gadchiroli district i.e. implementation of Surjagad Project and Green Hunt Operation showing hatred towards the Government.

ii] **Art.140** is a pamphlet issued by Bhumkal Johar Te Dandakaryanya Special Zonal Committee, Bhakapa (Maowadi), titled as, "Amar Shahidirku Lal Salam"

885] Further from the possession of accused no.3 Hem Mishra 16 GB memory card of Sandisk company and Kodak camera alongwith charger was found. The documents retrieved from the 16 GB memory card are as under :-

886] A document at **Art.A19** retrieved from the 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra is a letter addressed to Dear friends Red Salute by Sahyadri State Committee of Maharashtra CPI (Maoist) titled as –

Oppose the Government's ongoing war against the people of Garhchiroli district. In the said document detail history alongwith date and time regarding killing of around 17 naxals in encounter by Gadchiroli police is given as under

1] On 4.4.2013 five maoists were killed near Batpar village.

2] On 20.1.2013 police killed six maoists namely Shankar Lakda, a member of Divisional Committee, Mohan Kowase, Acm, Vinod Kodape Acm, Geeta Usendi, Platoon Deputy Commander, Juru Mattami and Raju Gavde at Govindgaon village.

3] On 12.4.2013 at village Sindesur police encircled and indiscriminately fired on a jan sabha (public meeting) killing 6 people namely Sukhdev, Varlu Gave and Kalidas Duru Hidko and Comrade Kailash a member of Tippagarh area committee was killed when he came down to save the people.

887] Further around 35 incidents of beating of naxals/members of CPI (Maoist) at the hands of Gadchiroli police are given. In the said document it is further mentioned that around 10000 police staff alongwith modern weapons like AK47, LMG, SLR are equipped, however, the PLGA on the other hand having old weapons like Bharmar and axe. In the said letter appeal was made to fight against paramilitary forces, commando forces to stop Green Hunt Operation

launched by the Government. Lastly, in the said document it is stated that mass movement and armed struggle both are equally important and are necessary for the revolution.

888] A document at Page nos.119 of Exh.267 is a an interview of accused no.6 Saibaba under the title as “**Maoist strategy in India**” and from the said document it is clear that accused no.6 Saibaba is the **deputy secretary** of the Revolutionary Democratic Front (RDF), a frontal organisation of RDF, an all Indian Federation of revolutionary organizations and in the said interview, accused no.6 Saibaba narrated the strategy of Maoist in India in which he stated that it is a vast movement includes the developed areas. Accused no.6 Saibaba further stated that the Maoists are creatively implementing the Marxist principles to the concrete conditions of India and without armed struggle no resistance can be built in countries like India and the resistance that has been built up in the previous years cannot be retained and the armed actions against the state forces and feudal forces are carried out to protect the movement. From this document it reveals that accused no.6 Saibaba being **Deputy Secretary** of RDF stated about the strategy of CPI (Maoist) about armed struggle which shows the incitement to the people against the Government of India.

889] The document Art.147 having path **Exh23/ALL /Accommodation issues/Letters/ letter to Saibaba** written by one Surendra Mohan to accused no.6 Saibaba in which it is mentioned that he cannot be part of the CPI (Maoist) program, as he never subscribed to violent resistance.

a] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO_TS/VTS_01_2** it is seen that armed naxals are seen coming for gathering for function in jungle and greeting each other and many red banners are seen and on one banner name of comrade Janki (Anuradha Gandhi) Amar Rahe is seen and further the gathered armed naxals and other peoples shouted the slogans as “Bharat ki Communist Party Maowadi Zindabad,Bharat ki Nav Janwadi Kranti Zindabad” and the video of killing of police persons by armed naxals is seen.

b] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO_TS/VTS_01_3** it is seen that armed naxals are seen taking training and exercising in jungle and background sound of CPI (Maoist) party spokesperson Aazad played and he states about the CPI (Maoist) armed strength and their tactics and further the interviews of one naxal about the Kudru ambush and CPI (Maoist) promotional video is seen how the ambush on police party is executed.

g] In the video-clip having path **Exh.3/films/ S1/RDF/1/video_TS, VTS_01_1** it is clear that accused no.6 Saibaba is seen taking part and others are singing song on death of Shankar and singing slogans Lal Salam Lal Salam. Slogan “Lal Salam” is used by naxals and members of banned

organisation RDF and hence it is clear that accused no.6 is a member of banned organisation CPI (Maoist) and its frontal organisation RDF and inciting the people with slogans Lal Salam Lal Salam.

h] In video-clip having path **Exh.3/films/s1 /RDF/1/VIDEO_ TS/VTS_01_1**, it is seen that some gents and ladies raised the slogans as “Shahidonko Lal Salam, Navjanwadi Kranti Zindabad, Ek Hi Rasta Ek Hi Rasta Naxalbari Ek Hi Rasta.” The slogan “Naxalbari Ek Hi Rasta” raised in this video is resolved as a slogan of RDF in Art.157 titled as “Joint Meeting of AIPRF and SFPR” written by Rajkishore Secretary of Adhoc Executive Committee Revolutionary Democratic Front (RDF) on 20th May 2005.

i] In video-clip having path **Exh.3/films/s1 /RDF/2/VIDEO_ TS /VTS_01_1**, it is clear that accused no.6 Saibaba is seen speaking about the Kashmiri peoples struggle for freedom and gave assurance that RDF is not only supporting the movement but takes active part and their main concern is to liberate the Kashmir and further accused no.6 Saibaba have stated that the struggle for liberation of Kashmir and our liberation are the same.

890] On viewing above video-clips it is clear that the armed naxals of CPI (Maoist) were participating in singing the songs while dancing and some of them were armed with guns alongwith banners of RDF, a frontal organization of CPI (Maoist) in their hands and they were attending the meetings and found addressing people to join the organization and were inciting the public at large to wage war against the Government established by law through the path of RDF.

891] As discussed above the facts of the Asit Kumar Sen Gupta -v- State of Chhattisgarh reported in MANU/ CG/ 0622/2011 and present case are identical. For sake of convenience the similarity in Asit's case and present case is reproduced in tabular form as under :-

Facts in Asit's case	Facts in the present case
In the case the appellant was found in possession of CPU containing incriminating electronic data and it was sent for forensic examination to CFL, Hyderabad and the transcript of the materials stored in the CPU was available on record.	In the present case the electronic gadgets i.e. 16 GB memory-card of Sandisk company seized from possession of accused no.3 Hem Mishra and Arts.1 to 41 CDs, DVDs, pen-drives, hard-discs were seized from the house search of accused no.6 Saibaba were sent to CFSL, Mumbai and the transcript of the material therein are filed on record at Exhs.266 and 267 and at Art.147 to 264.
In this case Court found that there was enough evidence against the appellant about exciting and encouraging (<u>खूनी कांति / सशस्त्र कांती</u>) i.e. armed rebellion.	In the present case from Art.A19 of Exh.266 and Page no.19 of Exh.267 it is clear that the word armed rebellion was resorted to throw out the Government power and machinery.
The appellant was found to be the	In this case there is sufficient

member of banned organisation CPI (Maoist) as envisaged u/s 35 of UAPA.	evidence against the accused that they are members of banned organisation CPI (Maoist) and its frontal organisation RDF as envisaged u/s 35 of UAPA.
In the case documents relating to naxal leaders/activist exhorting violence and revolution against the Government established by law by means of armed rebellion written by 'red salute' were found.	In this case also the letters (Arts.A17, Art.A19, A.A21 of Exh.266) and documents (Page nos.1, 184 of Exh.267) relating to leaders/activists of CPI (Maoist) and RDF exhorting violence and revolution against the Government established by law by means of 'armed struggle' written and received by 'red salute'.

892] Hence, finding of the document at Art.A19 of Exh.266 found in 16 GB memory-card in possession of accused no.3 Hem Mishra regarding the revolutionary movement against the Government through “Armed struggle” and finding of incriminating documents creating violence in public place and e-mail received by accused no.6 Saibaba from Surendra Mohan (Art.147) contained in Exh. 267 and video-clips found in the hard-discs seized from the house search of accused no.6 Saibaba showing the rejection of parliamentary democracy, finding of three naxal pamphlets (Arts.139 to 141) found in possession of accused no.1 Mahesh Tirki and finding of eight papers of naxal maoist literature alongwith typed written papers of undertrial maoist leader Narayan Sanyal at Art.130A shows that there is incitement to the people for resorting violence and to create public disorder.

Naxals kills police personnels, innocent persons on suspicion of police informer and cause loss, damage to public property.

893] In **Asit Kumar Sen Gupta -v- State of Chhattisgarh** reported in **MANU/CG/0622/2011** in para 63 and 64 and they are reproduced as under :

“The sympathizers of Naxal/Maoist’s violence are providing assistance which ultimately strengthens and promotes violence wherein public property is destroyed and innocent citizens are killed. True it is that the desired developmental activity has not taken place in tribal areas, but at the same time wherever any large project is contemplated by the Central Government or the Provincial Government, it is attacked by the groups on the ground that it will finish the identity and culture of tribals or it will have the effect of causing harm to flora and fauna of the area and at the same time, the Government established by law through democratic means at both levels are being criticized that no development is taking place in tribal or naxal affected areas. It is common knowledge that the Naxalites are not allowing the roads and bridges to be built in remote areas probably with a design that it will help in movement of security forces. Even if present is a criminal appeal, yet while testing validity of the appellant’s conviction, consideration has to be in the prevailing condition and context and not merely in abstract terms”.

The evidence available on record clearly suggest that the appellant was a member of CPI (Maoist) and/or CPI (ML) People’s War and that is why he was in possession of minutes of the meetings, debates, letters written by the General Secretary etc. and was inviting the witnesses to join the said organization and was also inciting them to wage armed rebellion against the Government established by law. Such act of the appellant is clearly punishable under Sections 8 (1), 8(3) & 8(5) of the Act of 2005 and Sections 18 and 39 (2) of the Act of 1967.

894] In the present case from the possession of accused no.1 Mahesh Tirki, naxal pamphlet at Art.139 was seized in which the reference of Surjagad Project was mentioned in the deep forest area. The said project is located in forest area and naxals are opposing the development in that area because movement of security forces will start there and this is also evident from Article 139. Further, recently on 23.12.2016 FIR was lodged at Etapalli Police Station at crime no.35/2016 against the absconding naxals, the copy of which is filed on record alongwith the list of document (Exh.472) at Sr.no.3 and in that incident the naxals burnt seventy-six trucks at village Hedri which were deployed for carrying stones (iron material) for the implementation of the said project and protest was made to prevent the Government from making implementation of that project and this is probably because of activities of naxals. If the project was started then that would help in movement of security forces in that Green Hunt Project and the existence of naxals would be in danger.

895] Further in the document at page no.175 of Exh.267 found in the hard-discs seized from the house search of accused no.6 Saibaba shows that there was protest for “The Raoghat Railway Line and the Mining Project which would derail the very existence of Bastariya People” and people of Bastar opposing the project because of destroy of forest against industrialization. The evidence available on record shows that the accused nos.1 to 6 are the members of banned organization CPI (Maoist) and its frontal organization RDF and they are supporting the ideology of naxals. This shows that conspiracy in between accused nos.1 to 6 is still continued.

896] From the confessional statements of accused no.1 Mahesh Tirki and accused no.2 Pandu Narote at Exhs.280 and 286 it is clear that the armed naxals used to come to their village in naxal uniform and the naxals told them to bring Radio, Torch, Polythene bag from market and they used to purchase the articles from the shop and used to provide the same to naxal. They further stated that they had been to meet under ground lady naxal at Korgatta where they saw Narmadakka and other 15 to 20 naxlites armed with guns and at the instance of lady naxal Narmadakka two to three times they had been to Ballarsha railway-station to receive the members of banned organization and brought them to forest area of Gadchiroli district to meet the underground naxals.

897] A document at **Art.A19** retrieved from the 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra is a letter addressed to Dear friends Red Salute by Sahyadri State Committee of Maharashtra CPI (Maoist) titled as – **Oppose the Government's ongoing war against the people of**

Garhchiroli district. In the said document detail history alongwith date and time regarding killing of around 17 naxals in encounter by Gadchiroli police is given as under :-

1] On 4.4.2013 five maoists were killed near Batpar village.

2] On 20.1.2013 police killed six maoists namely Shankar Lakda, a member of Divisional Committee, Mohan Kowase, Acm, Vinod Kodape Acm, Geeta Usendi, Platoon Deputy Commander, Juru Mattami and Raju Gavde at Govindgaon village.

3] On 12.4.2013 at village Sindesur police encircled and indiscriminately fired on a jan sabha (public meeting) killing 6 people namely Sukhdev, Varlu Gave and Kalidas Duru Hidko and Comrade Kailash a member of Tippagarh area committee was killed when he came down to save the people.

898] Further around 35 incidents of beating of naxals/members of CPI (Maoist) at the hands of Gadchiroli police are given. In the said document it is further mentioned that around 10000 police staff alongwith modern weapons like AK47, LMG, SLR are equipped, however, the PLGA on the other hand having old weapons like Bharmar and axe. In the said letter appeal was made to fight against paramilitary forces, commando forces to stop Green Hunt Operation launched by the Government. Lastly, in the said document it is stated that mass movement and armed struggle both are equally important and are necessary for the revolution.

899] From this letter it can be inferred that the incitement were given to the Comrades of CPI (Maoist) to resist the action of police by armed struggle. This shows that whatever the incident which took place in Gadchiroli district after the amendment of 31.12.2008 the members of CPI (Maoist) and its frontal organization RDF and naxals are responsible for the same.

900] Further the slogan of RDF is “Naxalbari Ek Hi Rasta” which is reflected in the document which is a draft manifesto at **Art.159** retrieved from the hard-disc seized from house search of

accused no.6 Saibaba having path **ex.4/31.12.12/RDFConference material/ DRAFT MANIFESTO OF RDF amended by conference** titled as “**Draft Manifesto of Revolutionary Democratic Front (RDF)**” and further in this document it is mentioned that the RDF upholds the path of **Naxalbari** i.e. the path of Andhra, Jharkhand, Bihar and Dandakaranya.

901] The document at page no.183 of Exh.267 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba having path **Ex-4/cy-475-13-Ex-4/c/on Azad** is a Press statement of Communist Party of India (Maoist) Central Committee North Regional Bureau. It is about the red-salutes to Martyrs com. Azad and com. Hem Pandey and suggested to take revenge for the killings of the comrades by the khaki clad (i.e. Police) fascist gangs of AP Government and allegations are made against the Andhra Pradesh Government about killing of those comrades. From this statement it is clear that one Ajay Spokesperson of CPI (Maoist) had written this press statement showing the violence against police.

902] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO_TS/VTS_01_2** it is seen that armed naxals are seen coming for gathering for function in jungle and greeting each other and many red banners are seen and on one banner name of comrade Janki (Anuradha Gandhi) Amar Rahe is seen and further the gathered armed naxals and other peoples shouted the slogans as “Bharat ki Communist Party Maowadi Zindabad,Bharat ki Nav Janwadi Kranti Zindabad” and the video of killing of police persons by armed naxals is seen.

903] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO_TS/VTS_01_3** it is seen that armed naxals are seen taking training of firing in jungle and background sound of CPI (Maoist) party spokesperson Aazad played and he states about the CPI (Maoist) armed strength and their tactics and further the interviews of one naxal about the Kudru ambush and CPI (Maoist) promotional video is seen how the ambush on police party is executed.

904] From the above discussion the accused no.1 Mahesh Tirki accused no.3 Hem no.6 Saibaba possessed naxal literature for the purpose of circulating it to the underground naxals at Gadchiroli district and people of Gadchiroli district with intention to incite the people to resort violence or cause public disorder and their acts clearly falls within the ambit of Section 18 of UAPA. As already observed in earlier part of the judgment that accused nos.1 to 6 hatched conspiracy, the object was to wage war against Government by armed rebellion and in view of observation of Supreme Court in case of Yash Pal Mittal v. State of Punjab, AIR 1977 Supreme Court 2433, accused nos.2 Pandu Narote, no.4 Prashant Rahi and Vijay Tirki are also responsible for the unlawful activities. Hence prosecution has proved that the accused no.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi and no.5 Vijay Tirki are guilty for the offence punishable under Section 18 of UAPA r/w Section 120B of IPC.

Argument of Advocate Shri Gadling for the accused on Sec.20 of UAPA

905] The learned Advocate Shri Gadling for accused submitted that for the application of Section 20 of UAPA it is not sufficient that organisation is to be declared as Terrorist Organisation but it has to be proved by the prosecution that the said organisation is involved in terrorist act. There is no oral or documentary evidence on record to show that the CPI (Maoist) and its frontal organisation RDF is a terrorist organisation and bare reading of Section 20 of UAPA reveals that mere membership of banned organisation is not sufficient unless that organisation is involved in terrorist act as defined under Section 15 of UAPA. He submitted that even assuming for the sake of argument that accused are connected with CPI (Maoist) organisation still prosecution has not adduced any oral or documentary evidence showing that CPI (Maoist) is involved in any sort of terrorist activities. There is absolutely no oral or documentary evidence on record to that effect.

906] He submitted that provisions of UAPA, TADA and POTA are in para-materia and Apex Court in the above cited case observed that TADA Act is very much applicable to decide the case under UAPA. In support of his submission he placed reliance on the case of **Kalpna Rai vs. State reported in (1997) 8 Supreme Court Cases 732** wherein it is observed that -

A. Terrorist and Disruptive Activities (Prevention) Act, 1987 – S.3(5) (as inserted by Act 43 of 1993), S. 3(1), (2) and (3) – Essential requirements of S.3(5) – Expression “terrorist act” in S.3(5) – Meaning of – Held, includes conspiracy to commit terrorist act or abetment, incitement, etc. of such acts – Acts enumerated in sub-section (3) cannot be delinked from those specified in sub-section (1) – In absence of any

evidence to show that terrorist gang of which accused were members committed any terrorist act after commencement of amended Act 43 of 1993 conviction cannot be sustained.

There are two postulates in sub-section (5). First is that the accused should have been a member of “a terrorists gang” of 'terrorists' organisation” after 23.5.1993. Second is that the said gang or organization should have been involved in terrorist acts subsequent to 23.5.1993. Unless both postulates exist together Section 3(5) cannot be used against any person.

It would be illogical to delink the acts enumerated in sub-section (3) from those specified in sub-section (1) for the purpose of understanding the meaning of “terrorist act” indicated in Section 3(5).

907] He submitted that even assuming for the sake of argument recovery of alleged literature about RDF organization which is alleged to be frontal organization of CPI (Maoist) and activities of accused no.6 Saibaba and accused no.3 Hem Mishra is proved and even assuming that they are the members of banned organization that would not invite any penal consequences. In support of his submission he further placed reliance on the following judgments :-

[i] **Arup Bhuyan v. State of Assam reported in (2011) 3 SCC 377** wherein it is observed that -

A] Constitution of India- Arts. 19(1)(c) & (a) and 21 – Right to form associations and freedom of expression – Scope of – Membership of banned/terrorist organisation – Inference therefrom – Held, mere membership of a banned organisation will

not make a person criminal unless he resorts or incites people to violence or creates public disorder by violence or Incitement to violence – Terrorist and disruptive Activities (Prevention) Act, 1987 – S.3(5) – Unlawful Activities (Prevention) Act, 1967, S.10

[ii] Indra Das v. State of Assam reported in (2011) 3 SCC 380 wherein it is observed that -

B] Constitution of India – Arts. 19(1)(c) & (a) and 21 – Right to form associations and freedom of expression – Scope of – Membership of banned/terrorist organisation – Inference therefrom – Reiterated, mere membership of a banned organisation will not make a person criminal unless he resorts or incites people to violence or creates public disorder by violence or incitement to violence – Hence, S. 3(5), TADA and S. 10, UAPA read --

C] Terrorist and Disruptive Activities (Prevention) Act, 1987 – S.3(5) – Membership of banned/terrorist organisation – Inference – Even assuming that appellant was a member of ULFA, which is banned organisation, there is no evidence to show that he indulged in any of the abovementioned acts or was an active member of the organisation – Hence, his conviction under S.3(5) unsustainable Activities (Prevention) Act, 1967, Ss.10

[iii] State of Kerala v. Raneef reported in (2011) 1 SCC 784 wherein it is observed that -

A] Unlawful Activities (Prevention) Act, 1967 – Ss. 10, 3 and 13 – Membership of alleged illegal organisation (not yet declared unlawful under S.3 nor otherwise found to be so)- Effect of -----

[B] Jyoti Babasaheb Chorge -v- State of

Maharashtra, reported in 2013(4) Mh.L.J. (Cri.)

4481 wherein it is held by **Bombay High Court** that -

(a) **Criminal Procedure Code (2 of 1974), S. 439 and Unlawful Activities (Prevention) Act (37 of 1967), S. 38** – Bail – Applicant was allegedly found in possession of literature about banned organization “Maoist” No ban was imposed on said literature – No material to establish nexus between applicants and workers of banned organization involved in violent activities – Applicants not involved in any violent or unlawful activities – No prima facie case against applicants even in respect of offence punishable under Act, 1967 – Applicants entitled for bail – Application allowed. (2011) 3 SCC 377, 395 US 444 (1969), 201 (2) Mh.L.J. (Cri.) (S.C.) 12, 367 US 203 and (2011) 2 SCC 380, Ref. (Paras 33, 34, 36 and 38).

Conclusion

908] The first ground on which the defence made submission that the prosecution has not proved the fact that CPI (Maoist) or its frontal organisation RDF is a terrorist organisation and accused are members of the same and such organisation is involved in terrorist act as defined u/s 15 of UAPA.

909] According to defence for attracting penal consequences under Section 20 of UAPA it is not sufficient that organisation is to be declared as Terrorist Organisation but it has to be proved by the prosecution that the said organisation is involved in terrorist act as defined u/s 15 of UAPA. There is no oral or documentary evidence on record to show that the CPI (Maoist) and its frontal organisation RDF

are a terrorist organisation and bare reading of Section 20 of UAPA reveals that mere membership of banned organisation is not sufficient unless it is proved that organisation is involved in terrorist act as defined under Section 15 of UAPA. He submitted that even assuming for the sake of argument that accused are connected with CPI (Maoist) organisation still prosecution has not adduced any oral or documentary evidence showing that CPI (Maoist) and RDF is involved in any sort of terrorist activities.

910] He submitted that amendment to Section 15 and 16 of UAPA were effected in the year 2008, the prosecution has to prove that after amendment in the year 2008 the accused are the members of banned terrorist organisation and it is not sufficient to prove that sometimes in past accused were members of banned organisation i.e. before the amendment in the year 2008.

911] So far as law relating to applicability of provisions of Section 2(k), 15, 16 and 20 of the UAPA to the present case is concerned, it is necessary to have look on the provisions of Section 2(k), 15, 16 and 20 of UAPA.

Section 2(k) - "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

Sec.15 of UAPA defined Terrorist act.- (1)
Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or

sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,-

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

- (i) death of, or injuries to, any person or persons; or
- (ii) loss of, or damage to, or destruction of, property;

The provisions of Section 15 and 16 came into force with effect from 31.12.2008. The provisions of Section 3(5) of TADA 1993 is para materia with Section 20 of UAPA 1967.

Sec.16 - Punishment for terrorist act.- (1)

Whoever commits a terrorist act shall-

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Sec.20 of UAPA - Punishment for being member of

terrorist gang or organization. - Any person who is a member of a terrorist gang or a terrorist organization, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

The said amended came into force w.e.f. 31.12.2008. Provisions of Section 3(5) of TADA 1993 is para-materia with Section 20 of UAPA 1967. Section 3(5) of TADA 1993 and Section 20 of UAPA 1967 are reproduced as under :-

Sec.3(5) of TADA - Any person who is a member of a terrorists gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

912] On going through the above provisions of Section 20 of UAPA it is clear that the ingredients of Section 3(5) of TADA and ingredients of Section 20 of UAPA are the same. While interpreting Section 3(5) of TADA the Apex Court in the case of **Kalp Nath Rai vs. State reported in (1997) 8 Supreme Court Cases 732** observed that

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A. Terrorist and Disruptive Activities (Prevention) Act, 1987 – S.3(5) (as inserted by Act 43 of 1993), S. 3(1), (2) and (3) – Essential requirements of S.3(5) – Expression “terrorist act” in S.3(5) – Meaning of – Held, includes conspiracy to

commit terrorist act or abetment, incitement, etc. of such acts – Acts enumerated in sub-section (3) cannot be delinked from those specified in sub-section (1) – In absence of any evidence to show that terrorist gang of which accused were members committed any terrorist act after commencement of amended Act 43 of 1993 conviction cannot be sustained.

There are two postulates in sub-section (5). First is that the accused should have been a member of “a terrorists gang” of 'terrorists' organisation” after 23.5.1993. Second is that the said gang or organization **should have been** involved in terrorist acts subsequent to 23.5.1993. Unless both postulates exist together Section 3(5) cannot be used against any person.

It would be illogical to delink the acts enumerated in sub-section (3) from those specified in sub-section (1) for the purpose of understanding the meaning of “terrorist act” indicated in Section 3(5).

913] While discussing the role of accused No.1 to 6 in the earlier part of judgment it is found that accused No.1 to 6 are active member of CPI (Maoist) and its frontal organization RDF and it is further discussed in earlier part of the judgment that RDF is a frontal organization of CPI (Maoist). The Central Government by notification No.954, dated 22.06.2009 declared CPI (Maoist) and all his frontal organization as a terrorist organization.

914] Now it is necessary to consider whether the CPI (Maoist) and its frontal organisation RDF is responsible for terrorist acts i.e. killing of innocent persons on the suspicion of police informers, police personnel and causing loss to public property by bomb explosion which had taken place in Gadchiroli district which took place after

amendment to Section 15 of UAPA i.e. from 31.12.2008.

915] It is important to note that for application of Section 15 of UAPA the word, “person who commits the act” defined there is commission of act is required by the person as contemplated u/s 15 of UAPA for which punishment is provided u/s 16 of UAPA.

916] However, u/s 20 of UAPA it is not necessary that a person should commit an offence but the person should be member of terrorist gang or organization which is involved in terrorist act. The requirement of Section 20 of UAPA organization should have been involved in the terrorist act and not the person. In view of judgment of Apex Court in case of **Kalp Nath Rai vs. State reported in (1997) 8 Supreme Court Cases 732** cited supra, for the incident which took place after 31.12.2008 and if it is established that the terrorist organization is involved behind the said incidents and the person is a member of such banned terrorist organization then he would be liable for punishment u/s 20 of UAPA.

917] In order to see whether the ingredients of the offence punishable under Section 20 of UAPA are established, it is necessary to scrutinize the documents seized from the possession of accused no.1 Mahesh Tirki i.e. naxal pamphlets (Art. 139 to 141), text documents Arts.A17 to A21 retrieved from 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra and documents, photographs, video-clips found in the electronic gadgets (Arts.1 to 41) at Page nos.1 to 247 of Exh.267 and Arts.147 to 164 seized from the house search of accused no.6 Saibaba.

918] From the confessional statements of accused no.1 Mahesh Tirki and accused no.2 Pandu Narote at Exhs.280 and 286 it is clear that the armed naxals used to come to their village in naxal uniform and the naxals told them to bring Radio, Torch, Polythene bag from market and they used to purchase the articles from the shop and used to provide the same to naxal. They further stated that they had been to meet under ground lady naxal at Korgatta where they saw Narmadakka and other 15 to 20 naxlites armed with guns and at the instance of lady naxal Narmadakka two to three times they had been to Ballarsha railway-station to receive the members of banned organization and brought them to forest area of Gadchiroli district to meet the underground naxals.

919] A document at **Art.A19** retrieved from the 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra is a letter addressed to Dear friends Red Salute by Sahyadri State Committee of Maharashtra CPI (Maoist) titled as – **Oppose the Government's ongoing war against the people of Garhchiroli district.** In the said document detail history alongwith date and time regarding killing of around 17 naxals in encounter by Gadchiroli police is given as under :-

- 1] On 4.4.2013 five maoists were killed near Batpar village.
- 2] On 20.1.2013 police killed six maoists namely Shankar Lakda, a member of Divisional Committee, Mohan Kowase, Acm, Vinod Kodape Acm, Geeta Usendi, Platoon Deputy Commander, Juru Mattami and Raju Gavde at Govindgaon village.

3] On 12.4.2013 at village Sindesur police encircled and indiscriminately fired on a jan sabha (public meeting) killing 6 people namely Sukhdev, Varlu Gave and Kalidas Duru Hidko and Comrade Kailash a member of Tippagarh area committee was killed when he came down to save the people.

920] Further around 35 incidents of beating of naxals/members of CPI (Maoist) at the hands of Gadchiroli police are given. In the said document it is further mentioned that around 10000 police staff alongwith modern weapons like AK47, LMG, SLR are equipped, however, the PLGA on the other hand having old weapons like Bharmar and axe. In the said letter appeal was made to fight against paramilitary forces, commando forces to stop Green Hunt Operation launched by the Government. *Lastly, in the said document it is stated that mass movement and armed struggle both are equally important and are necessary for the revolution.*

921] From this letter it can be inferred that the incitement were given to the Comrades of CPI (Maoist) to resist the action of police by armed struggle. This shows that whatever the incident which took place in Gadchiroli district after the amendment of 31.12.2008 the members of CPI (Maoist) and its frontal organization RDF and naxals are responsible.

