

**Spl. (NIA) Case No. 02/2020**

*(arising out of RC-13/2019/NIA/GUW)*

**01.07.2021**

- 1) The instant case - *Spl. (NIA) Case No. 02/2020*, has arisen out of NIA investigated case no. RC-13/2019/NIA/GUW, which after investigation by the National Investigation Agency (*hereinafter the NIA*) has resulted in a charge-sheet dated 29.05.2020 against 04 accused persons, namely, Sri Akhil Gogoi **(A-1)**, Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar **(A-2)**, Sri Manas Konwar @ Manash Pratim Konwar **(A-3)** and Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal **(A-4)** *u/s 120(B)/124-A/153A/153B IPC r/w **Section 18/39 of the Unlawful Activities (Prevention) Act, 1967** {hereinafter the UA(P) Act}*. Pursuant to filing of the aforesaid charge-sheet, along with requisite documents, cognizance has been taken vide order dated 12.06.2020, whereupon *Special (NIA) Case No. 02/2020* has been registered. Except Sri Akhil Gogoi **(A-1)** who is in judicial custody, all the other three accused persons – A-2, A-3 and A-4 are on bail. The case is present at the stage of consideration of charge.
  
- 2) The background facts in a nutshell. The instant case was initially registered as Chandmari P.S. Case No.1688/2019, which was subsequently, taken over by the NIA, whereupon it was registered as RC-13/2019/NIA-GUW, which after investigation was charge-sheeted against the 4 accused persons, as narrated above. The gist of the allegations in the ejahar dated 13.12.2019 lodged by SI Monoranjan Majumdar of Chandmari PS *inter alia* is that - an input

was received that A-1 Sri Akhil Gogoi had secretly merged his organization Krishak Mukti Sangram Samiti – KMSS with Revolutionary Communist Centre and the latter was later merged with the banned CPI (Maoist). That, A-1 has associated with the CPI (Maoist) to further its activities in this part of the country. That, A-1, along with A-2, A-3, A-4 and others have conspired to incite hatred and disaffection towards the Government established by law, using the passage of the Citizenship Amendment Bill (CAB) as a pretext and that they also promoted enmity amongst different groups of people.

3) Heard *Sri Satyanarayana*, the learned Senior Public Prosecutor, NIA for the prosecution. The learned Senior P.P., NIA has taken the Court through the contents of the ejahar / FIR and the findings of the investigation with regard to the accused persons. He has referred to the penal provisions under which the accused persons have been charge-sheeted. He has drawn attention to the prosecution sanctions relevant to the case. The learned Senior P.P. has taken the Court through statements of witnesses, the original ejahar, the FIR and various other documents. The learned Senior P.P. has referred to the documents – D29, D31, D32, D38, D44, D47, D51, D52-D54, D56 amongst others. It is submitted by the prosecution that there are sufficient implicating materials against the accused persons U/S 18/39 of the *UA (P) Act*. He also submitted that there are sufficient materials to frame charges U/S 120(B)/124A/153A/153B IPC. It is submitted that the materials on record make out a prima-facie case to frame charges against the accused persons under the charge-sheeted sections and prays that the same may be done so by this Court.

4) Heard *Sri H.A Ahmadi*, Senior Advocate, Supreme Court of India for A-1, assisted by learned counsels *Ms. S. Alam*, *Sri K. Mathur* and *Sri R. Sensua*. Also perused the written argument submitted by the learned senior defence counsel in this regard. Sri Ahmadi, learned senior counsel has drawn attention of the Court to document D-44 and D-56 stating that in his speech at Jorhat as reflected in D-56, A-1 has appealed to the people not to resort to violence. It is further submitted that the books which were seized by the NIA were not banned books. With regard to the statement of P.W-A, it is submitted that in the said statement A-1 is said to be suggesting not to indulge any activities of Maoist in Assam and that there is an additional last sentence which is at some variance with the earlier one. It is submitted that the statement of P.W-A and B are inculpatory and that the said statements should not be relied upon that the purpose of framing charge. Learned senior counsel submits that even if the statements are accepted as true, they do not make out offence u/s- 39 UA (P) Act. He has also pointed out that the CPI (Maoist) has been declared a banned terrorist organization only with from 22.06.2009. The learned senior counsel submits that an overt act is essential for an offence u/s- 15 UA (P) Act and that the same also has to be done so with the intentions mentioned therein. It is submitted that without fulfilling the criteria of Section 15, offence u/s- 18 of the UA (P) Act would not be made out. It is submitted that protest, bandh etc. would not be taken as compromising the economic security of India. Referring to the judgment of *Kedar Nath Singh*, the learned senior counsel submits that the statements of some of the witnesses about A-1 calling for blockade etc. would not

amount to sedition. Summoning up his submissions, the learned senior counsel submits that the materials do not justify framing of charges against the accused A-1.

5) Also heard, *Sri S Barthakur*, learned defence counsel assisted by *Sri K Gogoi* and *Sri R Sensua*, for A-2, A-3 and A-4. The learned defence counsel *Sri Barthakur* has also taken the Court through the materials on record. It is submitted that the ingredients of Sections 18/39 of *UA (P) Act* do not exist; that, A-2, A-3 and A-4 being associates of A1 is not an offence as A1 is not a declared terrorist; that no independent action is attributed to A2, A3 and A4 with regard to conspiracy. It is submitted that the prosecution witnesses have not made any reference to these three accused persons. It is submitted that witness No.15, Sri Bhaben Handique was stated to be General Secretary and Organizing Secretary of the KMSS in the period 2009-2013 and that this witness was not asked about any connection with Maoists. It is submitted that the statements of witnesses have no adverse materials against A2, A3 and A4. The learned defence counsel has also taken the Court through speech of A1 on the record including one speech made at Jorhat. With regard to some books seized, it is submitted that keeping such books is not an offence. It is submitted that there are no materials to link A2, A3 and A4 with the vandalism that took place. That in document D-52, no person has been identified therein as the member of KMSS. It is submitted that without active violence, people protesting should not invite criminal liability. It is also submitted that D-52 indicates that violence took place during protest by some other organisation like

AASU/Chutia Chatra Parishad etc. It is submitted that D-52 does not reveal any adverse materials against these three accused persons. It is submitted that economic blockage was done by other organizations as well. It is submitted that the activities cannot be said to be done with intension to threaten economic security of India. The learned defence counsel refers to the 2013 Amendment, whereby, the term *economic security* and provision *iii(a)* were inserted in Section 15. Summing up his submissions, the learned defence counsel argues that the charges should not be framed against A2, A3 and A4 due to the lack of materials and prays that they may be discharged.

6) In support of their contentions, the learned defence cites the following decisions: -

(i) *Zameer Ahmad v. State of Maharashtra, (2010) 5 SCC 246*

(ii) *State v. Nalini, (1999) 5 SCC 253*

(iii) *Hitendra Vishnu Thakur & Ors. v. State of Maharashtra, (1994) 4 SCC 602*

(iv) *PUCL v. Union of India, (2004) 9 SCC 580*

(v) *R H Khan v. NIA, (2012) SCCOnline Gau 341*

(vi) *Attorney General v. Brown, (1920) 1 KB 773*

(vii) *Shreya Vs. Union of India (2015) 5 SCC 1*

(viii) *Mazdoor Kisan Shakti Sangathan v. Union of India & Ors., (2018) 17 SCC 32*

(ix) *Rangarajan v. P. Jagjeevan Ram & Ors., (1989) 2 SCC 574*

(x) *Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955*

(xi) *State of Kerala v. Raneef, (2011) 1 SCC 784*

(xii) *Yogesh v. State of Maharashtra, (2008) 10 SCC 394*

7) I have perused the ejahar, the FIR, the charge-sheet, the materials submitted along with the charge-sheet, materials of the case diary, including statements, documents etc. and other relevant materials. I have considered the submissions of the learned counsels of both the sides. I have perused the relevant portions of the judgments cited at the Bar.

**Penal provisions of the charge-sheet against the accused persons**

8) As stated at the outset, the accused persons have been charge-sheeted **u/s 120(B)/124-A/153-A/153-B IPC r/w Section 18/39 of the UA(P) Act.** The subject areas of these penal provisions are as follows:

- (i) **Section 120(b) IPC** - Punishment for conspiracy - (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.
- (ii) **Section 153-A IPC** –Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony.
- (iii) **Section 153-B IPC** – Imputations, assertions, prejudicial to national integration.
- (iv) **Section 124-A IPC – Sedition**
- (v) **Section 18 UA (P) Act** - Conspiracy, attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates, the commission

of, a terrorist act or any act preparatory to the commission of a terrorist act.

(vi) **Section 39 UA (P) Act** – Offence relating to support given to a terrorist organization.

9) Before proceeding further, some important principles of law laid down by the Hon'ble Supreme Court on the subject of charge framing or discharge may be noticed hereunder.

**Important case law principles on the subject of consideration of charge**

10) In ***Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368 (para 21)***, the Hon'ble Supreme Court after referring to various earlier cases on the subject of framing charge, has summarized the principles which are to be kept in mind by the criminal court at the stage of consideration of a case for discharge or framing of charge under Sections 227 and 228 of Cr. P.C. :-

*On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

- (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
- (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
- (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the*

*case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

- (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
- (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
- (vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
- (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.*

11) Further, in para 19 of *Sajjan Kumar (supra)*, it was also held that –

- (i) It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the*



*accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.*

*(ii) If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*

12) In ***Asim Shariff v. NIA, (2019) 7 SCC 148 (para 8)***, the Hon'ble Supreme Court has enumerated the following principles:

- (i) It is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;
- (ii) where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge;
- (iii) by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him.
- (iv) It is thus clear that while examining the discharge application filed under Section 227 Cr.P.C, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not.
- (v) It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record.

13) In ***State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 (para 9)***, the Hon'ble Supreme Court has held that -

*Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements.*

- 14) In ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 (para 19)***, it has been held that - *at the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.*
- 15) In ***State v. S. Selvi, (2018) 13 SCC 455 (para 9)***, it has been held that –
- (i) It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the Judge has got power to sift and weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge. The test to determine a prima facie case would naturally depend upon the facts of each case.*
  - (ii) By and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused.*
  - (iii) The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the*

*total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on.*

*(iv) This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.*

16) In ***Soma Chakravarty v. State, (2007) 5 SCC 403 (para 19)***, it has been held that - *charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exist some materials therefor. Suspicion cannot alone, without anything more, it is trite, form the basis therefor or held to be sufficient for framing charge.*

17) In ***P. Vijayan v. State of Kerala, (2010) 2 SCC 398 (para 25)***, it has been held that - *Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he finds that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and documents at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure.*

18) In ***State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 (para 4)***, it has been held that –

*(i) If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-*

*examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*

*(ii) An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.*

19) In a recent judgment - ***M.E. Shivalingamurthy v. CBI, (2020) 2 SCC 768*** (para 17, 18, 29, 31), the Hon'ble Supreme Court has again summarised the principles with regard to discharge or charge framing and laid down the following principles:

*(i) If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.*

*(ii) The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.*

*(iii) The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.*

*(iv) If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot*

*show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial.*

*(v) It is open to the accused to explain away the materials giving rise to the grave suspicion.*

*(vi) The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.*

*(vii) At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.*

*(viii) There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.*

*(ix) The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC. The expression, "the record of the case", used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police.*

*(x) It is not open to the accused to rely on the material by way of defence and persuade the court to discharge him.*

*(xi) In view of the decisions of this Court that the accused can only rely on the materials which are produced by the prosecution, it must be understood that the grave suspicion, if it is established on the materials, should be explained away only in terms of the materials made available by the prosecution. No doubt, the accused may appeal to the broad probabilities to the case to persuade the court to discharge him.*

20) Upon perusing the aforesaid case laws enunciated by the Hon'ble Supreme Court in various decisions, some of the important principles that emerge on the subject of charge / discharge are:

- (i) At the stage of considering the discharge/charge the Court has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie against the accused has been made out.
- (ii) What constitute a prima-facie case would depend upon the facts of each case. But if there is a ground for presuming that the accused has committed the offence, a prima-facie case can be said to exist against him.
- (iii) If the evidence proposed to be adduced by the prosecution even if fully accepted, before being challenged by the defence, does not show that the accused committed the offence, there will no sufficient ground for proceeding with the trial.
- (iv) Full appreciation of evidence like that a trial is not permissible at the stage of consideration of charge, though broad probabilities indicated by the materials has to be seen for the purpose of determining by the Court whether it would be justified in commencing trial against the accused.
- (v) If the Court finds on the basis of materials that there are no sufficient grounds for proceeding against the accused, then the Court would be justified to discharge the accused.
- (vi) If the materials indicate two views, with one of them creating suspicion only as distinguished from grave suspicion, the Court will be empowered or justified to discharge the accused.
- (vii) Suspicion cannot alone without anything more from the materials, cannot be held sufficient for framing charge.
- (viii) Where the materials fall short of *prima-facie* case for framing charge against the accused, the interests of justice require the court to discharge the accused.

(ix) If the court finds that the materials at that stage are compatible with innocence of the accused, it can justifiably discharge the accused.

**Definition and interpretation of Terrorist Act under the UA  
(P) Act, 1967**

21) It may be mentioned herein that Section 2 (k) of the UA(P) Act pertaining to definitions, states that *terrorist act* has the meaning assigned to it in section 15, and the expressions *terrorism* and *terrorist* shall be construed accordingly.

22) In this context, Section 15 of the UA(P) Act is as under:

**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 do or abstain from doing any act;]

**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.]

23) From the analysis of this definition of terrorist act, I find that to constitute a terrorist act within the meaning of Section 15, the prescribed illegal activities have to be done with any or more of the stipulated intention(s) – such as threatening the unity, integrity, security, economic security of India or threatening the sovereignty of India or striking terror in the people or a section of the people.

### **MATERIALS AGAINST ACCUSED, THEIR ANALYSIS AND FINDINGS**

24) Now, the materials on record available at this stage have to be scrutinized and analyzed to determine the question of framing charge or otherwise, against the accused persons.

### **Materials with regard to Manas Konwar @ Manash Pratim Konwar (A-3)**

#### *Findings in the charge-sheet with regard to A-3*

25) Paragraph 16.18 (C) enumerates the findings against Sri Manas Konwar @ Manash Pratim Konwar **(A-3)** revealed by the investigation. It is stated therein that:

- (i) A-3 is closely associated with A-1 and supported the ideological inclination of A-1. The accused has an extremist (Maoist) ideology.

- (ii) A-3 has conspired, advocated, abetted, advised the conspiracy to terrorist act {as defined in Section 15(1)(a)(iii) of the UA(P) Act} and subsequently, in pursuance of that conspiracy committed terrorist acts.
- (iii) A-3 in association with A-1 promoted enmity between different classes of people on grounds of religion, race, place of birth, residence, language which is prejudicial to maintenance of harmony.
- (iv) A-3 made assertions prejudicial to harmony to the national integration.
- (v) A-3 in association with A-1 by his speeches caused disruption of public peace and causing widespread disharmony and disaffection towards the Government established by law.
- (vi) A-3 in association with A-1 by his speeches caused disruption of public peace and causing widespread disharmony and disaffection towards the Government established by law.
- (vii) A-3 in association with A-1 conspired to cause widespread blockade in the State of Assam, thereby paralyzing the Government machinery causing economic blockade.
- (viii) The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing prima facie case against the accused to prosecute.

*Materials with regard to A-3*

26) In the charge-sheet dated 29.05.2020, 76 witnesses are listed as prosecution witnesses, of which the statements of 19 witnesses have been recorded during the investigation. These also include 2 protected witnesses, being protected witness A and B.

- (i) The protected witness A has not mentioned the name of accused A-3. The protected witness B in his statement has also not mentioned the name of accused Sri Manas Konwar @ Manash Pratim Konwar (A-3).

- (ii) Witness Sri Dipak Mudoj, listed as PW-3 in the charge-sheet dated 29.05.2020, in his statement has not mentioned the name of Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- (iii) Witness Sri Pranab Jyoti Handique, listed as PW-4 in the charge-sheet dated 29.05.2020, in his statement has not mentioned the name of accused Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- (iv) Witness Sri Dibyajyoti Sarmah, listed as PW-5 in the charge-sheet dated 29.05.2020, in his statement has mentioned Sri Manas Konwar @ Manash Pratim Konwar (A-3) and stated that on 11.12.2019, at about 6 pm, A-1 Sri Akhil Gogoi along with A-3 Sri Manas Konwar @ Manash Pratim Konwar (President of SMSS – student wing of KMSS) reached near DC office Jorhat, where A-1 delivered a speech against the CAB (Citizenship Amendment Bill). He further stated that thereafter, he along with A-1, A-3 and Sri Lakha Jyoti Gogoi reached his house and soon after A-1 left. That, subsequently, police took him, A-3 and Lakha Jyoti Gogoi to Rowraya police OP and released them later. He further stated that he knew A-3 Sri Manas Konwar @ Manash Pratim Konwar (President of KMSS), accused Sri Bittu Sonowal (Acting President of SMSS) and accused Sri Dhajya Konwar (Secretary of KMSS). Apart from this, PW-5 has not made any other statement regarding Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- (v) Witness Sri Tulumoni Duarah, listed as PW-6 in the charge-sheet dated 29.05.2020, was the O-C of Chabua PS at the relevant time. He was also injured in the violent incident at Chabua. He has not referred to Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- (vi) Witness Sri Sunil Sonowal, listed as PW-7 in the charge-sheet dated 29.05.2020, in his statement stated that knows A-2 Sri Dhajya Konwar, has his phone number and is in contact with him on phone. He further stated that A-1 Sri Akhil Gogoi visited Dibrugarh on 09.12.2019 and that

he along with KMSS associates of Dibrugarh area were present in Chabua, where A-1 gave a speech. The public got provoked and violent activities started resulting in damage to Government vehicles and injury to O-C Chabua. That after violent activities, roads got blocked by protesters and he came back home. PW-7 has stated that he had seen Sri Manas Konwar @ Manash Pratim Konwar (A-3) accompanying A-1 Sri Akhil Gogoi.

(vii) Witness Sri Rahul Chetry, listed as PW-8 in the charge-sheet dated 29.05.2020, in his statement has not mentioned or implicated accused Sri Manas Konwar @ Manash Pratim Konwar (A-3).

(viii) Witness Asik Ali, listed as PW-9 in the charge-sheet dated 29.05.2020, in his statement has stated that knows Sri Manas Konwar @ Manash Pratim Konwar (A-3) as one of the office bearers of KMSS, being its Working President. He also stated that SMSS is the student wing of KMSS and that its main object is support KMSS and welfare of students. He further stated that he knows Sri Manas Konwar @ Manash Pratim Konwar (A-3) personally and have talked with him over phone. Apart from this, this witness has not stated anything regarding A-3.

(ix) Witness Sri Jugal Gogoi, listed as PW-10 in the charge-sheet dated 29.05.2020, in his statement has stated that he was the President of SMSS of Dhemaji district and that he personally knows Sri Manas Konwar @ Manash Pratim Konwar (A-3) as Working President of KMSS. He also stated that he had talk with Manas Konwar and others, on their phones in connection with protest and party work. Apart from this, this witness has not stated anything regarding A-3.

