[2023] 10 S.C.R. 867 : 2023 INSC 655

VERNON

v.

THE STATE OF MAHARASHTRA & ANR.

(Criminal Appeal No. 639 of 2023)

JULY 28, 2023

[ANIRUDDHA BOSE* AND SUDHANSHU DHULIA, JJ.]

Unlawful Activities (Prevention) Act, 1967 – Chapters IV and VI-ss.16, 17, 18, 18B, 20, 38, 39, 40 and ss.13, 43D(5) – Denial of bail – When not justified – Bhima-Koregaon violence – FIR – Scope of the investigation was expanded – Searches were conducted at the residences/workplaces of the appellants and they were arrested – Case of the NIA is that various letters and other materials recovered from the arrested co-accused persons showed appellants' involvement with the CPI (Maoist), an organization placed in the First Schedule to the 1967 Act as a terrorist organization – It is alleged that the appellants played an active role in recruitment of and training for cadres of the said organization and that one of the appellant also had role in managing finances thereof – Bail plea of the appellants dismissed by High Court – Held: Contents of the letters through which the appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-accused – No covert or overt terrorist act was attributed to the appellants in these letters or any other material – The letters were not recovered from the appellants – Hence, these communications or content thereof have weak probative value or quality – No credible case of conspiracy to commit offences enumerated under Chapter IV and VI – Mere participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act – No material was demonstrated that the appellants are members of the terrorist organization – The funds, dealing with which was attributed to one of the appellant cannot be connected to any terrorist act – No reasonable grounds for believing that the accusation against the appellant of committing or conspiring to commit terrorist act is prima facie true – Juxtaposing the appellants' case founded on Articles 14 and 21 with the allegations and considering the fact that almost five years have lapsed since they were taken into custody,

* Author

the appellants have made out a case for granting bail – Impugned judgments set aside – Appellants be released on bail, on such terms and conditions the Special Court may consider fit – Conditions to be imposed, enumerated – Penal Code, 1860 – ss. 121, 121A, 124A, 153A, 505(1)(b), 117, 120B r/w 34 – Constitution of India – Arts. 14, 21 – National Investigation Agency Act, 2008 – Bail.

Unlawful Activities (Prevention) Act, 1967 – s.15(1)(a)-(c) – When not attracted – Held: In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of s.15(1) can be attributed to the appellants – Nor there is any allegation against them which would attract sub-clause (c) of s.15(1) – Further, mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of s.15(1)(b) – Thus, prima facie, there is no case against the appellants u/s.15(1) (b).

Unlawful Activities (Prevention) Act, 1967 – s.20 – Interpretation given to s.20 by Bombay High Court in Dr. Anand Teltumbde vs. National Investigation Agency and Another *case for testing as to who would be a member of terrorist gang or terrorist organisation, affirmed – In the present case, on facts, s.20 cannot be made applicable against the appellants at this stage of the proceeding, on the basis of available materials.*

Unlawful Activities (Prevention) Act, 1967 – s.2(k), 2(m), 15 – Held: "Terrorist act" as defined u/s.2(k) carries the meaning assigned to it in s.15 – This Section also stipulates that the expressions "terrorism" and "terrorist" shall be construed accordingly – This implies construction of these two expressions in the same way as has been done in s.15 – "terrorist organisation" has been independently defined in s.2(m) – But so far as the word "terrorist" is concerned, in this Section also, the interpretation thereof would be relatable to the same expression as used in s.15 – An expression used in different parts of a statute shall ordinarily convey the same meaning unless contrary intention appears from different parts of the same enactment itself – No such contrary intention is found in the 1967 Act – Interpretation of Statutes.

Bail – Duty of the Court – Held: There is a duty of the Court to form an opinion on perusal of the case diary or the report made u/s.173, CrPC that there are reasonable grounds for believing that the accusations against such persons are prima facie true while considering the prayer for bail, to reject prayers for bail of the appellants – Code of Criminal Procedure, 1973 – s.173 – Criminal Law.

VERNON v. THE STATE OF MAHARASHTRA & ANR.

Unlawful Activities (Prevention) Act, 1967 – ss.38, 20 – Offence relating to membership of a terrorist organisation – Held: To bring within the scope of s.38, it would not be sufficient to demonstrate that one is an associate or someone who professes to be associated with a terrorist organisation – But there must be intention to further the activities of such organisation on the part of the person implicated under such provision – The same line of reasoning in respect of membership of a terrorist organisation u/s. 20, ought to apply in respect of an alleged offender implicated in s.38 – There must be evidence of there being intention to be involved in a terrorist act – So far as the appellants are concerned, at this stage there is no such evidence which can be relied on.

Bail – Prima facie "test" – Held: It would not satisfy the prima facie "test" unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth – Criminal Law.

Unlawful Activities (Prevention) Act, 1967 – ss.38, 39, 43D (5) – "intention to further activities" – Held: The interpretation given to the phrase "intention to further activities" of terrorist organisation could also apply in the same way in relation to s.39 – In the present case, there has been no credible evidence against the appellants of commission of any terrorist act or enter into conspiracy to do so to invoke the provisions of s.43D (5).

Bail – Unlawful Activities (Prevention) Act, 1967 – Narcotic Drugs and Psychotropic Substances Act, 1985 – s.37 – Held: The restrictions on the Court while examining the question of bail under the 1967 Act is less stringent in comparison to the provisions of s.37, Narcotic Drugs and Psychotropic Substances Act, 1985 – Criminal Law.

Bail – Unlawful Activities (Prevention) Act, 1967 – Bail restricting sections – Jurisdiction of Constitutional Court – Held: A bail restricting clause cannot denude the jurisdiction of a Constitutional Court in testing if continued detention in a given case would breach the concept of liberty enshrined in Article 21, would apply in a case where such a bail-restricting clause is being invoked on the basis of materials with prima facie low-probative value or quality – Constitution of India – Article 21 – Criminal Law.

Criminal Law – Stringent provisions of a statute – Interpretation of – Held: When the statutes have stringent provisions, the duty of the Court

would be more onerous – Graver the offence, greater should be the care taken to see that the offence would fall within the four corners of the Act – Unlawful Activities (Prevention) Act, 1967 – Terrorist and Disruptive Activities (Prevention) Act, 1987 – Interpretation of Statutes.

Allowing the appeals, the Court

HELD: 1.1 As it would be evident from the analysis of the evidence cited by the NIA, the acts allegedly committed by the appellants can be categorised under three heads. The first is their association with a terrorist organisation which the prosecution claims from the letters and witness statements. But what this Court must be conscious of, while dealing with prima facie worth of these statements and documents is that none of them had been seized or recovered from the appellants but these recoveries are alleged to have been made from the co-accused. The second head of alleged offensive acts of the appellants is keeping literatures propagating violence and promoting overthrowing of a democratically elected government through armed struggle. But again, it is not the NIA's case that either of the two appellants is the author of the materials found from their residences, as alleged. None of these literatures has been specifically proscribed so as to constitute an offence, just by keeping them. Thirdly, so far as AF is concerned, some materials point to handling of finances. But such finances, as per the materials through which the dealings are sought to be established, show that the transaction was mainly for the purpose of litigation on behalf of, it appears to us, detained party persons. The formation of or association with a legal front of the banned terrorist organisation has also been attributed to AF, in addition. The High Court while analysing each of these documents individually did not opine that there were reasonable grounds for believing that the accusations against such persons were not prima facie true. Those offences which come within Chapters IV and VI of the 1967 Act, charged against the appellants, are Sections 16, 17, 18, 18B, 20, 38, 39 and 40. In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any allegation against them which would attract subclause (c) of Section 15(1) of the said statute. As regards the acts specified in Section 15(1) (b) thereof, some of the literature alleged to have been recovered from the appellants,

by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. Mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act. Thus, prima facie, this Court cannot reasonably come to a finding that any case against the appellants under Section 15(1) (b) of 1967 Act can be held to be true. [Paras 24 and 26]

