

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF APRIL, 2022

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE S. RACHAIAH

CRIMINAL APPEAL No. 130/2021

BETWEEN:

1. SRI SALEEM KHAN,  
S/O ABDUL SATAR,  
AGED ABOUT 27 YEARS,  
R/AT OPP.MUTTON SHOP,  
BEEDI COLONY,  
RAHAMATH NAGAR,  
KOLAR - 563 101.
  
2. SRI MOHAMMED ZAID,  
AGED ABOUT 32 YEARS,  
R/AT 6<sup>TH</sup> MAIN ROAD,  
1<sup>ST</sup> FLOOR,  
NEW GURAPPANAPALYA,  
NEAR TIMBER GALLI,  
BANNERGHATTA MAIN ROAD,  
BANGALORE - 560 029.

... APPELLANTS

(BY SRI S. BALAKRISHNAN, ADVOCATE)

AND:

STATE OF KARNATAKA,  
SUDDAGUNTEPALYA POLICE STATION,

REPRESENTED BY,  
SPECIAL PUBLIC PROSECUTOR (NIA),  
HIGH COURT BUILDING,  
BENGALURU – 560 001.

(BY SRI PRASANNA KUMAR, SPL.PP)

...RESPONDENT

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 21(4) CR.P.C., PRAYING TO SET ASIDE THE ORDER OF LEARNED COURT OF XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPL.COURT FOR TRIAL FOR NIA CASES, BENGALURU DATED 29.12.2020 IN CRL.MISC.NO.7268/2020 AND GRANT BAIL TO THE APPELLANTS IN CR.NO.10/2020 OF SUDDAGUNTEPALYA P.S., MICO LAYOUT SUB DIVISION, BENGALURU CITY NOW INVESTIGATED BY NIA (FIR NO.RC-04/2020/NIA/DO (ISIS AL-HIND BENGALURU MODULE CASE) AND NUMBERED AS SPL.C.NO.320/2020 NOW PENDING ON THE FILE OF THE XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPL.COURT FOR TRIAL OF NIA CASES FOR THE OFFENCE PUNISHABLE UNDER SECTION 153A, 131A, 120B, 122, 123, 124A OF IPC AND UNDER SECTION 13.18,20 OF UNLAWFUL ACTIVITIES (PREVENTION)ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 13.04.2022, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **B. VEERAPPA J.**, DELIVERED THE FOLLOWING:-

## **J U D G M E N T**

This Criminal Appeal is filed by appellant Nos.1 and 2 / accused Nos.11 and 20 respectively under the provisions of section 21(4) of National Investigation Agency Act (hereinafter referred to as "NIA Act"), against the order dated 29.12.2020 made in CrI.Misc.No.7268/2020 filed by accused Nos.11 and 20, on the file of XLIX Addl. City Civil & Sessions Judge and Special Court for NIA Cases, Bengaluru (CC-50), Bengaluru, rejecting the application for bail filed by the accused persons under the provisions of section 439 of Cr.P.C.

2. It is the case of prosecution that one Mr.Niranjana Kumar, Inspector of Police attached to the Economic Offence Wing, CCB, Bengaluru, gave information to Suddaguntepalya Police Station, Mico Layout Sub-Division, Bengaluru City on 10.01.2020 at about 9.00 p.m. On the basis of the said information, a FIR in Crime No.10/2020 came to be registered by Suddaguntepalya Police Station against 17 accused persons for the offences punishable under the provisions of sections

153A, 120A, 120B, 122, 123, 124A & 125 of IPC and under the provisions of sections 13, 18, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UA(P) Act"). On 22.01.2020, the matter was referred to the National Investigation Agency (hereinafter referred to as "NIA"). Accordingly, on 23.01.2020, the NIA re-registered the case in RC.No.4/2020/NIA/DLI and accused No.11 was arrested on 20.01.2020 and accused No.20 was secured under body warrant on 09.03.2020. After investigation, the Investigation Officer filed the chargesheet on 13.07.2020 against accused Nos.11, 20 and others.

3. It is the further case of the prosecution that during the course of investigation, the role of the present appellants i.e., accused Nos.11 and 12 came to light. Accordingly, the Investigation Officer filed chargesheet against accused No.11 for the offences punishable under the provisions of sections 18, 18A, 20 and 39 of UA(P) Act and section 120B of IPC and against accused No.20 for the offence punishable under the provisions of sections 18, 20 & 39 of UA(P) Act and section 120B of IPC.