(x) Witness Sri Maina Deka, listed as PW-11 in the charge-sheet dated 29.05.2020, in his statement has stated that he was the Joint General Secretary of KMSS and that he personally knows Sri Manas Konwar @ Manash Pratim Konwar (A-3) as Working President of SMSS. He also

stated that he had talk with Manas Konwar and others, on their phones in connection with protest, meetings and party work. He also stated that during the period – 09.12.2019 to 13.12.2019, as per the directions of A-1, he was in the KMSS office in Guwahati and in close contact with A-1 and other leaders of KMSS. Apart from this, this witness has not stated anything regarding A-3.

- (xi) Witness Sri Kulapradip Bhattacharyya, listed as PW-12 in the charge-sheet dated 29.05.2020, in his statement has not mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- (xii) Witness Sri Nitul Sonowal, listed as PW-13 in the charge-sheet dated 29.05.2020, in his statement has not mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- (xiii) Witness Sri Ritumoni Hazarika, listed as PW-14 in the charge-sheet dated 29.05.2020, in his statement has not mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- (xiv) Witness Sri Bhaben Handique, listed as PW-15 in the charge-sheet dated 29.05.2020, in his statement has stated that he worked with KMSS from 2009 to 2013 and that he knows Sri Manas Konwar @ Manash Pratim Konwar (A-3) as Working President of SMSS.
- (xv) Witness Sri Jitul Deka, listed as PW-16 in the charge-sheet dated 29.05.2020, in his statement has not mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- (xvi) Witness Sri Poramananda Bora, listed as PW-17 in the charge-sheet dated 29.05.2020, in his statement has not mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3).

(xvii) Witness Sri Rajib Gogoi, listed as PW-18 in the charge-sheet dated 29.05.2020, in his statement has not mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3).

(xviii) Witness Dr Nabamita Das, APS, Assistant Commissioner of Police, Cyber Crime, Guwahati, listed as PW-19 in the charge-sheet dated 29.05.2020, in her statement has stated that she received in the Cyber Cell 7 DVDs from various police stations of Guwahati regarding the mass protests in Guwahati in December 2019. This witness has not mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3).

27) Apart from these witnesses, who have also been listed as prosecution witnesses in the charge-sheet dated 29.05.2020, I have also perused the statements of *Sri Arupjyoti Saikia*, *Sri Pranjal Kalita* and *Sri H M Sahjahan*. These 3 witnesses have not been listed in the charge-sheet dated 29.05.2020.

(i) Witnesses Sri Arupjyoti Saikia and Sri Pranjal Kalita, in their statements recorded during the investigation, have not mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3).

(ii) Witness Hussain Mohammad Shahjahan, who is not a listed witness, in his statement recorded during the investigation, has stated that during the protest activities against CAB, Sri Manas Konwar @ Manash Pratim Konwar (A-3) accompanied Sri Akhil Gogoi to upper Assam and that they were coordinating with Bittu Sonowal and Dhajya Konwar at Guwahati and with him at Barpeta. During the protest activities in Guwahati around 10<sup>th</sup> – 11<sup>th</sup> December, 2019 also, during which violence broke out, he and the aforesaid persons coordinated. He further stated that during such protest activities against CAB, he was getting updates about upper

Assam through Akhil Gogoi (A-1) and Sri Manas Konwar @ Manash Pratim Konwar (A-3).

28) Upon perusing the **documents**, I find as follows:

(i) Document D-34 is transcriptions and translations of intercepted voice clips of Akhil Gogoi, Bittu Sonowal and Dhajya Konwar. No such transcription is available with regard to Sri Manas Konwar @ Manash Pratim Konwar (A-3).

(ii) Document D-88 is CDR analysis report of the phone numbers of the 4 accused persons and some others, during the period 7<sup>th</sup> December, 2019 to 13<sup>th</sup> December, 2019. It indicates that during this period, Manas Konwar exchanged 1 call with Bittu Sonowal; 15 calls with Dhajya Konwar; 7 calls with Shajahan and 34 calls with Bittu Sonowal on another of his number. This is compatible with the statements of some of the witnesses that during this period, A-3 was also coordinating with the others regarding the protest activities against the CAB. However, intercepted voice call transcriptions of A-3 are not available to ascertain the contents of his phone calls.

(iii) Document D-63 gives an assessment of the damage to properties – both public and private, to the tune of approximately Rs 7 crores.

**Materials with regard to Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2)**

*Findings in the charge-sheet with regard to A-2*

29) Paragraph 16.18 (B) enumerates the findings against Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar **(A-2)** as stated to be revealed by the investigation. It is stated therein that:

- (i) A-2 is closely associated with A-1 and supported the ideological inclination of A-1. The accused has an ideology of the same spectrum of ideology of CPI (Maoist) ideology.
- (ii) A-2 has conspired, advocated, abetted, advised the acts preparatory to commission of terrorist act {as defined in Section 15(1)(a)(iii) of the UA(P) Act}.
- (iii) A-2 promoted enmity between different classes of people on grounds of religion, race, place of birth, residence, language which is prejudicial to maintenance of harmony.
- (iv) A-2 in association with A-1 made assertions prejudicial to harmony to the national integration.
- (v) A-2 in association with A-1 caused disruption of public peace and causing widespread disharmony and disaffection towards the Government established by the law.
- (vi) A-2 in association with A-1 conspired to cause widespread blockade in the State of Assam, thereby paralyzing the government machinery, causing economic blockade.
- (vii) The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing prima facie case against the accused to prosecute.

**Materials with regard to A-2**

- 30) Perusal of the statements of the witnesses reveals that:
- (i) The protected witness A and B have not mentioned the name of the accused Sri Dhirjya Konwar @ Dhajjya Konwar @ Dhajya Konwar (A-2).
  - (ii) Witness Sri Dipak Mudoi, has not mentioned about A-2. Witnesses Sri Pranab Jyoti Handique and Sri Dibyajyoti Sarmah, have stated that they know Sri Dhajjya Konwar, as Secretary of KMSS.
  - (iii) Witness Sri Tulumoni Duarah, listed as PW-6 has not referred to or made any implication by name against A-2.



- (iv) Witness Sri Sunil Sonowal, listed as PW-7 in the charge-sheet dated 29.05.2020, in his statement has stated that he knows the accused Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2), has his phone number and has been in regular contact with him. Further he stated that A-1 Akhil Gogoi, was leading a protest in the state of Assam against the CAB/CAA Bill passed by the Parliament in Delhi and all KMSS associates under the leadership of Akhil Gogoi were planning to stop the state machinery leading to block of Highways.
- (v) Witness Sri Rahul Chetry listed as PW-8 has not mentioned or implicated accused Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2).
- (vi) Witness Asik Ali, listed as PW-9 has stated that knows Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2) as Secretary of KMSS. Witness Sri Jugal Gogoi, listed as PW-10 has stated that he personally knows Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2) as General Secretary of KMSS.
- (vii) Witness Sri Maina Deka, listed as PW-11 has stated that he personally knows Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2) as general secretary of KMSS. He further stated that he had talked with A-2, A-1, A-3 and A-4 many times over their mobile phones on various occasions relating to protests, meetings and party work etc. He further stated that as per the directions of Akhil Gogoi, during the period i.e., 09.12.2019 to 13.12.2019, he was in Gauhati at the office of the KMSS office and during this period he was in close contact with Akhil Gogoi and other leaders of KMSS.
- (viii) Witnesses Sri Kulapradip Bhattacharyya, Sri Nitul Sonowal, Sri Ritumoni Hazarika, Sri Jitul Deka in their statements have not mentioned about Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2).

- (ix) Witness Sri Bhaben Handique, listed as PW-15 has stated that he knows Sri Dhirjya Konwar @ Dhajjya Konwar @ Dhajya Konwar (A-2), as General Secretary of KMSS.
- (x) Witnesses Sri Poramananda Bora, Sri Rajib Gogoi and police official Dr Nabamita Das, have not mentioned about Sri Dhajjya Konwar (A-2).
- (xi) Witness Sri Naba Moran and Sri Pranjal Kalita – not listed, as already mentioned, have not talked about Sri Dhajjya Konwar (A-2).
- (xii) Non-listed witness Sri Arupjyoti Saikia has stated that sometimes he used to speak to A-2 Dhajjya Konwar on his phone. That, after A-1 Akhil Gogoi got arrested, he had spoken to A-2 Dhajjya Konwar, who also asked him as to how Assam can take up the issue of CAA in legal manner and they discussed about going to court. He stated that he made calls with A-2 Dhajjya Konwar on 13.12.2019 due to his concern over the violence and that A-2 Dhajjya Konwar told that there is loss of lives and property in the violence. That, A-2 Dhajjya Konwar told him that the Hon'ble Supreme Court may take a positive view of the petitions filed and that KMSS had also decided to file a similar petition. They discussed about constitutional lawyers in Guwahati. He stated that he is one of the persons, the KMSS people speak to when they need help, apart from *Dr Hiren Gohain, Sri Udayaditya Bharali, Sri Haider Hussain, Sri Nekibur Zaman, Sri Arup Borbora etc.*
- (xiii) Witness Hussain Mohammad Shahjahan, (*non-listed, as already mentioned*) in his statement has stated that he was involved in the activities of SMSS till 2015 under the supervision of Sri Akhil Gogoi, in coordination with A-2 Sri Dhajya Konwar and A-4 Sri Bittu Sonowal. He further stated that during the protest activities against CAB, Sri Manas Konwar (A-3) accompanied Sri Akhil Gogoi (A-1) to upper Assam and that they were coordinating with Bittu Sonowal and Dhajjya Konwar at Guwahati and with him at Barpeta. He also stated that during the recent

protests, Sri Arupjyoti Saikia was in communication with A-1, A-2, A-4 and other associates of KMSS. He further stated that he and the aforesaid persons coordinated during the protest activities in Guwahati around 10<sup>th</sup> – 11<sup>th</sup> December, 2019 also, during which violence broke out. He further stated that during such protest activities against CAB, he was getting updates about upper Assam through Akhil Gogoi (A-1) and Sri Manas Konwar (A-3) and that updates from Guwahati were given by Sri Arupjyoti Saikia, A-2 and A-4. This witness further stated that during the recent bandh and violent activities in Guwahati during 10<sup>th</sup> to 12<sup>th</sup>, these persons were at Guwahati and coordinating the execution of the bandh against CAB, which caused economic blockade, destruction of essential supplies and complete shutdown leading to paralyzing of state machinery.

- 31) I have perused the copies of the **documents** listed in the charge-sheet dated 29.05.2020. In this regard, I find as follows:
- (i) Document D-34 is transcriptions and translations of intercepted voice clips of Akhil Gogoi, Bittu Sonowal and Dhajya Konwar.
  - (ii) Document D-88 is CDR analysis report of the phone numbers of the 4 accused persons and some others, during the period 7<sup>th</sup> December, 2019 to 13<sup>th</sup> December, 2019. It indicates that during this period, the accused A-2 Dhajya Konwar exchanged 54 calls with A-4 Bittu Sonowal; 15 calls with A-3 Manas Konwar; 20 calls with A-1 Akhil Gogoi; 4 calls with Shahjahan; 6 calls with Arupjyoti Saikia; 4 calls with Arupjyoti Saikia on another number.
  - (iii) Document D-59, is stated to be a scrutiny report of videos seized from the office of DY 365 news channel, wherein serial no. 2, 3, 5 and 8 pertains to the accused Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2):

- Serial No. 2 - CAB protestors led by A-2 Dhajija Konwar shouting slogans against Hon'ble CM, Assam
- Serial No. 3 – CAB protestors led by A-2 Dhajija Konwar argue with police and shouting slogans – *Jai Aii Asom*.
- Serial No. 5 – police official directed CAB protestors led by A-2 Dhajija Konwar not to come forward, in front of Ganesh Mandir, Ganeshguri, Guwahati.
- Serial No. 8 – CAB protestors led by A-2 Dhajija Konwar delivering speech and proposing to start one protest march up to Ganeshguri, to which the crowd agree.

(iv) Document D-63 gives an assessment of the damage to properties – both public and private, to the tune of approximately Rs 7 crores.

(v) D-34 contains transcriptions and translations of the intercepted voice clips of some persons, including that of Sri Dhirjya Konwar @ Dhajija Konwar @ Dhajya Konwar (A-2), in his conversations with co-accused and other persons, during the relevant time. The following telephone conversations of Sri Dhirjya Konwar @ Dhajija Konwar @ Dhajya Konwar (A-2) are available in these transcripts:

- Call between A-1 Akhil Gogoi and A-2 Dhajija Konwar on 04.12.2019 at 13:01
- Call between A-1 Akhil Gogoi and A-2 Dhajija Konwar on 10.12.2019 at 16:26
- Call between A-4 Bittu Sonowal and A-2 Dhajija Konwar on 10.12.2019 at 11:20.

**Materials with regard to Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4)**

*Findings in the charge-sheet with regard to A-4*

32) Paragraph 16.18 (D) of the charge-sheet dated 29.05.2020 enumerates the findings against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4):

- (i) A-4 is closely associated with A-1 and supported the ideological inclination of A-1. The accused has an ideology of the same spectrum of ideology of CPI (Maoist) ideology.
- (ii) A-4 has conspired, advocated, abetted, advised the acts preparatory to commission of terrorist act {as defined in Section 15(1)(a)(iii) of the UA(P) Act}.
- (iii) A-4 promoted enmity between different classes of people on grounds of religion, race, place of birth, residence, language which is prejudicial to maintenance of harmony.
- (iv) A-4 made assertions prejudicial to harmony to the national integration.
- (v) A-4 caused disruption of public peace and causing widespread disharmony and disaffection towards the Government established by the law.
- (vi) A-4 conspired to cause widespread blockade in the State of Assam, thereby paralyzing the government machinery, causing economic blockade.
- (vii) The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing prima facie case against the accused to prosecute.

**Materials with regard to A-4**

33) Perusal of the statements reveal that:

- (i) The protected witness A and B have have not mentioned the name of accused A-4.
- (ii) Witnesses Sri Dipak Mudoi, Sri Sunil Sonowal and Sri Pranab Jyoti Handique have not mentioned the name of Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4).

(iii) Witness Sri Dibyajyoti Sarmah has stated that he knows accused Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4), as acting President of SMSS. Witness Sri Tulumoni Duarah has named A-4.

(iv) Witness Sri Rahul Chetry listed as PW-8 in the charge-sheet dated 29.05.2020, in his statement has not mentioned or implicated accused Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4).

(v) Witness Asik Ali, listed as PW-9 in the charge-sheet dated 29.05.2020, in his statement has stated that knows Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) as one of the office bearers of SMSS, being its Working President. He also stated that SMSS is the student wing of KMSS and that its main object is support KMSS and welfare of students. He further stated that he talked with accused Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) on his mobile two – three times in the month of December 2019 regarding conducting protest against the CAB and that A-4 appointed him in charge of SMSS Kahilipara, Guwahati. He further stated that he knows A-4 personally and has talked with him over the phone. He further stated that he talked with A-4 on 06.12.2019 regarding conducting a protest on 09.12.2019 against the CAB; that he wanted to conduct a rally comprising 300 – 400 people and needed some money for banners and accordingly, A-4 told him to come to Cotton College, where he went and collected Rs. 500/- from A-4. This witness further stated that he asked Bittu Sonowal as to whether police will arrest whereupon, Bittu Sonowal told him not to worry and said that police might push the rally and that they also push them. This witness further stated that eventually on 09.12.2019 under his leadership only 30 – 40 persons joined the protest during which they carried the banner on which it was written – *we oppose CAB*.

(vi) Witness Sri Jugal Gogoi, listed as PW-10 in the charge-sheet dated 29.05.2020, in his statement has stated that he was the President of

SMSS of Dhemaji district and that he personally knows Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) as Working President of KMSS. He also stated that he had talk with Bittu Sonowal and others, on their phones in connection with protest and party work. This witness has also stated that on the directions of A-1 and A-4, they were doing protests against CAB/CAA since November 2019 and that during the period 09.12.2019 to 13.12.2019, he was in Dhemaji and involved in various protests against the CAB/CAA.

(vii) Witness Sri Maina Deka, (PW-11) has stated that he was the Joint General Secretary of KMSS and that he personally knows Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) as Working President of SMSS. He also stated that he had talk with Bittu Sonowal and others, on their phones in connection with protest, meetings and party work. He stated that under the leadership of A-1, they were opposing the CAB in doing protests against it in different parts of Guwahati on other places of Assam. He also stated that during the period – 09.12.2019 to 13.12.2019, as per the directions of A-1, he was in the KMSS office in Guwahati and in close contact with A-1 and other leaders of KMSS.

(viii) Witnesses Sri Kulapradip Bhattacharyya, Sri Ritumoni Hazarika and Sri Nitul Sonowal, have not mentioned about Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4).

(ix) Witness Sri Bhaben Handique, (PW-15) has stated that he worked with KMSS from 2009 to 2013 and that he knows Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) as Working President of SMSS. He further stated that on 11.12.2019, he called Bittu Sonowal over the phone to know the situation of Guwahati as well as about him.

(x) Witnesses Sri Jitul Deka, Sri Rajib Gogoi, Sri Poramananda Bora and police official Dr Nabamita Das, APS have not mentioned about Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4).

(xi) Witness Sri Naba Moran (*not listed in charge-sheet*) has not mentioned about Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4). Another non-listed witness Sri Arupjyoti Saikia has stated that he has never spoken to Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4). But that he had spoken to one Bedanta Laskar through his phone.

(xii) Witness Sri Pranjal Kalita (*not listed in charge-sheet*), has stated that he knows Sri Bittu Sonowal (A-4). He has further stated that on 8<sup>th</sup> – 9<sup>th</sup> December 2019, he exchanged calls with A-4 and talked regarding hunger strike and that on 11<sup>th</sup> December, he received a call from A-4, asking about the whereabouts of this witness.

(xiii) Witness Hussain Mohammad Shahjahan (*not listed in charge-sheet*), has stated that he was involved in the activities of SMSS till 2015 under the supervision of Sri Akhil Gogoi, in coordination with A-2 Sri Dhajya Konwar and A-4 Sri Bittu Sonowal. He further stated that during the protest activities against CAB, Sri Manas Konwar (A-3) accompanied Sri Akhil Gogoi (A-1) to upper Assam and that they were coordinating with Bittu Sonowal and Dhajya Konwar at Guwahati and with him at Barpeta. He also stated that during the recent protests, Sri Arupjyoti Saikia was in communication with A-1, A-2, A-4 Bittu Sonowal and other associates of KMSS. He further stated that he and the aforesaid persons coordinated during the protest activities in Guwahati around 10<sup>th</sup> – 11<sup>th</sup> December, 2019 also, during which violence broke out. He further stated that during such protest activities against CAB, he was getting updates about upper Assam through Akhil Gogoi (A-1) and Sri Manas Konwar (A-3) and that updates from Guwahati were given by Sri Arupjyoti Saikia, A-2 and A-4 Bittu Sonowal. This witness further stated that during the



recent bandh and violent activities in Guwahati during 10<sup>th</sup> to 12<sup>th</sup>, these persons including A-4 whether Guwahati and coordinating the execution of the bandh against CAB, which caused economic blockade, destruction of essential supplies and complete shutdown leading to paralyzing of state machinery.