1.2 Section 17 of the 1967 Act deals with punishment for raising funds for terrorist acts. Here also the funds, dealing with which has been attributed to AF, cannot be connected to any terrorist act. In the case of *Dr. Anand Teltumbde* the same account statement was referred to. There is also a request made to 'S' from an unnamed person to ask AF to manage the financial expenses of "these cases". The name of another 'A', with the surname Bhelke has surfaced in Annexure "R-19" to the NIA's counter-affidavit in AF's case. This is a copy of a witness statement. In absence of any form of corroboration at the prima facie stage it cannot be presumed that it was the same Arun (i.e., AF) who had received money from 'D'. The prosecution has also not produced any material to show that actual money was transmitted. The communication dated 5th November 2017 ("R-5"), purportedly addressed by 'S' to 'P' does not speak of any payment being made to AF. The rationale applied by the Bombay High Court in the above quoted passage of the judgment in the case of *Dr. Anand Teltumbde,* which has been sustained by this Court, ought to apply in the case of AF as well. [Paras 27 and 28]

1.3 It is not possible to form an opinion that there are reasonable grounds for believing that the accusation against the appellant of committing or conspiring to commit terrorist act is prima facie true. The witness statements do not refer to any terrorist act alleged to have been committed by the appellants. The copies of the letters in which the appellants or any one of them have been referred, record only third-party response or reaction of the appellants' activities

contained in communications among different individuals. These have not been recovered from the appellants. Hence, these communications or content thereof have weak probative value or quality. That being the position, neither the provisions of Section 18 nor 18B can be invoked against the appellants, prima facie, at this stage. The association of the appellants with the activities of the designated terrorist organisation is sought to be established through third party communications. Moreover, actual involvement of the appellants in any terrorist act has not surfaced from any of these communications. Nor there is any credible case of conspiracy to commit offences enumerated under chapters IV and VI of the 1967 Act. Mere participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act, with which they have been charged. [Para 29]

1.4 So far as application of Section 20 of the 1967 Act is concerned, the Bombay High Court in the case of *Dr. Anand Teltumbde* **construed the said provision. This judgment has not been interfered with and this Court also affirm this interpretation given to Section 20 of the 1967 Act for testing as to who would be a member of terrorist gang or terrorist organisation. Moreover, no material has been demonstrated by the NIA that the appellants are members of the terrorist organisation. AF's involvement with IAPL as a frontal organisation of the Communist Party of India (Maoist) is sought to be established, and that has been referred to in the chargesheet as well. But the link between IAPL and the CPI (Maoist) has not been clearly demonstrated through any material. Reference to AF and VG as members of the CPI (Maoist) appears from the statement of protected witness, but that link is made in relation to events between the years 2002-2007, before the organisation was included in the First Schedule to the 1967 Act. No evidence of continued membership after the party was classified as a terrorist organisation has been brought to this Court's notice. Nor is there any reliable evidence to link IAPL with CPI (Maoist) as its frontal organisation. Prima facie this Court does not think that Section 20 can be made applicable against the appellants at this stage of the proceeding, on the basis of available materials. [Paras 30 and 31]**

Dr. Anand Teltumbde v. National Investigation Agency and Another **2022 SCC OnLine Bom 5174 – approved.**

1.5 "Terrorist act" as defined under Section 2(k) of the 1967 Act carries the meaning assigned to it in Section 15. This Section also stipulates that the expressions "terrorism" and "terrorist" shall be construed accordingly. This implies construction of these two expressions in the same way as has been done in Section 15. "terrorist organisation" has been independently defined in Section 2(m) to mean an organisation listed in the First Schedule or an organisation operating under the same name as an organisation so listed. But so far as the word "terrorist" is concerned, in this Section also, the interpretation thereof would be relatable to the same expression as used in Section 15. It is one of the basic rules of statutory construction that an expression used in different parts of a statute shall ordinarily convey the same meaning – unless contrary intention appears from different parts of the same enactment itself. No such contrary intention can be found in the 1967 Act. Section 38 of the 1967 Act carries the heading or title "offence relating to membership of a terrorist organisation". A terrorist act would have to be construed having regard to the meaning assigned to it in Section 15 thereof. Interpretation to this provision has been given earlier. "terrorist organisation" [as employed in Section 2(m)], is not a mere nomenclature and this expression would mean an organisation that carries on or indulges in terrorist acts, as defined in said Section 15. The term terrorism, in view of the provisions of Section 2(k) of the said Act, ought to be interpreted in tandem with what is meant by 'terrorist Act' in Section 15 thereof. [Paras 32 and 33]

1.6 In this context, to bring the appellants within the fold of Section 38 of the 1967 Act, the prosecution ought to have prima facie establish their association with intention to further the said organisation's terrorist activities. It is only when such intention to further the terrorist activities is established prima facie, appellants could be brought within the fold of the offence relating to membership of a terrorist organisation. To bring within the scope of Section 38 of the 1967 Act, it would not be sufficient to demonstrate that one is an associate or someone who professes to be associated with a terrorist organisation. But there must be intention to further the activities of such organisation on the part of the person implicated under such provision. But the same line of reasoning in respect of membership of a terrorist organisation under Section 20, ought to apply in respect of an alleged offender

implicated in Section 38 of the 1967 Act. There must be evidence of there being intention to be involved in a terrorist act. So far as the appellants are concerned, at this stage there is no such evidence which can be relied on. The Court ought to carefully examine every case, before making an assessment if the Act would apply or not. When the statutes have stringent provisions the duty of the Court would be more onerous. Graver the offence, greater should be the care taken to see that the offence would fall within the four corners of the Act. Though these judgments were delivered while testing similar rigorous provisions under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the same principle would apply in respect of the 1967 Act as well. [Paras 34 and 35]

1.7 In the case of *Zahoor Ahmad Shah Watali,* it has been held that the expression "prima facie true" would mean that the materials/ evidence collated by the investigating agency in reference to the accusation against the accused concerned in the chargesheet must prevail, unless overcome or disproved by other evidence, and on the face of it, materials must show complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the accused ought to prevail. In this Court's opinion, however, it would not satisfy the prima facie "test" unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth. In the case of the appellants, contents of the letters through which the appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-accused. Moreover, no covert or overt terrorist act has been attributed to the appellants in these letters, or any other material forming part of records of these two appeals. Reference to the activities of the accused are in the nature of ideological propagation and allegations of recruitment. No evidence of any of the persons who are alleged to have been recruited or have joined this "struggle" inspired by the appellants has been brought before us. Thus, NIA's contention that the appellants have committed the offence relating to support given to a terrorist organisation is not accepted. The second set of materials include the witness statements. There also no covert or overt act of terrorism has been attributed to the appellants

by the three witnesses. Mere possession of the literature, even if the content thereof inspires or propagates violence, by itself cannot constitute any of the offences within Chapters IV and VI of the 1967 Act. [Paras 36 and 37]

National Investigation Agency v. Zahoor Ahmad Shah Watali **(2019) 5 SCC 1 : [2019] 5 SCR 1060 – referred to.**

1.8 Sections 38 and 39 of the 1967 Act have already been analysed. The interpretation given to the phrase "intention to further activities" of terrorist organisation could also apply in the same way in relation to Section 39 of the same statute. There has been no credible evidence against the appellants of commission of any terrorist act or enter into conspiracy to do so to invoke the provisions of Section 43D (5) of the 1967 Act. As far as raising funds for a terrorist organisation is concerned, at this stage, in absence of better evidence, the account statement is not credible enough to justify invoking the bail-restricting clause by attracting Section 40 of the 1967 Act. [Paras 38 and 39]

1.9 These findings are being returned as the restrictions on the Court while examining the question of bail under the 1967 Act is less stringent in comparison to the provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. This Court is not called upon, for granting a bail to an accused with commercial quantity of contraband article under the 1985 Act, to satisfy ourselves that there are reasonable grounds for believing that an accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Here, this Court has to satisfy ourselves that the specified offences alleged to have been committed by the appellants cannot be held to be prima facie true. [Para 40]