4. The accused Nos.11 and 20 filed application under section 439 of Cr.P.C., seeking regular bail, mainly contending that the accused No.11 has been in judicial custody since 20.01.2020 and accused No.20 since 09.03.2020. They are totally innocent of the alleged offences and they have not committed any offences much less the offences as mentioned in the chargesheet against them. Both the accused persons have got valid and tenable defence to make at the trial. The accused persons have neither directly or indirectly committed any offence nor are they involved in commission of alleged offence. They have been falsely roped in by the police at the instigation of their ill-wishers. Despite having taken both the accused persons to the police custody, the Investigation Officer could not place any material on record to indicate that the accused persons / appellants have committed the offences and they have been victimized by the police even though there are no prima facie materials available against them. It is further contended that they have been languishing in judicial custody for more than one year. The Investigation Officer has filed the chargesheet after

completing the investigation and further judicial remand of the appellants is not required for any other purpose. If both the accused are detained in prison for any further time, their whole career will be spoiled in the midst of hardcore criminals in prison. Both the accused persons have aged parents, wife and children to look after and they are the only bread winners of their respective family and they are hailing from respectable family and they have no bad antecedents. They have got deep roots in society owning sufficient movable and immovable properties and they are ready to offer surety to the satisfaction of the court and also abide by any condition imposed by the court.

5. The respondent / complainant - State has filed objections contending that there are serious allegations of criminal conspiracy, waging war against the nation and members of terrorist organization are being made against the accused Nos.11 and 20. There are sufficient prima facie materials available indicating that these accused persons along with co-accused have indulged in commission of the offences, to pose a threat to the sovereignty and integrity of the nation and also

its security. It is further contended that, during the course of investigation, the Investigating Officer has collected prima facie materials from the accused persons containing incriminating information. Thus, sufficient materials are secured by the Investigating Officer which *prima facie* indicate involvement of the accused persons in the alleged crime. Therefore, the accused are not entitled for bail in view of section 43-D of the UA(P) Act and the accused have not made out any extraordinary ground to grant bail and sought to reject the application.

6. Based on the aforesaid pleadings, learned Sessions Judge framed a point for consideration, which reads as under:-

*Whether the petitioners / accused Nos.11 and 20 are entitled for bail under Section 439 of Cr.P.C.?*

7. Considering the entire material on record, trial Court recorded a finding that the accused persons have not made out any case to grant bail as the prosecution has placed sufficient materials indicating the involvement of the appellants / accused Nos.11 and 20 in the alleged crime. It is not in dispute that, as

per section 43-D(5) of UA(P) Act, the accused shall not be released on bail, if the court, on perusal of report made under section 173 of Cr.P.C., is of the opinion that there are reasonable grounds for believing that the accusation against the accused are *prima facie* true. Accordingly the trial Court, by order dated 29.12.2020, rejected the application filed by both the accused persons. Hence, the present appeal is filed by the accused persons.

8. We have heard learned counsel for the parties.

9. Sri.S.Balakrishnan, learned counsel for the appellants / accused, vehemently contended that the impugned order passed by the trial Court rejecting the application under section 439 of Cr.P.C., is erroneous, contrary to the material on record and cannot be sustained in law. He would further contend that both the accused Nos.11 and 20 are the members of Al-Hind group, which is not a banned terrorist organization, as contemplated under Schedule I of the UA(P) Act. He would further contend that, it is alleged against them that they have

attended conspiracy meetings and also Jihadi meetings, but no date, place are shown in the chargesheet. It is further contended that both the accused persons had gone to pistol training classes and purchased training materials like tent, sleeping bags and organized shelters for co-accused at Gujarat and recovered knives. He would further contend that during the period shown in the FIR (Annexure-B) i.e., for a period of six months from 01.07.2019 to 10.01.2020, no incident has taken place during the said period involving accused Nos.11, 18, 19, 20, 21, 49 and 50. Eight witnesses namely CW.16, CW.17, CW.18, CW.19, CW.20, CW.21, CW.49 and CW.50 have deposed about tent, knives, sleeping bag. CW.20 and CW.21 have deposed about Document No.30 which pertains to seizure of Maruti car and Document No.139 – one laminated student identity card, and absolutely there is no material to prove that accused are involved in the offence as alleged by the prosecution. Learned counsel would further contend that the accused persons are of the members of Al-Hind group and not ISIS, their stand is indicated by the fact that the prosecution has failed to produce any iota of material to prove their stand in any

organization. To attract the provisions of section 18 of UA(P) Act, there must be some material abetting, advising, inciting, directing any one to do a terrorist act. In the present case, the prosecution has failed to prove anything on record against the accused persons.