34) I have perused the copies of the **documents** listed in the charge-sheet dated 29.05.2020 and find as follows:

- (i) Document D-88 is CDR analysis report of the phone numbers of the 4 accused persons and some others, during the period 7<sup>th</sup> December, 2019 to 13<sup>th</sup> December, 2019. It indicates that during this period, Bittu Sonowal exchanged 2 calls with A-1; 34 calls with Manas Konwar (A-3); 54 calls with Dhajya Konwar (A-2); 4 calls with Bedabrata Gogoi. This is compatible with the statements of some of the witnesses that during this period, A-4 was also coordinating with the others regarding the protest activities against the CAB.
- (ii) Document D-63 gives an assessment of the damage to properties – both public and private, to the tune of approximately Rs 7 crores.
- (iii) D-34 contains transcriptions and translations of the intercepted voice clips of some persons, including that of Sri Bittu Sonowal @ Bittu Sonowal @ Bitu Sonowal (A-4), in his conversations with co-accused and other persons, during the relevant time. The following telephone conversations of Sri Bittu Sonowal @ Bittu Sonowal @ Bitu Sonowal (A-4) are available in these transcripts:
  - Call between A-4 Bittu Sonowal and Asif on 06.12.2019 at 09:51
  - Call between A-4 Bittu Sonowal and A-2 Dhajya Konwar on 10.12.2019 at 11:20
  - Call between A-4 Bittu Sonowal and Jogo on 06.12.2019 at 21:49
  - Call between A-4 Bittu Sonowal and unknown person on 05.12.2019 at 21:31

35) These conversations of Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) can be discussed as follows:

- (i) In his conversation with Asif, they discuss about one rally at Guwahati and the possibility of arrest and on apprehension expressed by Asif, A-4 says that police might do some pushing and that they should push as well. Thereafter, they talk about arranging money for banner and on Asif expressing inability, A-4 asks him to meet him in Cotton College and collect Rs 300-500 for such banner.
- (ii) The conversation of A-4 with A-2 Dhajya Konwar appears to be in the backdrop of the then ongoing protests against the citizenship law. Leaving aside the many irrelevant aspects of their conversation, they talk about to plan some activities. At one point, A-2 asks A-4 whether he is able to shut down in Guwahati, whereupon A-4 replies that there is already a shutdown and they don't need to do anything.
- (iii) In his conversation with Jogo, they talk about one protest at the Mullockgaon residence of the then Hon'ble CM Assam where protesters hung a poster at the gate. They talk about media coverage that the said protest is getting. They also converse about motivating the Muttock people to rise in protest, saying that these are simple straight forward people. At one point, Jogo says - *muttock people will rise, after 9<sup>th</sup> it will be violent*. Thereupon, A-4 says – *still lift them. Once people of Chabua and muttocks wake up, nobody will mess with our world*.
- (iv) In his conversation with the unknown person, he tells A-4 about one naked protest done by some 4 persons. Subsequently, A-4 tells the unknown person to tell people that Assamese people will not accept CAB. He also tells him that if necessary, they will become naked again.

### **Materials with regard to Akhil Gogoi (A-1)**

*Findings in the charge-sheet with regard to A-1*

36) Paragraph 16.18 (A) enumerates the findings against Sri Akhil Gogoi (A-1) as stated to be revealed by the investigation. It is stated therein that:

- (i) A-1 has association with proscribed organization CPI (Maoist) and has sent cadres of KMSS to train in Maoist camps. Accused A-1 has an ideology of the spectrum of the CPI (Maoist) ideology.
- (ii) A-1 has conspired, advocated, abetted, advised the commission of terrorist act {as defined in Section 15(1)(a)(iii) of the UA(P) Act}.
- (iii) A-1 by giving provoking speeches promoted enmity between different classes of people on grounds of religion, race, place of birth, residence, language which is prejudicial to maintenance of harmony.
- (iv) A-1 made assertions prejudicial to harmony to the national integration.
- (v) A-1 by his speeches caused disruption of public peace and causing widespread disharmony and disaffection towards the Government established by the law.
- (vi) A-1 conspired and orchestrated the widespread blockade in the State of Assam, thereby paralyzing the government machinery, causing economic blockade. He provoked the mobs to cause damage to public property and grievous injury to officials on Government duty.
- (vii) The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing prima facie case against the accused to prosecute.

**Materials with regard to A-1**

37) As has already been stated in the narration with regard to the other 3 accused persons, in the charge-sheet dated 29.05.2020, 76 witnesses are listed as prosecution witnesses, of which the statements of 19 witnesses have been recorded during the investigation. These also include 2 protected witnesses, being protected witness A and B. The statement of protected witness A was recorded u/s 164 Cr.P.C. before the learned Metropolitan

Magistrate, Delhi. The rest of the statements, including that of protected witness B have been recorded u/s 161 Cr.P.C. I have gone through the statements of the 19 witnesses.

- (i) The protected witness A in his statement has stated that he had gone to Guwahati in the year 2008. There, he saw A-1 who is the head of KMSS (*Krishak Mukti Sangram Samiti*). A-1 was in a meeting with people. Meeting was regarding big dams and land *patta*. He saw it and then, he joined KMSS. Thereafter, he stated that he went with them to villages for meeting. He stated that one day after a meeting, five of them waited and met one person, who was not from KMSS and was a link man/contact man between A-1 and Maoists. That, A-1 sent five of them with that person for Maoist training in Orissa and that, he was one amongst the five persons. That person took all five of them including him from Guwahati to Howrah (West Bengal), where a Maoist leader called Dadaji took five of them from Howrah to Cuttack via Bhubaneswar by bus. After Bhubaneswar, Dadaji took five of them to Cuttack and from there, they were taken to the Maoist camps in the hills of Orissa. There they saw people in Maoist uniform and that everyone also had a gun. Then, all five of them stayed in the Maoist Camp for five months. They used to shift every day. And the camp had 24 hours' security. That, they were made to exercise in the morning and also used to say *Lal Salam*. That, in the camp, the Maoist people had AK-47, Insas guns, pistols and hand grenades. The Maoist people had also shown them how to open and close AK-47 and Insas Gun. That, in the evening some people used to take their class and teach them and they told and taught them about the countries in the world which had communist government and the communist countries. That, these people also gave all of them books to read and this happened for few days. That, the person who had trained them were Commander *Lallu*, Commander *Laxmi*. That, there they also saw one Senior Commander *Azaad*, but later came to know from the newspaper that he was dead. That, they

were also taught how to assemble people; taught how to protest, how to involve people in the protest and how to take forward the protest. That one day, they were told that the situation is bad and therefore they all have to go back to Assam and accordingly, they came back to Guwahati. That, after coming back to Guwahati, all five of them met A-1, who asked them about what they saw and learned in the Maoist Camp, whereupon they shared their experience and that A-1 told them that this is not the time to work together in Assam. The witness again said that A-1 said that it is not the time to work like that in Assam. That, thereafter, the other four people who were with the said witnesses left, but he did not know where. The witness further stated that he continued working with A-1 and for few days he went to different villages in Golaghat, Dhemaji, Sadiya and Dibrugarh and attended meetings and told people about their losses and losses of Assam due to coming of big Dam and also about the losses on coming of *Mati Patta*. That, thereafter he left Akhil Gogoi and joined one organization namely *Brihat Nodibandh Protirudhi Manch* which was opposing the Big Dam. It is stated by the learned recording Magistrate that after the statement was read over to the witness, the witness said that A-1 told five of them it is not situation in Assam to work as the Maoist do, therefore as they have learned they should go to upper Assam and get people ready. That, therefore, they were visiting villages and getting people ready. That, at that time, he got arrested.

- (ii) The protected witness B in his statement has stated that in the year 2002, he came in contact with one person of West Bengal who was working in Assam for Peoples War and that, by 2004, he got involved with CPI (Maoist) party and used to attend their meetings in Guwahati. That, he knew A-1 since 1998 when he was General Secretary of Cotton College, Guwahati and got close with him during 2006. The witness further stated that A-1 asked him to take some of his cadres/members of KMSS and get them trained in ways of Maoists, whereupon he told

that he does not have the authority to do so, but he can talk to the leadership of CPI (Maoist) to make it happen. That, accordingly, he arranged a meeting of A-1 with one Sri Amit Bagchi, a member of Central Committee, CPI(Maoist), at Golaghat in 2006. That, in the meeting, A-1 told Amit Bagchi that he would join CPI (Maoist) after 2 years, but he needs his cadres/members to be trained in the camps of CPI(Maoist) as soon as possible and that, Amit Bagchi agreed to the proposal made by A-1. The witness further stated that after 2-3 months, Amit Bagchi visited Assam again and met him in a restaurant in Guwahati and asked him to convey to A-1 to select 10-12 cadres/members of KMSS that A-1 wants to send for training, and that later on, the training would continue in such small batches. That, after around 20 days from this meeting, he met A-1 in person and conveyed him the message. He told A-1 to select 10-12 cadres/members of KMSS and that when Amit Bagchi visits Assam after 2-3 months, he would interact with those cadres/members. That, in 2007, A-1 met him and told him to take Amit Bagchi, whenever he comes, to Jorhat. That, during 2007, Amit Bagchi visited Assam again and met him and he took Amit Bagchi to a location. That, 10 cadres/members (2 females and 08 males), along with A-1 were present at the location. Amit Bagchi gave a small speech regarding their work and aim to the members (10 cadres+ Akhil Gogoi) of KMSS there. That, thereafter Amit Bagchi told that when time comes they would be given training in 02 batches of 5 members each. The witness further stated that A-1 requested Amit Bagchi to arrange funds for programs of KMSS and expenditure that will occur on account of cadres/members to be sent for training. The witness further stated that Amit Bagchi told him that he would provide the funds to him and he would hand it over again to A-1 later on. That, after 10-15 days of this meeting, he received an amount of Rs 45,000/- in cash sent by Amit Bagchi through one Indranil, member of CPI (Maoist) and that the witness handed over the amount to A-1 in cash in Guwahati. The witness further stated that during later 2007, Amit Bagchi visited Assam again and that A-1 met Amit Bagchi

and told him that he needs funds for KMSS activities and expenditures of cadres/members of KMSS selected for training with CPI (Maoist). That, Amit Bagchi told A-1 that he will bear their expenditure. The witness further stated that later in 2008, Amit Bagchi, along with him met A-1 at Jorhat and Amit Bagchi had a secret meeting with A-1 and that, the witness does not know the contents of the meeting. That, during summer season of 2008, Indranil conveyed him the message of Amit Bagchi to meet with A-1 and prepare batches of 5 cadres/members to be sent for training. Akhil Gogoi prepared batch of 5 cadres/members and the witness booked tickets for all 05 of them using the party funds of CPI (Maoist). Those 5 cadres met him at Guwahati. He took the 1st batch to Howrah by train and at Howrah, he handed them over to Indranil for their further journey to Maoist camps and he himself stayed at Howrah for the night. That, on the next day, the 2nd batch of 5 cadres/members arrived at Howrah and then he met them there as per previous plans decided by A-1. He then again handed them to Indranil for their further journey to Maoist camps and after that he returned to Guwahati. After few days he met A-1 and informed him that all 10 cadres have been sent to the Maoist training camps. The witness further stated that later in 2008, he received Rs. 60,000/- in cash sent by Amit Bagchi through the said Indranil {member of CPI (Maoist)} and that, he handed over the whole amount to A-1 in cash in Guwahati for further activities. The witness further stated that in 2009, he met A-1 and it was decided that the 3rd batch of 05 cadres (3 males+ 2 females) would be sent to Maoist training camps. That, he booked tickets for 5 cadres for their journey from Guwahati to Howrah. That, he then met them in a meeting at Guwahati where A-1 introduced them to him and briefed the members about their visit to Maoist Camps. That, he recalled names of 3 of those members. He then took all of 5 of them to Howrah by train and at Howrah, he handed them over to Indranil for their further journey to Maoist camps, and then he returned to Guwahati. That, after some days he met A-1 and informed him that the 3rd batch has been sent to the

Maoist training camps. The witness further stated that party had been providing regular funds to A-1 for party {CPI (Maoist)} activities, and special funds for special programs from time to time.

(iii) Witness Sri Dipak Mudoi, listed as PW-3 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he knows Akhil Gogoi (A-1) personally. That, on 08.12.2019 in the evening he reached his native house at Khetri along with his wife and two children by own car for birthday celebration of his younger son and on 09.12.2019, he was at home at Khetri. That, in the evening on 10.12.2019, he was at his home along with his relative namely Montu Deka and at around 22:30, he called A-1 Akhil Gogoi and asked him as to where he was and A-1 told that he is in Dibrugarh. That, he again asked A-1 Akhil Gogoi as to what will be the agenda of the *Khetri Sonapur* area for the next day, to which Akhil Gogoi replied that just close everything and block all roads etc. That, he told A-1 to speak with one of his leaders and gave the phone (speaker on) to his friend Sri Prafulla Baishya. A-1 Akhil Gogoi told Prafulla Baishya that all roads across the state of Assam will be blocked on the next day and his friend replied that they would block the national highway. That, again A-1 Akhil Gogoi told that complete blocked. That, his friend further said that around 400/500 people will be gather at Khetri and they will do it. This witness Sri Dipak Mudoi further stated that on the next day i.e. 11.12.2019, automatically national highway, all shops and market were closed. That, at around 22:15, he talked with Akhil Gogoi and asked whether he will come to Guwahati next day and then Akhil Gogoi told that they have to block everywhere in Assam and stop everything. This witness said that they are doing here and Sri Akhil Gogoi told that they have to block everywhere in Guwahati, stop everything and ready for any kind of protest. This witness further stated that on the next day 12.12.2019, due to imposing curfew by the Government, national highway, all shops and markets were closed.



(iv) Witness Sri Pranab Jyoti Handique, listed as PW-4 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he is the General Secretary of *Brihattar Asomiya Yuva Manch (BAYM)*. That, he personally knows the present accused Sri Akhil Gogoi who is the founder member of KMSS and he is presently chief advisor of KMSS; that, several times, he had talked with Akhil Gogoi over his mobile no. i.e. 9435054524, regarding meetings and other social work. He also further stated that he too opposed the CAB (now called CAA) at the behest of Akhil Gogoi and on his direction, he arranged meetings and provoked people to start protest against CAB and Govt. of India. He stated that during the meetings, Sri Akhil Gogoi (A-1) used to say that at any cost the bill should not be passed in Parliament and if the bill passes, then they have to sacrifice for this. Further, he also stated that on 08.12.2019, he came to Guwahati for medical treatment and he stayed at Rangpur lodge, Ganeshguri. At around 15: 10, Sri Akhil Gogoi called him over his mobile and asked him about the programme at Guwahati. The witness said that day after tomorrow, they are announcing the program "*a half-naked protest*" and it will be organized against CAB in front of Janata Bhawan. He also stated that the guys/people from all the districts of Assam will be participating. After that, A-1 Akhil Gogoi told him that Prime Minister will reach at Guwahati on 14th December, 2019 and people should be ready for fully naked protest. Then the witness told that on that day, they will display black flag and half-naked people and four committees of Guwahati town are already alerted and many people from multiple districts are travelling by train. He stated that a meeting was organized by him at Rangpur lodge Ganeshguri along with the members of his organization (City Committee Guwahati) and told them that Akhil Gogoi directed him to conduct naked protest during the arrival of PM of India. He also stated that due to non-arrival of PM, the programme (naked protest) could not be organized at Guwahati. The witness also stated that on 10.12.2019, due to his illness he could not participate in any protest and whole day he was in Rangpur lodge,

Ganeshguri. At around 18:50, A-1 Akhil Gogoi called him over his mobile and told that thousands of people marched in a procession at Dibrugarh to stop all essential supplies, market, National highway etc. and now they are going to stop Sivasagar as well. Further, Akhil Gogoi directed him to inform district committee, Sivasagar that they need to announce over mike and bring the people to shut down whole Sivasagar and further Akhil Gogoi told that, it would be better if they do it together. Then he told Akhil Gogoi that one Bishnu Saikia secretary (BAYM), of town/district committee will manage at Sivasagar. Further, Akhil Gogoi told him to arrange everything at 10:00. Further he asked Akhil Gogoi that will there be a bike rally, whereupon Akhil Gogoi replied that bike rally, marching whatever it could be done, they need to shut the town completely, tomorrow. This witness further stated that he came to know through TV Channels that mass violations had happened in different locations of Guwahati and some people got injury during police firing and also stated that heard that Akhil Gogoi has been arrested by police at Jorhat.

- (v) Witness Sri Dibyajyoti Sarmah, listed as PW-5 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he knows Akhil Gogoi, who is his family friend and also the founder of KMSS and advisor of KMSS during that relevant time. That, he talked with Akhil Gogoi over phone many times. That, he too was against the CAB / CAA. That, on 09.12.2019, a protest was organized against CAB at Jorhat in front of Deputy Commissioner office. When protest was going on at around 10:15, A-1 Akhil Gogoi called him at protest venue of Jorhat, regarding the development of protest against CAB and asked how is going on. He replied that at around 5000 people had gathered and hoped that around 20000 people will participate. This witness stated that A-1 Akhil Gogoi told that do close everything whereupon he replied that they have stopped everything and they visited each and every hostel. That, Akhil Gogoi told them not to lose hope and continue the struggle. The witness

further stated on 11.12.2019, a spontaneous protest was going on against CAB in front of Deputy Commissioner's and that at around 12:00 Sri Akhil Gogoi (A-1) called him that he is coming to Jorhat and at around 18:00, A-1 along with Manas Konwar reached DC office and Akhil Gogoi delivered a speech against CAB.

(vi) Witness Sri Tulumoni Duarah, listed as PW-6 in the charge-sheet dated 29.05.2020, was the O-C of Chabua PS at the relevant time. He has stated, *inter alia*, that he joined Assam Police as Sub-Inspector on 30th March, 2008 and was posted as Officer-in-Charge at Chabua PS since July, 2019. He further stated that on 09.12.2019, when he along his PS staff and Addl. SP, HQ, was performing law and order duty at Chabua town, there was a gathering of about 6000 people headed and addressed by Sri Akhil Gogoi (A-1), leader of KMSS. The large gathering blocked the railway track as part of economic blockade and he saw that they had damaged a Gypsy vehicle on duty under ITBP. That, his team went forward to stop the mass gathering and tried to remove the blockade but it was in vain as the gatherings were provoked by A-1. That, the leader of the crowd A-1 Sri Akhil Gogoi and his associates criminally conspired against police and threw stones at them and one of the stones hit his mouth, injuring his 2 teeth of upper jaw, upper lip grievously. That, another stone hit his head, but he was wearing a helmet. That, immediately he was shifted to Aditya Nursing Home, Dibrugarh, and doctor gave stitches and other treatment and that one of these teeth had to be completely removed and another one is about to be removed. He stated that it was an attempt of murder as a part of their conspiracy against police who were deployed there to maintain law and order. This witness stated that at the same time the associates of Akhil Gogoi also damaged a white Bolero vehicle on duty under CRPF, and they had turned the vehicle over on its side on road. That, Akhil Gogoi and his associates by way of their actions obstructed the police from performing their duty as well. He further stated that the gathering

of people was still being addressed by Akhil Gogoi, as he got injured and was being shifted away from the site. That, in this connection an FIR no. 289/2019 dated 10.12.2019 u/s 120B, 147, 148, 149, 336,353, 326 and 307 of IPC had been lodged at Chabua PS. He stated that he produced 08 videos in a San Disk pen drive containing 08 (eight) nos. of video footages of violent activities by KMSS/SMMS and their associates from 09.12.2019 and onwards and a copy of his medical examination report before Sh. D.R. Singh, Addl. SP, NIA, which were subsequently seized. *It may be mentioned herein that in Special NIA Case No. 03/2020, arising out the aforesaid Chabua PS Case No. 289/2019, A-1 was discharged by this court vide order dated 22.06.2021.*

(vii) Witness Sri Sunil Sonowal, listed as PW-7 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he is the working president of KMSS Dibrugarh District. That, he knows A-1 for 5 years as Chief Advisor of KMSS and has regular telephonic contact with him as well. That, A-1 was leading protest in Assam against CAB/CAA and all KMSS associates under leadership of A-1 were planning to stop the state machinery leading to block of highways. That, A-1 visited Dibrugarh on 09.12.2019. When A-1 delivered a speech and provoked the public, violent activities started in Chabua area resulting in damage to vehicles and grievous injury to OC Chabua. That after violent activities, all roads were blocked by protestors and the situation was very bad. That, the witness then went away from the scene. *The outcome with regard to A-1 of the separate NIA case (03/2020) arising out of this incident is already stated above.*

(viii) Witness Sri Rahul Chetry listed as witness no. 8 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he is the General Secretary of Dibrugarh University PG Students Union and also associated with Assam Unit of *Bharatiya Gorkha Jana Parishad*. That, he was involved in protest against CAB since 2018, in DU campus.