922] The infamous slogan of RDF is “**Naxalbari Ek Hi Rasta**” which is reflected in the document which is a draft manifesto at **Art.159** retrieved from the hard-disc seized from house search of accused no.6 Saibaba having path **ex.4/31.12.12/RDFConference**

material/ DRAFT MANIFESTO OF RDF amended by conference titled as “**Draft Manifesto of Revolutionary Democratic Front (RDF)**” and further in this document it is mentioned that the RDF upholds the path of **Naxalbari** i.e. the path of Andhra, Jharkhand, Bihar and Dandakaranya.

923] A document at Page no.97 of Exh.267 titled as Communist Party of India (Maoist) by Gudsa Usendi, Spokesperson, Dandakaranya Special Zonal Committee, CPI (Maoist) headed by “**Observe Martyrs Week From July 28 to August 3! Red Homage to Our Party’s Fore-founders and Beloved Teachers Comrades Charu Mazumdar and Kanhai Chatterjee!**” and further it is mentioned in the document that - By virtue of these sacrifices, revolutionary movement has been advancing raising the slogan ‘**Naxalbari Ek Hi Rasta**’. From this document it is clear that the Dandakaranya Special Zonal Committee of CPI (Maoist) a banned organisation made incitement to wage a against the Government and choose a way of naxal with slogan “**Naxalbari Ek Hi Rasta**” and oppose the scheme of Government i.e. “Operation Green Hunt”.

924] A document at Page no.99 of Exh.267 titled as Concept of Revolutionary Mass Organizations (RMOs) reveals that no revolution can advance until and unless the vast masses are mobilized to actively participate on a mass scale in it and not merely stay as passive observers. To do so requires that the party, the people's army and the UF be effectively consolidated while doing the mass work. Building the secret party deep amongst the masses and drawing them into the armed struggle and anti-imperialist, anti-feudal United Front

can alone result in effective wielding the seizure of political power. It further suggests that while people's war has already started in 17 states of India revolutionary mass organizations must emphasize their activities on **strengthening the armed struggles** and building armies while continue their mass movements like processions, Demonstrations, mass meetings, Protest movements, street corner meetings, seminar with intellectuals, cultural functions etc. From this document it is clear that CPI (Maoist) is conducting armed struggle and attempting to commit offences under terrorist act.

925] In interview at **page no.119 of Exh.267** taken out from the hard-disc Exh.4 having path **Exh.4/OLD EHD/OLD/All 12345** titled as **“Maoist Strategy in India”** with Sub title **“An interview with G.N.Saibaba”**, accused no.6 Saibaba stated that he is the **deputy secretary** of the Revolutionary Democratic Front, an all Indian Federation of revolutionary organizations and further stated that the Maoist are following the new democratic method proved by China under the leadership of Mao that the revolutionary movements must put priority on working in the areas where the state is weak. The Maoists work in the backward regions to smash the local government and establish people's power. They build bases in these backward areas. This doesn't mean that they don't also work in the cities.

926] It is further mentioned in the interview in Note 2 that the following is a closer description of the communist movement in India today according to accused no.6 **Saibaba** and there are three different main streams of the revolutionary movement like (a) CPNmaoist – peoples war (b) Cpi(ml) **naxalbari**, ct and others are also Maoist and

close to the Maoists. Also CPRCML, Red Flag, Communist Revolutionary Platform, CCICP(ml), CPI(ml)central team, CPM (ml)new democracy.

927] Further, from the letter Article 147 having path **Exh23/ALLL/ Accommodation issues/Letters/ letter to Saibaba** retrieved from the hard-disc seized from the house search of accused no.6 Saibaba which is a letter addressed to accused no.6 Saibaba by Surendra Mohan in which it is mentioned that said Surendra Mohan cannot be part of the CPI (Maoist) program, as he never subscribed to violent resistance and he was taking initiative for peace which between the Government and the Maoists and he was proposing violence on both sides should come to an end. The contents of this letter clearly shows that CPI (Maoist) was promoting the activities of violence and hence said Surendra Mohan was not ready to work with CPI (Maoist).

928] In order to prove the incitement on the part of accused, prosecution relied on following video-clips found in electronic gadgets (Arts.1 to 41) seized from the house search of accused no.6 Saibaba :-

(1) In the video-clip having path **Exh.16/(1) NAXILISTES/ VIDEO_TS/VTS_01_1** it is seen that armed naxals in uniforms are seen walking in jungle and they are campaigning and attending public meeting showing naxal tactics in jungle.

(2) In video-clip having path **Exh.4/OLD**

EHD/OGH/DKMATTERS/Bhoomkalprogramme_2010/Kutul_Maad/kutulbhoo mkal_2010 armed naxals in uniforms along with the villagers are seen gathered in jungle to celebrate the 10th anniversary of Bhoomkal and they are shouting with the slogans as “Lal Salam, Mahan Bhoomkal Zindabad, Mahan Bhoomkal Shahidonko Lal Salam” and further one armed naxal seen addressing to the gathering of around 2000 to 3000 peoples and armed naxals.

(3) In the video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_2010/Vayanar_ EBT/1/DSCN 4236**, armed naxals in uniforms along with the villagers are seen gathered in jungle are shouting with the slogans as “Jantana sarkar ko majbut karo, Dandkaranyako aadhar elakeme badal dalo,Bharat ki communist party maowadi zindabad”.

(4) In the video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_2010/Vayanar_EBT/2/Bhoomakal _ 2010**, it is seen that CPI (Maoist) armed naxals along with the villagers are seen marching in jungle with red coloured banners and flags and some green coloured dressed girls seen dancing and singing on the stage. Further it is seen around 2 to 3 thousand villagers gathering along with armed CPI (Maoist) naxals and one naxal speaks and many red coloured banners and

pictures, naxal martyr monument is seen around there and further it is seen that CPI (Maoist) armed naxals in uniforms are dancing and one naxal seen taking video shooting of the dance.

(5) In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO _TS/VTS_01_2** armed naxals in uniforms are seen coming for gathering for function in jungle and greeting each other also many red banners are seen and on one banner it is seen the name comrade Janki (Anuradha Gandhi) Amar Rahe and further the gathered armed naxals and other peoples shouted the slogans as Bharat ki Communist Party Maowadi Zindabad, Bharat ki Nav Janwadi Kranti Zindabad and encounter by armed naxals in which police persons were killed is seen. Clips of the said video shows that the members of CPI (Maoist) and its frontal organisation RDF are propagating the terrorist act and unlawful activities amongst the people in which police personnels were killed by them and accused no.6 Saibaba has promoted the said unlawful activities to incite or abet the people.

(6) In video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_20 10/Vayanar_EBT/1/DSCN 4236**, armed naxals in uniforms along with the villagers are seen gathered in jungle are shouting with the slogans as Jantana sarkar ko majbut karo, Dandkaranyako aadhar

elakeme badal dalo, Bharat ki communist party maowadi zindabad. Contents of the video-clip shows about strengthening the revolutionary struggle.

929] Further the slogan of RDF is “**Naxalbari Ek Hi Rasta**” which is reflected in the document which is a draft manifesto at **Art.159** retrieved from the hard-disc seized from house search of accused no.6 Saibaba having path **ex.4/31.12.12/RDFConference material/ DRAFT MANIFESTO OF RDF amended by conference** titled as “**Draft Manifesto of Revolutionary Democratic Front (RDF)**” and further in this document it is mentioned that the RDF upholds the path of **Naxalbari** i.e. the path of Andhra, Jharkhand, Bihar and Dandakaranya.

930] The document at page no.183 of Exh.267 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba having path **Ex-4/cy-475-13-Ex-4/c/on Azad** is a Press statement of Communist Party of India (Maoist) Central Committee North Regional Bureau. It is about the red-salutes to Martyrs com. Azad and com. Hem Pandey and suggested to take revenge for the killings of the comrades by the khaki clad (i.e. Police) fascist gangs of AP Government and allegations are made against the Andhra Pradesh Government about killing of those comrades. From this statement it is clear that one Ajay Spokesperson of CPI (Maoist) had written this press statement showing the violence against police. The related details of video-clips have been enumerated as under:-

a] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO_TS/VTS_01_2** it is seen that armed naxals are seen coming for gathering for function in jungle and greeting each other and many red banners are seen and on one banner name of comrade Janki (Anuradha Gandhi) Amar Rahe is seen and further the gathered armed naxals and other peoples shouted the slogans as “Bharat ki Communist Party Maowadi Zindabad, Bharat ki Nav Janwadi Kranti Zindabad” and the video of killing of police persons by armed naxals is seen.

b] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO_TS/VTS_01_3** it is seen that armed naxals are seen taking training of firing in jungle and background sound of CPI (Maoist) party spokesperson Aazad played and he states about the CPI (Maoist) armed strength and their tactics and further the interviews of one naxal about the Kudru ambush and CPI (Maoist) promotional video is seen how the ambush on police party is executed.

931] In the present case from the possession of accused no.1 Mahesh Tirki, naxal pamphlets at Art.139 was seized in which the reference of Surjagad Project is mentioned in the deep forest area. The said project is located in forest area and naxals are opposing the development in that area because movement of security forces will start there and this is also evident from Article 139. Further, recently on 23.12.2016 FIR was lodged at Etapalli Police Station at crime

no.35/2016 against the absconding naxals, the copy of which is filed on record alongwith list of document at Exh.472 at Sr.no.3 and in that incident the naxals burnt seventy-six trucks at village Hedri which were deployed for carrying stones (iron material) for the implementation of the said project and protest was made to prevent the Government from making implementation of that project and this is probably because of activities of naxals. If the project was started then that would have been helped in movement of security forces in that Green Hunt Project and the existence of naxals would be in danger.

932] Further in the document at page no.175 of Exh.267 found in the hard-discs seized from the house search of accused no.6 Saibaba shows the protest of “The Raoghat Railway Line and the Mining Project which would derail the very existence of Bastariya People” and people of Bastar opposing the project because of destroy of forest against industrialization. The evidence available on record shows that the accused nos.1 to 6 are the members of banned organization CPI (Maoist) and its frontal organization RDF and they are supporting the ideology of naxals. This shows that conspiracy in between accused nos.1 to 6 is still continued.

933] From the above discussion it is clear that RDF is formed with popular slogan “Naxalbari Ek Hi Rasta”. In Gadchiroli district almost all cases where killing or attempt of murder of police personnel and innocent persons on the suspicion of police informer and causing destruction, loss or damage to public property. The charge sheets have been filed against naxals. This is clear from the copy of FIR registered at Etapalli Police Station at Crime No.35/2016

against absconding naxals offence was registered alleging burning of 76 trucks at Hedri. From the video clips as discussed above it is seen that naxals were killing police personnel and planting ambush for killing of police personnel. Further there is a text document in which it is appeal to take revenge for the killings of the comrades by the khaki clad (i.e. Police) fascist gangs. This shows for the incident of killing and attempting murder of police personnel and innocent persons on the suspicion of police informer which took place after 31.12.2008 the members of CPI Maoist and its frontal organization RDF are responsible.

934] Further from the e-mail at Article 147 having path **Exh23/ALLL/ Accommodation issues/Letters/ letter to Saibaba**, sent by Surendra Mohan to accused no.6 Saibaba it is clear that he withdrew from the membership of CPI (Maoist) because it involved in violent activities and accused no.6 Saibaba also replied the same. This shows that members of CPI (Maoist) and its frontal organisation RDF are involved in violent activities.

935] From the pamphlets Arts.139 to 141 found in possession of accused no.1 Mahesh Tirki which was issued by Bhakapa (Maowadi), (Gadchiroli Division) and Bhumkal Johar Te Dandakaryanya Special Zonal Committee, Bhakapa (Maowadi), titled as, "Amar Shahidirku Lal Salam" and Bhartachi Communist Party (Maowadi), Maharashtra Rajya Samiti and Navjanwadi Kranti i.e. RDF in which protest was made for Surjagad project and in recently i.e. on 23.12.2016 naxals burnt 76 trucks on the site of Surjagad Project and to that effect FIR filed alongwith list of document at Exh.472 at Sr.no.3. From this it is clearly inferred that whatever the

activities of killing of innocent persons on the suspicion of police informer, killing and attempt of killing of police personnel and destruction and damage to public property from 31.12.2008 till date of FIR, members of RDF and CPI Maoist and members of RDF are responsible and further from the FIR it can be inferred that conspiracy between accused nos.1 to 6 is continued.

936] The prosecution case against the accused is that on or prior to 12.9.2009 they they hatched criminal conspiracy to wage war against the Government of India and to collect people with the intention of waging war against the Government of India, to overawe by means of criminal force the Government of Maharashtra and the Government of India, to shake and reduce the faith of the common citizen in its democratic Government by large scale violence destruction of lives and property and thereby destabilize the system of Government established by law, to organize the spread of secessionist and rebellious thoughts by holding covert and secret meetings, to collect money in India for achieving the objects of the said criminal conspiracy by illegal means, to continue unlawful activities of Communist Party of India (Maoist) and its front organization Revolutionary Democratic Front, for achieving the objects of criminal conspiracy, to continue the activities of Terrorist Gang, banned terrorist organization or unlawful association, singly or jointly as a member of the Terrorist Gang & banned organization CPI Maoist & its frontal organisation Revolutionary Democratic Front to conspire, advocate, incite, abet & knowingly facilitate the commission of a terrorist act and unlawful activities by use of violence or other unlawful means, to take part or commit or advocate, abet or incite the

commission of unlawful activities, being the member of a banned Terrorist Gang.

937] This shows that the naxal activities which took place in Gadchiroli district and in all over India after 31.12.2008 i.e. killing and attempt of murder of innocent persons on the suspicion of police informers, police personnel and damage, loss and destruction of public property the members of banned organization CPI (Maoist) and its frontal organization RDF are responsible. Hence, prosecution has proved the offence punishable under Section 20 of UAPA read with Section 120B of IPC.

Mere membership of banned organization not sufficient

938] Learned advocate Shri Gadling for accused has relied on judgment of the Hon'ble Supreme Court in the matters of Arup Bhuyan Vs. State of Assam, reported in 2011(1) SCC, 784 (SC), and Sri Indra Das Vs. State of Assam, reported in (2011) 3 SCC 380 to argue that merely being a member of a banned organization will not incriminate the person and, therefore, even if it is found that the appellant was a member of a banned CPI (Marxist) and/or CPI (Marxist Leninist) People's War, he cannot be held guilty of committing an offence under Section 124A of IPC or for committing offences under the Act of 2005 and the Act of 1967.