10. He would further contend that under the provisions of section 20 of the UA(P) Act, punishment for being member of terrorist gang or organization as contemplated under sections 2(1)(l) and 2(1)(m) of UA(P) Act, none of the provisions are applicable to these accused persons and the present appellants are not linked and cannot be linked to any organization as defined either under sections 2(1)(l) and 2(1)(m) of UA(P) Act. He would further contend that, in respect of accused No.20, Document No.41 - two Dell laptops, one black colour shoulder bag, one Samsung mobile set with sim card have been recovered; Document No.49 discloses statements deposed by witnesses CW.19 and CW.21; Document No.55 observation mahazar witnesses CW.102 and CW.103, but no recovery was made. Document No.60 - social media account screen shot

deposed by CW.90 and CW.91. No charges are made against accused No.11 except under sections 120B of IPC and sections 18, 18A, 20, 39 of UA(P) Act and in respect of accused No.20, only under the provisions of sections 120B of IPC and sections 18, 20 and 39 of UA(P) Act, thereby he sought to allow the appeal.

11. Learned counsel also relied upon the provisions of sections 2(k), 15, 18, 18A, 20 and 39 of UA(P) Act. In support of his contention, learned counsel for the appellants relied upon the dictum of the Division Bench of the Kerala High Court in the case of **A.RAMACHANDRAN vs. CENTRAL BUREAU OF INVESTIGATION & Others** reported in **2015(3) KHC 678** para 36, and also on the Division Bench judgment of Bombay High Court in Criminal Appeal No.355/2021 in the case of **IQBAL AHMED KABIR AHMED vs. THE STATE OF MAHARASHTRA** dated 13.08.2021 - para 23.

12. Per contra, Sri.P.Prasanna Kumar, learned Spl. PP, while inviting the attention of this Court to the averments made

in the chargesheet which depicts that the accused Nos.11 and 20 had attended several conspiracy meetings with accused Nos.1 and 2, it is thereby the accused are involved in the offences made out against them in the chargesheet filed. He would further contend that accused No.20 was accused No.8 in RC-02/2020/NIA/DLI under the Supplementary Charge Sheet under section 173 Cr.P.C. dated 21.01.2020, wherein the present accused No.20 – Mohammed Zaid is alleged to have been involved in commission of the offences under section 120B read with sections 465 and 471 of IPC, section 25(1A) of Arms Act besides sections 17, 18 and 39 of UA(P) Act. It is stated that the court has not granted any bail to accused No.20.

13. He would further contend that accused No.11, as per the chargesheet allegations, is one of the close associates of accused No.1 since 2015 and motivated and recruited accused Nos.19 and 20 to Al-Hind Group. Further, accused No.11 attended several criminal conspiracy meetings of Al-Hind Group with accused No.2 and other accused persons at Al-Hind Office and arranged two secret conspiracy meetings at Kolar with

accused Nos.2, 19, 20 and 21. Learned counsel would further contend that accused No.11 regularly attended jihadi and martial arts (Taekwon-do and Kungfu) classes at Al-Hind Office during late night hours and attended the training classes for handling of pistol and bow and arrow, conducted by accused No.6.

14. He would further contended that accused No.20 is a close associate of accused No.11, accused No.1 and other Al-Hind Group members. He attended several criminal conspiracy meetings of Al-Hind Group with accused No.2 and other accused persons at Al-Hind Office, Bengaluru, Kolar, Mysore, Hosur, Edepalyam, Salem etc., Learned counsel would further contend that accused No.20 regularly attended jihadi and martial arts (Taekwon-do and Kungfu) classes at Al-Hind Office during late night hours and attended the training classes for handling of pistol and bow and arrow, conducted by accused No.6. Therefore, he sought to dismiss the appeal.

15. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that arise for our consideration, in the present appeal, are:-

*"(i) Whether the accused No.11 has made out a case to interfere with the impugned order of rejection of bail under the provisions of section 439 of Cr.P.C.?"*

*"(ii) Whether the accused No.20 has made out a case to interfere with the impugned order of rejection of bail under the provisions of section 439 of Cr.P.C. and made out a case to grant bail under section 439 Cr.P.C. in the facts and circumstances of the case?"*

16. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material including the original records carefully.