1.10 In these two proceedings, the appellants have not crossed, as undertrials, a substantial term of the sentence that may have been ultimately imposed against them if the prosecution could establish the charges against them. But the fundamental proposition of law laid down in K.A. Najeeb, that a bail restricting clause cannot denude the jurisdiction of a Constitutional Court in testing if continued detention in a given case would breach the concept of liberty enshrined in Article 21 of the Constitution of India, would apply in a case where such a bail-restricting clause is being invoked on the basis of materials with prima facie

low-probative value or quality. Juxtaposing the appellants' case founded on Articles 14 and 21 of the Constitution of India with the aforesaid allegations and considering the fact that almost five years have lapsed since they were taken into custody, the appellants have made out a case for granting bail. Allegations against them no doubt are serious, but for that reason alone bail cannot be denied to them. While dealing with the offences under Chapters IV and VI of the 1967 Act, the materials available at this stage cannot justify continued detention of the appellants, pending final outcome of the case under the others provisions of the 1860 Code and the 1967 Act. [Paras 42 and 43]

Union of India v. K.A. Najeeb **(2021) 3 SCC 713;** *Angela Harish Sontakke v. State of Maharashtra* **(2021) 3 SCC 723 – relied on.**

Jayendra Saraswathi Swamigal v. State of Tamil Nadu **(2005) 2 SCC 13 : [2005] 1 SCR 160;** *State v. Jagjit Singh* **AIR 1962 SC 253 : [1962] SCR 622;** *Gurucharan Singh v. State of (UT of Delhi)* **(1978) 1 SCC 118 : [1978] 2 SCR 358 – referred to.**

1.11 The impugned judgments are set aside. The appellants be released on bail in respect of the cases(s) out of which the present appeals arise, on such terms and conditions the Special Court may consider fit and proper, if the appellants or any one of them are not wanted in respect of any other case. The conditions to be imposed by the Special Court, enumerated. [Paras 45][911-C-D]

Romila Thapar and Ors. v. Union of India and Ors. **Writ Petition (Criminal) No. 260/2018;** *Thwaha Fasal v. Union of India* **2021 SCC OnLine SC 1000;** *Sagar Tatyaram Gorkhe and Another v. State of Maharashtra* **(2021) 3 SCC 725;** *Arup Bhuyan v. State of Assam and Another* **2023 SCC OnLine SC 338;** *Hitendra Vishnu Thakur and Others v. State of Maharashtra and Others* **(1994) 4 SCC 602 : [1994] 1 Suppl. SCR 360;** *Niranjan Singh Karam Singh Punjabi, Advocate v. Jitendra Bhimraj Bijjaya and Others* **(1990) 4 SCC 76 : [1990] 3 SCR 633;** *Usmanbhai Dawoodbhai Memon and Others v. State of Gujarat* **(1988) 2 SCC 271 : [1988] 3 SCR 225 – referred to.**

VERNON v. THE STATE OF MAHARASHTRA & ANR.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 639 of 2023.

From the Judgment and Order dated 15.10.2019 of the High Court of Judicature at Bombay in Criminal Bail Application No. 3007 of 2021.

With

Criminal Appeal No. 640 of 2023.

Tushar Mehta, SG, K M Nataraj, ASG, Ms. Rebecca John, R. Basant, Sr. Advs., Jawahar Raja, Chinmay Kanojia, Archit Krishna, N. Sai Vinod, Vishnu P, Ms. Varsha Sharma, Anand Dilip Landge, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Kanu Agarwal, Mrs. Swati Ghildiyal, Ms. Deepabali Dutta, Sabrish Subramanian, Ms. Sairica S Raju, Arvind Kumar Sharma, Shrikant Sonkawade, Yug Chaudhry, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ANIRUDDHA BOSE, J.

The appellants before us assail two judgments of the High Court of Judicature at Bombay rejecting, in substance, their prayers for bail. Both the applications were filed on 27th October 2018 after the Special Judge, Pune under the Unlawful Activities (Prevention) Act, 1967 ("1967 Act") had dismissed their bail plea. The decisions of the High Court were delivered on the same date i.e. 15th October 2019.

2. We shall deal with both the appeals in this judgment as the detention of the appellants was on the basis of the same First Information Report ("FIR") and the chargesheet also contains the same Sections in respect of which offences are alleged to have been committed by them. These are Sections 121, 121A, 124A, 153A, 505(1)(b), 117, 120B read with Section 34 of the Indian Penal Code, 1860 ("1860 Code") and Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the 1967 Act. Wherever there are distinguishing features vis-à-vis the individual appellants in relation to the nature of evidence against them relied on by the Investigating Agency, we shall refer to them separately. In the subject-case, initially investigation was conducted by the regular law enforcement agency, being the State police. The Central Government, in exercise of their power under Section

6(5) read with Section 8 of the National Investigation Agency Act, 2008 directed the National Investigation Agency ("NIA") to take up investigation of the case by an order passed on 24th January 2020. The case was re-registered at the NIA Police Station, Mumbai as RC No.01/2020/NIA/MUM. Before us, the appeals have been contested by Mr. Nataraj, learned Additional Solicitor General, appearing for the NIA.

3. The proceedings against the appellants have their origin in an FIR, bearing CR No.4/2018 dated 8th January 2018 registered with Vishrambaug Police Station, Pune, Maharashtra. The informant is one Tushar Ramesh Damgude. The incident which prompted filing of the FIR was in relation to a programme at Shaniwar Wada, Pune held on 31st December 2017. The organisers for this event- Elgar Parishad, were activists of Kabir Kala Manch, a cultural organisation. There were various events in connection with the said programme, which according to the prosecution, were provocative in nature and had the effect of creating enmity between caste groups leading to violence and loss of life, as also state wide agitation. There were books kept at the venue, which, according to the maker of the FIR were also provocative. There were incidents of violence, arson, and stone pelting near Bhima-Koregaon and six members of Kabir Kala Manch and other associates were named as accused in the FIR. The appellants did not feature in the FIR. The scope of the investigation was subsequently expanded, as we find in the judgment giving rise to Criminal Appeal No.639 of 2023 on 17th April 2018 the Pune Police conducted searches at the residences of eight individuals, i.e. (1) Rona Wilson of Delhi, (2) Surendra Gadling of Nagpur, (3) Sudhir Dhawale of Mumbai, (4) Harshali Potdar of Mumbai, (5) Sagar Gorkhe (also referred to as Sagar Gorakhe by the prosecution) of Pune, (6) Deepak Dhengale of Pune, (7) Ramesh Gaichor of Pune and (8) Jyoti Jagtap of Pune. The residences of Shoma Sen and Mahesh Sitaram Raut, who have also been implicated in the same case, were searched on 6th June 2018. It has been argued by the NIA that during the searches, electronic devices and documents apart from other materials were recovered and the seized articles were sent to Forensic Science Laboratory ("FSL") for analysis. Cloned copies

thereof, according to the prosecution, revealed incriminating materials. The appellants' names did not also figure in the initial chargesheet dated 15th November 2018, which implicated ten individuals as accused. Among them were Sudhir Dhawale, Surendra Gadling, Shoma Sen, Mahesh Raut and Rona Wilson, who were in detention at that point of time. Rest five accused persons were absconding at that point of time. We are informed by Mr. Nataraj that one of the absconding accused, Milind Teltumbde, has since passed away.