That, on 7th /8th December 2019, A-1 and his supporters came to DU and addressed the students involved in the protest in which he encouraged the protestors to continue their protest. That, as official bearer of the students' union, he had introduced A-1 to the student protestors and expressed his gratitude to him for coming to the university. That, A-1 gave him his number and told him to call for any guidance and assistance to continue the protest. On 11/12/2019 around 10 pm, he called A-1 and asked A-1 that CAB has been passed and what can be done, to which A-1 told that there is only one option - to shut down Assam completely. That during telephonic conversation, A-1 again told that there is no other option than to shut down Assam. On his query regarding economic blockage, A-1 stated that the same has started as well. That A-1 encouraged him to continue protest and shut down Assam.

(ix) Witness Asik Ali, listed as PW-9 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he became member of KMSS on advice of A-4. That, KMSS is the student wing of KMSS and its main object is to support KMSS and welfare of students. That, he knows A-1 as advisor of KMSS.

(x) Witness Sri Jugal Gogoi, listed as PW-10 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he is the District President Dhemaji KMSS. That, he personally knows A-1 and has talked many times over phone in connection with protest and party work. That, as per directions of A-1 and A-4 they were doing protest against CAB/CAA since November 2019. That during 09.12.2019 to 13.12.2019, he was in Dhemaji and involved in various protests against CAB.

(xi) Witness Sri Maina Deka, listed as PW-11 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he is the Joint General Secretary of the KMSS. He has stated that he personally knows,

A-1 as Chief Advisor of KMSS and talked with him many times on various occasions relating to protest, meetings and party work. That, under leadership of A-1, they were doing protest against CAB in different parts of Assam. That, as per direction of A-1, during the period 09.12.2019 to 13.12.2019, this witness was in Guwahati at the KMSS office and was in close contact with the A-1 and other KMSS leaders.

(xii) Witness Sri Kulapradip Bhattacharyya, listed as PW-12 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he went to Sivasagar jail on 01.04.2019 to execute arrest warrant of A-1 in connection with Chabua police case no.289/2019. While doing the arrest formalities, A-1 started briefing media persons wherein he threatened to again start agitation against CAB in the state of Assam.

(xiii) Witness Sri Nitul Sonowal, listed as PW-13 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he was Inspector of police, Moran. That, he went to Sivasagar jail on 01.04.2019 to execute arrest warrant of A-1 in connection with Chabua police case no.289/2019. While doing the arrest formalities A-1 started briefing media persons wherein he threatened to re-start the agitation in the State of Assam.

(xiv) Witness Sri Ritumoni Hazarika, listed as witness no. 14 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he is District President Sivasagar KMSS and organizing Secretary Central Committee KMSS. That A-1 as the Chief Advisor of KMSS had called various meetings and PW-14 was assigned to arrange KMSS members to participate in Sivasagar area. That on 10th and 11th December 2019, he held protests in Sivasagar and Amguri by blocking National Highways and trains. On 10th December he called A-1 and updated him about blocking of train and other protests along with 200/300 associates of KMSS. This witness further stated that Akhil

Gogoi, told him that he is reaching Sivasagar on 11th December 2019 and asked to arrange 200/300 boys of KMSS to execute strong protest against CAA/CAB, blockade of National Highways for disruption of essential supplies.

(xv) Witness Sri Bhaben Handique, listed as witness no. 15 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he came into contact with A-1 in 2009 and on his suggestion, he joined KMSS in 2009 but left it in 2013. He has the phone numbers of A-1 in his mobile. That on 11.12.2019, he went to Assam Secretariat at around 12:00 hours to see the situation in Guwahati. There was crowd in front of Assam Secretariat and they were opposing CAB and that after staying there 2-3 hours, he returned to his home at Guwahati. He further stated that during the production of A-1 in NIA Court, he had met him 2-3 times and that he had met A-1 in Central Jail, Guwahati also.

(xvi) Witness Sri Jitul Deka, listed as witness no. 16 in the charge-sheet dated 29.05.2020, in his statement has stated, *inter alia*, that he is the General Secretary of *Asomiya Yuva Manch* and claimed to know A-1 for past 5-6 years as a social activist and founder member of KMSS. That, he talked with A-1 over phone during December 2019. He further stated that he received a call from A-1 on 11.12.2019 in which A-1 told him that he was in Jorhat and that thousands of people have gathered at Janata Bhawan for protests in Guwahati and A-1 asked him to repeatedly to go to Janata Bhawan as well.

(xvii) Witness Sri Poramananda Bora, listed as witness no. 17 in the charge-sheet dated 29.05.2020, in his statement has stated that he knows A-1 for past 9-10 years as social activist and founder of KMSS. That, he had talked with A-1 in December 2019 over phone. That, in the telephonic conversation on 07.12.2019, invited A-1 for a demonstration in Jorhat on 09.12.2019, to which he replied that he had plans to be in

Chabua where a big programme is being planned. One Rajib Gogoi of ATASU also talked with A-1 on the same using phone of this witness.

(xviii) Witness Sri Rajib Gogoi, listed as witness no. 18 in the charge-sheet dated 29.05.2020, in his statement has stated that he knows Akhil Gogoi for past 8-10 years as a social activist and founder member of KMSS. He talked to A-1 in December 2019 over the phone of Sri Poramananda Bora and that during the conversation, he asked A-1 to attend their programme in Jorhat to which he replied that he had plans to be in Panitola in morning and in Chabua at night.

(xix) Witness Dr Nabamita Das, APS, Assistant Commissioner of Police, Cyber Crime, Guwahati, listed as PW-19 in the charge-sheet dated 29.05.2020, in her statement has stated that she received in the Cyber Cell 7 DVDs from various police stations of Guwahati regarding the mass protects in Guwahati in December 2019.

38) As already stated, I have also perused the statements of *Sri Naba Moran, Sri Arupjyoti Saikia, Sri Pranjal Kalita and Hussain Mohammad Sahjahan* – all of whom, however, have not been listed as prosecution witnesses in the charge-sheet dated 29.05.2020.

(i) Witness Sri Naba Moran in his statement recorded during investigation, has stated, *inter alia*, that he was associated with All Moran Students Union whose purpose was to engage youths in social activities so that they do not fall prey to the recruitment of ULFA. He further stated that he knew A-1 Sri Akhil Gogoi for last 5-6 years and had meetings with him. That, in November -December, 2019, A-1 Sri Akhil Gogoi called the representatives of 70 organizations including Moran Students Union for information on an umbrella organization to launch protest / agitation against CAB. The witness stated that he participated in such meeting and gave his consent to join the protest. He stated that he was in Guwahati during the protest. That, on 11.12.2019, he had conversation



with A-1 Sri Akhil Gogoi who told him that they can do whatever they want to do now. That, A-1 Sri Akhil Gogoi further told him – you promised this, now he can do whatever he wants to.

(ii) Witness Sri Arupjyoti Saikia, an academician of IIT Guwahati, in his statements recorded during the investigation, has stated, *inter alia*, that he met A-1 Sri Akhil Gogoi in 2010 as he was a member of the N.C. Saxena Forest Review Committee. That, he met A-1 Sri Akhil Gogoi another time during a public hearing on environment issue during which A-1 Sri Akhil Gogoi had deposed. He further stated that between 2012-2017 he might have spoken to A-1 Sri Akhil Gogoi on matters of Assam's economy, society & cultural history. He denied having any discussion with him on regional identity politics nor giving him any advice to form political party. This witness further stated that in 2018 A-1 Sri Akhil Gogoi spoke to him regarding the CAB before the visit of the Joint Parliamentary Committee to Guwahati. Sri Saikia stated that he does not hold any post in KMSS or is associated with them. He further stated that on 7th December, he met A-1 Sri Akhil Gogoi and had a brief talk regarding his newly released book. He further stated that on 29th November, 2019 A-1 Sri Akhil Gogoi called Sri Saikia because he had not come for the book release programme of Sri Saikia. Regarding calls with A-1 Sri Akhil Gogoi in December 2019, the witness stated that he did not recall but that he had sent 2 WhatsApp messages on 11th or 12th December, 2019 telling A-1 Sri Akhil Gogoi to appeal to the people to remain democratic.

(iii) Witness Sri Pranjal Kalita, in his statement recorded during the investigation, has stated, *inter alia*, that during his stay at Cotton University, he got to know Sri Bittu Sonowal. He further stated that SMSS and KMSS worked together and are involved in each other's works. He further stated that A-1 Sri Akhil Gogoi advises SMSS while working for

KMSS. He stated that he is a member of SMSS. The rest of the statement of this witness is not with regard to A-1 Sri Akhil Gogoi.

(iv) Hussain Mohammad Shahjahan, who is a non-listed witness, in his statement has stated that in 2011 he met Sri Akhil Gogoi (A-1) and joined KMSS and got involved in its activities. That he was involved in the activities of SMSS till 2015 under the supervision of Sri Akhil Gogoi, in coordination with A-2 Sri Dhajya Konwar and A-4 Sri Bittu Sonowal. That, the funding of KMSS is through subscription of its 12 lacs members. A-1 is the advisor of KMSS. That, during protests he was in upper Assam. AASU gave a bandh call on 10<sup>th</sup> December 2019, which was supported by KMSS/SMSS. The bandh was executed by KMSS and SMSS from 10<sup>th</sup> December onwards to disrupt the essential supplies, blockade of State economy and paralyzing the State machinery. The associates of KMSS/SMSS were engaged to make the bandh successful. In continuance of the bandh, violent activities took place from 10<sup>th</sup> December 2019. That the witness was present in Barpeta and coordinated with A-1 and others. That he was getting updates from upper Assam through Manas Konwar and Akhil Gogoi. He further stated that during the protest activities against CAB, Sri Manas Konwar (A-3) accompanied Sri Akhil Gogoi (A-1) to upper Assam and that they were coordinating with Bittu Sonowal and Dhajya Konwar at Guwahati and with him at Barpeta. He also stated that during the recent protests, Sri Arupjyoti Saikia was in communication with A-1, A-2, A-4 and other associates of KMSS. He further stated that he and the aforesaid persons coordinated during the protest activities in Guwahati around 10<sup>th</sup> – 11<sup>th</sup> December, 2019 also, during which violence broke out. He further stated that during such protest activities against CAB, he was getting updates about upper Assam through Akhil Gogoi (A-1) and Sri Manas Konwar (A-3) and that updates from Guwahati were given by Sri Arupjyoti Saikia, A-2 and A-4. This witness further stated that during the recent bandh and violent activities in Guwahati during 10<sup>th</sup> to 12<sup>th</sup>, these persons were

at Guwahati and coordinating the execution of the bandh against CAB, which caused economic blockade, destruction of essential supplies and complete shutdown leading to paralyzing of state machinery.

39) I have perused the copies of the documents available on record. Some of these documents may be enumerated as follows:

- (i) Document D-34 is transcriptions and translations of intercepted voice clips of Akhil Gogoi, Bittu Sonowal and Dhajya Konwar.
- (ii) Document D-32 contains details of cases registered against Sri Akhil Gogoi (A-1).
- (iii) D-44 is a scrutiny report of the Samsung tab of A-1, which also includes a speech of A-1.
- (iv) D-47 is a scrutiny report of some videos seized from SI Tulumoni Duarah, which also includes a speech of A-1.
- (v) D-52 is scrutiny report of videos provided by the different police stations of Guwahati, regarding the protests in December 2019 and violence therein.
- (vi) D-53 is a Facebook video downloaded
- (vii) D-54 is a speech of Sri Akhil Gogoi (A-1).
- (viii) D-56 is also another speech of A-1.
- (ix) D-59 is a scrutiny report of videos seized from the office of DY 365 – an Assamese news channel.
- (x) D-63 is a report regarding details of properties damaged during the CAB protest.
- (xi) Document D-88 is CDR analysis report of the phone numbers of the 4 accused persons of the and some others, during the period 7<sup>th</sup> December, 2019 to 13<sup>th</sup> December, 2019. It indicates that during this period, the accused Sri Akhil Gogoi (A-1) exchanged 2 calls with A-4 Bittu Sonowal; 2 calls with Arupjyoti Saikia; 20/10 calls with Dhajya Konwar; 6 calls with Shahjahan.

40) As stated above, document D-34 contains transcriptions and translations of the intercepted voice clips of some persons, including that of Sri Akhil Gogoi (A-1), in his conversations with co-accused and other persons, during the relevant time. The details of these conversations can be enumerated as follows:

- (i) In his conversation with Sri Arup Borbora on 09.12.2019 at 22:37, Sri Akhil Gogoi (A-1) and Sri Borbora discuss about protest during the coming visit of the Japanese Prime Minister. Shri Borbora stated that people should protest with banner welcoming the Japanese Prime Minister and state – "*Sri Narendra Modi go back; anti-community go back.*" To this suggestion of Sri Borbora, A-1 simply nodded.
- (ii) In his conversation with Shri Dipjyoti Sarma, on 09.12.2019 at 10:17, Sri Akhil Gogoi (A-1) was discussing about the protest and closing everything. He states that there is programme at Tinsukia and that *dharna* will be carried on at Chabua. A-1 asked the Sri Sarma about joining in the protest by the Students' Union and asked him to continue the struggle.
- (iii) In his conversation with Shri Dipak Mudoi on 10.12.2019 at 22:30, on being asked about the agenda of *Sonapur Khetri* area for the next day, Sri Akhil Gogoi (A-1) states that everything should be closed and all roads blocked. During the conversation A-1 speaks to a 3rd person on the same phone who says that they will obstruct all roads on the next day tomorrow to which A-1 states that all roads across the State of Assam shall be blocked on the next day and that he must come out on early morning to do this. During the conversation they further talked about blocking the National Highway and also about torchlight march with about 200 to 300 people.
- (iv) In his conversation with Sri Dipak Mudoi on 11.12.2019 at 22:13, Sri Akhil Gogoi (A-1) stated that they have to block everywhere in Assam

and stop everything. On Dipak Mudoji asking for advice, A-1 states that they have to block everywhere in Guwahati, stop everything and be ready for any kind of protest.

(v) In his conversation with A-2 Sri Dhajya Konwar on 04.12.2019 at 13:01, A-1 stated that they have to start the journey from Sadiya and go to each and every village, make people aware and convince them to protest. A-1 also states about public meeting, making people aware and struggling for opposing the ruling party.

(vi) In his conversation with A-2 Sri Dhajya Konwar on 10.12.2019 at 16:26, A-1 asks him as to whether people have gathered in large numbers at Dispur last gate to which A-2 states that about 500 – 550 people have gathered. A-1 tells him to do something in a positive way and to do something to get a positive result. A-1 further asks A-2 as to whether people have enclosed the house of a senior Cabinet minister, which is replied in the affirmative and A-2 states that people are enclosing the house of the said senior Cabinet minister. In the course of the conversation, A-1 further states that they should do something in a positive way.

(vii) In his conversation with Shri Gopal Das on 11.12.2019 at 15:19 Sri Akhil Gogoi (A-1) and the other person talked about protest where thousands of people joined and that many people had gathered in front of Janata Bhawan as well.

(viii) In the conversation of Sri Akhil Gogoi (A-1) with Shri Jayanta Das on 11.12.2019 at 22:03, the said Sri Jayanta Das stated that they stunned everything at Barpeta Howli by burning tyre and that no car can enter and he also stated that there are many Bengali people there and invited A-1 to come to Howli one day. A 3<sup>rd</sup> person also participated in the conversation.

(ix) In the conversation of Sri Akhil Gogoi (A-1) with Shri Mridu Paban Neog on 05.12.2019 at 22:02, Sri Neog stated that the President may not come on 15<sup>th</sup> for the meeting between Japan and India and that they are afraid of A-1 and apprehending of facing very threatening movement in Assam. Sri Neog states that this was discussed in Home Ministry and that name of A-1 has come up for discussion because they have declared the movement as very militant.

(x) In the conversation of Sri Akhil Gogoi (A-1) with Shri Mridu Paban Neog on 11.12.2019 at 19:55, they discussed that the President of Japan is not coming. During the conversation one Miya Baideo also joins in. A-1 asked Neog as to what had happened in Guwahati on that day to which Neog replies that police buses were burnt and Secretariat was gheraoed. A-1 asked as to how many buses were burnt to which Neog replies that it is quite a few. A-1 also talks to the said Miya Baideo and tell her that they should not let the people get lax and then going forward they have to break their government (*hihotar Sarkar bhangibo lagibo*). Miya Baideo states that all through the day they will create chaos (*Khelimeli*) and continue with the agitation to which A-1 says "all right."

(xi) In his conversation with Shri Naba Moran on 11.12.2019 at 21:10, Sri Akhil Gogoi (A-1) discusses about Citizenship Bill and A-1 says that the same has been approved and that now they can do whatever they want to. A-1 tells Sri Moran that he was promised so much and now he can do whatever he wants.

(xii) In his conversation with Smt. Padumi Kalita on 07.12.2019, Sri Akhil Gogoi (A-1) refers to some programme.

(xiii) In his conversation with Sri Sanjoy Baruah on 07.12.2019 at 10:06, Sri Akhil Gogoi (A-1) informs him that he will be reaching on that night and staying at his place.