17. It is an undisputed fact that Sri.Niranjan Kumar, Inspector of Police, CCB, Bengaluru, gave information to Suddaguntepalya Police Station, Mico Layout Sub-Division, Bengaluru, on 10.01.2020 at about 9.00 p.m. and accordingly, Crime No.10/2020 came to be registered by the said Police against 17 accused persons, including the present appellants, under the provisions of sections 153A, 121A, 120B, 122, 123, 124A, 125 of IPC and sections 13, 18 and 20 of UA(P) Act. It is also not in dispute that on 23.01.2020, the National Investigation Agency re-registered the FIR in RC.04/2020/NIA/DLI against 17 persons and others including the present appellants. It is also not in dispute that accused No.11 was arrested on 20.01.2020 and accused No.20 was secured under body warrant on 09.03.2020 and after investigation, Investigation Officer filed chargesheet on 13.07.2020 against the present appellants / accused Nos.11 and 20 i.e., under the provisions of section 120B of IPC, sections 25(1B)(a) of Arms Act and sections 18, 18A, 18B, 19, 20, 38 and 39 of the UA(P) Act against accused No.11 and under the provisions of section 120B

of IPC, sections 18, 20 and 39 of the UA(P) Act against accused No.20.

18. While considering the application filed by the accused, against whom the offences under Chapter IV and VI of the UA(P) Act have been alleged, the Court has to consider, whether there are reasonable grounds for believing that the accusation against the accused is *prima facie* true. If the Court is satisfied, after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is *prima facie* true, then the accused is entitled to bail. It is also well settled that the scope of inquiry is to decide whether *prima facie* material is available against accused Nos.11 and 20 of commission of offences alleged under the provisions of section 120B of IPC, sections 18, 18A, 18B, 19, 20, 38 and 39 of the UA(P) Act, which comes under Chapters IV and VI of the UA(P) Act and the grounds for believing that the accusation against the accused is *prima facie* true must be reasonable grounds.

19. It is also not in dispute that the Court, while examining the issue *prima facie* case, as contemplated under sub-section (5) of section 43-D of UA(P) Act, is not expected to hold a mini trial. The Court is not supposed to examine the merits and demerits of the evidence. If a chargesheet is already filed, the Court has to examine the material forming a part of the chargesheet for deciding the issue whether there are reasonable grounds for believing that the accusation against accused Nos.11 and 20 is *prima facie* true. While doing so, the Court has to take the material in the chargesheet as it is. Keeping the aforesaid principle in mind, let us examine the material forming part of the chargesheet against accused Nos.11 and 20.

20. As could be seen from the chargesheet filed by the Investigation Officer of NIA against Saleem Khan @ Kolar Saleem – accused No.11, it reads as under:-

"i. *He is one of the close associates of Mehboob Pasha (A-1) since 2015. He motivated and recruited Mohammed Zaid (A-20) and Syed Fasiur Rahman (A-19) to Al-Hind group.*

ii. He attended several criminal conspiracy meetings of Al-Hind group with Khaja Moideen (A-2) and other accused persons at A1 Hind Office. He arranged two secret conspiracy meetings at Kolar with Khaja Moideen (A-2), Syed Fasiur Rehman (A-19), Mohammed Zaid (A-20) and Sadiq Bhasha (A-21).

iii. He regularly attended jihadi and martial arts (Taekwon-do and Kungfu) classes at A1-Hind office on late night hours. He attended the training classes for handling of Pistol and Bow and Arrows conducted by Jaffar Ali (A-6).

iv. He purchased training materials such as tents, sleeping bag knives etc for the use of Al-Hind group. The same were recovered and seized from his house.

v. As per the direction of Khaja Moideen (A-2) and Mehboob Pasha (A-1), he visited Gujarat twice and arranged shelter for Al-Hind group members at Jambusar, Gujarat through his friend.