4. Searches were conducted at the residences/workplaces of the appellants and they were arrested on the same day, i.e. on 28th August 2018. They were initially put under house arrest and subsequently sent to judicial custody. Case of the NIA is that various letters and other materials recovered from the arrested co-accused persons including Surendra Gadling and Rona Wilson showed appellants' involvement with the Communist Party of India (Maoist). This organisation has been placed in the First Schedule to the 1967 Act as a terrorist organisation by a notification dated 22nd June 2009 issued in terms of Section 2(m) of the 1967 Act. Prosecution's case is that the appellants played an active role in recruitment of and training for cadres of the said organisation and Arun Ferreira (whom we shall refer to henceforth as AF), being the appellant in Criminal Appeal No.640 of 2023 also had role in managing finances of that organisation. The other accused persons who were detained in the third phase were P. Varavara Rao and Sudha Bharadwaj. Among them, we are apprised by the learned senior counsel for the appellants, Ms. Rebecca John appearing for Vernon Gonsalves (VG in short), being the appellant in Criminal Appeal No.639 of 2023 and Mr. R. Basant (representing AF) that, P. Varavara Rao has been enlarged on bail by an order of this Court passed on 10th August 2022. Sudha Bharadwaj is on "default bail" granted by the Bombay High Court on 1st September 2021. Petition for special leave to appeal against that order was rejected by a three-Judge Bench of this Court on 7th December 2021. Gautam Navlakha, as per information made available before this Court, is under house arrest. Another supplementary chargesheet has been submitted on 21st February 2019 by the State police implicating the appellants, along with other co-accused persons for commission of

aforesaid offences under the 1967 Act and the 1860 Code. On 9th October 2020, NIA had filed a further supplementary chargesheet against, inter-alia, Dr. Anand Teltumbde, Gautam Navlakha, Hany Babu, Sagar Gorkhe, Ramesh Gaichor, Jyoti Jagtap, Stan Swami (since deceased) and Milind Teltumbde (since deceased) broadly under the same provisions of the 1860 Code and the 1967 Act. Barring deceased Milind Teltumbde, all these individuals had been arrested. Among them, Dr. Anand Teltumbde has been released on bail by the Bombay High Court and the judgment to that effect was delivered on 18th November 2022. The petition for special leave to appeal against that decision has been dismissed by a coordinate Bench of this Court on 25th November 2022. VG, it transpires from his pleadings, is a writer, columnist and has been vocal on issues of human rights, prison rights and reform of the criminal justice system. AF has described himself as a practising Advocate of the Bombay High Court as also a cartoonist and a human rights activist.

5. After the arrest of the appellants, a writ petition was filed before this Court **[Writ Petition (Criminal) No. 260/2018- Romila Thapar and Ors. -vs- Union of India and Ors.].** One of the prayers in this petition was for direction of immediate release of all activists arrested in connection with the Bhima Koregaon violence. Direction was also sought for staying any arrest until the matter was fully investigated and decided by this Court. That writ petition was dismissed on 28th September 2018 (by a 2:1 majority). The majority view was that it was not a case of arrest because of expression of mere dissenting views or difference in political ideology of the named accused, but concerning their links with the members of the banned organisation. At that stage, the Court did not go into an exercise of evaluating the materials brought before it. This finding or observation, however, cannot aid the prosecution in a regular application for bail, the appeals in respect of which we are adjudicating. The Court deciding on specific plea of the appellants for bail is required to independently apply its mind and examine the materials placed before it for determining the question of granting bail to the individual applicants.

6. As the charges against the appellants include commission of offences under different Sections of the 1967 Act, including those coming

within Chapters IV and VI thereof, the restriction on grant of bail as contained in Section 43D (5) of the said Act would apply in their cases. We shall also refer to the ratio of the judgment of a three-Judge Bench of this Court in the case of **Union of India -vs- K.A. Najeeb** [(2021) 3 SCC 713] while examining the appellants' cases in the backdrop of the aforesaid provision. In this judgment, it has been held that such statutory restrictions, per se, do not oust the jurisdiction of the Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution of India and it would be within the jurisdiction of the Constitutional Courts, i.e., this Court and the High Courts to relax the rigours of such provisions, where there is no likelihood of trial being completed within a reasonable time and the period of incarceration a detenue has already undergone, covers a substantial part of the prescribed sentences for the offences with which the latter has been charged. This ratio has been relied upon by the learned counsel for the appellants. Other authorities cited on this point are **Thwaha Fasal -vs- Union of India** [2021 SCC OnLine SC 1000] and **Angela Harish Sontakke -vs- State of Maharashtra** [(2021) 3 SCC 723]. On general proposition of law on the aspect of grant of bail due to delay in trial, the case of **Sagar Tatyaram Gorkhe and Another -vs- State of Maharashtra** [(2021) 3 SCC 725] has been relied upon. In course of hearing, we were apprised by the appellants' counsel that charges against the appellants are yet to be framed.

7. We have referred to the case of Dr. Anand Teltumbde, who was added as an accused in relation to the same case on 23rd August 2018 and has subsequently enlarged on bail. His name, according to the prosecution, had surfaced from digital devices and other articles seized by the police, in the expanded phase of investigation. Dr. Anand Teltumbde had surrendered on 14th April 2020 after his plea for pre-arrest bail was rejected. Subsequently, however, he has been released on bail.

8. Arguments have been advanced before us on the question as to whether mere membership of a banned organisation constitutes an offence or not. On behalf of the appellants' reliance was placed on the prevailing view that the same would not be sufficient to constitute an

offence under the 1967 Act or the Terrorist and Disruptive Activities (Prevention) Act, 1987 (which statute also has similar provisions) unless it is accompanied with some overt offending act. A three Judge-Bench of this Court in the case of **Arup Bhuyan -vs- State of Assam and Another** [2023 SCC OnLine SC 338] has held that if a person, even after an organisation is declared as an unlawful association, continues to be a member thereof, would attract penalty under Section 10 of the 1967 Act.

9. Barring Section 13, all the offences with which the appellants have been charged with under the 1967 Act fall within Chapters IV and VI of the said statute. This is apart from the offences under the 1860 Code. Hence, there is a duty of the Court to form an opinion on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure, 1973 ("1973 Code") that there are reasonable grounds for believing that the accusations against such persons are prima facie true while considering the prayer for bail, to reject prayers for bail of the appellants. The manner in which the Court shall form such opinion has been laid down by this Court in the case of **National Investigation Agency -vs- Zahoor Ahmad Shah Watali** [(2019) 5 SCC 1]. It has been held in this judgment:-

*"**23.** By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for*

believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act. Nevertheless, we may take guidance from the exposition in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, [(2005) 5 SCC 294 : 2005 SCC (Cri) 1057], wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paras 36 to 38, the Court observed thus : (SCC pp. 316-17)

> *"36. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?*
>
> *37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.*
>
> *38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is*

satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. … What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea."

And again in paras 44 to 48, the Court observed : (SCC pp. 318-20)

"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must

demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] this Court observed : (SCC pp. 537-38, para 18)

'18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in Puran v. Rambilas [(2001) 6 SCC 338: 2001 SCC (Cri) 1124] : (SCC p. 344, para 8)

> *"8. …Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. … That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."*

We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application

are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.'

48. In Jayendra Saraswathi Swamigal v. State of T.N. (2005) 2 SCC 13 : 2005 SCC (Cri) 481] this Court observed [(SCC pp. 21-22, para 16)]

> *'16. … The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh [(1962) 3 SCR 622 : AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and Gurcharan Singh v. State (UT of Delhi) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] and basically they are — the nature and seriousness of the offence;*

the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.'"

10. We shall first deal with the argument of the appellants that the accusations against the appellants under the Sections which fall within Chapters IV and VI of the 1967 Act cannot lead to a prima facie satisfaction of the Court that such accusations are true and the available evidences at this stage do not fit the ingredients of these restrictive provisions. The nature of the accusations to invoke the bail-restricting clause has been stated in the supplementary chargesheet in which the appellants were implicated. The counter-affidavits also contain printouts/copies of several letters and documents. In the case of VG, the Agency has relied upon the statement of a protected witness who has disclosed that he had met VG in the year 2002. Referring to a time-length between 2002 and 2007, he has stated that during that period, both VG and AF were members of the Maharashtra State Committee of the said party. It is also stated by the protected witness that, in 2002 VG wanted to resign from the party but his resignation was not accepted.

11. Before embarking on this exercise, we reproduce below the following provisions of the 1967 Act, the application of which we shall have to examine in respect of the appellants: -

***"2. Definitions.**- (1) In this Act, unless the context otherwise requires,-*

xxxxxxxxxxx

(k) "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

xxxxxxxxxxx

(m) "terrorist organisation" means an organisation listed in the [First Schedule] or an organisation operating under the same name as an organisation so listed;

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.