939] In the matter of Arup Bhuyan (Supra), allegation against him was that he was a member of ULFA and the only material against him was his alleged confessional statement made before the Superintendent of Police in which he is said to have identified the

house of the deceased. After referring to its earlier decision in the matter of **State of Kerala Vs. Raneef {2011 (1) SCALE 8} wherein the Hon'ble Supreme Court agreeing with the US Supreme Court's decision in Elfbrandt Vs. Russell, 384 U.S. 17 (1966)**, which has rejected the doctrine of "guilt by association", the Hon'ble Supreme Court held thus:-

“Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence.” (Emphasis supplied)

940] At this juncture, it is necessary to consider observations made in case of **Arup Bhuyan .v. State of Assam reported in (2015) 12 SCC** wherein Their Lordship of Apex Court observed that -

Supreme Court in Arup Bhuyan, reported in (2011) 3 SCC 377 reading down S. 3(5), Terrorist and Disruptive Activities (Prevention) Act, 1987 so as not to violate Arts. 19 and 21 of the Constitution, holding that mere membership of banned organization would not make a person criminally liable unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence – Regard being had to important issue raised, matter directed to be placed before larger Bench – Terrorist and Disruptive Activities 9 (Prevention) Act, 1987 – S. 3(5) – Unlawful Activities (Prevention) Act, 1967 S.10.

941] Further in the Book of **Principles of Statutory Interpretation by Justice G P Singh 14th Edition revised by Justice A K Patnaik** at Page no.975, it is observed that -

In Indradas v. State of Assam, it was held that mere

membership of a banned organisation as provided in section 3(5) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and section 10 of the Unlawful Activities (Prevention) Act, 1967 are if literally read unconstitutional as they will then violate Article 19(1) and (2) of the Constitution and they have to be read down to mean that unless the person resorts or incites violence or creates public disorder by violence or incitement to violence he would not be held guilty of the offence simply by becoming a member.

(2011) 3 SCC 380 paras 23 to 44 : (2011) 2 JT 153. The editor has rightly commented that “would the court be so sanguine when the organisation concerned is an international terrorist organisation whose avowed aim is the very destruction of Indian Civil Society and the liberal Indian State?”

It is important to note that provisions of Section 20 of UAPA are pari materia with provision of Section 3(5) of TADA.

942] The Constitutional Bench of Apex Court in Hitendra Vishnu Thakur and others vs. State of Maharashtra reported in 1994(4) SCC 602 upheld the constitutional validity of the provisions of Section 3(5) of TADA which is in pari materia with Sec. 20 of UAPA. Further while upholding the other provisions of TADA which are pari materia with provisions of Ss. 38 and 39 of UAPA. The Apex Court in Mohammad Ekbal Sheikh v. State of Maharashtra and Kartarsing, the Apex Court held as under -

943] In Mohd. Iqbal M. Shaikh's case (supra), Apex Court held:

"In view of the rival submissions at the bar, the first

question that arises for our consideration is whether the activities can be held to be terrorist activities' so as to bring it within the purview of TADA. The expression 'terrorist act' has not been defined and, on the other hand, Section 2(h) stipulates that it would have the same meaning as has been assigned to it in sub-section (1) of Section 3. The expression 'terrorism' has not been defined under the Act and as has been held by this Court, in the case of HITENDRA VISHNU THAKUR AND ORS. v. STATE OF MAHARASHTRA. 1994(4) SCC 602, it is not possible to give a precise definition of terrorism or to lay down what constituted terrorism. But the Court had indicated in the aforesaid decision that it may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. It has also been stated in the aforesaid decision that if the object of the activity is to disturb harmony of the society or to terrorise people and the society with a view to disturb even the tempo, tranquillity of the society, and a sense of fear and insecurity is created in the minds of a section of the society or society at large, then it will, undoubtedly, be held to be a terrorist act. The question, therefore, does not really boil down to an examination as to whether for the activities, under the normal criminal law, the accused persons can be punished but to examine the real impact of such gruesome and atrocious activities on the society at large or at least on the section of the society. If the case in hand is examined from the aforesaid stand point, on the facts that shortly after the demolition of Babri Masjid at Ayodhya, a communal riot erupted in Mumbai and during that period in the locality in question which was predominantly occupied by Muslims, a Chawl occupied by Hindus who were in minority was set to fire by the people belonging to the rival community and on account of such fire, several people were burnt alive, it is difficult to

accept the contention of Mr. Jain that the activities do not fall within the ambit to TADA. In our considered opinion, judging from the atrocity of the activities and judging from the sensitive and tense atmosphere prevailing in the town under which the acts were perpetrated resulting ultimately in the death of several persons, the conclusion becomes irresistible that such activities has far reaching consequences and it affects the society at large and the even tempo had been greatly disturbed and as such the provisions of the Act get attracted to such activities."

55. "That the prominent method of understanding the legislative intention, in a matter of this nature, is to see whether the substantive provisions of the Act require mens-rea element as a constituent ingredient for an offence. Offence under Sectin 3(1) of POTA will be constituted only if it is done with "intent". If Parliament stipulates that the "terrorist" itself has to be committed with a criminal intention, can it be said that a person who "profess" (as under Section 20) "invites support" or "arranges, manages or assists in arranging or managing a meeting" or "addresses a meeting" (as under Section 21) has committed the offence if he does not have an intention OR design to further the activities of any terrorist organization or the commission of terrorist acts? We are clear that it is not. Therefore, it is obvious that the offence under Section 20 or 21 or 22 needs positive inference that a person has acted with intent of furthering or encouraging terrorist activity or facilitating its commission. In other words, these sections are limited only to those activities that have the intent of encouraging or furthering or promoting or facilitating the commission of terrorist activities. If these sections are understood in this way, there cannot be any misuse. With this clarification we uphold the constitutional validity of Sections 20, 21 and 22"

944] Now it is necessary to consider whether the ratio laid down in Arup Bhuyan and Indra Das would be applicable to the facts of the case in hand without going to the factual aspect of the case of Arun Bhuyan and Indra Das. At this juncture, it is necessary to consider the ratio laid down by the Apex Court in **Padmasundara Rao (Dead) and others -v- State of T.N. and others reported in AIR 2002 Supreme Court 1334** wherein it is held that -

(A) Interpretation of Statutes – Precedents – Reliance on decisions – Cannot be placed without discussing fact situation of decision relied on.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

945] At this stage, further it is necessary to consider ratio laid down by the Apex Court in case of **Ramesh Singh alias Photti v. State of A.P reported in AIR 2004 Supreme Court 4545** wherein it is observed that -

(B) Precedent – Earlier case – Can be treated as precedent only if facts and circumstances in such earlier cited case is in pari materia in all respects with facts and circumstances of case in hand. (Para 11)

946] In both Arup Bhuyan and Indra Das cases, the only material against the accused was confessional statement. Except this, there was no other evidence to connect the accused with the crime and in view of these peculiar facts, the Apex Court made a observations in both the cases that mere membership of banned organization would not make a person criminally liable unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence. However, present case is not only based on confessional statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote made before P.W.12 Nileshwar Vyas, Judicial Magistrate F.C. Aheri but it is corroborated by the evidence of P.W.9 Raju Atram and further there are several text documents, video-clips, photographs found in electronic gadgets (Arts.1 to 41) seized during house search of accused no.6 Saibaba and text documents Arts.A17 to A21 found in 16 GB memory-card seized from the personal search of accused no.3 Hem Mishra. Following are the few text documents and video clips which show that member of CPI (Maoist) and RDF resorted to violent activities.

947] A document at **Art.A19** retrieved from the 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra is a letter addressed to Dear friends Red Salute by Sahyadri State Committee of Maharashtra CPI (Maoist) titled as – **Oppose the Government's ongoing war against the people of Garhchiroli district.** In the said document detail history alongwith date and time regarding killing of around 17 naxals in encounter by Gadchiroli police is given as under :-

- 1] On 4.4.2013 five maoists were killed near Batpar village.
- 2] On 20.1.2013 police killed six maoists namely Shankar Lakda, a member of Divisional Committee, Mohan Kowase, Acm, Vinod Kodape Acm, Geeta Usendi, Platoon Deputy Commander, Juru Mattami and Raju Gavde at Govindgaon village.
- 3] On 12.4.2013 at village Sindesur police encircled and indiscriminately fired on a jan sabha (public meeting) killing 6 people namely Sukhdev, Varlu Gave and Kalidas Duru Hidko and Comrade Kailash a member of Tippagarh area committee was killed when he came down to save the people.

948] Further around 35 incidents of beating of naxals/members of CPI (Maoist) at the hands of Gadchiroli police are given. In the said document it is further mentioned that around 10000 police staff alongwith modern weapons like AK47, LMG, SLR are equipped, however, the PLGA on the other hand having old weapons like Bharmar and axe. In the said letter appeal was made to fight against paramilitary forces, commando forces to stop Green Hunt Operation launched by the Government. Lastly, in the said document it is stated that mass movement and armed struggle both are equally important and are necessary for the revolution.

949] A document at Page nos.119 of Exh.267 is a an interview of accused no.6 Saibaba under the title as “**Maoist strategy in India**” and from the said document it is clear that accused no.6 Saibaba is the **deputy secretary** of the Revolutionary Democratic Front (RDF), a frontal organisation of RDF, an all Indian Federation of revolutionary organizations and in the said interview, accused no.6 Saibaba narrated the strategy of Maoist in India in which he stated that it is a

vast movement includes the developed areas. Accused no.6 Saibaba further stated that the Maoists are creatively implementing the Marxist principles to the concrete conditions of India and without armed struggle no resistance can be built in countries like India and the resistance that has been built up in the previous years cannot be retained and the armed actions against the state forces and feudal forces are carried out to protect the movement. From this document it reveals that accused no.6 Saibaba being **Deputy Secretary** of RDF stated about the strategy of CPI (Maoist) about armed struggle which shows the incitement to the people against the Government of India.

950] The document Art.147 having path **Exh23 /ALLL /Accommodation issues/Letters/ letter to Saibaba** written by one Surendra Mohan to accused no.6 Saibaba in which it is mentioned that he cannot be part of the CPI (Maoist) program, as he never subscribed to violent resistance. This shows that CPI (Maoist) is involved in violent activities.

951] The document at page no.183 of Exh.267 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba having path **Ex-4/cy-475-13-Ex-4/c/on Azad** is a Press statement of Communist Party of India (Maoist) Central Committee North Regional Bureau. It is about the red-salutes to Martyrs com. Azad and com. Hem Pandey and suggested to take revenge for the killings of the comrades by the khaki clad (i.e. Police) fascist gangs of AP Government and allegations are made against the Andhra Pradesh Government about killing of those comrades. From this statement it is clear that one Ajay Spokesperson of CPI (Maoist) had written this

press statement showing the violence against police.

952] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO_TS/VTS_01_2** it is seen that armed naxals are seen coming for gathering for function in jungle and greeting each other and many red banners are seen and on one banner name of comrade Janki (Anuradha Gandhi) Amar Rahe is seen and further the gathered armed naxals and other peoples shouted the slogans as “Bharat ki Communist Party Maowadi Zindabad,Bharat ki Nav Janwadi Kranti Zindabad” and the video of killing of police persons by armed naxals is seen.

953] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO_TS/VTS_01_3** it is seen that armed naxals are seen taking training and exercising in jungle and background sound of CPI (Maoist) party spokesperson Aazad played and he states about the CPI (Maoist) armed strength and their tactics and further the interviews of one naxal about the Kudru ambush and CPI (Maoist) promotional video is seen how the ambush on police party is executed.

954] In the video-clip having path **Exh.3/films/S1/RDF/1/video_TS, VTS_01_1** it is clear that accused no.6 Saibaba is seen taking part and others are singing song on death of Shankar and singing slogans Lal Salam Lal Salam. Slogan “Lal Salam” is used by naxals and members of banned organisation RDF and hence it is clear that accused no.6 is a member of banned organisation CPI (Maoist) and its frontal organisation RDF and inciting the people

with slogans Lal Salam Lal Salam.

955] In video-clip having path **Exh.3/ films/ s1/RDF/1/VIDEO_TS/VTS_01_1**, it is seen that some gents and ladies raised the slogans as “Shahidonko Lal Salam, Navjanwadi Kranti Zindabad, Ek Hi Rasta Ek Hi Rasta Naxalbari Ek Hi Rasta.” The slogan “Naxalbari Ek Hi Rasta” raised in this video is resolved as a slogan of RDF in Art.157 titled as “Joint Meeting of AIPRF and SFPR” written by Rajkishore Secretary of Adhoc Executive Committee Revolutionary Democratic Front (RDF) on 20th May 2005.

956] In video-clip having path **Exh.3/films /s1/RDF/2/VIDEO_TS /VTS_01_1**, it is clear that accused no.6 Saibaba is seen speaking about the Kashmiri peoples struggle for freedom and gave assurance that RDF is not only supporting the movement but takes active part and their main concern is to liberate the Kashmir and further accused no.6 Saibaba have stated that the struggle for liberation of Kashmir and our liberation are the same.

957] On viewing above video-clips it is clear that the armed naxals of CPI (Maoist) were participating in singing the songs while dancing and some of them were armed with guns alongwith banners of RDF, a frontal organization of CPI (Maoist) in their hands and they were attending the meetings and found addressing people to join the organization and were inciting the public at large to wage war against the Government established by law through the path of RDF.

958] In view of above discussion finding of text documents wherein it is mentioned that to protest Government action by armed rebellion and communications found in the form of text documents in the form of electronic data between the members of CPI (Maoist) and RDF for furthering the terrorist activities of the said organization and causing the people and members of banned organization to resort for violence and causing public disorder and the incident of killing of innocent persons on the suspicion of police informers, police personnel and destruction and damage to public property which took place after 31.12.2008 till today, the members of CPI (Maoist) and RDF are responsible and the conspiracy between accused nos.1 to 6 has been established by the prosecution. The prosecution has proved the case against accused u/s 20 of UAPA r/w 120B of IPC and the ratio laid down in the cases of **Indra Das v. State of Assam reported in (2011) 3 SCC 380**, **State of Kerala v. Raneef reported in (2011) 1 SCC 784** and **Arup Bhuyan v. State of Assam reported in (2011) 3 SCC 377** cited supra are not applicable to the facts of the present case.

Section 38 and 39 of UAPA

959] Now it is necessary to see whether the prosecution has proved the case against accused for the offence punishable u/s 38 and 39 of UAPA. In order to constitute the offence punishable u/s 38 and 39 of UAPA prosecution has to prove the ingredients of those Sections. The ingredients of Sections 38 and 39 of UAPA are common hence the said Sections are discussed together.