- (xiv) In his conversation with Sri Sanjay Baruah on 04.12.2019 at 19:42, Sri Akhil Gogoi (A-1) is asked by him as to when he is coming to Sadiya, whereupon A-1 mentions that he is planning on 11th. Sri Baruah suggest that A-1 should reach on 10<sup>th</sup>, whereupon A-1 says that after finishing his programme on the next day, he will plan with Sri Baruah.
- (xv) In his conversation with Sri Sunil Sonowal on 08.12.2019 at 9:53, Sri Akhil Gogoi (A-1) says that he got a meeting at Panitola on the next day and then he will be in Chabua by the evening. A-1 further says that there is no need for torch march protest at Chabua.
- (xvi) In the conversation of Sri Akhil Gogoi (A-1) with one Sanjoy Da on 09.12.2019 at 16:46, A-1 tells him about protest by lakhs of people in the state, that rail roads are blocked and Assam is under total shut down and that there is total *hartal*; they discuss about the bill coming to the Rajya Sabha and A-1 tells the said person about building up of Joint Parliamentary Committee.
- (xvii) In the conversation of A-1 Sri Akhil Gogoi with one Sri Ritumoni on 12.12.2019 at 14:45, A-1 tells him to announce to all the folks of Sivasagar that A-1 will be staying there on the next day and that he will reach at 11 P.M. at night. Sri Ritumoni says that they are blocking the Amritsar Express Train and will let it go at 4:00 clock whereupon A-1 Sri Akhil Gogoi says – “*why let it go? Do not*”. A-1 Sri Akhil Gogoi further says that they should tell the Station Master that the trains should be cancelled to which the other persons agree. A-1 Sri Akhil Gogoi further tells the other person to announce in Sivasagar that he is going to reach there at 11:00 P.M. and tells him to collect about 200-300 people.
- (xviii) In the conversation of A-1 Sri Akhil Gogoi with Sri Rahul Chetry on 11.12.2019 at 21:55, the other person says that since the bill has been passed what can be done to which A-1 Sri Akhil Gogoi replies that there is only one option left and they need to shut down complete Assam

and there is no other option. A-1 Sri Akhil Gogoi in course of the conversation further states that there is no other option than to shut down Assam. The other person asks as to whether there should be a continuous shut down, to which A-1 says yes. The other person also asks as to whether economic blockage has been started to which A-1 Sri Akhil Gogoi replies that everything has started.

(xix) In the conversation of A-1 Sri Akhil Gogoi with Sri Pranab Jyoti Handique on 08.12.2019 at 17:11, the other person talks about announcing their programme of half-naked protest in front of Janata Bhawan where persons from all districts of Assam will participate, to which A-1 Sri Akhil Gogoi states that it should be made naked protest. A-1 Sri Akhil Gogoi further states that the Hon'ble Prime Minister will reach on 14<sup>th</sup> and that they should reach with the people to which the other person states that they will display black flag and half naked. A-1 Sri Akhil Gogoi further states that they should make the people ready.

(xx) In the conversation of A-1 Sri Akhil Gogoi with Sri Pranab Jyoti Handique on 10.12.2019 at 18:51. A-1 tells him that he had called the District Committee President Sri Jadab Gogoi and that he is coming to Sivasagar on the next day at 11:00 clock. A-1 Sri Akhil Gogoi tells Sri Handique that he would reach Station Chariali at 11:00 Clock and he should inform the District Committee that they need to announce over mike and bring people to shut down whole Sivasagar and that it would be better if they do it together. The other person says that one Sri Bishnu Saikia also called A-1 Sri Akhil Gogoi and he asks as to whether there will a bike rally. A-1 Sri Akhil Gogoi says that bike rally, marching whatever can be done and that they need to shut down completely.

(xxi) In the conversation of A-1 Sri Akhil Gogoi with Sri Poramananda Bora on 07.12.2019 at 21:50, the other person says that they have planned a demonstration irrespective of party affiliation in front of Jorhat Deputy Commissioner Office at 9 O'clock for which they have already



made rounds of Jorhat and distributed pamphlets etc. The other person asks A-1 Sri Akhil Gogoi whether he can be around Golaghat at that time to which A-1 replies that it would not be possible as he would be at Panitola during the day and at Chabua during the night for which he had already promised.

41) As stated earlier, D-44 is the scrutiny report of data on the Samsung Tab of A-1 Sri Akhil Gogoi: -

- (i) Serial No. 1 and 2 of D-44 state that no incriminating audios have been found and serial No. 3 and 5 (including its sub-items) mentioned about some images and indicates CAB protests, including rail *roko*, road blockade, burning of tyres etc.
- (ii) Serial No. 4 is a speech of A-1 Sri Akhil Gogoi in which he is talking about the CAB protest and amongst other things, he states that only way to withdrawal of the bill is that all people should come out in high way; that people from each and every district of the State need to come out and paralyze the administrative system of the Government; that by coming out in high way they need to disrupt and disconnect all means of communications; that they need to come out peaceful and democratic way and shut down all Central and State Government offices by picketing ; that they need to shut down all rail roads, stop all rail services and shut down all national high ways completely; that they need to stop the administrative system of Assam completely and that then only government will be afraid to implement CAB. He further stated in the speech that he was in Dibrugarh with people and that in front of each and every house, people burnt one tyre on high way saying that they will not allow any vehicle to pass in front of their houses; that every house observed bandh; that they did not accept CAB and that as long as CAB is not withdrawn, they will not spare anybody. He further stated that on the next day people should come out in highway and stop all

communication in high way; that they shut down all rail roads, disrupt rail services and tell Central Government that they will accept CAB.

42) D-47 is a scrutiny report of videos seized by Sri Tulumoni Duarah, O/C of Chabua Police Station and one of the witness listed in the charge sheet: -

(i) Serial No. 1 of D-47 is a speech delivered by A-1 Sri Akhil Gogoi in which amongst other things, he praises the people of Chabua for their protest; he severely criticizes one senior Cabinet Minister and challenges him to debate with A-1 Sri Akhil Gogoi on CAB

(ii) Serial No. 2, 3 and 4 shows mobs damaging one white colored vehicle.

(iii) Serial No. 6 is another speech delivered by A-1 Sri Akhil Gogoi in which amongst other things, he tells the people to form human chain and that all organizations of Assam should unite and make the movement successful. He calls upon AASU, KMSS, AJYCP, leftist organizations of Assam, all nationalist organizations of Assam and all political parties to be unified for movement against CAB. He further states that till CAB is not cancelled they will not spare anybody.

(iv) Serial No. 7 is the video of a police officer seen with grievous facial injury and behind the police party, a crowd was shouting slogans – *Jai Aai Asom*.

43) D-52 is the scrutiny report of data provided by different police stations of Guwahati regarding violent protests in the city in December, 2019 in connection with CAB. Upon perusing the same I find that there are details regarding various videos indicating protests, burning of tyre, road blockades, shouting of slogans and damaging of public property.

- 44) D-54 is the speech of A-1 down loaded from a video, where amongst other things, he calls upon people lodged inside jails in Assam to go for protest programme if they are not released on bail immediately. He asked as to how matured person like him in a movement going on for long, can pelt stone to police. He further states that they will not accept any foreigners either Hindu or Muslim.
- 45) D-56 is another speech of A-1 Sri Akhil Gogoi down loaded from *Assam Diary Channel of YouTube*. In the said speech, amongst other things, A-1 Sri Akhil Gogoi calls upon the people to continue the movement in a peaceful way; not pelt stone in anywhere; not set fire anywhere or damage any vehicle. He called upon revolutionary colleagues not to set fire anywhere, not to pelt stone anywhere; not to damage any vehicle and not to create any violence. He called upon his revolutionary colleagues to continue movement with dedication. He compared himself with professional revolutionary like Jay Prakash Narayan. He further stated that if they come to arrest him they should not create violence and give opportunity to open fire. A-1 Sri Akhil Gogoi further states that he will tell what mass revolution is and that they will aware the mass and stop transportation of economic and natural resources from here, like transportation of crude oil, coal, tea, limestone etc.
- 46) D-59 is a scrutiny report of some videos seized from the Office of DY-365 News Channel. Upon perusal, I find that these videos are mostly about CAB protest in various parts of Guwahati, shouting of slogans, procession etc.

### **Some case law principles**

- 47) Before proceeding to analyze the aforesaid materials, it will be relevant to enunciate some case law principles.
- 48) In ***Union of India v. Yasmeen Mohd. Zahid, (2019) 7 SCC 790, Yasmin Zahid (para 16)***, the Hon'ble Supreme Court delving into section 39 of the UA(P) Act, stated that such support to a terrorist organization must be within meaning of any of the three causes of sub section (1) of Section 39 of the Act.
- 49) With regard to S.18 of the *UA (P) Act*, the Hon'ble Gauhati High Court in ***Malsawmkimi v. NIA, 2012 SCC OnLine Gau 897 : (2014) 1 Gau LR 409 (para 27)***, stated as follows:  
*"..... The words conspire 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 are sufficient to bring the case of the appellants within the ambit of section 18 of the UA(P) Act. ...."*
- 50) In ***Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 (para 16)***, it was held that
- (i) *Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility.*

(ii) The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused.

51) The leading case on the subject of sedition is the judgment of the Hon'ble Supreme Court rendered in the case of ***Kedar Nath Vs. State of Bihar, AIR 1962 SC 955***. While interpreting the meaning of sedition U/S 124-A IPC, the Hon'ble Apex Court held in **para 26** that in "The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence."

52) ***Mohd. Husain Umar Kochra v. K.S. Dalipsinghji, (1969) 3 SCC 429 (para 15)***

*".....Criminal conspiracy as defined in Section 120-A of the IPC is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not done by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time*

*be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. ....”*

53) In ***Rajender v. State (NCT of Delhi), (2019) 10 SCC 623*** (para 10, 17), it was held that -

10. ".....with respect to conspiracy, it is trite law that the existence of three elements must be shown—a criminal object, a plan or a scheme embodying means to accomplish that object, and an agreement or understanding between two or more people to cooperate for the accomplishment of such object.”

17. "..... Admittedly, the incorporation of Section 10 to the Evidence Act, 1872, suggests that proof of a criminal conspiracy by direct evidence is not easy to get.”

54) In ***State v. Nalini, (1999) 5 SCC 253 {Rajiv Gandhi Assassination case}***, the Hon'ble Supreme Court summarizing the law on conspiracy held as follows in para 583

*Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.*

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It

*would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.*

*2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.*

*3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.*

*4. Conspirators may for example, be enrolled in a chain – A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.*

*5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime*

*was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.*

*6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.*

*7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".*

*8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into*



*by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.*

*9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.*

*10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.*

### ANALYSIS AND FINDINGS

#### **Analysis with regard to Manas Konwar @ Manash Pratim Konwar (A-3) and findings on the point of charge**

- 55) Out of the 19 witnesses examined during the investigation and who are listed in the charge-sheet dated 29.05.2020, the two protected witnesses and witness no. 3, 4, 6, 8, 12, 13, 14, 16, 17, 18 and 19 of the charge-sheet dated 29.05.2020, have not mentioned the name of Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- 56) Witness no. 9, 10 and 15 of the charge-sheet dated 29.05.2020, have mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3), but have not implicated him.
- 57) Witness no. 5 of the charge-sheet dated 29.05.2020 has stated about being with Sri Manas Konwar @ Manash Pratim Konwar (A-3) on 11.12.2019, along with A-1 Sri Akhil Gogoi, but he has not implicated him (A-3).
- 58) Witness no. 11 of the charge-sheet dated 29.05.2020, has mentioned about being in KMSS office in Guwahati during the period – 09.12.2019 to 13.12.2019 and being in close contact with A-1 and other leaders of KMSS, but he has not mentioned in that part of his statement as to who those other KMSS leaders were, though in an earlier part of his statement, he stated that he knew A-3 Sri Manas Konwar.
- 59) Witness No. 7 has stated that he had seen Sri Manas Konwar @ Manash Pratim Konwar (A-3) accompanying A-1 Sri Akhil Gogoi, though he did not specify whether he meant A-3 accompanying A-1 around the time of Chabua incident, but has not attributed any

act of violence or violence inciting provoking speech to A-3 Manas Konwar.

- 60) Witnesses Sri Arupjyoti Saikia and Sri Pranjal Kalita, who were not listed in the charge-sheet dated 29.05.2020, have not mentioned the name of Sri Manas Konwar @ Manash Pratim Konwar (A-3).
- 61) Though witness Shahjahan, who is not a listed witness has stated about his coordinating with various persons, including A-3 during the protest activities against CAB, including the protest in Guwahati, during which violence broke out, he has not attributed any act of incitement, conspiracy or terrorism to A-3.
- 62) As stated earlier, the protected witnesses are silent about A-3.
- 63) From the materials, I could not find any words or deeds on the part of the *Sri Manas Konwar @ Manash Pratim Konwar (A-3)* which can be seen to be promoting enmity between different communities or being an act prejudicial to maintenance of harmony in society and therefore, there are no materials to frame any charge u/s- 153-A IPC against him. Reference may be made to the case of *Manzar Sayeed Khan (supra)*, where it has been held that - *intention to cause disorder or incite people to violence is an essential ingredient of Section 153-A IPC and further, it is also necessary that at least two groups or communities be involved.*

- 64) There are also no materials whatsoever, about *Sri Manas Konwar @ Manash Pratim Konwar (A-3)* making any imputations or assertions prejudicial to national integration of our country. Therefore, there is no case for framing any charge against A-3 u/s 153B IPC.
- 65) The telephone conversations and the CDR analysis definitely indicate that Sri Manas Konwar @ Manash Pratim Konwar **(A-3)** was involved in protests against the CAA and there are also some materials about his also coordinating such protests with others, including co-accused. However, there are no materials to indicate any criminal agreement within the meaning of S.120 (B) IPC so as to constitute conspiracy. There is nothing to indicate that A-3 along with co-accused or others made agreement to commit offences and / or to commit some legal acts illegally. There are no *prima facie* materials to indicate that he was involved in conspiracy to commit violence and to indicate his linkage with the vandalism etc. that took place in December 2019, during the CAA protests. Thus, there is no case whatsoever to frame charges against Sri Manas Konwar @ Manash Pratim Konwar (A-3) u/s 120 (B) IPC.
- 66) Keeping in mind the principles laid down in *Kedar Nath Singh (supra)*, there are no materials indicating involvement of Sri Manas Konwar @ Manash Pratim Konwar **(A-3)** in any act of inciting violence, or trying to overawe the government through violence, so as to constitute sedition. It has been held in a catena of decisions by the Hon'ble Supreme Court and various Hon'ble High Courts by applying the principle of *Kedar Nath Singh (Supra)* that if there is

no incitement to imminent public disorder through violence, criticism of the Government and its policies, even if strongly worded, would not constitute sedition. Thus, tested on the touchstone of these principles, all emanating originally from *Kedar Nath Singh (supra)*, I come to the considered finding that there is no case whatsoever, to frame charge against Sri Manas Konwar @ Manash Pratim Konwar (A-3) u/s 124-A IPC.

67) There are no materials to support any finding that Sri Manas Konwar @ Manash Pratim Konwar **(A-3)** was *involved in or attempted to do or abetted, advocated, advised an act*, within the any of the clauses of Section 15 (1) and such act done or to be done with the intention 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. In the absence of materials indicating incitement to violence and being linked to vandalism, A-3 talking about the CAA protests, participating in it and coordinating with others about such protests, cannot by any means constitute justification for trying A-3 for offences u/ 18 *UA (P) Act*. Thus, there are no materials to frame charges against Sri Manas Konwar @ Manash Pratim Konwar (A-3) u/s 18 *UA (P) Act*.

68) Regarding Section 39 *UA (P) Act*, which criminalizes giving of support to a terrorist organization, there are absolutely no materials to support any such proposition with regard to Sri Manas Konwar @ Manash Pratim Konwar **(A-3)**. The findings in the charge-sheet in this regard have no correlation with the materials and have no legs to stand on. Reference may also be made to *Yasmin Zahid (supra)*.

I also do not find materials to frame charges against A-3 under other penal provisions.

- 69) Thus, I came to the considered finding that on the basis of the aforesaid materials, charges cannot be framed against Sri Manas Konwar @ Manash Pratim Konwar (A-3).

**Analysis with regard to Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2) and findings on the point of charge**

- 70) The two protected witnesses have not implicated the accused Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2) in any manner. In fact, they have not mentioned the name of A-2.
- 71) Of the remaining witnesses of the charge-sheet dated 29.05.2020, 10 witnesses viz., witness no. 3, 6, 8, 12, 13, 14, 16, 17, 18 and 19, have not mentioned the name of Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2) nor made any implications against him.
- 72) 5 witnesses of the charge-sheet dated 29.05.2020 viz., witness no. 4, 5, 9, 10 and 15 have mentioned about Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2), stating that they know him as an office bearer of the KMSS, but have not implicated him.
- 73) Out of the witnesses whose statements were recorded during investigation but who were not listed in the charge-sheet dated

29.05.2020, the statements of witness Sri Naba Moran and Sri Pranjal Kalita, do not mention the name of or implicate accused Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2) in any manner. Similarly, the statement of witness Sri Arupjyoti Saikia also in my considered view, do not implicate A-2 Dhajya Konwar.

74) Regarding the intercepted telephone conversations of Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2) available in D-34 - in the conversation of A-2 Dhajya Konwar with A-1 Akhil Gogoi on 04.12.2019 at 13:01, they talk about a protest programme, probably in the context of CAB. A-2 Dhajya Konwar says they should do a *padayatra*, whereupon A-1 says that they have to take vehicles or otherwise they will not reach the destination. In another part of the conversation, A-2 Dhajya Konwar talks about a rally by car. Upon perusing this conversation, I am of the considered view that there are no implications whatsoever with regard to A-2 Dhajya Konwar.

75) The conversation of A-4 with A-2 Dhajya Konwar in D-34 appears to be in the backdrop of the then ongoing protests against the citizenship law. Leaving aside the many irrelevant aspects of their conversation, they talk about to plan some activities. At one point, A-2 Dhajya Konwar asks A-4 whether he is able to shut down somewhere in Guwahati, whereupon A-4 replies that there is already a shutdown and they don't need to do anything. In the conversation of A-2 Dhajya Konwar with A-1 Akhil Gogoi on 10.12.2019 at 16:26, A-2 Dhajya Konwar says that he is at Dispur last gate, where many people have gathered. A-1 Akhil Gogoi tells that they should do something positive. A-1 Akhil Gogoi further asks whether people

have enclosed the house of a senior Cabinet minister, to which A-2 Dhajya Konwar replies in the affirmative.

76) What emerges from the statement of Sri Maina Deka, (witness no. 11), to the effect that - during the period – 09.12.2019 to 13.12.2019, as per the directions of A-1, this witness was in the KMSS office in Guwahati and in close contact with A-1 and other leaders of KMSS - is that A-2 might have been involved in the protest activities against CAB, but the statement does not necessarily indicate or implicate A-2 in incitement to violence or commission of any terrorist act.

77) Document D-59 – the scrutiny report of videos (*serial no. 2, 3, 5 and 8*) – indicate the involvement of A-2 Dhajya Konwar in political protests against CAB, but does not in my considered view contain any implications therein, especially vis-à-vis violence and terrorism, for framing charge for these offences.

78) With regard to the conversations of A-2 Dhajya Konwar with A-4 Bittu Sonowal and A-1 Akhil Gogoi in D-34, I am of the considered view that it cannot be taken as indicating conspiracy to commit offences or incitement to violence or commission of terrorist acts on the part of A-2 Dhajya Konwar, so as to frame charge thereunder.

79) Upon perusal and analysis of the statements of witness Sri Sunil Sonowal (*charge-sheet witness*) and Hussain Mohammad Shahjahan (*not a charge-sheet witness*), it is clear that the KMSS and its associates were involved in planning, coordinating and



executing protest activities against the citizenship law (CAB) proposed and later passed by the Government of India. In this context, judicial notice can also be taken that around the relevant there were lot of protest activities in the State over this law, carried out by various peoples and organizations, involving bandhs, disruption of transport, supplies and administrative work. Unfortunately, the protests also led to violence and damage to property. However, there are no *prima facie* materials to connect *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2)* to incitement to violence and vandalism.