15. Terrorist act.— *(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic 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; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iiia) damage to, the monetary stability of India by way of

production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.

[Explanation.—For the purpose of this sub-section,—

(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.]

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

***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.

***17. Punishment for raising funds for terrorist act.**—Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such 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.*

Explanation.—For the purpose of this section,—

(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;

(b) *raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and (c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 shall also be construed as an offence.*

***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.*

***18A. Punishment for organising of terrorist camps.**—Whoever organises or causes to be organised any camp or camps for imparting*

training in terrorism 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.

18B. *Punishment for recruiting of any person or persons for terrorist act.—Whoever recruits or causes to be recruited any person or persons for 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.*

20. Punishment for being member of terrorist gang or organisation.*—Any person who is a member of a terrorist gang or a terrorist organisation, 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.*

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 First 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.

39. Offence relating to support given to a terrorist organisation.*— (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 organisation,—*

(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 organisation, 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 organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to 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.

***40. Offence of raising fund for a terrorist organisation.**—(1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,—*

(a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism.

Explanation.—For the purposes of this sub-section, a reference to provide money or other property includes—

(a) of its being given, lent or otherwise made available, whether or not for consideration; or

(b) raising, collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency.

(2) A person, who commits the offence of raising fund for a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding fourteen years, or with fine, or with both.

***43D. Modified application of certain provisions of the Code.**—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.*

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under

this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to 'the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

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

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable

under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

12. Allegations against these two appellants appear, inter-alia, from paragraphs 17.5, 17.9, 17.10, 17.11, 17.15 17.18 and 17.19 of the first supplementary chargesheet. These paragraphs from the chargesheet dated 21st February 2019 are quoted below:-

"17.5 During the investigation of this crime it emerged that the activity of the accused in this was not limited to only creating antagonism between two sections but they were also doing other destructive acts against the country. Accused Sudhir Dhawale, Rona Wilson, Surendra Gadling, Mahesh Raut and Shoma sen had done unlawful and terrorist acts in accordance with a pre-planned plot by and on behalf of the banned organization C.P.I (Maoist) , a large country wide conspiracy to overthrow through force of violence the constitutionality established democracy and administrative system in the country. It has also emerged that the present crime is also one part of this conspiracy.

Since the participation of accused No.1 Varavara Rao, No.2 Vernon Gonsalves, No.3 Arun Ferreira, No.4 Sudha Bharadwaj and other accused in the said conspiracy of the banned organization C.P.I (Maoist) became clear, their residences and those places from where evidence could possibly be obtained were searched on 28/08/2018.

17.9 It has emerged that accused No.2 Vernon Gonsalves No.3 Arun Ferreira and No.4 Sudha Bharadwaj along with other accused have recruited members for the banned terrorist organization. They are also active members of the said banned organization and have fulfilled the objectives of the banned organization by doing propaganda and dissemination through the medium of frontal organization with the ideology of the organization.

17.10 Accused No.2 Vernon Gonsalves has been convicted and sentenced by the Hon'ble Court of Session , Nagpur in C.R.No.10/2007 offence u/s 10,13,16,17,18,20,23,40(2) Unlawful Activities (Prevention) Act, 25(1-B) Arms Act, 6,9(b) Explosives Act,

4(b), 5 Explosive Substances act 120-B, 121-A IPC of A.T.S. Kala Chowky Police Station , Mumbai. He has accordingly served the sentence. Accused Vernon Gonsalves Unlawful Activities as member of banned organization have been going on continuously.

17.11 During investigation of the said crime it has emerged that I.A.P.L (Indian Association of People's Lawyers) is a frontal organization of the banned organization C.P.I (Maoist) and is working according to the organization's direction and orders and with its economic backing to fulfill the objectives of the banned organization. Accused no.3 Arun Ferreira , No.4 Sudha Bharadwaj and Surendra Gadling are members of the said frontal organization. They along with other accused have made conscious attempts to spread this frontal organization. By doing various unlawful activities through the medium of this frontal organization they have endangered the stability of the country.

17.15. Thus accused nos. 01 to 04 and other accused are members of the banned terrorist organization CPI (Maoist). All work related to this organization is done by these accused is an underground manner. It has emerged from the evidence obtained that frontal organization which supposedly promote democratic rights and civil liberties, such as Indian Association of People's Lawyers (I.A.P.L) , Anuradha Ghandy Memorial Committee (A.G.M.C), Kabir Kala Manch, Persecuted Prisoners Solidarity Committee (P.P.S.C) are set up or similar organizations are infiltrated in as systematic manner and under their cover the work related to the terrorist organization C.P.I (Maoist) is being accomplished is an extremely secret manner.

17.18. During the Investigation it has emerged that the accused No.01 to 04 in this offence and other accused have worked as part of a pre-planned conspiracy devised by the banned organisation C.P.I. (Maoist), a large, countrywide plot and conspiracy to overthrow by force of violence the democratic administrative system established under the country's constitution. It emerged that the organisation C.P.I. (Maoist) and the members of the organisation in this offence have hatched the conspiracy of this offence.

17.19. Accused no.1 in the said offence Varavara Rao, Accused Rona Wilson and Surendra Gadling along with the Polit Bureau

and Central Committee and other underground members of the banned terrorist organisation C.P.I.(Maoist) hatched a criminal conspiracy and obtained the participation of the accused no.02 Vernon Gonsalves, accused no.3 Arun Ferreira and accused no.04 Sudha Bharadwaj in the said conspiracy and got them to participate as active members of the banned C.P.I. (Maoist) organisation banned by the Government of India for the continuation of Unlawful Activity, for exchange of messages, for the implementation of the goals and policies of the said unlawful organisation by planning and convening sittings along with them as also to help their unlawful activities. In same manner it has emerged that hard disks, pendrives, memory cards, mobiles, etc. seized during the house search of accused no.1 Varavara Rao, Surendra Gadling and Rona Wilson contained correspondence, papers, photographs, etc. related to the banned CPI(Maoist) organisation as also that they attempted in different ways to implement the goals, policies and objectives of the said organisation. It also emerged that they attempted in different ways to do acts against the country to overthrow the democratic and lawful administrative system through the medium of frontal organisations established on behalf of the banned organisation in urban areas."

(quoted verbatim from paperbook)

13. In the first statement, the protected witness who appears to have had been associated with Maoist movement claims to have met VG in the year 2002 as we have already indicated. He has spoken of a timeline between 2002 to 2007. According to him, at that time VG and AF were members of the Maharashtra State Committee, presumably of CPI (Maoist) organisation. This statement was recorded on 27th January 2019 by an Assistant Commissioner of Pune Police. The protected witness has made another statement on 27th July 2020 before the police in which he has referred to participation of AF in a seminar of Revolutionary Democratic Front in Hyderabad in the year 2012 and VG in September 2017 by an organisation referred to as "Virasam". These were also broadly repeated in his statement before a Magistrate recorded under Section 164 of the 1973 Code on 28th July 2020. The prosecution has also relied on statements made by one Kumarsai, who appears to have been associated with the

same organisation. Such statements appear to have been made on 2nd November 2018 and 23rd December 2018. He has stated that he had personally never seen VG but according to him, VG was doing the work of uniting intellectuals. About AF, he is alleged to have said that he was "intruding" in student organisations and creating cadre, who were being sent to forests. He also claims to have met AF in the 2003-2007 phase. The third witness, whose statements have also been relied upon by the prosecution agency is one Sudarshan Satyadeo Ramteke. He has referred to another Arun (Arun Bhelke) in his statement, whom he had met while working for an organisation in Chandrapur. He also declared himself as a party associate in his statement, and claims to have had been introduced to AF by another person. He has alleged that AF, Milind Teltumbde and Anil Nagpure had asked him to work with the said organisation.