*vi. Thereby, accused Saleem Khan(A-11) committed offences punishable under section 120b of IPC, 1860 and sections 18, 18A, 20 and 39 of the UA(P) Act 1967."*

21. The chargesheet is filed by the Investigation Officer of NIA against Mohammed Zaid – accused No.20, it reads as under:-

*"i. He is one of the close associates of Saleem Khan (A-11), Mehboob Pasha (A-1) and other Al-Hind group members. He attended several criminal conspiracy meetings of al-Hind group with Khaja Moideen (A-2) and other accused persons at Al-Hind Office, Bengaluru, Kolar, Mysore, Hosur, Edepalyam, Salem etc.,*

*ii. He regularly attended jihadi and martial arts i.e. taekwon-do and Kungfu classes at Al-Hind office during late night hours. He attended the classes for handling of pistol, Bow and Arrows, conducted by Jaffar Ali (A-6).*

*iii. He assisted Mehboob Pasha (A.1) for contacting unknown ISIS handler through dark Web. He also taught Dark Web operations to Syed Ali @ Anis (A-14) for assisting KhajaMoideen (A-2) to contact ISIS handler, Bhai (A-23). He along with Abdul Matheen Ahmed Taahaa (A-12) prepared fake Aadhar Card for Al-Hind group members.*

*Thereby, accused Mohammed Zaid (A-20) was part of the terror group, and was involved in furthering the activities of ISIS in India and assisted Mehboob pasha(A-1) in communicating with the ISIS handler through dark web and thus, committed offences punishable under section 120B of IPC, 1860 and sections 18, 20 and 39 of the UA(P) Act 1967."*

22. A careful examination of the materials forming part of the chargesheet clearly depicts that the allegations against accused No.11 are that he is a member of Al-Hind Group and attended several criminal conspiracy meetings as well as jihadi meetings and underwent pistol and bow and arrows training

classes, purchased training materials such as tents, sleeping bag, knives and organized shelters for Al-Hind Group members at Gujarat. Mere attending meetings and becoming Member of Al-Hind Group, which is not a banned organization as contemplated under the Schedule of UA(P) Act and attending jihadi meetings, purchasing training materials and organizing shelters for co-members is not an offence as contemplated under the provisions of section 2(k) or section 2(m) of UA(P) Act. Admittedly, in the present case, in order to attract section 2(k), in the absence of any allegation of the offences under section 15 of the UA(P) Act, section 18 of the UA(P) Act would not arise. Section 18A deals with imparting training in terrorism and section 20 deals with punishment for being member of terrorist gang or organization. In the present case, the prosecution has not produced any material, as could be seen on examination of the chargesheet, against accused No.11 about his involvement in terrorist act or being member of terrorist gang or organization or training terrorism. Admittedly, Al-Hind Group is not a terrorist organization as contemplated under section 39 of the UA(P) Act, thereby the prosecution has failed to prove the *prima facie* case

for rejection of bail against accused No.11. Therefore, the trial Court is not justified in rejecting the bail application filed by accused No.11.

23. It is well settled that, in view of the provision of section 43D of the UA(P) Act, it is necessary to strove to strike a balance between the mandate under Section 43D on the hand and the rights of the accused on the other. To decide as to whether the accusation in such cases is *prima facie* true, the following circumstances would provide adequate guidance for the Court to form an opinion, which read as under:-

1. *Whether the accused is/are associated with any organization, which is prohibited through an order passed under the provisions of the act?*
2. *Whether the accused was convicted of the offences involving such crimes, or terrorist activities, or though acquitted on technical grounds; was held to be associated with terrorist activities?*
3. *Whether any explosive material, of the category used in the commission of the crime,*

*which gave rise to the prosecution; was recovered from, or at the instance of the accused?*

4. *Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the accused, at or around the scene of occurrence? and*
5. *Whether the accused was/were arrested, soon after the occurrence, on the basis of the information, or clues available with the enforcement or investigating agencies?*

24. Admittedly, in the present case, the prosecution has not proved that accused No.11 has associated himself with any organization which is prohibited or barred under the provisions of the UA(P) Act. Admittedly, he is a Member of Al-Hind Group. It is not a prohibited organization under the Schedule of the UA(P) Act, 1967 and the chargesheet material does not depict that he was convicted for the offences involved or crimes or terrorist activities and the prosecution has also not proved whether the accused has used any explosive material of the category used in the commission of the crime or recovered from

him nor the chargesheet depicts any eyewitness or mechanical device such as CCTV, camera indicating the involvement of accused No.11, let alone scene of occurrence as shown in the chargesheet. On careful examination of the material forming part of the chargesheet, there are no reasonable grounds for believing the accusation against the accused No.11 *prima facie* true. In the absence of any *prima facie* case, restrictions imposed by sub-section (5) of section 43-D *per se* do not prevent a Constitutional Court from granting bail on the grounds of violation of part III of the Constitution. Our view is fortified by the dictum of the Hon'ble Supreme Court, in an identical case i.e., in the case of **THWAHA FASAL vs. UNION OF INDIA** reported in+ **2021 SCC OnLine SC 1000**, in paras 27, 42, 43, the Hon'ble Supreme Court has held as under:-