Sec.38 – Offence relating to membership of a

terrorist organisation -

(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation :

Provided that this sub-section shall not apply where the person charged is able to prove -

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

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

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

Sec.39. Offence relating to support given to a terrorist organization.- (1) A person commits the offence relating to support given to a terrorist organisation, -

(a) who, with intention to further the activity of a terrorist organization,-

(i) invites support for the terrorist organization,
and

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

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

(i) to support the terrorist organization, or

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

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

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

(2) A person, who commits the offence relating to support given to a terrorist organization under subsection (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.”

960] In order to see whether the ingredients of the offence punishable under Sections 38 and 39 of UAPA are established, it is necessary to scrutinize the documents seized from the possession of

accused no.1 Mahesh Tirki i.e. naxal pamphlets (Art. 139 to 141), the eight pages of naxal literature alongwith type-written documents of under-trial prisoner maoist leader Narayan Sanyal at Art.130A seized from the personal search of accused no.4 Prashant Rahi and text documents Arts.A17 to A21 retrieved from 16 GB memory-card of Sandisk company seized from the personal search of accused no.3 Hem Mishra and text documents, photographs, video-clips found in the electronic gadgets (Arts.1 to 41) at Page nos.1 to 247 and Arts.147 to 164 of Exh.267 seized from the house search of accused no.6 Saibaba brought on record by the prosecution.

961] To prove the said allegations against the accused persons prosecution has relied on the following text documents which are as under :-

1] A document at **Art.A17** retrieved from 16 GB memory-card seized from the possession of accused no.3 Hem Mishra is a letter written in Hindi language by one Lal Salam J.V. addressed to **Lal Salam**. On perusal of contents of said letter it reveals that it is in respect of Jana Sanghathan and Jana Andolan and it is written that some problems arises in progress and development of the organization and hence it reveals the further activities of banned organization CPI (Maoist) and its frontal organization RDF.

2] On perusal of document at **Art.A18** which is also in Hindi language addressed to **Jan Sanghathan**

and Sanyukta Morcha by N.R.B., it reveals that there were suggestions to make effort about strengthening and expanding the party and to struggle against repression, in developing campaigns and unlawful organization and lastly to support all anti-imperialist struggles and peoples' wars on the international level. Further, from the contents of the said document it is clear that there was a revolution by the Communist Party of India (Maoist) and they were struggling armed rebellion against the Government and it is the great achievement developed in the form of Krantikari Jana Andolan. From the said document it is clear that N.R.B., a part of banned organization CPI (Maoist) and its frontal organization RDF were trying to furthering their terrorist activities like armed rebellion against the Government through PLGA and Krantikari Jana Aandolan all over the country.

962] A document at **Art.A19** retrieved from the 16 GB memory-card of Sandisk company seized from the possession of accused no.3 Hem Mishra is a letter addressed to Dear friends Red Salute by Sahyadri State Committee of Maharashtra CPI (Maoist) titled as – **Oppose the Government's ongoing war against the people of Garhchiroli district.** In the said document detail history alongwith date and time regarding killing of around 17 naxals in encounter by Gadchiroli police is given as under :

- 1] On 4.4.2013 five maoists were killed near Batpar village.
- 2] On 20.1.2013 police killed six maoists namely Shankar Lakda, a member of Divisional Committee, Mohan Kowase, Acm, Vinod Kodape Acm, Geeta Usendi, Platoon Deputy Commander, Juru Mattami and Raju Gavde at Govindgaon village.
- 3] On 12.4.2013 at village Sindesur police encircled and indiscriminately fired on a jan sabha (public meeting) killing 6 people namely Sukhdev, Varlu Gave and Kalidas Duru Hidko and Comrade Kailash a member of Tippagarh area committee was killed when he came down to save the people.

963] Further around 35 incidents of beating of naxals/members of CPI (Maoist) at the hands of Gadchiroli police are given. In the said document it is further mentioned that around 10000 police staff alongwith modern weapons like AK47, LMG, SLR are equipped, however, the PLGA on the other hand having old weapons like Bharmar and axe. In the said letter appeal was made to fight against paramilitary forces, commando forces to stop Green Hunt Operation launched by the Government. Lastly, in the said document it is stated that mass movement and armed struggle both are equally important and are necessary for the revolution.

964] A document at **Art.A21** of Exh.266 which was retrieved from the 16 GB memory-card of Sandisk Company seized from the possession of accused no.3 Hem Mishra addressed to **Comrade by one Jaddu and Prakash** dated 1st August 2013 and the relevant portions of this document are reproduced as under :-

“We have received 1.5 lakhs once and 75 thousand at another time so far after the arrest of the comrade. But we incurred several lakhs of rupees on the continuous programmes and activities. We have incurred a loan of 2.5 lakhs as of now. Every passing day brings in new expenditure. We do collect funds but the range of our activities is so very high that we are not in a position to meet all expenses through collections.

We urgently need funds under the following heads:

Prisoner comrades' health and other legal charges on cases (we are looking after here): 2 laks.

Conference (apart from what we can be collected): 3 Lakhs.

Books we are publishing now: 2 lakhs.

(For more books we could collect 1 lakh) But need 2 lakhs more to publish the remaining books.

Loan to be cleared: 2.5 lakhs.

One arrested senior comrade's life partner needs at least 1 lakhs here.

For our team (next 6 months) to run ourselves and activities planned we need 4 lakhs at least.

Therefore we need a minimum of 13 lakhs immediately to meet various urgent needs and activities.”

965] From this documents it reveal that accused no.3 Hem Mishra on the directions of accused no.6 Saibaba was carrying 16 GB memory-card containing such documents to meet the underground naxalites in Abuzamad forest of Gadchiroli district and for collection of funds for the development of organization and to support the terrorist organization CPI (Maoist) and its frontal organization RDF with intention to further the terrorist activities.

966] From the evidence of P.W.9 Raju Atram it is clear that at the instance of absconding lady naxal Narmadakka he alongwith accused no.1 Mahesh Tirki and no.2 Pandu Narote had been to Ballarsha railway-station to receive the members of banned organisation and further handed-over cash amount of Rs.5 lacs to the members of banned organisation at Ballarsha railway-station and at that time accused no.1 Mahesh Tirki and no.2 Pandu Narote were accompanied with him.

967] The document at page no.183 of Exh.267 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba having path **Ex-4/cy-475-13-Ex-4/c/on Azad** is a Press statement of Communist Party of India (Maoist) Central Committee North Regional Bureau. It is about the red-salutes to Martyrs com. Azad and com. Hem Pandey and suggested to take revenge for the killings of the comrades by the khaki clad (i.e. Police) fascist gangs of AP Government and allegations are made against the Andhra Pradesh Government about killing of those comrades. From this statement it is clear that one Ajay Spokesperson of CPI (Maoist) had written this press statement to further the activities of organization.

968] The document at Page no.57 of Exh.267 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba having path **Exh.4/c/for said/working Directory 201/New Folder/final months after correction/Manjeera/core**, titled as **“Meeting of Core of A3/A4 on Oct 2nd and 3rd 2006”** contains various resolutions regarding the suggestions of demands for the campaign of building A3 and A4, mass movement, displacement

movement and funds and budgets for the development of A3 and A4 committees of banned organisation CPI (Maoist) working in various States of India and it is mentioned that Prakash i.e. accused no.6 Saibaba alongwith his companion must take serious attempts at consultation on all A4 FC decisions and other matters concerning the organization. This document shows the further activities to strengthen the organization.

969] The document at page no.78 of Exh.267 having path **Exh.4/OLD EHD/OLD/All 12345/ILPS/Dear Arman, Exh.267** is a letter addressed to **Dear Arman** wherein it is mentioned that when accused no.6 Saibaba was in London, Holland and Birmingham during their discussion following proposals were agreed.

Some representatives from India from anti-displacement front, political prisoners and RDE, possibly anti- caste movement will join ILPS TIA.

An international team of ILPS to visit areas of anti-displacement movements in India in March 2008 to come out with a report for international propaganda. The team will also to visit Chhattisgarh in the area effected by Salwa Judum, an area of indigenous people most serious affected in a major way. Other important areas, among others, would be Nandigram and Singur West Bengal, Kalingnar, Jagatisgapur and Kashipur in Orissa, and Jharkhand. The team needs to in India for at least 15 days.

Followed by the team's report, an International Public Hearing may be conducted as suggested by Comrade Jose Maria Sison, with internationally renowned people as jury simultaneously from India and London sessions through video conferencing. But a section of the international jury be able present in India.

ILPS to aid and promote the formation of

international Solidarity Committees supporting and taking up the issues of Indian Anti-displacement movement particularly in Europe and Americas to start with. The international monopoly corporate houses that directly displace, kill, maim, rape people in India are to be targeted in a big way through campaign.

Comrade Varavara Rao has agreed to participate in the TIA.

970] This document shows that there are some international programmes of ILPS organisation and at the end of the letter accused no.6 Saibaba has informed to contact some members at the end of each mail contained so that they will understand the importance of the organisation and at the foot of this letter the e-mail of accused no.6 Saibaba is given.

971] A document at page no.81 of Exh.267 is a letter on the letter head of ATIK (Avrupa Turkiyeli Isciler Konfederalasyonu), Turque and Europe addressed to accused no.6 G.N.Saibaba from Chairperson of International Relation Commission ATIK wherein it is mentioned that said ATIK launched a campaign for the solidarity with the Indian people and people's movement against Operation Green Hunt (OGH) a scheme of Indian Government and invited Senior Maoist leaders from India to Europe and also talked to Turkey about the joining of Maoist leaders. From this letter it reveals that accused no.6 Saibaba is an active member of CPI (Maoist) India and he is in contact and has relations with other Maoist organisations working in foreign countries.

972] A document at Page no.88 of Exh.267 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba is a

letter addressed to **Dear Comrade** by Prakash in which it is suggested to celebrate Lenin's Birth Day and formation day of CPI (ML) to further its activities.

973] A document at page no.92 of Exh.267 in which the recitals were shown against **imperialism, against modern fascism, struggle, organize and construct the party** written by Communist Party Maoist-Italy, France, Turkey North Kurdistan and suggested to install amid the rebel youth of the imperialist banlieues, constructing youth revolutionary organisms and to give support and orientation to the student struggles, immigrants, lodgement occupants, to the popular struggles on the territories against military bases. At the end of letter there is mention of Communist Party Maoist – Italy, Communist Party Maoist – France, Communist Party Maoist – Turkey North Kurdistan. From this letter, it shows that the CPI(Maoist) is working in various countries to further their activities.

974] A document at Page no.94 of Exh.267 is a **Press Release issued by Ramanna Secretary DKSZC CPI(Maoist)** titled as “**The claim made by the government that 7 ‘Naxals’ were killed by the CoBRA, Greyhounds and SPOs in an encounter between the Maoists and the police on 10th November 2009 is completely false!**”. In the said letter there was appeal to all the democratic, progressive and pro-people organisations and individuals, democratic and civil rights organizations and activists, writers and intellectuals, journalists, students and youth to come forward and make all efforts to stop this genocide and brutal repression committed on the people by the Indian government and to punish the police officers guilty of these crimes.

975] A document at Page no.97 of Exh.267 titled as **“Communist Party of India (Maoist) by Gudsa Usendi, Spokesperson, Dandakaranya Special Zonal Committee, CPI (Maoist)”** headed by **“Observe Martyrs Week From July 28 to August 3! Red Homage to Our Party’s Fore-founders and Beloved Teachers Comrades Charu Mazumdar and Kanhai Chatterjee!”** and further it is mentioned that By virtue of these sacrifices, revolutionary movement has been advancing raising the slogan ‘**Naxalbari Ek Hi Rasta**’, with the aim of building liberated areas through area-wise seizure of political power. From this document it is clear that the Dandakaranya Special Zonal Committee of CPI (Maoist) a banned organisation made incitement to wage a against the Government and choose a way of naxal with slogan “Naxalbari Ek Hi Rasta” and oppose the scheme of Government i.e. “Operation Green Hunt”. From this document it further reveals that Gudsa Usendi, Spokesperson of Dandakaranya Special Zonal Committee, CPI (Maoist) has written slogan “Naxalbari Ek Hi Rasta” and decided July 28 is an important day to commemorate the sacrifices of all the Martyrs to further the activities of organization.

976] A document at Page no.99 of Exh.267 titled as **Concept of Revolutionary Mass Organizations** (RMOs) reveals that no revolution can advance until and unless the vast masses are mobilized to actively participate on a mass scale in it and not merely stay as passive observers. From this document it is clear that CPI (Maoist) is conducting armed struggle and attempting to commit offences under terrorist act and to further the activities of organization and to support the terrorist organization.

977] A document at page no.114 of Exh.267 titled as “**Expressing Solidarity with Communist Party of India (Maoist)**” wherein it is appealed to continue on the path of Comrade Azad, spokesperson for Communist Party of India (Maoist). This document shows the further activities of the organization against the Government.

978] A document at Page nos.119 of Exh.267 is an interview of accused no.6 Saibaba under the title as “**Maoist strategy in India**” and from the said document it is clear that accused no.6 Saibaba is the deputy secretary of the Revolutionary Democratic Front, an all Indian Federation of revolutionary organizations and was working for the expansion of the organisation to further its activities.

979] A document at page no.183 of Exh.267 having path **Ex-4/cy-475-13-Ex-4/c/on Azad** is a Press statement of Communist Party of India (Maoist) Central Committee North Regional Bureau is about the red-salutes to Martyrs com. Azad and com. Hem Pandey and suggested to take revenge for the killings of the comrades by the khaki clad (i.e. Police) fascist gangs of AP Government and allegations are made against the Andhra Pradesh Government about killing of those comrades.

980] A document at page no.210 of Exh.267 titled as “**Revolutionary Democratic Front (RDF), The First All India Conference**” is a Press Release dated 23 April 2012 held at Hyderabad, Telangana which was written by accused no.6 Saibaba, in which it is mentioned that he is the Deputy Secretary of RDF, a frontal

organisation of CPI (Maoist). Some recitals of the document are reproduced as under :-

981] Several important resolutions were passed by the First Conference of RDF today. These included a resolution condemning operation Green Hunt and Indian States War on People against forced displacement of people by the Government and private corporations in the name of development, resolution demanding the unconditional release of all political prisoners resolution in solidarity with the national liberation struggles of Kashmir, Nagalim, Manipur, Aasam and other oppressed nationalities resolution condemning imperialist aggression against Iraq, Afganisthan, Iran, Syria, North Korea and other sovereign countries. A new All-India Committee has been elected by the Conference consisting of eighteen executive members from thirteen States.

982] A document at Article 159 of Exh.267 is a revised draft as per EC suggestions titled as, “**Draft Manifesto of Revolutionary Democratic Front (RDF)**”. The constitution draft of Revolutionary Democratic Front (RDF) shows that there are different types of organizations in different States which are (a) Revolutionary Democratic Front (RDF) in English, (b) Krantikari Janwadi Morcha (RDF) in Hindi and (c) in different states the name of the organisation should be written in the respective languages but RDF should be kept within brackets.