14. VG has been earlier implicated in 19 cases for alleged crimes under the 1967 Act, the Arms Act 1959, and the Explosives Act 1884. But it has been submitted before us on his behalf that he has been acquitted in 17 out of these 19 cases. In respect of another case, his discharge application is pending. He was convicted in Case No.257/11 by the Sessions Judge, Nagpur under Section 25 (1B) of the Arms Act 1959, Sections 10(a)(i) and 13(1)(b) of the 1967 Act. There were charges against him also under Section 9(B) of the Explosives Act 1884, Sections 4(b) and 5 of the Explosives Substances Act, 1908 and Sections 10 (a)(ii)(iii)(iv), 10(b), 16, 17, 18, 20 and 23 of the 1967 Act and Sections 120B and 121A of 1860 Code. It has been emphasised by learned counsel for VG that his conviction is under appeal before the High Court, and the offences for which he has been convicted do not fall within offences incorporated in Chapters IV and VI of the 1967 Act. The other case is Sessions Case No.261/10 pending before the Sessions Court at Surat.

15. The prosecution has referred to some letters alleged to have been recovered from the computers or other devices of the co-accused persons in which activities of the two appellants have been referred to. We shall deal with these communications in the subsequent paragraphs of this judgment. Under ordinary circumstances in a petition for bail, we must point out, this exercise of analysis of evidence

would not have been necessary. But in view of the restrictive provisions of Section 43D of the 1967 Act, some element of evidence-analysis becomes inevitable.

16. The High Court in dealing with both these appeals had opined that the Investigating Agency had materials which prima facie showed that the applicants were part of a larger conspiracy attracting the offences contained in Sections 121A, 117 and 120B of the 1860 Code as well as Section 18 of the 1967 Act against them. The High Court had invoked the allegations of recruiting cadres for the banned organisation, to import the provisions of Section 18B of the 1967 Act. It further invoked Section 20 of the same statute on the ground that the appellants had been active members of the banned organisation. In the same way, the view of the High Court was that Sections 38 and 39 of the 1967 Act were attracted against the appellants. The High Court found that there were sufficient materials in the chargesheet against the appellants and there were reasonable grounds to believe that the accusation of commission of offences punishable under Chapters IV and VI of the 1967 Act was prima facie true in relation to both the appellants. The High Court, however, did not take into consideration, the factor of the appellants' continued detention. But the judgment of the High Court was delivered on 15th October 2019, when the appellants were in detention for a period little over one year.

17. The NIA has also referred to a set of letters which are alleged to have been recovered from electronic devices of the co-accused persons in course of searches. The other set of documents on which the NIA has placed reliance, are literatures, pamphlets etc. some of which are meant to have been recovered from the residences of the appellants themselves. So far as the aforesaid letters are concerned, copies thereof have been annexed to the courter-affidavits of the NIA filed in connection with both the appeals. We shall refer to them in this judgment in the way they have been described numerically as annexures in NIA's counter-affidavit in the appeal of AF. The first document is an undated letter addressed to Surendra, from an unnamed sender, marked as Annexure "R-6". This letter is claimed to have been recovered from the computer of one of the co-accused and refers to Radical Student Union initiative by AF and VG. This

letter requests the addressee to ask Arun to manage finances for legal defence of one Murgan. There is further reference to two other individuals who apparently have been inspired by the struggles of AF and VG.

18. The second document is a letter dated 18th April 2017, marked as Annexure "R-10", addressed to one "Comrade Prakash" and is claimed to have been written by "R". Prosecution claims "R" is Rona Wilson. Only reference to the two appellants in this document is that they, and others were equally concerned about the "two-line struggle" that was slowly taking shape on the urban front. The source of this letter has not been disclosed in the counter-affidavit. From the content of this letter, the Agency wants to establish that the appellants were senior leaders of the banned organisation.

19. The third document is a letter dated 25th September 2017, marked as Annexure "R-12", written by "Comrade Prakash", which is claimed to have been recovered from the computer of Surendra Gadling and addressee thereof is "Comrade Surendra". Here also there is appreciation of activities of 'Vernon' and 'Arun' in motivating research scholars to get them involved in the revolutionary movement. About VG, it is recorded that one "Comrade G" has been asked to arrange APT to meet with Vernon.

20. As regards AF, his name appears in an undated letter, marked as Annexure "R-4", addressed to Surendra by Darsu, which refers to organisation of a joint meeting by the addressee and Arun in Hyderabad. The next letter is purported to have been written to Prakash by Surendra on 5th November 2017 and is marked as Annexure "R-5". It refers to establishing Indian Association of People's Lawyer ("IAPL") in Kerala for which discussion was held with Arun. According to the Agency, IAPL – a lawyer's body is a frontal organisation of the banned organisation. This communication records a proposed visit to Kerala on International Human Rights Day by AF and the author thereof. This is followed by a further communication from Prakash to Surendra dated 16th July 2017 ("R-7"). This letter records a proposed visit of Arun to Chennai in connection with release of a detained party member as also raising of funds for the

legal defence of detained persons. Here also, there is appreciation of AF and VG's work. The next letter at Annexure "R-22" is claimed to have been written by Sudha Bharadwaj to Prakash and this letter relates to a seminar titled "Udta Loktantra against the UAPA Act" in which Arun was to participate. Lastly there is a letter at Annexure "R-14" written by one Anantwa to Comrade Monibai which relates to the celebration of 50th Anniversary of the Great Proletarian revolution and Naxalites organisation in Mumbai (Bombay) and records that the party had sent revolutionary greetings to Comrades of various associations, including the appellant, Arun.

21. There is also a reference to an account statement alleged by the prosecution to have been recovered from the laptop of Rona Wilson (Annexure "R-3"). We reproduce below this statement in the same form as it has been represented in the said Annexure:-

"Surendra=R=2.5L from Milind

Shoma & amp; Sudhir = R and D = 1L from Surendra

Amit B = R = 1.5 for CPDR canvasing

And T = R = 90T from Surendra (Through Milind)

Myself = R = 1.8L from Com Manoj

Arun = R = 2L from Com Darsu

VV = R = 5L from Com G."

22. Apart from these letters and statements, various literatures, books etc. have been referred to by the prosecution which they claim to have recovered from the residences of AF and VG. These mainly involve writings on extreme left-wing ideology including its application to India. Similar materials are alleged to have been recovered from other accused persons as well. Recovery of different electronic communication devices like Mobile Phones, Tablets, Pen Drives and ancillary items is alleged to have been made. From these devices themselves, however, no evidence has been cited before us which would implicate AF and VG in terrorist acts and the other offences barring the letters on which emphasis has been laid by the agency. We have already referred to the letters which the law enforcement

agency alleges to have recovered from the devices of other accused persons in which there are references to AF and VG. Call Detail Records have also been referred to for establishing location of the accused and also their inter-association.

23. In pursuance of the judgment of this Court in the case of **Zahoor Ahmad Shah Watali** (supra) the documents relied upon by the prosecution at this stage ought to prevail until overcome or disproved by other evidences. In the case of **Dr. Anand Teltumbde -vs- National Investigation Agency and Another** [2022 SCC OnLine Bom 5174] allegations were similar in nature against the petitioner therein. He was charged with all the Sections of the 1967 Act as has been done in the cases of AF and VG except Section 40. The Bombay High Court by a judgment delivered on 18th November 2022 had enlarged him on bail. The NIA's petition for special leave to appeal [SLP(Crl) No. 11345/2022] against that judgment was dismissed by a Coordinate Bench of this Court on 25th November 2022.