27. *"Now we turn to the material against the accused nos.1 and 2 in the charge sheet. In paragraph 18 of the charge sheet, the charges against accused nos.1 and 2 have been set out.*

*Paragraph 18.1 to 18.17 reads thus:*

*"18.1 That, accused A-1, A-2 and A-3 had, knowingly and intentionally,*

*associated themselves and acted as members of Communist Party of India (Maoist) in short CPI (Maoist), proscribed as a terrorist organisation by the Government of India under section 35 of the Unlawful Activities (Prevention) Act, 1967 and included in the 1st Schedule to the Act.*

*18.2 That, accused A-1, A-2 and A-3 knowingly and intentionally attended various conspiracy meetings along with other underground part-time and professional members of CPI (Maoist). They had also attended various programmes organized by the frontal organisations of the proscribed terrorist organisation, for furthering the objectives of CPI (Maoist).*

*18.3 That, the accused A-1, A-2 and A-3 had, knowingly and intentionally conducted meeting and conspired in front of Medicare Laboratory, Kottayithazham, Kozhikode City, at around 06:45 PM on 01.11.2019 for furthering the activities of the proscribed terrorist organisation CPI (Maoist).*

18.4 That, the accused A-1 had knowingly possessed documents supporting and published by CPI (Maoist) with the intention of supporting the proscribed terrorist organisation and propagating its violent extremist ideology.

18.5 That, the accused A-2 had knowingly possessed documents supporting and published by CPI (Maoist) with the intention of supporting the proscribed terrorist organisation and propagating its violent extremist ideology.

18.6 That, the accused A-3, on seeing the Police party, had fled from the scene and managed to escape owing to his membership in the proscribed terrorist organisation CPI (Maoist). He is still absconding.

18.7 That, A-1 had knowingly and with the intention of aiding CPI (Maoist) possessed on his digital devices, materials supporting the proscribed terrorist organisation and its violent

*extremist ideology, for the purpose of spreading such ideology.*

*18.8 That, the materials found during the house search of A-2 such as notices, pamphlets, books, hand written notes, banners besides digital devices and publications were knowingly and intentionally possessed by A-2 for supporting the proscribed terrorist organisation CPI (Maoist)*

*18.9 That, in pursuance of the conspiracy to further the activities of CPI (Maoist), during the house search of A-2, he had, intentionally and knowingly, raised slogans, supporting the ideology of the proscribed terrorist organisation.*

*18.10 That, in furtherance of the conspiracies with co-accused and others, A-2 had knowingly and intentionally prepared cloth banners supporting secession of Kashmir from the Indian Union, for displaying at public places on behalf of CPI (Maoist) and thus committed unlawful activity as defined under the Unlawful Activities (Prevention) Act.*

18.11 That A-1, knowingly and intentionally participated in the meetings of the proscribed terrorist organisation CPI (Maoist) with professional members including A-3 and had prepared notes that were maintained by A-1.

18.12 That, A-1 and A-3 knowingly and intentionally conspired and conducted secret meetings at the rented accommodation of A-1 in Kannur district, for furthering the objectives of the proscribed terrorist organisation CPI (Maoist).

18.13 That, the accused A-1, had knowingly and intentionally propagated the Maoist ideology amongst his close friends with the intention of radicalizing and recruiting them in to the proscribed terrorist organisation CPI (Maoist).

18.14 That, the accused had knowingly and intentionally conducted several conspiracy meetings (APTs) in Kozhikode and Kannur districts of Kerala for furthering the objectives of the proscribed terrorist organisation CPI (Maoist).

18.15 That, the accused A-3 and other underground professional members of CPI (Maoist) had radicalised and recruited A-1 and A-2, besides others, into the proscribed terrorist organisation, with the intention of furthering the activities of CPI (Maoist).