983] From all these documents it reveals that accused nos.1 to 6 were the active members of banned organization CPI (Maoist) and its frontal organization RDF and they were associated themselves or

professed to be associated with a terrorist organization with intention to further its activities in the different State of India and in other countries.

Documents showing the further activities of CPI (Maoist) India with fraternal organizations of other countries found in the electronic gadgets (Arts.1 to 41) seized from the house search of accused no.6 Saibaba.

984] A document at page no.136 of Exh.267 titled as **“Prabhatham will not die”** shows that the genocide in Sri Lanka on Tamils is the continuation of aggression on the fighting people of Pelestine, Afghanistan and Iraq and it is alleged that this genocide on the Eelam struggle under the leadership of V Prabhakaran was supported by Indian Government.

985] A document at Page no.137 of Exh.267 under the head of Office of the Prime Minister Transnational Government of Tamil Eelam, 875, Avenue of the Americas, Suite 1001, New York, NY 1001, USA, dated 19 February 2011 titled as **“We share this Joyful moment with the people of Egypt!”**.

986] A document at Page no.139 of Exh.267 under the head of Office of the Prime Minister Transnational Government of Tamil Eelam, 875, Avenue of the Americas, Suite 1001, New York, NY 1001, USA, dated 8 March 2011 titled as **“Vehement condemnation of Despicable Attack on Member of Parliament Sivagunanam in Sri Lanka!”**.

987] CPI (Maoist) India suggested to conduct a debate within the Maoist camps world-wide and to that effect it is mentioned in the said letter that - We are sending this Open Letter to your Party so as to conduct a polemical debate both within your Party and the Maoist revolutionary camp worldwide. This step has become necessary because of the very serious developments that have taken place in the course of development of the revolution in Nepal that have a bearing on our understanding of imperialism and proletarian revolution as well as the strategy-tactics to be pursued by Maoist revolutionaries in the contemporary world; there is also serious deviation from the ideology of MLM. Hence these are no more the internal matters concerning your Party alone.

988] There is mention of Naxalbari in the said open letter by CPI (Maoist) India to the Comrades of CPI (Maoist) from other countries.

989] From all these documents it reveals that the accused nos.1 to 6 associated themselves or professed to be associated with a terrorist organization CPI (Maoist) and its frontal organization RDF with intention to further activities of CPI (Maoist) India with fraternal organizations of other countries.

990] In order to prove the incitement on the part of accused, prosecution relied on following video-clips found in electronic gadgets (Arts.1 to 41) seized from the house search of accused no.6 Saibaba :-

a] In video-clip having path **Exh.8/(1)MATI_KE**

LAAL/VIDEO_TS/VTS_01_2 armed naxals in uniforms are seen coming for gathering for function in jungle and greeting each other and many red banners are seen and on one banner name of comrade Janki (Anuradha Gandhi) Amar Rahe is seen and further the gathered armed naxals and other peoples shouted the slogans as “Bharat ki Communist Party Maowadi Zindabad, Bharat ki Nav Janwadi Kranti Zindabad” and killing of police persons by armed naxals is seen.

b] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO_TS/VTS_01_3** armed naxals in uniforms are seen taking training and exercising in jungle and background sound of CPI (Maoist) party spokesperson Aazad played and he states about the CPI (Maoist) armed strength and their tactics and further the interviews of one naxal about the Kudru ambush and CPI (Maoist) promotional video is seen how the ambush on police party is executed.

c] In the video-clip having path **Exh.16/(1) NAXILISTES/ VIDEO_TS/VTS_01_1** armed naxals in uniform are seen walking in jungle and they are campaigning and attending public meeting showing naxal tactics in jungle.

d] In video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_20**

10/Kutul_Maad/kutul bhoomkal_2010 armed naxals in uniforms along with the villagers are seen gathered in jungle to celebrate the 10th anniversary of Bhoomkal and they are shouting with the slogans as “Lal Salam, Mahan Bhoomkal Zindabad, Mahan Bhoomkal Shahidonko Lal Salam” and further one armed naxal seen addressing to the gathering of around 2000 to 3000 peoples and armed naxals.

e] In the video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_2010/Vayanar_EBT/1/ DSCN4236**, armed naxals in uniforms along with the villagers are seen gathered in jungle are shouting with the slogans as “Jantana sarkar ko majbut karo,Dandkaranyako aadhar elakeme badal dalo,Bharat ki communist party maowadi zindabad”.

f] In the video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_2010/Vayanar_EBT/2/Bhoomakal_2010**, armed naxals in uniforms along with the villagers are seen marching in jungle with red coloured banners and flags and some green coloured dressed girls seen dancing and singing on the stage. Further it is seen around 2 to 3 thousand villagers gathering along with armed CPI (Maoist) naxals and one naxal speaks and many red coloured banners and pictures, naxal martyr monument is seen around there and

further it is seen that CPI (Maoist) armed naxals are dancing and one naxal takes video shooting of the dance.

g] In the video-clip having path **Exh.3/films/S1/RDF/1/video_TS, VTS _01_1** accused no.6 Saibaba is seen taking part and others are singing song on death of Shankar and singing slogans Lal Salam Lal Salam. Slogan “Lal Salam” is used by naxals and members of banned organisation RDF and hence it is clear that accused no.6 is a member of banned organisation CPI (Maoist) and its frontal organisation RDF and inciting the people with slogans Lal Salam Lal Salam.

h] In video-clip having path **Exh.3/films/s1 /RDF /1/VIDEO_ TS/VTS_01_1**, some men and women raised the slogans as “Shahidonko Lal Salam, Navjanwadi Kranti Zindabad, Ek Hi Rasta Ek Hi Rasta Naxalbari Ek Hi Rasta.” The slogan “Naxalbari Ek Hi Rasta” raised in this video is resolved as a slogan of RDF in Art.157 titled as “Joint Meeting of AIPRF and SFPR” written by Rajkishore Secretary of Adhoc Executive Committee Revolutionary Democratic Front (RDF) on 20th May 2005.

i] In video-clip having path **Exh.3/films/s1/RDF /2/VIDEO_ TS/VTS_01_1**, the dignitaries from

different parts including accused no.6 G.N. **Saibaba** is seen on dais along with Sayad Gilani, and explaining about the manifesto of RDF and further accused no.6 **Saibaba** have seen supporting the Navjanvadi Kranti, further he have invited Arun Pareira to release the book SCRIPTING THE CHANGE WRITTEN BY ANURADHA GANDHY and has released the book. From the contents of this video it is clear that Revolutionary Democratic Front (RDF) is also known as Krantikari Janwadi Morcha (RDF) in Hindi language and this fact is mentioned in draft manifesto Art.159 written by accused no.6 Saibaba.

j] In video-clip having path **Exh.8/(1)MATI_KE LAAL/VIDEO _TS/VTS_01_1** armed naxals in uniforms are seen walking in jungle and background sound of CPI (Maoist) Party spokesperson Aazad played and states that Maoism teaches us that self preservation is possible only through war. This shows that accused no.6 Saibaba is working to influence the people for joining the war against the Government and inciting the people.

k] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO _TS/VTS_01_2** armed naxals in uniforms are seen coming for gathering for function in jungle and greeting each other also many red banners are seen and on one banner it is seen the

name comrade Janki (Anuradha Gandhi) Amar Rahe and further the gathered armed naxals and other peoples shouted the slogans as Bharat ki Communist Party Maowadi Zindabad, Bharat ki Nav Janwadi Kranti Zindabad and encounter by armed naxals in which police persons were killed is seen. Contents of the said video shows that the members of CPI (Maoist) and its frontal organisation RDF are propagating the terrorist act and unlawful activities amongst the people in which police personnel were killed by them and accused no.6 Saibaba has promoted the said unlawful activities to incite or abet the people

1] In video-clip having path **Exh.8/(1)MATI_KE LAAL/ VIDEO_TS/VTS_01_3** armed naxals in uniforms are seen taking training of firing in jungle and background sound of CPI (Maoist) party spokesperson Aazad played and he states about the CPI (Maoist) armed strength and their tactics the interviews of one naxal about the Kudru ambush and CPI (Maoist) promotional video is seen how the ambush on police party is executed. The said video-clip is found in possession of accused no.6 Saibaba which shows that the revolutionary movement is strengthening the struggles and initiative through the people's war against Government through activities of CPI (Maoist).

m] In video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_2010/Kutul_Maad/ kutul bhoomkal _2010** armed naxals in uniforms along with the villagers are seen gathered in jungle to celebrate the 10th anniversary of Bhoomkal and they are shouting with the slogans as Lal Salam, Mahan Bhoomkal Zindabad, Mahan Bhoomkal Shahidonko Lal Salam. Contents of the video shows the activities of the naxals with the villagers to propagate the revolutionary ideology and strategy of armed struggle of banned organisation CPI (Maoist) and its frontal organisation RDF.

n] In video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_2010/Vayanar_EBT/1 /DSCN 4236**, armed naxals in uniforms along with the villagers are seen gathered in jungle are shouting with the slogans as Jantana sarkar ko majbut karo, Dandkaranyako aadhar elakeme badal dalo,Bharat ki communist party maowadi zindabad. Contents of the video shows about strengthening the revolutionary struggle.

o] In video-clip having path **Exh.4/OLD EHD/OGH/DKMATTERS/Bhoomkalprogramme_2010/Vayanar_EBT/2/Bhoomakal_ 2010**, armed naxals in uniforms along with the villagers are seen marching in jungle with red coloured banners and flags and some green coloured dressed girls seen

dancing and singing on the stage. It is seen around 2 to 3 thousand villagers gathering along with armed CPI (Maoist) naxals and one naxal speaks and many red coloured banners and pictures, naxal martyr monument is seen around there and it is seen that CPI (Maoist) armed naxals are dancing and one naxal takes video shooting of the dance.

p] In video-clip having path **Exh.3/RDF Conference video/9DVD/VIDEO_TS/VTS_01_4**, comrade Rajkishore is seen declaring new office bearers of the RDF and further comrade Varavararao declares as a President, comrade Ghantiprasadam as a Vice President and accused no.6 Saibaba declares as a Joint Secretary along with comrade Jeetan Marandi who was in jail, also declares as a Joint Secretary, comrade Ajay as a Treasurer. From the contents of the video it is clear that accused no.6 Saibaba was declared as Joint Secretary including other members of RDF.

991] On viewing above video-clips it is clear that the armed naxals of CPI (Maoist) were participating in singing the songs while dancing and some of them were armed with guns alongwith banners of RDF, a frontal organization of CPI (Maoist) in their hands and they were attending the meetings and found addressing people to join the organization to support the terrorist organization CPI (Maoist) and its frontal organization RDF to further its activities against the Government. After considering the above text documents, video clips

and photographs it is clear that the accused nos.1 to 6 were members of CPI (Maoist) and its frontal organization RDF and they were holding meetings for banned organisation and addressing the people and inciting the people for resorting the violence and create public disorder and sending and receiving vital communication for strengthening their organization for doing the terrorist act as defined under Section 15 of UAPA. Hence, it is clear that accused nos.1 to 6 were the active members of banned organisation CPI (Maoist) and its frontal organization and they have supported the terrorist organisation with intention to further the activities of terrorist organization by arranging and managing the meetings and assisted the members of banned organization to further the terrorist activities. As such prosecution has proved the case for the offence punishable u/s 38 and 39 of UAPA read with Section 120B of IPC against accused nos.1 to 6.

992] After considering entire oral, documentary and circumstantial evidence on record the prosecution has proved beyond reasonable doubt following facts and circumstances against accused nos.1 to 6 who are active members of banned organization CPI (Maoist) and its frontal organization RDF :-

I] That on 22.8.2013 accused nos.1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra were arrested at near Aheri Bus Stand at secluded place and personal search of accused nos.1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra was taken by Police Officer P.W.10 Anil Badgujar and from the

personal search of accused no.3 Hem Mishra, 16 GB memory card of sandisk company and kodak camera and other articles (i.e. Arts.20 to 38) have been recovered.

II] From the personal search of accused no.1 Mahesh Tirki articles like, three pamphlets regarding banned CPI (Maoist) organization, one Micromax company mobile, one pocket purse containing Rs.60/-, platform ticket dated 28-5-21013 were found. Thereafter, from the possession of accused no.2 Pandu Narote, platform ticket of Ballarsha Railway dated 28-5-2013, one mobile of Samsung company, and cash of Rs.1400/- and his election identity card and school leaving and birth certificate were found and those were seized under seizure panchanama at Exh.137.

III] During investigation, accused nos.1 Mahesh and No.2 Pandu expressed their desire to make confessional statements before the Magistrate and accordingly they were produced before the J.M.F.C., Aheri (P.W.21 Nileshwar Vyas) and thereafter after complying the provisions of Section 164 of the Cr.P.C. and Criminal Manual framed by the Honourable High Court, J.M.F.C., Aheri (P.W.21 Nileshwar Vyas) recorded confessional statements of accused nos.1 Mahesh and No.2 Pandu and in their confessional

statement both accused nos.1 Mahesh and No.2 Pandu Narote stated that prior to incident for three to four times at the instance of under ground lady naxal Narmadakka they had been to Ballarsha Railway Station to receive the members of banned organization to take them safely within the forest area of Gadchiroli District to have meeting with underground naxal leaders and on 22.8.2013 they had been to Ballarsha Railway Station to receive accused no.3 Hem Mishra and to take him in forest area of Gadchiroli to have meeting with underground lady naxal Narmadakka and when they came at Aheri Bus Stop they were caught by police and defence of the accused that accused no.3 Hem Mishra at Ballarsha Railway Station is appears to be false.

V] The Confessional Statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote are corroborated by the evidence of P.W.9 Raju Atram who in his examination deposed that at the instance of lady naxal Narmadakka he had been to Ballarsha Railway Station on 29.5.2013 alongwith Rs.5 lakhs which were given by lady naxal Narmadakka to be handed-over to members of banned organization and when he went at Ballarsha Railway Station alongwith cash amount of Rs.5 lakhs on 29.5.2013 accused no.1 Mahesh Tirki and no.2 Pandu Narote

were present there and accused no.2 Pandu Narote came and took the money and handed-over amount of Rs.5 lakhs to the members of banned organization at Ballarsha Railway Station.

From the above Confessional Statements of accused no.1 Mahesh Tirki and no.2 Pandu Narote and seizure of naxal pamphlets Arts.139 to 141 from accused no.1 Mahesh Tirki it is clear that accused no.1 Mahesh Tirki and no.2 Pandu Narote maintained live contacts with underground naxals and members of banned organization CPI (Maoist) and its frontal organization RDF and as such they are active members of banned organization CPI (Maoist) and its frontal organisation RDF.