24. As it would be evident from the analysis of the evidence cited by the NIA, the acts allegedly committed by the appellants can be categorised under three heads. The first is their association with a terrorist organisation which the prosecution claims from the letters and witness statements, particulars of which we have given above. But what we must be conscious of, while dealing with prima facie worth of these statements and documents is that none of them had been seized or recovered from the appellants but these recoveries are alleged to have been made from the co-accused. The second head of alleged offensive acts of the appellants is keeping literatures propagating violence and promoting overthrowing of a democratically elected government through armed struggle. But again, it is not the NIA's case that either of the two appellants is the author of the materials found from their residences, as alleged. None of these literatures has been specifically proscribed so as to constitute an offence, just by keeping them. Thirdly, so far as AF is concerned, some materials point to handling of finances. But such finances, as per the materials through which the dealings are sought to be established, show that the transaction was mainly for the purpose of litigation on behalf of, it appears to us, detained party persons. The

formation of or association with a legal front of the banned terrorist organisation has also been attributed to AF, in addition. The High Court while analysing each of these documents individually did not opine that there were reasonable grounds for believing that the accusations against such persons were not prima facie true. Those offences which come within Chapters IV and VI of the 1967 Act, charged against the appellants, are Sections 16, 17, 18, 18B, 20, 38, 39 and 40. We have summarised the nature of allegations reflected in the chargesheet as also the affidavit of the NIA. Now we shall have to ascertain if on the basis of these materials, the prosecution has made out reasonable grounds to persuade the Court to be satisfied that the accusations against the appellants are prima facie true. There is charge under Section 13 of the 1967 Act and certain offences under the 1860 Code against the appellants also. But we shall first deal with the appellants' case in relation to charges made against them under the aforesaid provisions.

25. Section 16 prescribes punishment for committing terrorist act and terrorist act has been defined in Section 15 of the 1967 statute. We have reproduced these provisions earlier in this judgment.

26. In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any allegation against them which would attract sub-clause (c) of Section 15(1) of the said statute. As regards the acts specified in Section 15(1) (b) thereof, some of the literature alleged to have been recovered from the appellants, by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. Mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act. Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants

under Section 15(1) (b) of 1967 Act can be held to be true.

27. Section 17 of the 1967 Act deals with punishment for raising funds for terrorist acts. Here also the funds, dealing with which has been attributed to AF, cannot be connected to any terrorist act. In the case of **Dr. Anand Teltumbde** (supra) the same account statement was referred to. In respect of such allegations against Dr. Anand Teltumbde the Bombay High Court came to the following finding:-

"42. Mr. Patil has vehemently argued that this statement from the earlier letter supports receipt of monies i.e. Rs. 90,000/- by Anand T. (Appellant) from Surendra (accused No. 3) who was authorized to provide funds for future programmes. On careful reading of the earlier letter dated 02.01.2018 and the aforementioned statement of account it is seen that there is a fallacy in the argument of NIA. Assuming that Anand T. is the Appellant himself and he received Rs. 90,000/- from Surendra through Milind, firstly it cannot be linked to the statement in the earlier letter dated 02.01.2018 since this account statement pertains to the year 2016 and or 2017. The document has a heading; viz; Party fund received in last year from C.C. Last year would invariably mean the account of 2016 as the title of this document is "Accounts2K17" which would mean Accounts for 2017". That apart requiring us to presume that Anand T. is the Appellant would require further corroboration and evidence. prima facie it appears that, the same has not been brought on record. ***This document is unsigned and has been recovered from the laptop one of the co-accused. Hence, at this prima facie stage we cannot presume that Anand T. i.e. the Appellant received Rs. 90,000/- from Surendra Gadling as argued by NIA. We are afraid to state that we cannot agree with NIA's contention."***

(emphasis added)

28. Here we must point out that there is also a request made to Surendra from an unnamed person to ask AF to manage the financial expenses of "these cases". The name of another Arun, with the surname Bhelke has surfaced in Annexure "R-19" to the NIA's counter-affidavit in AF's case. This is a copy of a witness statement. In absence of any form of corroboration at the prima facie stage it cannot be presumed

that it was the same Arun (i.e., AF) who had received money from Darsu. The prosecution has also not produced any material to show that actual money was transmitted. The communication dated 5th November 2017 ("R-5"), purportedly addressed by Surendra to Prakash does not speak of any payment being made to AF. The rationale applied by the Bombay High Court in the above-quoted passage of the judgment in the case of **Dr. Anand Teltumbde** (supra), which has been sustained by this Court, ought to apply in the case of AF as well.

29. We have already observed that it is not possible for us to form an opinion that there are reasonable grounds for believing that the accusation against the appellant of committing or conspiring to commit terrorist act is prima facie true. The witness statements do not refer to any terrorist act alleged to have been committed by the appellants. The copies of the letters in which the appellants or any one of them have been referred, record only third-party response or reaction of the appellants' activities contained in communications among different individuals. These have not been recovered from the appellants. Hence, these communications or content thereof have weak probative value or quality. That being the position, neither the provisions of Section 18 nor 18B can be invoked against the appellants, prima facie, at this stage. The association of the appellants with the activities of the designated terrorist organisation is sought to be established through third party communications. Moreover, actual involvement of the appellants in any terrorist act has not surfaced from any of these communications. Nor there is any credible case of conspiracy to commit offences enumerated under chapters IV and VI of the 1967 Act. Mere participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act, with which they have been charged.

30. So far as application of Section 20 of the 1967 Act is concerned, the Bombay High Court in the case of **Dr. Anand Teltumbde** (supra) construed the said provision in the following manner:-

"52. Section 20 cannot be interpreted to mean that merely being a member of a terrorist gang would entail such a member for the

above punishment. What is important is the terrorist act and what is required for the Court to see is the material before the Court to show that such a person has been involved in or has indulged in a terrorist act. Terrorist act is very widely defined under Section 15. In the present case, seizure of the incriminating material as alluded to hereinabove does not in any manner prima facie leads to draw an inferance that, Appellant has committed or indulged in a 'terrorist act' as contemplated under Section 15 of the UAP Act."

31. This judgment has not been interfered with by this Court and we also affirm this interpretation given to Section 20 of the 1967 Act for testing as to who would be a member of terrorist gang or terrorist organisation. Moreover, no material has been demonstrated by the NIA before us that the appellants are members of the terrorist organisation. AF's involvement with IAPL as a frontal organisation of the Communist Party of India (Maoist) is sought to be established, and that has been referred to in the chargesheet as well. But the link between IAPL and the CPI (Maoist) has not been clearly demonstrated through any material. Reference to AF and VG as members of the CPI (Maoist) appears from the statement of protected witness, but that link is made in relation to events between the years 2002-2007, before the organisation was included in the First Schedule to the 1967 Act. No evidence of continued membership after the party was classified as a terrorist organisation has been brought to our notice. Nor is there any reliable evidence to link IAPL with CPI (Maoist) as its frontal organisation. We have already dealt with the position of the appellants vis-à-vis terrorist acts in earlier paragraphs of this judgment and we prima facie do not think that Section 20 can be made applicable against the appellants at this stage of the proceeding, on the basis of available materials.

32. "Terrorist act" as defined under Section 2(k) of the 1967 Act carries the meaning assigned to it in Section 15. This Section also stipulates that the expressions "terrorism" and "terrorist" shall be construed accordingly. This implies construction of these two expressions in the same way as has been done in Section 15.

"terrorist organisation" has been independently defined in Section 2(m) to mean an organisation listed in the First Schedule or an

organisation operating under the same name as an organisation so listed. But so far as the word "terrorist" is concerned, in this Section also, the interpretation thereof would be relatable to the same expression as used in Section 15. It is one of the basic rules of statutory construction that an expression used in different parts of a statute shall ordinarily convey the same meaning – unless contrary intention appears from different parts of the same enactment itself. We do not find any such contrary intention in the 1967 Act.

33. Section 38 of the 1967 Act carries the heading or title **"offence relating to membership of a terrorist organisation".** As we have already observed, a terrorist act would have to be construed having regard to the meaning assigned to it in Section 15 thereof. We have given our interpretation to this provision earlier. "terrorist organisation" [as employed in Section 2(m)], in our opinion is not a mere nomenclature and this expression would mean an organisation that carries on or indulges in terrorist acts, as defined in said Section 15. The term terrorism, in view of the provisions of Section 2(k) of the said Act, ought to be interpreted in tandem with what is meant by 'terrorist Act' in Section 15 thereof.