18.16 Therefore, Allan Shuaib @ Mamu @ Mammu @ Vivek (A-1) committed offences punishable under Section 120B of the Indian Penal Code besides sections 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

18.17 Therefore, Thwaha Fasal @ Thaha @ Fasal @ Kishan (A-2) committed offences punishable under section 120B of the Indian Penal Code besides sections 13, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

42. As held in the case of K.A. Najeeb (*supra*), the stringent restrictions imposed by sub-section(5) of Section 43D, do not negate the power of Constitutional Court to grant bail

*keeping in mind violation of Part III of the Constitution. It is not disputed that the accused no.1 is taking treatment for a psychological disorder. The accused no.1 is a student of law. Moreover, 92 witnesses have been cited by the prosecution. Even assuming that some of the witnesses may be dropped at the time of trial, there is no possibility of the trial being concluded in a reasonable time as even charges have not been framed. There is no minimum punishment prescribed for the offences under Sections 38 and 39 of the 1967 Act and the punishment can extend to 10 years or only fine or with both. Hence, depending upon the evidence on record and after consideration of relevant factors, the accused can be let off even on fine. As regards the offence under Section 13 alleged against accused no.2, the maximum punishment is of imprisonment of 5 years or with fine or with both. The accused no.2 has been in custody for more than 570 days.*

*43. It is true that without recording a satisfaction as contemplated by sub-section (5) of Section 43D, the order granting bail to the accused no.1 could not have been confirmed*

*by the High Court. However, we have examined the material against both the accused in the context of sub-section (5) of Section 43D. Taking the materials forming part of the charge sheet as it is, the accusation against both the accused of the commission of offences punishable under Sections 38 and 39 does not appear to be prima facie true."*

The said material fact has not been considered by the trial Court while rejecting the bail application, filed by accused No.11, under section 439 Cr.P.C., thereby accused No.11 is entitled to bail.

25. In so far as accused No.20 – Mohammed Zaid, while examining the material forming part of the chargesheet which clearly indicates that he is associated with accused No.1 for contacting unknown ISIS handler through Dark Web. (ISIS is a banned organization as contemplated under the Schedule of UA(P) Act.) He also taught Dark Web operations to Syed Ali @ Anis – accused No.14 for assisting Khaja Moideen – accused No.2 to contact ISIS handler, Bhai – accused No.23. He along with Abdul Matheen Ahmed Taasha – accused No.12 prepared

fake Aadhar Card for Al-Hind group members, thereby, accused No.20 was part of the terror group and was involved in furthering the activities of ISIS in India and assisted Mehboob Pasha – accused No.1 in communicating with the ISIS handler through dark web and thus, committed offences punishable under section 120B of IPC and sections 18, 20 and 39 of the UA(P) Act.

26. It is also relevant to note, at this stage, that accused No.20 was also an accused in FIR No.RC-02/2020/NIA/DLI filed by the National Investigation Agency, New Delhi, under the Supplementary Charge Sheet filed wherein the present accused No.20 – Mohammed Zaid was accused No.8 in the said case and the charge against him in the said case was also under section 120B read with sections 465 and 471 of IPC, section 25(1A) of Arms Act besides sections 17, 18 and 39 of UA(P) Act. Admittedly, it is brought to our notice that in the said case also, he was not granted bail.

27. The material on record clearly depicts that there is sufficient material against accused No.20 – Mohammed Zaid. In the chargesheet it is projected active participation of the appellant / accused No.20 in the offences. Call details between accused No.20 with other accused persons from his mobile bearing No.7022664577 read as under:-

Accused No.	Mobile No.	No.of calls
Accused No.11/Saleem Khan	8151997123	397
Accused No.19/Faziur Rehman	9535548323	191
Accused No.8/Imran Khan	8861882487	22
Accused No.9/mohammed Haneef	7349619220	13
Accused No.1/Mehaboob Pasha	8553462902	67
Accused No.16/Zabiulla	9535876737	7
Accused No.12/Abdul Matheen ahmed Taahaa (Absconding accused)	8310742503	187
Accused No.10/Mohammed Mansoor Ali Khan	9844255442	144
Accused No.1/Mehaboob Pasha	7411566643 8431194486	7 112
Accused No.19/Fazi	9916098093	33
Accused No.12/Abdul Matheen Ahmed Taahaa (Absconding accused)	9743630461	2

28. Considering the material on record, including the chargesheet filed against the accused No.20 by the Investigation

Officer, this Court is of the considered opinion that there are reasonable grounds for believing that the accusation against accused No.20 – Mohammed Zaid is *prima facie* true, thereby he is not entitled for grant of bail in view of sub-section (5) of section 43-D of UA(P) Act, 1967. The scope of inquiry to decide whether *prima facie* material is available against accused for commission of offences alleged under Chapters IV and VI of the UA(P) Act, the Court while examining the issue of *prima facie* case as required by sub-section (5) of section 43-D of UA(P) Act, is not expected to hold a mini trial and the Court is not supposed to examine the merits and demerits of the evidence. If a chargesheet is already filed, the Court has to examine the material forming a part of the chargesheet for deciding the issue whether there are reasonable grounds for believing that the accusation against accused No.20 is *prima facie* true.