- 80) The voice conversations and the video footage discussed above, also *prima facie* do not implicate A-2 Dhajjya Konwar.
- 81) From the materials, I could not find anything on the part of *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2)* which can be seen to be promoting enmity between different communities or being an act prejudicial to maintenance of harmony in society and therefore, there are no materials to frame any charge u/s- 153-A IPC against him. Reference may be made to *Manzar Sayeed Khan (supra)*.
- 82) There are also no materials whatsoever, about *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2)* making any imputations or assertions prejudicial to national integration. Therefore, there is no case for framing any charge against A-2 u/s 153B IPC.

83) I do not find any implications against A-2 in the statement of witnesses including that of two protected witnesses, who have not even mentioned the name of A-2. The telephone conversation transcripts at the CDR analysis do reveal that the accused person A-2 as a member of KMSS was involved in protests against the citizenship law along with others and that he was also involved in coordinating such protest. However, the said materials do not indicate any conspiracy with regard to committing violence or inciting violence. The statement of witness Shahjahan, who is not even a listed PW, is also not sufficient in my considered view to come to any *prima facie* finding for the purpose of framing charge that A-2 was involved in any act of inciting violence, or commission of any terrorist act or trying overawe the government through violence himself by way of sedition. The findings stated in the charge sheet when compared with the other materials such as statement and documents, do not find support therein.

84) The telephone conversations, the CDR analysis and statements of some of the witnesses definitely indicate that *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2)* was involved in protests against the CAA and also coordinating such protests with others, including co-accused. However, the materials are grossly inadequate to *prima facie* attribute any conspiracy. There is nothing to indicate that A-3 along with co-accused or others made agreement to commit offences and / or to commit some legal acts illegally. There are no *prima facie* materials to indicate that he was involved in conspiracy to commit violence and to indicate his linkage with the vandalism etc. that took place in December 2019,

during the CAA protests. Thus, there is no case whatsoever to frame charges against Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2) u/s 120 (B) IPC.

- 85) Keeping in mind the principles laid down in *Kedar Nath Singh (supra)* as stated earlier, there are no materials indicating involvement of *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2)* in any act of inciting violence, or trying to overawe the government through violence, so as to constitute sedition. Thus, I come to the considered finding that there is no *prima facie* case to frame charge against Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2) u/s 124-A IPC, on the basis of the aforesaid materials.
- 86) There are no materials indicating incitement to violence by *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2)* and no *prima facie* material to link him to any specific vandalism.
- 87) In my considered view, there are no *prima facie* materials to support any finding that - Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajjya Konwar (A-2) committed or attempted or abetted, advocated, advised a terrorist act within the clauses of Section 15 (1) and that any such act was done or sought to be done with the intention 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. That would be too far-fetched a conclusion and the materials just do not support that. Thus, there

are no materials to frame charges against *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajiya Konwar (A-2)* u/s 18 UA (P) Act.

88) Regarding Section 39 UA (P) Act, there are absolutely no materials with regard to *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajiya Konwar (A-2)* as well. The protected witnesses have not uttered a word about A-2. There is no correlation between what has been stated in the charge-sheet in this regard and the materials. Thus, there are no materials whatsoever to frame charges against *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajiya Konwar (A-2)* u/s 39 UA (P) Act

89) I also do not find materials to frame charges against A-2 under other penal provisions.

90) Thus, I came to the considered finding that the aforesaid materials are grossly insufficient to frame any charges against *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajiya Konwar (A-2)*.

**Analysis with regard to Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) and findings on the point of charge**

91) In the statements of 18 out of 23 witnesses, there are no adverse materials whatsoever against A-4.

92) The statement of witness no. 10 – Sri Jugal Gogoi that he along with others were protesting against CAA on the directions of

A-1 and A-4 does not constitute any implication. People have a right to protest in a democracy, provided they do not resort to violence.

93) What emerges from the statement of witness Maina Deka is that A-4 might was involved in the protest activities against CAB, but the statement does not indicate or implicate A-4 in incitement to or commission of any violence or terrorist act.

94) The statement of H M Shahjahan, who is not even a listed prosecution witness, even if accepted on face value indicates that A-4 was involved in coordinating the protest activities against the CAB, including protest activities in Guwahati, during which violence broke out. That, he along with others were also supervising execution of bandh in Guwahati against CAB, during which there was some blockages and shutdowns. In the transcripts of the intercepted voice conversations of A-4, his conversation, if any with this witness is not available. Thus, in my considered view, primarily on the basis of the statement of this non-listed witness, it cannot be said *prima facie* that A-4 was responsible for inciting the said violence or committing terrorist acts with intention to threaten the economic security of India. That would be again too far-fetched a deduction for framing charge against him for any such offence.

95) Next, I carefully analyze the transcripts of the intercepted voice conversations available in document D-34 and my considered findings are as follows:

- (i) In the conversation of A-4 with Asif, his advice about the rally people pushing back the police, if the police pushes, cannot be taken as an implication. Similarly, in the conversation of A-4 with the unknown person, their discussion about the naked protest also does not constitute any implication in my considered view against accused Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4).
- (ii) In the conversation of A-4 Bittu Sonowal with A-2 Dhajya Konwar, they talk about to plan some activities. Regarding the query of A-2 Dhajya Konwar about shut down in Guwahati, A-4 says that there is already a shutdown and they don't need to do anything. Upon carefully scrutinizing this part of the statement, I am of the considered view that it cannot be taken as indicating any incitement to violence or commission of terrorist acts.
- (iii) In the conversation of A-4 Bittu Sonowal with one Jogo, they talk about one protest at the Mullockgaon residence of the then Hon'ble CM Assam and media coverage of the same. They also converse about motivating the "*simple straight forward Muttock people*" to rise in protest. In this context, there is one mention of violence after 9<sup>th</sup> by the said person Jogo whereupon A-4 still talks about *motivating the muttock people, saying that - once people of Chabua and muttock wake up, nobody will mess with our world*. I have carefully perused and analyzed this statement of A-4. Though there is one word about violence, it is not from the side of A-4. The said Jogo, who uttered this word, is neither an accused in this case nor any statement recorded during investigation of any witness by the name Jogo, though there is a witness by the name Jugal Gogoi. In my considered view, it would be stretching things far, if the conversation of A-4 with this witness is interpreted as constituting prima facie incitement to commission of terrorist acts or any conspiracy or abetment thereof.

- 96) Upon perusing, considering and analyzing the materials available on record, as narrated and discussed above, what is revealed is the accused Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal **(A-4)**, along with others, is likely to have been involved in planning, participating and coordinating the protest activities that took place in the State of Assam, including in Guwahati, especially in the month of December. This appears from the statements of some of the witnesses, the transcripts of the voice conversations and the CDR analysis. But there are no materials to implicating him for violence or its incitement or commission of terrorism or its abetment.
- 97) Further, from the materials, I could not find any words or deeds on the part of the *Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4)*, which can be seen to be promoting enmity between different communities or being an act prejudicial to maintenance of harmony in society and therefore, there are no materials to frame any charge u/s- 153-A IPC against him.
- 98) There are also no materials whatsoever, about *Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4)* making any imputations or assertions prejudicial to national integration of our country. Therefore, there is no case for framing any charge against A-4 u/s 153B IPC.
- 99) The telephone conversations and the CDR analysis definitely indicate that *Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-*

**4)** was involved in protests against the CAA and there are also some materials about his also coordinating such protests with others, including co-accused. However, the materials are grossly inadequate to indicate any conspiracy. In fact, the materials are non-existent. Though it is clear that A-4 participated in CAA protests, there are no *prima facie* materials to indicate that he was involved in conspiracy to commit violence and to indicate his linkage with the violence or its abetment. Thus, I am of the considered finding that there is no case whatsoever to frame charges against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) u/s 120 (B) IPC.

100) Keeping in mind the principles laid down in *Kedar Nath Singh (supra)*, there are no materials indicating involvement of *Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4)* in any act of causing imminent public disorder through violence, or trying to overawe the government through violence, so as to constitute sedition. Thus, tested on the touchstone of the principles emanating from *Kedar Nath Singh (supra)*, I come to the considered finding that there is no case whatsoever, to frame charge against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) u/s 124-A IPC.

101) There are also no materials to support any finding that *Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4)* was involved in or attempted to do or abetted, advocated, advised an act, within the any of the clauses of Section 15 (1) and such act done or to be done with the intention 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. In the absence of materials indicating incitement to violence and being linked to violence, vandalism or terrorist act, A-4 participating in CAA protests and coordinating with others about such protests, cannot by any means constitute justification for trying A-4 for offences u/ 18 *UA (P) Act*. Thus, I come to the considered finding that there are no materials to frame charges against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) u/s 18 *UA (P) Act*.

102) Regarding the offence of giving support to a terrorist organization punishable u/s 39 *UA (P) Act*, there are absolutely no materials with regard to A-4 also, to try him for that penal provision. The findings in the charge-sheet in this regard are not at all supported by the other materials. Thus, I come to the considered finding that there are no materials to frame charges against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) u/s 39 *UA (P) Act*.

103) Summing up the discussion, the statement of witness Sri Jugal Gogoi that on the direction of A-1 and A-4, he along with others were protesting against CAA since November 2019 and that between 09.12.2019 and 13.12.2019 he was involved in various protest against CAA in Dhemaji - cannot be seen as *prima facie* implicating against A-4. The statement of Maina Deka also does not *prima facie* incriminate. The statement of H.M. Shahjahan, who is not even a listed witness, about A-4 and others coordinating of execution of bandh against CAB also do not lead to *prima-facie* satisfaction about A-4 involved in conspiracy abetment etc. of

terrorist act or the offence of sedition, in view of other materials on record. There are no materials linking A-4 to any incitement of violence or involvement in violence. Though there are some materials about his involvement in protest against CAB – which is also admitted position of the defence. The statement of the other witnesses does not contain *prima facie* implication whatsoever against A-4. The CDR analysis indicate that he was exchanging calls with other co-accused and other people and that he was interested and involved in protesting against CAA. However, the transcripts of the conversation do not contain any materials indicating *prima facie* commission of offence by A-4. The materials on record also do not indicate any offence of conspiracy, as already stated. Further, on the basis of the materials I do not find any grounds whatsoever to frame charges against A-4 u/s- 124A/153B/153B IPC. There are also no materials to frame any charges under the provisions of the *UA (P) Act* pertaining to offences of terrorism. Consequently, there is no other option but to come to the inevitable finding in my considered view that there is no justification to frame any charges against A-4.

104) I also do not find materials to frame charges against A-4 under other penal provisions.

105) Thus, I came to the considered finding that the aforesaid materials are not sufficient at all, to frame any charges against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4).

## **Analysis with regard to Akhil Gogoi (A-1) and findings on the point of charge**

### **Determination with regard to S. 18 UA (P) Act**

107) Section 18 *UA (P) Act* may be reproduced hereinbelow:

**18. Punishment for conspiracy, etc.**—Whoever conspires or attempts to commit, or advocates, abets, advises or <sup>3</sup>[incites, directly 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.

108) Section 15 of the *UA (P) Act* defines a terrorist act and even at the cost of repetition, is reproduced hereinbelow:

**5. Terrorist act.**—4[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security <sup>5</sup>[, 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

5[(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 <sup>6</sup>[an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.

7[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.]

1[(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.]

109) In the backdrop of the aforesaid statutory provisions, now the materials with regard to *Sri Akhil Gogoi (A-1)* have to be analyzed

to see if there are *prima facie* materials to try him for an offence u/s 18 UA (P) Act.

- 110) As stated earlier, it is clear from the provisions of Section 15 of UA (P) Act that to constitute a terrorist act, the requisite intention is necessary - of doing the act with the intention of threatening the unity, integrity, security or sovereignty of India or with the intention to strike terror or likely to strike terror in the people or any section of the people in India or any foreign country.
- 111) In this regard, one of the submissions of the learned senior defence counsel for A-1 was that the term "*by any other means of whatever nature*" has to be read *ejusdem generis* on the ground that if interpreted otherwise, the previously described means like bombs etc. would not be necessary to be enumerated. Upon carefully perusing the provisions of Section 15(1)(a) of the Act, the aforesaid submission appeals to reason.
- 112) Further, the Hon'ble Gauhati High Court in BA No. 930/2020 (para 22), pertaining to the same accused A-1 in another case, has also held that - .....The phrase "by any other means of whatever nature" appearing in Section 15(1)(a) of the UA(P) Act is to be read, in my considered view, with reference to and in a conjunctive manner with the previous part of the said Section and not in isolation and disjunctively, meaning thereby, this phrase is to be read as ejusdem generis along with the previous part. .....
- 113) I have perused the speeches of A-1 available in documents such as D-44 and D-56. In none of the speeches of A-1, I find any

incitement to violence. It is a different matter that during the protests in the State in December, 2019 against the *Citizenship Amendment Act (CAA)* led by various organizations, incidents of vandalism, damage and destruction of property unfortunately did take place.

114) However, as stated above, from his speeches available on record, *Sri Akhil Gogoi (A-1)* cannot be imputed with any incitement to violence. There are also no materials to link A-1 with vandalism and damage to property that took place during the said CAA protest due to such agitations led by various organizations.

115) I have carefully perused the statement of Sri Dipak Mudoi (W-3), Sri Pranabjyoti Handique (W-4) and Sri Rahul Chetry (W-8). As per witness no. 8, A-1 expressed his opinion that after passing of CAB there is no other option then to shut down the State and that A-1 encouraged him to continue protest and shut down.

116) In the statement of witness No. 4 *Sri Pronab Jyoti Handique*, there is a sentence "marched in a procession at Dibrugarh to stop all essential supplies, markets, national highway". This statement of witness No. 4 is based on a telephonic conversation with A-1 on 10.12.2019 at 18:50, in which the corresponding statement is – "At around 6:50 P.M. on 10.12.2019, A-1 called him over his mobile and told that thousands of people marched in a procession at Dibrugarh to stop it". Thus, I find that the words- 'stop all essential supplies, markets, national highway' do not find place in the corresponding telephone conversation transcript as stated above. A similar significant dichotomy is seen in the

statement of Sri Ritumoni Hazarika and his telephone conversation with A-1 with regard to such kind of subject matter.

117) In the statement of W-3 also, A-1 is stated to be talking about closure and blockade. It is also revealed in the statement that on the next day shops, markets were automatically closed. In the statement of W-4, A-1 is stated to be talking about shut down in town of Sivasagar. From the expression – *supervising execution of the bandh against CAB* - in the statement of witness Shahjahan, it cannot be automatically inferred prima-facie that accused had instructed about destruction of essential supplies or that the same amounts to abetment or commission of an act of terrorism defined in Section 15 of the Act. Further, there are also no telephone conversations with regard to non-listed witness Shahjahan.

118) I am of the considered view that apart from other materials, the following components of the speeches of *Sri Akhil Gogoi (A-1)* has an important bearing on ascertaining his intention with regard to terrorism and sedition and may be reproduced hereunder:

- Speech in D-56 – “*my request is to continue the movement peaceful way don't pelt stone in anywhere; don't set set fire anywhere or damage any vehicle. ....Therefore my request to revolutionary comrades that don't set fire anywhere, don't pelt stone anywhere; don't damage any vehicle, don't create any violence.....*” He called upon his revolutionary colleagues to continue movement with dedication. He compared himself with professional revolutionary like Jay Prakash Narayan. He further stated that if they come to arrest him they should not create violence and give opportunity to open fire.

- Speech in SI No. 4 of D-44 – .....that they need to come out peaceful and democratic way and shut down all Central and State Government offices by picketing.....

119) Thus, in his speech transcript available document D-56, rather than inciting violence, A-1 is exhorting people not to indulge in violence and seems to be doing so fervently.

120) There is one statement at the end about stopping transportation of natural resources from Assam. There is no material to indicate that such stoppage of natural resources from this part of the country to the rest took place as a result of any such statement by A-1. Moreover, that statement alone cannot be used to impute frame charge for terrorism.

121) In this context, it might be also relevant to mention herein that there are no materials whatsoever, about Sri Akhil Gogoi (A-1) making any imputations prejudicial to unity and integrity of India or national integration.

122) Only on the basis of the statements of some of the witnesses about A-1 speaking about blockade and closure, it cannot be said that there are *prima facie* materials to indicate that such talk of blockade was with an intention to threaten the economic security of India so as to constitute an offence of advocating commission of a terrorist act. That would not be a correct *prima facie* deduction, for the purpose of framing charge.

- 123) Even if the statements of some of the witnesses attributing talk of shut down etc. to A-1 are accepted on face value – *in the backdrop of any non-incitement to violence and appeals for peace in his speech in D-56 – it cannot said that there is a prima facie case for inferring that – A-1 advocated or advised causing death, destruction of properties or disruption of essential supplies with the use of 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 (ejusdem generis), with the intention of threatening 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.* Therefore, I am of the considered view that these statements and conversations do not make out any offence u/s 18 UA (P) Act – of conspiracy, abetment, advise, advocacy of a terrorist act defined in S.15 of the Act.
- 124) It may be mentioned herein that S.2(ea) of the Act defines economic security as follows - *“economic security” includes financial, monetary and fiscal stability, security of means of production and distribution, food security, livelihood security, energy security, ecological and environmental security;].*
- 125) This definition was inserted by the same amendment in 2013, which inserted sub-clause (iiia) in S.15(1)(a) of the Act. S.15(1)(a) (iiia) of the act reads – *[(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].*
- 126) There is a connection between the definition of *“economic security”* in S.(ea) of the Act and the nature of the offence defined



in S.15(1)(a)(iiiia) of the Act, both of which were inserted by the same amendment in 2013.

127) In this regard, a reference may be made to – **Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra, (2010) 5 SCC 246**, wherein at **para 76**, it was held that – The offences within the meaning of S.15 of the UA (P) Act are related to the defence of India and are covered by Entry 1 of the Union List.

128) Para 76 and 77 can be gainfully reproduced hereunder:

**76.** "..... The concept of the offence of "terrorist act" under Section 15 of UAPA essentially postulates a threat or likely threat to unity, integrity, security and sovereignty of India or striking terror amongst people in India or in foreign country or to compel the Government of India or the Government of a foreign country or any other person to do or abstain from doing any act.

**77.** The offence of terrorist act under Section 15 and the offence of unlawful activity under Section 2(1)(o) of UAPA have some elements in commonality. The essential element in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India. While Section 15 requires some physical act like use of bombs and other weapons, etc., Section 2(1)(o) takes in its compass even written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India. The said offences are related to the defence of India and are covered by Entry 1 of the Union List."

129) In the backdrop of the aforesaid discussion, I am of the considered view that ordinary bandhs, blockades, shut downs as part of some protests, unaccompanied by incitement to violence

would not come within the ambit of the expression – "*threatening the economic security of India*" in S.15(1) of the Act. Rather, the said expression, has a much graver connotation.

130) As already stated, there are no materials to link A-1 personally and vicariously, with the vandalism and property damages that took place during the protests in December 2019. At the relevant time, there were overlapping agitations led by various organizations, during which unfortunately, vandalism also took place. Materials to support *prima facie* linkage of A-1 personally and vicariously, with specific incidents of vandalism, are not there in my considered opinion.

131) In view of the above and in the context of the materials indicating that A-1 in his speeches did not incite violence and rather appealed to the people to maintain peace and not indulge in violence, (*document D-56*), the statements of some witnesses attributing talk of shut down, blockade and closure on the part of A-1 - cannot be constituted to mean *prima facie* that A-1 advocated or advised commission of a terrorist act with the intention to threaten the unity, integrity, sovereignty, security or economic security of India or with an intention to strike terror in the people. In my considered view, interpreting otherwise would be incorrect and too far-fetched a conclusion, *stretching the definition of Section 15 beyond permissible limits*, for the purpose of framing against A-1 for offence of terrorism. Further, the fact that there is no an iota of materials about A-1 making any imputations prejudicial to the

unity, integrity and sovereignty of our country, also has a bearing on coming to this finding, for the purpose of framing charge.