VI] The prosecution has proved that during house search of accused no.6 Saibabai extensive electronic gadgets (Articles 1 to 41) i.e. CDs, DVDs, pen-drives, memory-card, hard-discs containing writing text of speeches and video clips of naxal leader and activists exhorting violence and revolution against the Government established by law by means of armed rebellion were seized and from the possession of accused no.3 Hem Mishra 16 GB memory card containing electronic data in text format inciting people and the members of banned organization to resort to violence and cause public

disorder and letters addressed to underground naxal by accused no.6 Saibaba for taking guidance for strengthening the banned organization RDF were seized.

VII] From the video-clips found in the hard-discs, CD, DVD seized from house search of accused no.6 Saibaba, it is clear that he was a Assistant Secretary, Deputy Secretary, Joint Secretary and, at present he is Vice-President of RDF, which is frontal organization of CPI (Maoist) banned organization and in several video-clips accused nos.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba were found attending meeting conducted by RDF, which is frontal organization of banned CPI (Maoist) organization.

VIII] There are several letters addressed by accused no.6 Saibaba sometime in his own name and sometime by his pseudo name "Prakash" to the members of banned organization CPI (Maoist) and its frontal organization RDF. The document at Page no.1 of Exh.267 "Secretary Report" clearly shows that RDF is hardly working for release of members of CPI (Maoist) and several letters written by members of CPI (Maoist) to the Comrades were found in the hard-disc seized from the house search of accused no.6 Saibaba. Further, accused no.6 Saibaba addressed several letters to fraternal organization of other

countries on behalf of CPI (Maoist). From this it is clear that RDF is a frontal organization of CPI (Maoist).

IX] From the CDR details of mobile SIM card bearing Nos.9873877513 and 8860601278 belonging to accused no.3 Hem Mishra, mobile SIM card bearing No.8800100490 belonging to accused no.6 Saibaba and mobile SIM card bearing No.8394875017 belonging to accused no.4 Prashant Rahi, it is clear that on 12-12-2012, 5-7-2013, 8-7-2013, 9-7-2013, 31-7-2013, 3-3-2013, 8-4-2013, 4-7-2013, 15-9-2012, 10-7-2013, 2-8-2013, 13-9-2012, 4-7-2013 and 14-8-2013 they were contacted with each other and last location of their mobiles was in premises of Delhi University and thereafter after two days accused nos.4 Prashant Rahi and 5 Vijay Tirki were found in Gadchiroli.

X] It is important to note that in the statement recorded u/s 313 of Cr.PC of accused nos.1 to 6 they merely denied that nothing was seized from their possession and the electronic data contained in electronic gadgets is false, fabricated and manipulated and further accused nos.3, 4 and 6 denied that they have any contact with each other and the said denial is false one as from CDR of mobile SIM of accused nos.3, 4 and 6 it is clear that they were in contact with each other. In the present case

accused have been charged for the offence of conspiracy u/s 120B of IPC and Sec.18 of UAPA. In proving the offence of conspiracy direct evidence is hardly available and conspiracy is to be proved by circumstantial evidence.

993] It is well settled that when the case is based upon circumstantial evidence mere denial or false statement by accused u/s 313 Cr.P.C. is considered to be additional link and this has been observed by the Apex Court in case of **Ravirala Laxmaiah vs. State of Andhra Pradesh reported in (2013) 9 Supreme Court Cases 283** wherein it is observed that -

A. Criminal Trial – Circumstantial Evidence – Failure to explain incriminating circumstances – Is an additional link to chain of circumstances – False explanation or no explanation offered by accused to incriminating circumstance put to him – When accused is last seen with deceased in his house, accused is duty-bound to explain circumstances under which deceased died – Failure to explain or false explanation would create a strong suspicion about guilt of accused – Criminal Procedure Code, 1973, S.313.

994] In view of above prosecution has proved beyond reasonable doubt that accused no.1 to 6 on or prior to 12.9.2013 within India hatched criminal conspiracy to wage war against the Government of India and to collect people with the intention of waging war against the Government of India, to overawe by means of criminal force the Government of Maharashtra and the Government of India, to shake and reduce the faith of the common citizen in its democratic Government by large scale violence destruction of lives

and property and thereby destabilize the system of Government established by law, to organize the spread of secessionist and rebellious thoughts by holding covert and secret meetings, to collect money in India for achieving the objects of the said criminal conspiracy by illegal means, to continue unlawful activities of Communist Party of India (Maoist) and its front organization Revolutionary Democratic Front, for achieving the objects of criminal conspiracy, to continue the activities of Terrorist Gang, banned terrorist organization or unlawful association, singly or jointly as a member of the Terrorist Gang & banned organization CPI (Maoist) and its frontal organisation RDF to conspire, advocate, incite, abet and knowingly facilitate the commission of a terrorist act and unlawful activities by use of violence or other unlawful means, to take part or commit or advocate, abet or incite the commission of unlawful activities, being the member of a banned Terrorist Gang.

995] It is proved that accused No.1 Mahesh Tirki, no.2 Pandu Narote and no.4 Prashant Rahi in pursuance to the criminal conspiracy with accused no.3 Hem Mishra and no.6 Saibaba were found in possession of naxal literatures, pamphlets, letters, correspondence, audio-video, electronic material which were to be used for inciting the people to create violence to cause public disorder and accused no.1 Mahesh Tirki, no.2 Pandu Narote and no.5 Vijay Tirki were receiving the members of banned terrorist organization CPI (Maoist) and its frontal organization RDF and were taking them safely and secretly to forest area within the Gadchiroli district to meet absconding underground naxals. Further they possessed naxal literature, pamphlets, letters, correspondence, video clips which were

to be used for inciting people to cause violence and public disorder and their activities were with intention to further the activities of banned organization CPI maoist and its frontal organization RDF and they showed disaffection towards the Central Government and State of Maharashtra and the prosecution has proved the case against the accused nos.1 to 6 for the offences punishable under Section 13, 18, 20, 38, and 39 of UAPA read with Section 120B of Indian Penal Code against accused nos.1 to 6 beyond all reasonable doubts as they are active members of banned organization CPI (Maoist) and its frontal organization RDF and the prosecution also proved that valid sanction has been accorded in Sessions Case no.13/2014 and Session Case no.130/2015. For all the above reasons I answer Point Nos.1 to 6 in the affirmative.

996] As accused no.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi, no.5 Vijay Tirki and no.6 Saibaba have been found guilty for the offences punishable under Sections 13, 18, 20, 38 and 39 of UAPA r/w Section 120B of IPC and as offence u/s 18 UAPA r/w 120B of IPC and offence u/s 20 UAPA r/w 120B of IPC are punishable upto life imprisonment, I take pause to hear the accused nos.1 to 6 on the point of sentence. Accused nos.1 to 6 were apprised with the fact that they would get time for making submission on the point of sentence but they have filed application at Exh.493 and submitted that they don't want time for hearing on the point of sentence. Advocate Shri Gadling for accused nos.1 to 4 and 6 and Advocate Shri Samaddar for accused no.5 Vijay submitted that accused do not want time for making submission on the point of

sentence and prayed for passing order of sentence. Hence, I heard the accused nos.1 to 6 on the point of sentence.

Sd/-

Date : 7.3.2017

(Suryakant S. Shinde)
Sessions Judge, Gadchiroli
Date 7.3.2017, 1.00 p.m.

997] Accused no.1 Mahesh Tirki submitted that he is an agriculturist, he has wife, daughter, two sons, mother and father depending upon him. Hence, he prayed that leniency may be shown in the matter of awarding the sentence.

998] Accused no.2 Pandu Narote submitted that he is an agriculturist, he has wife, daughter, mother and father depending upon him. Hence, he prayed that leniency may be shown in the matter of awarding the sentence.

999] Accused no.3 Hem Mishra submitted that he does not want to say anything.

1000] Accused no.4 Prashant Rahi submitted that he does not want to say anything.

1001] Accused no.5 Vijay Tirki submitted that he does not want to say anything.

1002] Accused no.6 Sabibaba submitted that he does not want to say anything.

1003] The learned Advocate Shri Gadling on behalf of the accused for accused no.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba and Advocate Shri Samaddar for accused no.5 Vijay Tirki submitted that they don't want to submit anything on the point of sentence and left the matter at the discretion of the Court.

1004] Learned Spl. PP. Shri Sathianathan submitted that from 31.12.2008 till today several innocent persons were killed by naxals on suspicion that they are police informers. Further several police personnel were killed in the firing took place between naxals and police. Further huge public property was either damaged, destroyed and burnt by the naxals during the period from 31.12.2008 till today. Hence, he prayed for granting maximum punishment of life imprisonment for an offence punishable u/s 18 UAPA r/w 120 B of IPC and u/s 20 r/w 120B of IPC and maximum punishment for offence u/s 13, 38 and 39 of UAPA r/w 120B of IPC.

Case adjourned to 3.00 p.m. for passing sentence.

Sd/-

Date : 7.3.2017

(Suryakant S. Shinde)
Sessions Judge, Gadchiroli
Date 7.3.2017

Resumed at 3.00 p.m.

1005] Before proceeding further it is necessary to bear in mind the exact nature of the Maoist movement in India and for that the documents and records found in possession of the accused themselves can be looked into -

Maoist Movement in India

1006] In the present case at Page no.41 of Exh.267 there is a document which is retrieved from the hard-disc seized from the house search of accused no.6 Saibaba titled as “Interview with G.N.Saibaba on the Revolutionary and Democratic Movements in India” By Ka Frank. In the said interview accused no.6 Saibaba stated about the origin of Maoist Movement in India. In reply to question no.3, what accused no.6 Saibaba has stated is reproduced as under :-

“The Naxalite movement emerged in the late 1960s as a response to the most oppressive semi-feudal, semi-colonial state that was put in place after the transfer of power from the British colonialists to the Indian feudal and comprador ruling classes. The Naxalite movement should also be seen as a process that permanently changed the political scenario of the peoples’ movements by defining and establishing the path of Indian revolution.

The word Naxalite came after the name of the village where the first steps towards armed mobilization was initiated under the leadership of Charu Mazumdar. In May 1967 a village called Naxalbari in Jalpaiguri district of North Bengal rose in revolt. Simultaneously, under the leadership of Kanai Chatterjee, the poor peasants and tribal / indigenous people bordering the states of Bengal-Bihar started organizing themselves. This region also developed into a mighty revolutionary movement.

This path-breaking event is also the beginning of the polarization of the revolutionary forces on one side and the revisionist forces on the other from among the

communist parties and groups that existed by then throughout India. That's why it was called the Spring Thunder. No sooner than the revolt of the tribal peasants in North Bengal shook the world did the sparks of Naxalbari spreading the prairie fire of revolution in as many as 600 regions in India.

The nature of the communist movement in India has completely changed with the rise of the Naxalbari revolutionary peasant struggle. The Indian revolutionaries for the first time understood the nature of Indian revolution. Revolutionaries started organizing the more oppressed sections of the rural peasantry- the landless and poor peasants, which in Indian context meant the dalits and adivasis of the vast backward countryside. The RDF works among the broad sections of the masses spreading the revolutionary message. Ever since the Naxalbari rebellion, the poorest of the poor have come to the centre-stage of the peoples' movement in India."

1007] Initially, the said movement was directed against the Landlords and money-lenders. However, because of serious ideological differences within the movement soon resulted in splits and counter-splits, with the Peoples War, which later became the Maoist Party, emerging as the most influential of all factions. Although all factions believed in a protracted armed struggle against the State, they differed in their approaches, methods and understanding of the complex socio-political formations and conditions on ground. Thus, while the leader of each ideological faction was a name of repute and sacrifice.

1008] There is another interview of accused no.6 Saibaba at Page no.119 of Exh.267. By that time he was Deputy Secretary of

RDF. In the said interview at Page no.127 he had given the development of Maoist Organisation under the different names. These are reproduced as under :-

“ The largest groups in 1972 was formed under the leadership of Chandra Pulla Reddy. This group argued for people’s resistance first. There was another group under the leadership of T N Reddy. These argued also for people’s resistance first. Both argued for parliamentary participation. The third major group was CPI (ML) Liberation, led by Mishra. These were centrist on these questions. They were developed a peasants’ movement in Bihar and continued with armed struggle for a while. During that time there was also a group led by Ramanatham. He argued that India is not semi-feudal but capitalist. He formed the Communist League of India (ML). The others are those that believed in armed struggle from the beginning: CPI (ML) Peoples War in the south of India, in the North, the other party was the Maoist coordination center (MCC). The third group was CPI (ML) Party Unity. They also started in Bihar. These were formed by the 1980s.

There are two more groups formed by the 1980s: Provisional Central Committee (ML), and CPI (ML) Second CC. Both operated in Bengal. This was the situation in the 1980s.

The first party that transformed its nature was CPI (ML) Liberation. Initially they argued for armed struggle. But stopped and took up “people’s resistance” and the parliamentary path. The 1980s is the decade when the parties worked among the people and formed their own mass base in different regions.

There was an attempt already in 1970 to unite the various revolutionary groups into the United Revolutionary Party (URP). But three groups stayed

outside. URP itself split into many parts by 1972.

1009] In the said interview accused no.6 Saibaba further stated that in the 1990s the unification process started and the MCC, Peoples War and Party Unity had discussions for party unity and in the unification process People's War and Party Unity united along with, and formed CPI (ML) Peoples War in 1998 and the process continued until 2004, then CPI (Maoist) was formed.

1010] It is mentioned in the said document (Page no.41 of Exh.267) that AIPRF in 2005 merged with other similar organisations to form Revolutionary Democratic Front (RDF) and from the document at Art.157 titled as "Joint Meeting of AIPRF and SFPR", it is clear that the said other similar organisation is SFPR. From the document at Art.157 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba, titled as "Joint Meeting of AIPRF and SFPR", it is clear from Resolution no.1 that in the meeting unanimously resolved to unify AIPRF and SFPR into one organization with a new name Revolutionary Democratic Front (RDF).

1011] The then Prime Minister Manmohan Singh described Maoist Movement as "the greatest internal security threat" and this fact is reflected in reply to question no.16 of interview of accused no.6 Saibaba at Page no.51 of Exh.267 in which he stated that "the first untruth – or distortion, if one would like to call it so – is the so-called hijacking of the train. Either to sensationalise in order to add some colour to drab news stories, or with the evil intention of projecting the Naxalites as the biggest threat to internal security."