29. As already stated supra, the chargesheet filed against accused No.20 clearly depicts his active participation in the offence as a Member of terrorist gang and conspiracy with other accused persons for criminal act and violent acts thereby

he was in contact with other accused persons including Mehboob Pasha – accused No.1 for contacting unknown ISIS handler through dark web, thereby accused No.20 is not entitled to the discretionary relief of bail under section 439 of Cr.P.C. The trial Court is justified in rejecting the bail application of accused No.20.

30. The judgment relied upon by the learned counsel for the appellants in the case of **A.RAMACHANDRAN vs. CENTRAL BUREAU OF INVESTIGATION & Others** reported in **2015(3) KHC 678** has no application to the case of accused No.20 – Mohammed Zaid. In view of sufficient material against him in the chargesheet filed, as he is involved in the terrorist organization ISIS and he is already involved in another case stated supra which attract terrorist activities and he is involved in teaching dark web operations to other accused persons, thereby, the said judgment has no application to the facts of case of accused No.20.

31. In so far as the judgment of Bombay High Court relied by the learned counsel for the appellants in the case of ***IQBAL AHMED KABIR AHMED vs. THE STATE OF MAHARASHTRA*** dated 13.08.2021 in Criminal Appeal No.355/2021, in para 23, enunciating the import of the word "prima facie" coupled with the word "true" as contemplated under the provisions of section 43D(5) of UA(P) Act, on examination of the material forming part of the chargesheet, there are reasonable grounds for believing that the accusation against accused No.20 is *prima facie* true, thereby the said judgment is also not application to the facts of the present case.

32. For the reasons stated above, the point No.1 raised in the present appeal is answered in the **affirmative**, holding that accused No.11 – Saleem Khan has made out a case for grant of bail. Point No.2 is answered in **negative** holding that accused No.20 – Mohammed Zaid has not made out any ground to interfere with the impugned order passed by the trial Court rejecting the application for bail under the provisions of section 439 of Cr.P.C.

33. In view of the above, we pass the following:-

ORDER

(I) Criminal Appeal is **allowed-in-part.**

(II) Criminal Appeal filed by appellant No.1 / accused No.11 is hereby allowed.

(III) Criminal Appeal filed by appellant No.2 / accused No.20 is hereby dismissed, confirming the order dated 29.12.2020 in Crl.Misc.No.7268/2020 passed by the XLIX Addl. City Civil & Sessions Judge and Special Court for NIA Cases, Bengaluru (CCH-50), rejecting the bail application in respect of appellant No.2 / accused No.20.

(IV) Appellant No.1 / Accused No.11 is entitled to bail, subject to the following conditions:-

(i) Appellant No.1 / Accused No.11 is directed to be released on bail, subject to executing a bond of Rs.2,00,000/- (Rupees Two Lakh only), with two solvent sureties for the likesum, to the satisfaction of the Special Court.

- (ii) Appellant No.1 / Accused No.11 shall report before the concerned Investigation Officer, who is in-charge of the case as and when required, without fail.
- (iii) Appellant No.1 / accused No.11 shall neither influence nor intimidate the prosecution witnesses.
- (iv) Appellant No.1 / accused No.11 shall not enter the limits of Kolar District and shall appear before the Special Court on all dates of hearing, in order to assist the Special Court to decide the case on merits expeditiously.
- (v) Appellant No.1 / accused No.11 shall surrender his passport, if any, before the Special Court, Bengaluru, at the time of executing the bail bond. If he is not having any passport, he shall file an affidavit to that effect before the Special Court.

- (vi) Appellant No.1 / accused No.11 shall not commit any offence or shall involve himself in prejudicial activity while on bail.
- (vii) In case, accused No.11 violates any of the above conditions, the bail granted to him is liable to be cancelled.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Bss.