132) Protests in a democracy are sometimes seen to take the form of blockades also, even causing inconvenience to citizens. However, it is doubtful whether such blockades for temporary periods, if unaccompanied by any incitement to violence, would constitute a terrorist act within the meaning of Section 15 of the *UA (P) Act*. That in my mind, is beyond the intention of the legislature. There can be other laws to address that.

133) The following observations of the Hon'ble Supreme Court in ***Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1***, regarding the real nature of terrorism is worth reproducing:

*The term "terrorism" is a concept that is commonly and widely used in everyday parlance and is derived from the Latin word "terror" which means the state of intense fear and submission to it. There is no particular form of terror, hence, anything intended to create terror in the minds of general public in order to endanger the lives of the members and damage to public property may be termed as a terrorist act and a manifestation of terrorism. Black's Law Dictionary defines terrorism as: "Terrorism.—The use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct." (8th Edn., p. 1512.) – (para 809).*

*Terrorism is a global phenomenon in today's world and India is one of the worst victims of terrorist acts. Terrorism has a long history of being used to achieve political, religious and ideological objectives. Acts of terrorism can range from threats to actual assassinations, kidnappings,*

*airline hijackings, bomb scares, car bombs, building explosions, mailing of dangerous materials, computer based attacks and the use of chemical, biological, and nuclear weapons—weapons of mass destruction (WMD). (para 810).*

*Terrorism means use of violence when its most important result is not merely the physical and mental damage to the victim but the prolonged physiological (sic psychological) effect it produces or has the potentiality of producing on the society as a whole. Terrorism is generally an attempt to acquire or maintain power or controlled by intimidation and causing fear and helplessness in the minds of people at large or any section thereof and it is a totally abnormal phenomenon. Terrorism is distinguishable from other forms of violence as in the former, the deliberate and systematic use of coercive intimidation is used. (Vide Hitendra Vishnu Thakur v. State of Maharashtra [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 :) – (para 1542).*

- 134) Thus, I come to the considered finding that on the basis of the aforesaid materials on record, there is no prima facie case to frame charge against Sri Akhil Gogoi (A-1) u/s 18 UA (P) Act, to try him for any offence of conspiracy, abetment, advocacy of a terrorism.

**Determination with regard to S. 124-A IPC (Sedition)**

- 135) Section 124-A IPC may be reproduced hereunder:

**124A. Sedition.**—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, <sup>11\*\*\*</sup>the Government established by law in <sup>12</sup>[India], <sup>13\*\*\*</sup>shall be punished with <sup>14</sup>[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

*Explanation 1.*—The expression “disaffection” includes disloyalty and all feelings of enmity.

*Explanation 2.*—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or

attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

*Explanation 3.*—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

- 136) As already referred to in an earlier part of the order, the leading case on the subject of sedition is the judgment of the Hon'ble Supreme Court rendered in the case of ***Kedar Nath Vs. State of Bihar, AIR 1962 SC 955***. While, interpreting the meaning of sedition u/s 124A IPC, the Hon'ble Apex Court held in para 26 that in "*The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.*"
- 137) This decision of the Hon'ble Apex Court rendered way back in 1962, still hold the field and has been relied upon by the Hon'ble Apex Court itself and several Hon'ble High Courts over the years till date. In *Kedar Nath Singh (supra)*, the ratio is that *public disorder by use of violence is essential ingredient, for the offence of sedition*. In various subsequent decisions, the law of sedition has been discussed keeping in mind the cardinal principles laid down in *Kedar Nath Singh (supra)*. Even though the Hon'ble Supreme Court upheld the law, but redefined its interpretation to prevent misuse.
- 138) As stated in the earlier narration and discussion, since there are no materials regarding incitement to violence by *Sri Akhil Gogoi (A-1)* and lack of materials linking him personally and vicariously to the vandalism, property damages etc. during the CAA protests, it is

not possible to come to any *prima facie* finding that A-1 caused public disorder through incitement of violence or tried to overthrow duly elected legitimate Government through violent means, so as to try him for sedition.

139) In a recent case - ***Umesh Kumar Sharma v. State of Uttarakhand, 2020 SCC OnLine Utt 707***, the Hon'ble Uttarakhand High Court discussed S.124-A IPC and made the following observations in para 83 and 85:

**83.** *There are many heavy words like 'hatred', 'contempt', 'incites', 'disaffection' used in Section 124-A IPC. It defines as well as punishes, the actions given thereunder. The heading of this section is "Sedition". The word as such is not used in the section. A provision, which was not in the initial Penal Code, 1860 and added subsequently, in the year 1870. It is said that the draft Penal Code, 1860 had this provision, but it could not be added due to mistake. In the year 1870, India was not independent, it was being governed by the Crown through Secretary of State. Indians did not have any say in the governance at that point of time. They were not part of decision making process. At that point of time, we were not governing ourselves. We were governed by outsiders. No voice in governance. Today, India, a sovereign country, is a democratic republic.*

**85.** *The Constitution of India gives freedom of expression to each one with reasonable restrictions as given under Article 19 of the Constitution. Long back, when Bal Gangadhar Tilak was being prosecuted for sedition, he stood and said "the law may be rigid; the law may be harsh. Stand between me and the law and protect me because I represent the liberty of the press." Mahatma Gandhi when tried for the charges under Section 124-A IPC before Mr. C.N. Broomfield, I.C.S., District and Sessions Judge, Ahmedabad, had on 18.03.1922 said "In my opinion, the administration of the law is thus prostituted, consciously or unconsciously, for the benefit of the exploiter.....Section 124 A, under which I am happily charged, is perhaps the prince among the political sections of the Penal Code, 1860 designed*

*to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence.....*"

140) Thus, in view of the above discussion, I come to considered finding that materials do not make out a case for framing charge against *Sri Akhil Gogoi (A-1)* u/s 124-A IPC.

**Determination with regard to S. 120(B) IPC**

141) As stated above, I have already arrived at the finding that there are no materials to frame charge against *Sri Akhil Gogoi (A-1)* for conspiracy to commit terrorism.

142) Section 120(B) of the Indian Penal Code (IPC) which defines conspiracy is a substantive offence and criminalizes a mere agreement to commit an offence. Some of the leading principles on the law of conspiracy have already been noticed earlier.

143) Testing the materials on the touchstone of those principles, I do not find anything therein (*in the materials*) to commence trial against *Sri Akhil Gogoi (A-1)* for the offence of conspiracy simpliciter and / or conspiracy to commit any offences other than terrorism. Exchanging telephone calls with co-accused and coordinating protests against CAA in December 2019, in the absence of other significant materials, would not suffice to impute conspiracy, for the purpose of framing charge thereunder.

144) Moreover, considering the complete absence of lack of materials regarding conspiracy with regard to accused *A-2, A-3 and A-4*, the finding in the charge sheet about conspiracy by A-1 u/s 120(B) IPC falls through, for framing charge thereunder.

145) In this regard, reference may be made to ***Topandas v. State of Bombay, AIR 1956 SC 33 : 1956 Cri LJ 138 (para 6)*** wherein it was held as follows - Criminal conspiracy has been defined in Section 120-A of the Indian Penal Code: "When two or more persons agree to do or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy". By the terms of the definition itself there ought to be two or more persons who must be parties to such an agreement and it is trite to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself.

146) Thus, in view of the above discussion, I come to the considered finding that there are no materials to frame charge against accused *Sri Akhil Gogoi (A-1)* u/s 120(B) IPC.

***Determination with regard to S. 153-A/ 153-B IPC etc.***

147) In ***Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 (para 16)***, it was held that

- *Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities*



*or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility.*

- *The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused."*

148) In ***Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431,***

where it was stated in para 11 – “*This Court has held in Balwant Singh v. State of Punjab (1995) 3 SCC 214: 1995 SCC (Cri) 432] that mens rea is a necessary ingredient for the offence under Section 153-A. ....*”

149) In ***Bilal Ahmed Kaloo (supra)*** itself, the Hon’ble Supreme

Court held in para 15 that – *feature of S.153-A IPC being promotion of feeling of enmity, hatred or ill will “between different” religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved.*

150) Tested against these principles, from the materials perused I have not found any words or deeds on the part of accused *Sri Akhil Gogoi (A-1)* which can be seen to be promoting enmity between different communities or being an act prejudicial to maintenance of harmony in society so as to frame any charge u/s 153-A IPC.

151) As already stated earlier during earlier discussion, there are no materials whatsoever about *Sri Akhil Gogoi (A-1)* A-1 making any imputations and aspersions prejudicial to national integration.

152) Accordingly, I come to the considered finding that there is no case for framing charges against Sri Akhil Gogoi (A-1) u/s 153-A / 153-B IPC.

153) Further, from the materials, I do not find any *prima facie* case for framing charge (s) against *Sri Akhil Gogoi (A-1)* under other penal provisions.

**Determination with regard to S. 39 UA (P) Act**

154) Section 39 of the *UA (P) Act* punishes the offence of giving support to a terrorist organization.

**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.

155) On the face of it, the statements of protected witnesses A and B appear implicating. However, on a slightly closer look, I am of the considered view that they suffer from significant infirmities, even for the purpose of framing charge.

156) For example, except for one instance, all other activities referred to, have taken place before 2009 when CPI (Maoist) was

still not a banned terrorist organization. Even with regard to the one instance of 2009, the statement of PW-B is completely vague as to which part of 2009, the said activity took place. This is very significant because as per a Gazette Notification dated 22.06.2009 of Government of India, CPI (Maoist) was declared a banned terrorist organization only with effect from 22.6.2009. Therefore, even if the statement of the protected witness is accepted on face value, the possibility of the said activity of 2009 having taken place prior to 22.06.2009, when CPI (Maoist) was yet to be banned, remains wide open. Thus, clearly two views have emerged for the prima-facie a determination on the point of charge. In this context, a reference may be made to the leading case of *Sajjan Kumar (Supra)* in which one of the principles laid down regarding consideration of charge, is that - *if two views emerge and there is no grave suspicion but only perhaps suspicion, the Court would be justified in discharging the accused.*

157) Secondly, the periods of time referred to by the protected witnesses regarding the activities were of 2004, 2006, 2007, 2008, 2009. But their statements were recorded in 2020, i.e., after a gap of more than 11-14 years. For example, though P.W-A has mentioned about the incident of 2008 and his participation in those activities, his statement before the Metropolitan Magistrate of Delhi was recorded on 03.03.2020 - after a gap of 12 (twelve) years. Similarly, though protected witness B has mentioned about activities for the periods 2004, 2006, 2007, 2008 and 2009, his statement was recorded by investigating authority on 06.05.2020 - after a gap

of 11 to 16 years. There is no indication that the witnesses were absconding. Such inordinate delay in recording the statements of these two witnesses dilutes their veracity and inadequately satisfies the judicial conscience of this Court to solely rely upon them to frame charges against A-2 u/s 39 *UA (P) Act*. This is also in view of the fact that the nature of the statements of P.W- A and B do not find any support whatsoever from the statements of other witnesses and other materials. Witness no. 15 - Sri Bhaben Handique who claimed to be Organizing Secretary of KMSS in 2009, in his statement before NIA has not uttered a word on the lines of what has been stated by protected witnesses A and B, regarding any liasioning with CPI (Maoist) before or after it got banned.

158) The ingredients of section 39 *UA (P) Act* may be discussed as follows:

159) Upon perusing the ingredients of Section 39 *UA (P) Act*, I find that the following acts would constitute an offence of giving support to a terrorist organization

- *If a person invites support for a terrorist organization (by way of money, property or other things etc.) with an intention to further activity of the terrorist organization.*
- *If a person addresses a meeting for the purpose of encouraging support for a terrorist organization, with the intention to further the activity of the terrorist organization.*
- *If a person organizing / manages/assist in organizing - a meeting to support a terrorist organization **or** further the activity of the terrorist organization **or** to be addressed by a person associated with the terrorist*

*organization - and such act is done with the intention of furthering the activity of the terrorist organization.*

160) As already narrated earlier, in the case of *Union of India v. Yasmeeen Mohd. Zahid, (2019) 7 SCC 790, Yasmin Zahid (supra)*, the Hon'ble Supreme Court discussing section 39 of the UA(P) Act, had held that such support to a terrorist organization must be within the meaning of any of the three causes of sub section (1). The relevant para may be gainfully reproduced hereunder: *For Section 39 UAPA to get attracted, support to a terrorist organisation must be within the meaning of either of three clauses viz. clauses (a), (b) and (c) of sub-section (1) (para 16).*

161) From the ingredients of Section 39, it is also clear that to constitute an offence under that section, the activities mentioned therein, have to be done with the requisite *mens-rea* i.e., with the intention of furthering the activity of a terrorist organization.

162) It is well settled that the penal statute has to be interpreted strictly and more stringent the statute, stricter has to be the interpretation. Thus, a penal provision like Section 39 of the *UA (P) Act* has to be interpreted strictly so that it criminalizes only those activities of giving support to terrorist organization which the legislature intended to punish.

163) In the backdrop of the aforesaid position, with regard to the statements of PW-A and PW-B, even if the aspect of date on 22.06.2009 is overlooked and the statements are accepted, it is

doubtful whether said materials *prima-facie* constitute giving support to a terrorist organization, with the requisite *mens rea* of furthering its activity, as to fall within the *meaning of either of three clauses viz. clauses (a), (b) and (c) of sub-section (1) of S. 39 UA (P) Act* {Reference: *Yasmeen Mohd. Zahid (supra)*}.

164) However, as already discussed, the aspect of date of 22.06.2009 cannot be overlooked and that has an important bearing on this determination.

165) Nevertheless, on or overall view of the matter the ingredients of Section 39 *UA (P) Act* do not seem to exist *prima-facie* against A-1 to justify framing of charge against him u/s- 39 of the *UA (P) Act*.

166) There is another aspect in the statements of PW-A and PW-B. Even if they are accepted on face value and considered incriminating, the statements are inculpatory with regard to them. Now, in the absence of any other materials whatsoever to support PW-A and B, I am of the considered view that the same should not be relied on to frame charge u/s- 39 *UA (P) Act*. In this regard, a reference may be made to ***Suresh Kr. Bubharmal Kalani v. State of Maharashtra (1988) 7 SCC 377 (para 7)***, where the Court held that - *the confession of one Sri Surjya Rao cannot be used to frame charges against the accused Kalani, in the absence of other materials to do so.*

167) Thus, in view of the above discussion, I of the considered view that only on the basis of these materials, charge u/s 39 of the *UA*

*(P) Act* cannot be framed, as the same apart from suffering from basic infirmities – *as discussed above* – are also *prima facie* inadequate to do so.

**Additional Materials submitted by NIA / Prosecution**

- 168) It may be mentioned herein that in this case, on the investigation materials pertaining to the main charge-sheet dated 29.05.2020, the learned prosecution started charge hearing on 16.03.2021 and concluded on 10.06.2021, after arguments on various dates in between. Thereafter, the respective learned defence counsels commenced their charge arguments on 22.06.2021 and concluded on 24.06.2021. On 24.06.2021, the learned prosecution prayed that they may be given an opportunity to give a brief reply to the defence argument on charge, which was allowed and date was fixed on 30.06.2021, on the prayer of the prosecution, submitting further that the learned Advocate-General Assam would address the said reply on behalf of the prosecution/NIA.
- 169) On 28.06.2021, the prosecution vide petition no. 192/2021 submitted the statement of a witness (*indicated as witness no. 77*) recorded by the NIA on 27.06.2021, with the prayer that he should be declared as **Protected Witness C**, which was allowed considering the apprehensions expressed therein.
- 170) Thereafter, on 29.06.2021, vide petition No. 195/2021, the NIA has submitted a supplementary report by way of an additional charge sheet dated 29.06.2021, incorporating the said statement of

*P.W-C* therein, and a document indicated as *D-91* containing photograph identification memorandum and also one object in the form of *DVD* indicated as *Material Object No.13*. The defence vide petition no. 196/2021, filed an objection to the same. The learned defence was furnished with the copies u/s 207 Cr.P.C.

171) S.173(8) Cr.P.C. empowers the investigating authority to continue further investigation, after submission of report u/s 173(2) Cr.P.C. In this regard, reference may be made to ***Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762***, wherein in para 22, the Hon'ble Supreme Court with regard to Section 173 (8) Cr.P.C. held that - the scope of further investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at the subsequent stage to the primary investigation. The report submitted in pursuance of further investigation is commonly described as "supplementary report" as the subsequent investigation is meant and intended to supplement of the primary investigation conducted by the empowered police officers. Another significant feature of further investigation is that it does have the effect of wiping out directly or indirectly impliedly the initial investigation conducted by the investigating authority.

172) Another important principle has been laid down in para 42 of ***Vinay Tyagi (supra)*** and the said paragraph is reproduced hereinunder –

*"42. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these*



*reports, the court shall discharge an accused in compliance with the provisions of Section 227 of the Code.”*

173) Thus, though the power of police for further investigation u/s- 173 (8) Cr.P.C. does not seem to have any statutory limit and it has also been interpreted as having a wide ambit, but the spirit of the law laid down in para 42 of **Vinay Tyagi** (*supra*), in my considered view is that all the materials gathered by the investigating authority should be available, as far as possible, with the Public Prosecutor before the commencement of charge hearing so the Public Prosecutor has a complete picture of those materials. This should be so even if the investigating officer needs a little more time to complete the investigation. This is also helpful for the Court to better adjudicate the point of charge, apart from saving the valuable time of the Court.

174) Now, coming back to the instant case, accordingly, on 30.06.2021, the learned Advocate General, Assam appeared on behalf of the NIA. In this case, the prosecution has argued on the case regarding charge over a period of almost three months – *from 16.03.2021 to 10.06.2021*. Thereafter, the defence completed the argument on 24.06.2021, as already mentioned. Considering the long period of time for which the matter has been pending at the stage of charge hearing, the learned prosecution Advocate General, Assam representing the prosecution and Sri Borthakur, learned defence counsel were requested to submit and complete their reply and arguments, if any (*on the additional materials, comprising just one relevant photo and statement*), on 30.06.2021 itself, so that the order

on the point of charge can be passed expeditiously without further delay, as the same has been pending for long and one accused is an UTP and if charge is framed, the case can be taken to the next stage. Moreover, the long pendency of this case at the stage of charge hearing has delayed pending charge hearings in other NIA matters in this court, in which accused persons are in custody. The learned defence counsel submitted that they just support the written objection filed by them. On the other hand, the prosecution sought an adjournment, seeking 10 days' time. It may be mentioned herein that date was fixed on 30<sup>th</sup> June 2021, on the prayer of the prosecution, as stated in para above. The court considered the said prayer as not justified, in the backdrop of the aforesaid facts and circumstances. In this case, the NIA and the prosecution has availed sufficient time for investigation and charge hearing respectively. It may be mentioned herein that charge-sheet was filed on 29.05.2020 itself. Therefore, the court was of the considered view that in the interests of justice, there should be any more delay whatsoever on the part of the prosecution or defence, even with regard to the additional charge-sheet and that arguments, if any, on the same should have been addressed promptly. The court was also not willing to countenance any possible delaying tactics on the part of the prosecution, in the interests of justice. Accordingly, the prosecution prayer for adjournment was rejected vide order dated 30.06.2021 and the case was fixed for order on the point of charge.