34. In this context, to bring the appellants within the fold of Section 38 of the 1967 Act, the prosecution ought to have prima facie establish their association with intention to further the said organisation's terrorist activities. It is only when such intention to further the terrorist activities is established prima facie, appellants could be brought within the fold of the offence relating to membership of a terrorist organisation. To bring within the scope of Section 38 of the 1967 Act, it would not be sufficient to demonstrate that one is an associate or someone who professes to be associated with a terrorist organisation. But there must be intention to further the activities of such organisation on the part of the person implicated under such provision. But the same line of reasoning in respect of membership of a terrorist organisation under Section 20, ought to apply in respect of an alleged offender implicated in Section 38 of the 1967 Act. There must be evidence of there being intention to be involved in a terrorist act. So far as the appellants are concerned, at this stage there is no such evidence before us on which we can rely.

35. In three decisions of this Court, **Hitendra Vishnu Thakur and Others -vs- State of Maharashtra and Others** [(1994) 4 SCC 602], **Niranjan Singh Karam Singh Punjabi, Advocate -vs- Jitendra Bhimraj Bijjaya and Others** [(1990) 4 SCC 76] and **Usmanbhai Dawoodbhai Memon and Others -vs- State of Gujarat** [(1988) 2 SCC 271], the manner in which stringent provisions of a statute ought to be interpreted has been laid down. In all the three authorities, observation of this Court has been that the Court ought to carefully examine every case, before making an assessment if the Act would apply or not. When the statutes have stringent provisions the duty of the Court would be more onerous. Graver the offence, greater should be the care taken to see that the offence would fall within the four corners of the Act. Though these judgments were delivered while testing similar rigorous provisions under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the same principle would apply in respect of the 1967 Act as well.

36. In the case of **Zahoor Ahmad Shah Watali** (supra), it has been held that the expression "prima facie true" would mean that the materials/ evidence collated by the investigating agency in reference to the accusation against the accused concerned in the chargesheet must prevail, unless overcome or disproved by other evidence, and on the face of it, materials must show complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the accused ought to prevail. In our opinion, however, it would not satisfy the prima facie "test" unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth. In the case of the appellants, contents of the letters through which the appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-accused. Moreover, no covert or overt terrorist act has been attributed to the appellants in these letters, or any other material forming part of records of these two appeals. Reference to the activities of the accused are in the nature of ideological propagation and allegations of recruitment. No evidence of any of the persons who are alleged to have been recruited or have

joined this "struggle" inspired by the appellants has been brought before us. Thus, we are unable to accept NIA's contention that the appellants have committed the offence relating to support given to a terrorist organisation.

37. The second set of materials include the witness statements. There also no covert or overt act of terrorism has been attributed to the appellants by the three witnesses. We have dealt with the summary of their statements earlier in this judgment. We have also observed earlier that mere possession of the literature, even if the content thereof inspires or propagates violence, by itself cannot constitute any of the offences within Chapters IV and VI of the 1967 Act.

38. We have already analysed Sections 38 and 39 of the 1967 Act. The interpretation given by us to the phrase "intention to further activities" of terrorist organisation could also apply in the same way in relation to Section 39 of the same statute. There has been no credible evidence against the appellants of commission of any terrorist act or enter into conspiracy to do so to invoke the provisions of Section 43D (5) of the 1967 Act.

39. As far as raising funds for a terrorist organisation is concerned, we do not think at this stage, in absence of better evidence, the account statement is credible enough to justify invoking the bail-restricting clause by attracting Section 40 of the 1967 Act.

40. We are returning these findings as the restrictions on the Court while examining the question of bail under the 1967 Act is less stringent in comparison to the provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. We are not called upon, for granting a bail to an accused with commercial quantity of contraband article under the 1985 Act, to satisfy ourselves that there are reasonable grounds for believing that an accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Here, we have to satisfy ourselves that the specified offences alleged to have been committed by the appellants cannot be held to be prima facie true.

41. We shall now turn to the other offence under the 1967 Act, which is under Section 13 thereof, and the 1860 Code offences. The yardstick

for justifying the appellants' plea for bail is lighter in this context. The appellants are almost five years in detention. In the cases of **K.A. Najeeb** (supra) and **Angela Harish Sontakke** (supra), delay of trial was considered to be a relevant factor while examining the plea for bail of the accused. In the case of **K.A. Najeeb** (supra), in particular, this same provision, that is Section 43D (5) was involved.

42. In these two proceedings, the appellants have not crossed, as undertrials, a substantial term of the sentence that may have been ultimately imposed against them if the prosecution could establish the charges against them. But the fundamental proposition of law laid down in **K.A. Najeeb** (supra), that a bail-restricting clause cannot denude the jurisdiction of a Constitutional Court in testing if continued detention in a given case would breach the concept of liberty enshrined in Article 21 of the Constitution of India, would apply in a case where such a bail-restricting clause is being invoked on the basis of materials with prima facie low-probative value or quality.

43. In the case of **Zahoor Ahmad Shah Watali** (supra) reference was made to the judgment of **Jayendra Saraswathi Swamigal -vs- State of Tamil Nadu** [(2005) 2 SCC 13) in which, citing two earlier decisions of this court in the cases of **State -vs- Jagjit Singh** (AIR 1962 SC 253) and **Gurcharan Singh -vs- State of (UT of Delhi)** [(1978) 1 SCC 118), the factors for granting bail under normal circumstances were discussed. It was held that the nature and seriousness of the offences, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tempered with; the larger interest of the public or the State would be relevant factors for granting or rejecting bail. Juxtaposing the appellants' case founded on Articles 14 and 21 of the Constitution of India with the aforesaid allegations and considering the fact that almost five years have lapsed since they were taken into custody, we are satisfied that the appellants have made out a case for granting bail. Allegations against them no doubt are serious, but for that reason alone bail cannot be denied to them. While dealing with the offences under Chapters IV and VI of the 1967 Act, we have referred to the materials available against them at this stage.

These materials cannot justify continued detention of the appellants, pending final outcome of the case under the others provisions of the 1860 Code and the 1967 Act.

44. While forming our opinion over granting bail to the appellants, we have taken into account the fact that that VG was once earlier convicted involving offences, inter-alia, under 1967 Act and there is also a pending criminal case against him on the allegations of similar line of activities. Hence, we propose to impose appropriate conditions in respect of both, which they shall have to comply with, while on bail.

45. We accordingly set aside the impugned judgments and direct that the appellants be released on bail in respect of the cases(s) out of which the present appeals arise, on such terms and conditions the Special Court may consider fit and proper, if the appellants or any one of them are not wanted in respect of any other case. The conditions to be imposed by the Special Court shall include:-

(a) Vernon Gonsalves, appellant in Criminal Appeal No.639 of 2023 and Arun Ferreira, appellant in Criminal Appeal No.640 of 2023, upon being enlarged on bail shall not leave the State of Maharashtra without obtaining permission from the Trial Court.

(b) Both the appellants shall surrender their passports, if they possess so, during the period they remain on bail with the Investigating Officer of the NIA.

(c) Both the appellants shall inform the Investigating Officer of the NIA, the addresses they shall reside in.

(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers.

(e) Both the appellants shall also ensure that their Mobile Phones remain active and charged round the clock so that they remain constantly accessible throughout the period they remain on bail.

(f) During this period, that is the period during which they remain on bail, both the appellants shall keep the location status of their mobile phones active, 24 hours a day and their phones

shall be paired with that of the Investigating Officer of the NIA to enable him, at any given time, to identify the appellants' exact location.

(g) Both the appellants shall report to the Station House Officer of the Police Station within whose jurisdiction they shall reside while on bail once a week.

46. In the event there is breach of any of these conditions, or any of the conditions to be imposed by the Trial Court independently, it would be open to the prosecution to seek cancellation of the bail of each or any of the defaulting appellants without any further reference to this Court. Similarly, if the appellants seek to threaten or otherwise influence any of the witnesses, whether directly or indirectly, then also the prosecution shall be at liberty to seek cancellation of bail of the concerned appellant by making appropriate application before the Trial Court.

47. The appeals stand allowed in the above terms.

48. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Divya Pandey
(*Assisted by :* Roopanshi Virang, LCRA)

Result of the case: Appeals allowed.