1012] Having stated about the condition of the said movement now impact of its functioning on people at large is to be taken into account. “When one person dies it is a tragedy and when thousands dies it is a statistics.” Situation of people in Gadchiroli District today is that it has become routine part of their lives observing the incidents of killing of innocent persons on the suspicion of police informer, police officers and damage and destruction of public property at the hands of naxal. As discussed in earlier part of the judgment that CPI (Maoist) and its frontal organisation like RDF have been formed with a infamous slogan “Naxalbari Ek Hi Rasta” which has come in the Draft Manifesto at Art.159 retrieved from the hard-disc seized from the house search of accused no.6 Saibaba. The ultimate goal of Maoist/Naxal of wresting powers of revolutionary means in India. Even Dr.Babasaheb Ambedkar, the Father of the Constitution of India was not against the idea of Revolution but he had emphasized that revolution should be bloodless. By following the path of “Naxalbari Ek Hi Rasta” the CPI (Maoist) and its frontal organisation RDF intended to overpower the Government machineries by means of violent activities and armed rebellion. It is high time for these terrorist organisations to think changing of the of the path of naxal and to come in the mainstream of democratic Government as said path was also not proved to be successful in other countries like Nepal, China and Russia. It is for the Central Government and State Government to take stringent steps to eradicate the naxal activities and movement all over India because now a days it is not only limited to the tribal area but it is spreading in the urban area in major cities. The then Prime Minister of India, Manmohan Singh said that “Naxal is the greatest internal security threat to India”.

1013] As observed earlier part of the judgment accused nos.1 to 6 are active members of CPI Maoist banned organisation and its frontal organization RDF which is formed with infamous slogan “Naxalbari Ek Hi Rasta” and the prosecution has proved that accused nos.1 to 6 have conspired together for carrying out illegal and violent activities of banned organization CPI (Maoist) and its frontal organization RDF and further from the document filed alongwith list at Exh.472 at Serial no.3 the copy of FIR it is clear that offence is registered at Crime no.35/2016 dated 27.12.2016 registered at Etapalli Police Station it is clear that conspiracy between accused nos.1 to 6 is still continued and since 31.12.2008 till today several innocent persons were killed by naxals on the suspicion of police informers and several police officers have been killed by naxals and huge public property has been either destroyed, damaged or burnt. The Gadchiroli district has been formed in the year 1982 and the State Government has declared the whole Gadchiroli district as naxal affected area on 6 August 2002. As per Government record 78% area of the Gadchiroli district is comprised of forest. It is a good shelter for naxals. Because of the naxal movement and violent activities in Gadchiroli district the position of Gadchiroli district today is same as it was in the year 1982 and for that the accused nos.1 to 6 and members of banned organization CPI (Maoist) and its frontal organization RDF are responsible. Hence, merely because the accused no.6 Saibaba is 90% disabled is no ground to show him leniency and though he is physically handicapped but he is mentally fit and he is a think tank and high profile leader of banned organization CPI (Maoist) and its frontal organization RDF and by the violent activities

of accused nos.1 to 6 and members of banned organization CPI (Maoist) and its frontal organization RDF, the situation of Gadchiroli district from 1982 till today is in paralyzed condition and no industrial and other developments are taking place because of fear of naxal and their violent activities. Hence, in my opinion, the imprisonment for life is also not a sufficient punishment to the accused but the hands of the Court are closed with the mandate of Section 18 and 20 of UAPA and in my opinion it is a fit case to award sentence of imprisonment of life to accused no.1 Mahesh Tirki, no.2 Pandu Narote, no.3 Hem Mishra, no.4 Prashant Rahi and no.6 Saibaba for offence punishable u/s 18 r/w 120B of IPC and u/s 20 r/w 120B of IPC and maximum sentence of imprisonment for Section 13, 38 and 39 of UAPA read with Section 120B of IPC.

1014] In respect of accused no.5 Vijay Tirki only a single incident is proved against him that he was found taking accused no.4 Prashant Rhai from Devri Chichgad area to have meeting with underground naxal Ramdar in forest area of Gadchiroli. While in respect of accused no.1 Mahesh Tirki and no.2 Pandu Narote there are 3 to 4 incidents where they acted as a mediator to take the members of banned organization from Ballarsha railway station to forest area of Gadchiroli district to have meeting with underground naxals. In my opinion, there are mitigating circumstances in matter of awarding sentence to accused no.5 Vijay Tirki but accused no.1 Mahesh Tirki and no.2 Pandu Narote deserve for deterrent punishment though their position is not different than accused no.5 Vijay Tirki and in my opinion, following sentence would meet the ends of justice and I pass following order.

ORDER

1] Accused no.1 Mahesh Kariman Tirki, resident of Murewada, Taluqa : Etapalli, District Gadchiroli, accused no.2 Pandu Pora Narote, resident of Murewada, Taluqa : Etapalli, District Gadchiroli, accused no.3 Hem Keshavdatta Mishra, resident of Kunjbargal, Post : Nagarkhan, District : Almoda (Uttarkhand), accused no.4 Prashant Rahi Narayan Sanglikar, resident of 87, Chandrashekhar Nagar, Krushikesh, Deharadun, Uttarkhand, accused no.5 Vijay Nan Tirki, resident of Beloda, Post PV.92 Dharampur, Taluqa : Pakhanjoor, District Kanker (C.G.) and accused no.6 Gokalkonda Naga Saibaba, resident of Warden House, Gwair Holl, Delhi University Road, New Delhi have been convicted as per Section 235(2) of the Criminal Procedure Code for offences punishable under Section 13, 18, 20, 38, 39 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code.

2] Accused no.1 Mahesh Kariman Tirki, accused no.2 Pandu Pora Narote, accused no.3 Hem Keshavdatta Mishra, accused no.4 Prashant Rahi Narayan Sanglikar and accused no.6 Gokalkonda Naga Saibaba are convicted for the offence punishable under Section 13 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for Seven Years each and to pay a fine of Rs.1000/- (Rs. One Thousand only) each and in default to suffer R.I. for Six months each.

3] Accused no.5 Vijay Nan Tirki is convicted for the offence

punishable under Section 13 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for Four Years and to pay a fine of Rs.1000/- (Rs. One Thousand only) and in default to suffer R.I. for Six months.

4] Accused no.1 Mahesh Kariman Tirki, accused no.2 Pandu Pora Narote, accused no.3 Hem Keshavdatta Mishra, accused no.4 Prashant Rahi Narayan Sanglikar and accused no.6 Gokalkonda Naga Saibaba are convicted for the offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Imprisonment for Life each and to pay a fine of Rs.1000/- (Rs. One Thousand only) each and in default to suffer R.I. for Six months each.

5] Accused no.5 Vijay Nan Tirki is convicted for the offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for Ten Years and to pay a fine of Rs.1000/- (Rs. One Thousand only) and in default to suffer R.I. for Six months.

6] Accused no.1 Mahesh Kariman Tirki, accused no.2 Pandu Pora Narote, accused no.3 Hem Keshavdatta Mishra, accused no.4 Prashant Rahi Narayan Sanglikar and accused no.6 Gokalkonda Naga Saibaba are convicted for the offence punishable under Section 20 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Imprisonment for

Life each and to pay a fine of Rs.1000/- (Rs. One Thousand only) each and in default to suffer R.I. for Six months each.

7] Accused no.5 Vijay Nan Tirki is convicted for the offence punishable under Section 20 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for Ten Years and to pay a fine of Rs.1000/- (Rs. One Thousand only) and in default to suffer R.I. for Six months.

8] Accused no.1 Mahesh Kariman Tirki, accused no.2 Pandu Pora Narote, accused no.3 Hem Keshavdatta Mishra, accused no.4 Prashant Rahi Narayan Sanglikar and accused no.6 Gokalkonda Naga Saibaba are convicted for the offence punishable under Section 38 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for Ten Years each and to pay a fine of Rs.1000/- (Rs. One Thousand only) each and in default to suffer R.I. for Six months each.

9] Accused no.5 Vijay Nan Tirki is convicted for the offence punishable under Section 38 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for Five Years and to pay a fine of Rs.1000/- (Rs. One Thousand only) and in default to suffer R.I. for Six months.

10] Accused no.1 Mahesh Kariman Tirki, accused no.2 Pandu

Pora Narote, accused no.3 Hem Keshavdatta Mishra, accused no.4 Prashant Rahi Narayan Sanglikar and accused no.6 Gokalkonda Naga Saibaba are convicted for the offence punishable under Section 39 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for Ten Years each and to pay a fine of Rs.1000/- (Rs. One Thousand only) each and in default to suffer R.I. for Six months each.

11] Accused no.5 Vijay Nan Tirki is convicted for the offence punishable under Section 39 of the Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for Five Years and to pay a fine of Rs.1000/- (Rs. One Thousand only) and in default to suffer R.I. for Six months.

12] All the sentences shall run concurrently.

13] The accused no.1 Mahesh Kariman Tirki was in Jail from 22.8.2013 to 18.11.2014. Hence, he is entitled to set off under Section 428 of the Criminal Procedure Code.

14] The accused no.2 Pandu Pora Narote was in Jail from 22.8.2013 to 18.11.2014. Hence, he is entitled to set off under Section 428 of the Criminal Procedure Code.

15] The accused no.3 Hem Keshavdatta Mishra was in Jail from 22.8.2013 to 7.9.2015. Hence, he is entitled to set off under

Section 428 of the Criminal Procedure Code.

16] The accused no.4 Prashant Rahi Narayan Sanglikar was in Jail from 2.9.2013 to 30.8.2014. Hence, he is entitled to set off under Section 428 of the Criminal Procedure Code.

17] The accused no.5 Vijay Nan Tirki was in Jail from 2.9.2013 to 18.7.2014. Hence, he is entitled to set off under Section 428 of the Criminal Procedure Code.

18] The accused no.6 Gokalkonda Naga Saibaba was in Jail from 9.5.2014 to 2.7.2015 and from 25.12.2015 to 6.4.2016. Hence, he is entitled to set off under Section 428 of the Criminal Procedure Code.

19] All the accused to surrender their bail bonds.

20] Police Station, Aheri is directed to trace absconding accused Narmadakka and Ramdar and to file separate charge-sheet against them.

21] The muddemal property in **Muddemal Property no.81/2015 in Sessions Case No.13/2014** - 1] One mobile of micro-max company, 2] Cash amount of Rs.60/-, one railway platform ticket of Ballarsha Railway-station dated 28.5.2013, xerox copy of election identity card, 3] one mobile of Samsung Company, 4] Cash amount of Rs.1480/-, xerox copy of election identity card, Registration Certificate book of vehicle no.MH-33/K-9656, pan card and railway

platform ticket of Ballarsha railway-station dated 28.5.2013, 5] One plastic bag containing pass-book of State Bank of India, Birth certificate of Karishma Narote and Birth certificate of Pandu Narote, Caste certificate, School Leaving Certificate, Domicile Certificate, xerox copy of ration-card, newspaper Lokmat and umbrella, 6] Cash amount Rs.7700/-, railway ticket of Delhi to Ballarsha dated 19.8.2013, ATM card of State Bank of India, Pan Card, election identity card, identity-card of Jawaharlal Nehru University, identity-card, Yatri card 7] One camera of Kodak company alongwith charger, 8] One sack containing clothes, spect cover, white cap, newspaper Sahara dated 19.8.2013, 9] Cash amount of Rs.8819/-, Pan-card, Yatri-card, driving license and 12 visiting-cards 10] Newspaper "Dainik Bhaskar" dated 1.9.2013, 11] One transparent plastic file containing one railway ticket of Samta Express from Nijamuddin to Raipur having no.31737002 dated 31.8.2013, four empty packets, two xerox copies of newspaper "Dainik Bhaskar", some plane papers, eight pages of naxal literature alongwith type written papers of naxal under-trial Narayan alias Vijay alias Navin alias Prasad, 12] One mobile of Intex company of silver colour, 13] cash amount of Rs.5000/-, 14] One newspaper "Dainik Bhaskar" dated 1.9.2013 and four pieces of papers on which some phone numbers and the information of some places was written, 15] letter of Justice K. Balkrishnan, Chairperson, National Human Right Commission, New Delhi, dated 31 July 2012, 16] one printed letter of RDF against operation green hunt dated 7 June 2012, 17] 15 printed pages regarding People Hero Comrade Kishanji, 18] News-book by name "The Arrested", 19] People March dated 8 August 2007, 20] Magazines "Jana Pratirodh" volume 39, 41, 42, 21] One printed book

in Telgu language, 22] One colour photo of naxal lady, 23] One book of Lal Salam 24] One book showing “Prasenbabu Maowadi Nahi Hain”, 25] One Telgu book having 8 pages, 26] One letter of two pages of RDF dated 21 August 2013, 27] One sketch of lady having the no.7.7.07, 28] One mobile of Nokia company bearing IMEI No.356320/05/85244429 containing Vodafone SIM card 29] One mobile of Nokia company 359741/04/47915013 and IMEI No.2359741/104/479151/3 of dual SIM, 30] One Mobile of Nokia company having IMEI No.355931/04/460414/5, 31] SIM card of Airtel no.89914904040857278526, 32] One SIM card of Vodafone company no.89911100182011289696, 33] One sealed envelope Ex – 25 {Ex-25, 25/1} received from CFSL, Mumbai of C.R.No.3017/13, CY-612/2014, 34] One sealed envelope Exhibit No.1 to Ex.24 from CFSL Mumbai in C.R.No.3017/13, CY-612/2014, 35] One sealed Envelope Exhibit No.1 from CFSL Mumbai in C.R.No.3017/13, CY-446/13, 36] One sealed envelope Exhibit No. Annexure hard discs, cy475/13 from CFSL, Mumbai in C.R.No.3017/13, 37] One sealed envelope Exhibit No. Annexure hard discs, cy446/13 from CFSL, Mumbai in C.R.No.3017/13, 38] One sealed envelope Exhibit No.25 {LAPTOP} from CFSL, Mumbai CY-612/2014, C.R.No.3017/13 and **Muddemal Property no.14/2016 in Sessions Case No.130/2015 -**

1] I-phone black colour model no.A1332 EMC 3808 fee ID – BCG. E 2 308 Ic-579 c-E 2 3808, 2] cash amount of Rs.320/- and 3] registration certificate DL-2 CAK 7878 be returned to Aheri Police Station and they shall file the same at the time of filing supplementary charge-sheet against absconding accused persons as and when they are arrested.

22] The muddemal property electronic gadgets 16 GB memory-card of Sandisk Company at Art.137 and CDs, DVDs, pen-drives, hard-discs etc. at Arts.1 to 41 be returned to Aheri Police Station in sealed condition and they shall file the same at the time of filing of supplementary charge-sheet against the absconding accused persons as and when they are arrested.

23] Copy of the judgment be given to accused nos.1 to 6 separately free of costs.

24] Pronounced in open Court.

Sd/-

Dt/-07.03.2017

(Suryakant S.Shinde)
Sessions Judge, Gadchiroli.

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

Name of Steno : B.G.Rode, Stenographer (H.G.)
Court name : Sessions Court, Gadchiroli
Date of PDF : 7.3.2017
Judgment signed by Presiding Officer on 7.3.2017
Judgment uploaded on 7.3.2017.