**Analysis of the Additional Materials and Findings thereon with regard to the point of charge**

175) With regard to the statement of PW-C, it is necessary to reproduce the same hereunder:

*"On being asked about Mr Akhil Gogoi am voluntarily disclosed that, I know he runs many organizations namely 1) Krishak Mukti Snagram Samity, 2) Mod Mukto Akhom, 3) Cha Srahmik Mukti, 4) Chatra Mukti, 5) Nari Mukti, and many more. Mr. Akhil Gogoi is the actual chief of all organization. Mr. Akhil Gogoi runs his organization in Assam with Maoist style.*

*They extorted money through his associates, party member or voluntaries of his organization, he first raised demand for money to the industrialists of non-Assamese and Assamese business man. If his demand not fulfilled then he started to create pressure through using media and in the plea of RTI. He is very cleaver he never protests at the time of purchase of land or any infrastructure construction. When business man invests a large amount and he is in middle of a business project, then Mr. Akhil Gogoi demand money as levy. Mr. Akhil Gogoi demanded in crores for this type of extortion, he even gathered people by means of giving money Rs. 250/- to Rs. 150/- and also provide them food and alcohol free.*

*Another style of extortion he he do that he stopped lorries or trucks of Supari (Beetle Nuts), Ada (Ginger), Haldi (Turmeric), Dhan (Paddy) in highways, mostly in forest areas by his party people. Mr. Akhil Gogoi does to settlement in yearly and monthly payment basis and as per scale of business. If business man not paid the levy to Mr. Akhil Gogoi then his men beat drivers and do damage to the truck. Even Mr. Akhil Gogoi demands form trucks coming to Assam with fish, eggs and Paan Pata. No trucks can enter Assam from outside without paying levy to Mr. Akhil Gogoi.*

*Mr. Akhil Gogoi also demands money from business man of outsider who runs whole sale business with sugar cane product in the false plea of their making illegal alcohol. This extortion is running in the name of "Mod Mukto Akhom".*

*The leader of Nari Mukti Mr. Akhil Gogoi is also runs a dirty business in the name of "Nari Mukti" he trapped business man and high government officials in honey trap and then do black mail to the person and demand money for settlements or used them as and when required. To run it successfully Mr. Akhil Gogoi also does some good social work like settlement of rifts in families to create a good image of Nari Mukti sangathan.*

*Another style of extortion of Mr. Akhil Gogoi is using Tea labours of Assam. In Assam there are fallow lands, which are not Tea garden after British period, but they adjoining area. If any person purchase the land and started to do some business then Mr. Akhil Gogoi send his party members who are belongs to tea labour union "Cha Srahmik Mukti" and creates problem to the business man by agitation and dharna gherao. And then place high demand of money to settlements.*

*Mr. Akhil Gogoi also runs illegal cattle business which is smuggled to Bangladesh. With this he gets supports from Muslim community mostly they are Silothaiya Muslims and Bengali Muslims. This business runs through Muslim members of Krishak Mukti.*

*I know this because I personally experienced and suffered a lot. Mr. Akhil Gogoi demanded money fifty lakhs from me for one year. He threatens me that I will be killed anytime and his people are watching me and my family every moment. He also declared that he runs much more strong and lethal organization than ULFA a terrorist organization. I know Mr. Akhil Gogoi from last five years as an antisocial criminal and extortionist, who creates terror to the business man till he not go for monetary settlements. When am not responded to his demand he called me to do meeting with him, but I am not willing to bow down for his illegitimate demand because I am not doing any wrong business and paying tax to the government of Assam as well as government of India. My family pressurized me to leave Assam and started newly in other state of India. Anyhow Mr. Akhil Gogoi came to know about our plan then he also threaten me and I have come to know that he his Krishak Mukti Snagram Samity has association with association with "MAOISTS" who have a network in all over India and they will kill me and my family in accident or other means.*

*On being asked about identifying of his photographs, I voluntarily ready to identify his photos, I know him since I passed 10<sup>th</sup> exam. Mr. Akhil Gogoi is living my area."*

- 176) Document D-91 contains three photographs. In photograph no. 1, the photo marked 1 is stated to be of Akhil Gogoi in Saranda jungle of Jharkhand, where he allegedly went to meet Maoist leaders. Photograph No. 2 is stated to be a photograph of A-1 during agitation led by him. Photograph No. 3 is stated to be the photo of

A-1 during his NIA custody. The DVD, contains the same photograph no. 1.

177) Upon perusing the statement of Protected Witness C, I find that apart from two statements pertaining to Maoists, which I shall take up later, the rest of the statement reveal various allegations of a serious nature, which if accepted as true, would almost constitute an organized crime of extortion, cattle smuggling, blackmailing people with honey trapping, criminal intimidation etc. The subject areas of these alleged activities would be outside the jurisdiction of this court, which is only guided by the Schedule of the NIA Act, which is reproduced hereinbelow:

**THE SCHEDULE** [See section 2(1) (f)] 1

1. The Explosive Substances Act, 1908 (6 of 1908);
- 1A. The Atomic Energy Act, 1962 (33 of 1962);
2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
3. The Anti-Hijacking Act, 2 [2016 (30 of 2016)];
4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);
5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
8. Offences under— (a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];
- 3 [(b) Sections 370 and 370A of Chapter XVI of the Indian Penal Code (45 of 1860); (c) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860); (d) Sub-section (1AA) of section 25 of Chapter V of the Arms Act, 1959 (54 of 1959); (e) Section 66F of Chapter XI of the Information Technology Act, 2000 (21 of 2000).]

178) However, with regard to these allegations, if the police of the State or any appropriate investigating authority having jurisdiction, finds them to be verifiable facts, meriting an investigation, they can always pursue the due process of law.

- 179) As regards the statement of PW-C, the allegations made therein have no correlation with the charge-sheeted sections – S.120(B) IPC r/w S.18 UA (P) Act and S.124-A/153-A/153-B IPC. These allegations also have no correlation with the main subject matter of this case - *about the violence and vandalism during the CAA protests in the State in December 2019*. I have also noticed a significant discrepancy regarding the age of P.W-C indicated from his statement and the age stated in the case diary.
- 180) The allegations made by Protected Witness C proceeds on a trajectory, quite different from the factual matrix of the instant case. The P.W-C in his statement is also silent about any date, time and place of the allegations. The NIA has chosen not to get the statement of this witness recorded before Magistrate u/s 164 Cr.P.C.
- 181) Now, I come to the two materials in the statement of PW-C, to determine whether they correlate to S.39 UA (P) Act. These two sentences are: **a)** *That, A-1 runs his organization like a Maoist style;* **b)** *A-1 has links with Maoists.* It may be stated that no other details, including periods etc., have been mentioned with regard to these two statements. Admittedly, KMSS is not a banned organization under the Schedule of the UA (P) Act.
- 182) Upon perusing these statements carefully *vis-à-vis* the ingredients of S.39 UA (P) Act, as already narrated and discussed in detail above – I find that even if the statements are accepted, they solely are grossly inadequate to frame charge u/s 39 UA (P) Act against **Sri Akhil Gogoi (A-1)**, which, as already discussed, *requires*

*specific activities with the requisite mens rea as defined in the section.*

183) Coming to the photographs, in the photograph no. 1, some persons seems to be practicing martial arts with their hands. Upon comparing photographs 2 and 3 of A-1 with photograph-1, from the bare eye, I do not find any resemblance between the photo of A-1 in photo no. 2 and 3 and the person indicated as A-1 in photo no. 1. Though the DVD has been accompanied by a certificate under S. 65B of the Evidence Act, the photo is not accompanied by any forensic report. Further, there is no indication whatsoever regarding the time period or date on which the photograph was taken. From the photo, there is no indication as to where it was taken and on what date, month, year.

184) In this regard, D-91 which is the photo identification memo proceedings, where these photos were stated to be identified by Protected Witness B on 27.06.2021 during identification proceeding conducted on 27.06.2021 at the NIA Office at Guwahati. It is stated in D-91 that during the said identification proceedings, the identifier P.W- B stated that A-1 probably visited Saranda Jungle to meet Maoist leaders to establish link with KMSS cadres. He also stated that the said photograph allegedly of A-1 was probably taken at Saranda Jungle of Jharkhand. Again, here also, PW-B does not mention any date, month, year. Thus, it appears *prima facie* that identifier himself is vague about whether it is in Saranda jungle or whether A-1 went there to meet Maoist. The aspect of lack of resemblance to the naked eye has already being mentioned. There

is no indication regarding date, month, year of the photo, in either the photo or the photo identification proceedings. Therefore, even if it is assumed for a moment that the photo is of A-1, the same is grossly inadequate to try A-1 u/s 39 UA (P) Act.

185) I found an endorsement in the case diary pertaining to these additional materials, about some photograph of A-1 taken in Maoist camp in 2009, without however mentioning any time, date, month of taking such photograph in 2009. As already discussed above, the date is important because this organization – CPI (Maoist) was banned in law as a terrorist organization only with effect from 22.06.2009. Further, if the photo was taken in 2009 as indicated at a place in the case diary, the investigating authority took inordinately long to bring it before the Court (*on 29.06.2021*), especially when the identifier of the photo – *Protected witness B* was examined by NIA on 06.05.2020.

186) Thus, these materials – photo and photo identification memo – are grossly inadequate to frame any charge against *Sri Akhil Gogoi (A-1)*, including any charge u/s 39 UA (P) Act, which, as already discussed requires specific ingredients *prima facie* and strict interpretation, even for framing charge thereunder.

187) In the case diary pertaining to the additional materials I find a letter written by the accused A-1 alleging ill treatment and threats while he was in NIA custody. There are also newspaper clippings in the additional case diary regarding these allegations made by A-1. *Amongst the allegations in the letter found in additional case diary, he has*



*stated that he was asked to seek mercy for organizing CAA protests; that, he was given some lucrative monetary and political offers with an assurance that if he accepts he will be bailed out. It is also alleged that when he refused the offers, he was threatened with death or jail upto ten years and that he was threatened that he would not be allowed to come out from jail.* Though these allegations are serious, they are unverified and no petition in this regard, has also been brought before the Court on behalf of A-1 regarding these allegations. If A-1 was indeed threatened with death or jail by NIA investigators, he ought to have brought this serious matter to the notice of this Court during his productions.

- 188) In is worthwhile at this point to refer to the ***S Selvi (supra)***, where it has been laid down that - *one of the principles to be kept in mind by the court at the stage of 227/228 Cr.P.C. is to see whether the investigation materials suffer from any basic infirmities.*
- 189) Thus, upon perusing the additional materials – *statement of protected witness-C, photo identification proceeding report (D-91) and materials exhibit (photo in DVD)* – and in view of the above discussion, I am of the considered finding that the said materials are also *prima facie* grossly insufficient to frame any charges against the accused persons, including accused ***Sri Akhil Gogoi (A-1)***.
- 190) With regard to the protected witnesses A, B and C, it is surprising that, while the statements of protected witness P.W- A and B have been recorded more than 10 (ten) years after the alleged activities; on the other hand, the statement of protected witness-C has been recorded after completion of the main charge hearing by both the learned prosecution as well as the learned

defence over an extended period. Further, if the photo no. 1 in D-91 was taken in 2009 as indicated at a place in the case diary, one fails to understand why the investigating authority took so long to bring it before the Court (*on 29.06.2021*), especially when the identifier of the photo – *Protected witness B* was examined by NIA was examined on 06.05.2020 itself, as already discussed. The findings in the charge-sheet with regard to accused A-2, A-3, A-4 were found by this court to bear almost no correlation to the materials perused. Even with regard to A-1, the correlation was found to be non-existent with regard to some sections and with regard to other sections, the materials were found to be inadequate.

191) Before concluding the discussion, this court is constrained to observe, in the interests of justice, that the court has found the conduct and approach of the investigating authority / prosecution in this case, to be discouraging, to say the least. The court has high expectations from a premier investigating agency like the NIA, entrusted with the profoundly important task of protecting our country and us, citizens from the menace of terrorism. The court hopes and expects that, such high standards will be upheld, for sake of the country and this one will be just an exception.

### **Conclusion**

192) On the basis of the materials, including the additional materials, and in view of the above narration and discussion, I come to the considered findings, that there are no *prima facie* materials to frame charges against the accused persons – *Sri Akhil Gogoi (A-1)*, *Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajya Konwar (A-2)*, *Sri Manas Konwar @ Manash Pratim Konwar (A-3)*, *Sri Bittu*

Sonowal @ Bittu Sonwal @ Bitu Sonowal (**A-4**). The materials are also compatible with the innocence of the accused persons - *which is one of the principles to be looked by the court, at the time of considering the point of charge – as laid down in **Amit Kapoor (supra)**.*

193) In a case, if there are no materials or no sufficient materials to frame charges against the accused person (s), the ends of justice demands that the accused be discharged, without making him suffer the process of trial. In this regard, reference may be made to the judgment of the Hon'ble Supreme Court in the case of State of **Debendra Nath Padhi (supra)**, where it has been held that - *S.227 Cr.P.C. pertaining to discharge, has been incorporated in Code to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. In **P. Vijayan (supra)** also, it has been held that - Section 227 was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure.*

194) The aforesaid principles of law have also been kept in mind to arrive at the finding that there is no case for framing charge not only against A-2, A-3 and A-4, but with regard to A-1 as well and that all the four accused persons are liable to be discharged.

### **Some general observations**

195) Though the law of sedition continues in our statute book, its colony legacy cannot be overlooked. In this context, it would be

interesting to refer to what was stated by *Eric Weston, C.J.* in the case of ***Tara Singh v. State, 1950 SCC OnLine Punj 113 : AIR 1951 P&H 27 : 1951 Cri LJ 449*** (at page 198) that, "India is now a sovereign democratic State. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about."

- 196) Recently, a writ petition - *W.P.(Cri.) No. 106 / 2021 : Kishore Chandra Wangkhemcha & Anr. V. Union of India* – is pending before the Hon'ble Supreme Court, seeking re-examination of S.124-A IPC and even seeking reconsideration of *Kedar Nath Singh (supra)*, due to passage of time.
- 197) Nevertheless, as long as it remains on the statute book in the present form, for enforcing the law on sedition, it is desirable for the investigating authorities to be continually trained to conform to the parameters of the law of sedition laid down by the Hon'ble Supreme Court ***in Kedar Nath Singh (Supra)***. This is to ensure that while enforcing this penal law by police and other investigating agencies, the ambit of sedition does not get stretched beyond permissible limits imposed by the Hon'ble Supreme Court.
- 198) The offence of terrorism is a great challenge of our times and many countries have become victim of it. India is no exception and rather, has been a significant victim of terrorism for long years. The observations of the Hon'ble Supreme Court in ***Yakub Abdul Razak Memon v. State of Maharashtra (supra)*** regarding the dimensions of real terrorism have already been enumerated.

199) It is not doubt that every country needs a well drafted, strict and effective anti-terrorism law. The country would remain safe from terrorism when real terrorist crimes are promptly and effectively investigated; efficiently prosecuted, correctly adjudicated and upon conviction, appropriately sentenced – all done within the most reasonable possible time. The stringency of an anti-terrorism law is natural, considering the menace it seeks to prevent.

200) In this regard, when we look at the *UA (P) Act 1967*, it is found that, in a way, the stringency is more with regard to bail, *which may have its own justification*, rather than with regard to sentencing. Though *UA (P) Act, 1967* has offences punishable with death or life term, the minimum punishment prescribed for some offences is 5 years only and in one section, 7 years. On comparison, it is found that in the NDPS Act, 1985, such prescribed minimum sentence for some offences therein is 10 years; while in the updated POCSO Act, 2012 – such prescribed minimum sentence for some offences therein is 20 years. Under the *UA (P) Act, 1967* in its present form, if the court finds *prima facie* materials while adjudicating bail with regard to offences in Chapter IV and VI – *which are in a way the main offences* – the court is statutorily prohibited u/s *43(D)(5) proviso UA (P) Act*, from granting bail to the accused and if the same attains finality, such an accused is likely to remain an under-trial prisoner during the trial – which might take months, in the best-case scenario and even years, in the worst-case scenario. In such a situation, needless to say that, trials have to be expedited by courts like us. If a criminal justice system, for some reasons, is unable to

give bail to an accused, his trial should preferably get completed within one year, so that his constitutional and human rights of presumption of innocence and speedy trial is not violated.

201) In the aforesaid backdrop, considering the nature of the *UA (P) Act*, while enforcing this law on the ground, the law enforcement agencies, again have to be take care to see that the enforcement remains within the strict parameters of the law and does not get stretched beyond permissible limits imposed by the statute itself and the principles laid down by the Hon'ble Apex Court and various Hon'ble High Courts of the country. They also should be sensitized and trained continually in this. If this precaution is not taken, two serious consequences might follow:

- Persons who are not really guilty of terrorism or who might be guilty of other penal offences, might get unnecessary roped in within the ambit of the stringent anti-terrorism law, with its limited scope for bail.
- Secondly, if the enforcement of the anti-terrorism law gets stretched beyond permissible limits, then over a period of time, it might carry the risk of *diluting the requisite continuous focus of the anti-terrorism law itself, on the real terrorist crimes*, thereby weakening the fight against terrorism.

202) In a catena of decisions, the Hon'ble Supreme Court has upheld the rights of the citizens to freedom of speech and expression, in all its manifestations - *which is undoubtedly, the soul of our cherished democracy* - while repeatedly emphasizing that all these freedoms are subject to non-incitement of violence. *The*

*mantra of all these freedoms being subject to not inciting or resorting to non-violence is a common thread.*

203) In this context, the observations of the Hon'ble Supreme Court in ***Bimal Gurung v. Union of India, (2018) 15 SCC 480 (para 37)*** may be seen: - *"Articles 19(1)(a) and (b) gives constitutional right to all citizens freedom of speech and expression which includes carrying out public demonstration also but public demonstration when becomes violent and damages the public and private properties and harm lives of people it goes beyond fundamental rights guaranteed under Article 19(1) and becomes an offence punishable under law."*

204) Violence, obviously has no place in our civilized world. If the propagation and commission of violence becomes acceptable, the survival of our civilization, as we know it, will come into question. In this context, the following words of Mahatma Gandhi – *the greatest apostle of non-violence* - may be quoted –

- *"Non-violence is the greatest force at the disposal of mankind. It is mightier than the mightiest weapon of destruction devised by the ingenuity of man."*
- *I object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent."*
- *"An eye for an eye will only make the whole world blind."*

### **Final orders on the point of charge**

205) Thus, on the basis of the materials before this court and in view of the narration and discussion in the preceding paragraphs and findings thereon, all the 4 (four) accused persons, namely, *Sri Akhil Gogoi (A-1), Sri Dhirjya Konwar @ Dhajya Konwar @ Dhajija*

*Konwar (A-2), Sri Manas Konwar @ Manash Pratim Konwar (A-3) and Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4) are hereby discharged u/s 227 Cr.P.C.* Their bail bonds and sureties stand discharged.

206) The accused UTP *Sri Akhil Gogoi (A-1)* shall be set at liberty forthwith, if not wanted in any other case. **Inform accordingly.**

207) The instant case - **Spl. (NIA) Case No. 02/2020** - stands disposed of on the aforesaid terms.

**Special Judge NIA  
Assam Guwahati**