Cr. Appeal (D.B.) No. 175 of 2022

[Against the order dated 26.02.2022 passed by the learned AJC-XVI-cum-Spl. Judge, NIA, Ranchi in Misc. Criminal Application No. 109/2022, corresponding to Special (NIA) Case No. 03 of 2018 (R.C. Case No. 06/2018/NIA/DLI), arising out of Tandwa P.S. Case No. 02 of 2016]

.....

Mahesh Agarwal, S/o Late Mahadeo Prasad Agarwal, R/o BA 209, Salt Lake, P.O. & P.S. Bidhannagar (North), Kolkata-700064, West Bengal ... ... **Appellant**

Versus

Union of India through National Investigation Agency, N.I.A. Camp Office, Qr. No. 305, Sector-II, P.O. & P.S.-Dhurwa, Ranchi ... ... **Respondent**

.....

For the Appellant : Dr. Abhishek Manu Singhvi, Sr. Advocate
Mr. Vikash Pahwa, Sr. Advocate
Mr. Indrajit Sinha, Advocate
Mr. Nitesh Rana, Advocate

For the N.I.A. : Mr. Vikramjit Banerjee, ASGI
Mr. Amit Kr. Das, Advocate

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE RAJESH KUMAR

.....

C.A.V. on 25/03/2022 **Pronounced on 11/04/2022**

Per. R. Mukhopadhyay. J.:

Heard Dr. Abhishek Manu Singhvi and Mr. Vikash Pahwa, learned Senior Counsels appearing for the appellant and Mr. Vikramjit Banerjee, learned ASGI for the National Investigation Agency.

2. Aggrieved by the order dated 26.02.2022 passed by the learned AJC-XVI-cum-Spl. Judge, NIA, Ranchi in Misc. Criminal Application No. 109/2022, corresponding to Special (NIA) Case No. 03 of 2018 (R.C. Case No. 06/2018/NIA/DLI), arising out of Tandwa P.S. Case No. 02 of 2016, by which the prayer for bail of the appellant was rejected, the appellant has preferred the present appeal.

3. A written report was submitted by Ramdhari Singh, Sub Inspector of Police, posted at Simaria P.S. to the effect that on 10.01.2016 a secret information was received by the Superintendent of Police that in Amrapali Magadh Coal area in Tandwa some local people have formed an association which is related to the banned extremist outfit TPC. The members of such association were extracting levy from coal traders and DO holders by creating fear in the name of the extremists of TPC, namely

Gopal Singh Bhokta @ Brijesh Ganjhu, Mukesh Ganjhu, Kohram Ji, Akraman Ji @ Ravindra Ganjhu, Anischay Ganjhu, Bhikan Ganjhu, Deepu Singh @ Bhikan and Bindu Ghanju. It was also alleged that if any businessmen hesitates to pay levy, they are threatened by members of such organization and are also subjected to hardships. In order to verify the truthfulness or otherwise of such information a raiding party was constituted on the orders of Superintendent of Police, Chatra. A raid was conducted in the house of the President of the association Binod Kumar Ganjhu and from under his bed as well as from an almirah Rs. 91,75,890/- was recovered. No satisfactory explanation could be submitted by Binod Kumar Ganjhu with respect to the recovery of such a huge amount of cash. From the house of Binod Kumar Ganjhu two persons were also apprehended who disclosed their names as Birbal Ganjhu and Munesh Ganjhu and on search of their persons a loaded Mauser pistol was recovered from the possession of Birbal Ganjhu while from the possession of Munesh Ganjhu a country made pistol and two live cartridges were recovered. Both had confessed of being associated with TPC organization. Binod Ganjhu had disclosed that he is the President of "Magadh Sanchalan Samittee" and the levy collected is sent to Gopal Singh Bhogta @ Brijesh Ganjhu and thereafter it is distributed between Mukesh Ganjhu, Kohramji, Akramanji @ Ravindra Ganjhu, Anischyaji, Bhikan Ganjhu and Deepu Singh @ Bhikan. He had further disclosed that Bindu Ganjhu is a member of "Amrapali Sanchalan Samittee" who collects levy on behalf of TPC and since he is at present in Jail the collection of levy is being done by Pradeep Ram. On such information a raid was conducted in the house of Pradeep Ram and from under his bed as well as from an almirah Rs. 57,57,710/- in cash was recovered. No satisfactory explanation could be given by Pradeep Ram with respect to the cash recovered.

4. Based on the aforesaid allegations Tandwa P.S. Case No. 02 of 2016 was instituted for the offences under Sections 414, 384, 386, 387, 120B of the I.P.C., Section 25(1-b)(a), 26/35 of the Arms Act and Section 17 (1)(2) of Criminal Law Amendment Act

against Binod Kumar Ganjhu, Munesh Ganjhu, Pradeep Ram, Birbal Ganjhu, Gopal Singh Bhokta @ Brijesh Ganjhu, Mukesh Ganjhu, Kohramji, Akramanji @ Ravindra Ganjhu, Anischya Ganjhu, Deepu Singh @ Bhikan, Bindu Ganjhu @ Bindeshwar Ganjhu and Bhikan Ganjhu.

On 10.03.2016 charge sheet was submitted against the other accused persons before the learned Chief Judicial Magistrate, Chatra. On 09.04.2017 on the prayer made by the Investigating Officer offences under Sections 16, 17, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 (herein after referred to as the UAP Act for the sake of brevity) were added. Since the offences involved a scheduled offence, in exercise of powers conferred u/s 6(3) read with Section 8 of the National Investigation Agency, Act 2008, the Central Government vide order dated 13.02.2018 had directed the National Investigation Agency to take up the investigation of the case consequent to which Tandwa P.S. Case No. 02 of 2016 was re-registered as NIA Case No. RC-06/2018/NIA/DLI.

The first supplementary charge sheet bearing Charge Sheet No. 32/2018 was filed by the NIA on 21.12.2018.

5. The appellant was issued notice by the NIA, Ranchi on 17.01.2019, 18.01.2019 and 22.01.2019 wherein he was directed to appear before the NIA, Ranchi which was complied with and the statement of the appellant u/s 161 Cr.P.C. was recorded. Pursuant to an application preferred by NIA before the learned Special Judge, NIA, Ranchi the statement u/s 164 Cr.P.C. of the appellant was recorded. On 07.01.2020 the appellant was issued a notice u/s 41-A of the Cr.P.C. directing him to appear before the NIA on 10.01.2020. According to the appellant, on account of his mother's sudden illness he could not appear on the appointed day for which an intimation was sent to the Agency on 10.01.2020. However, after conducting further investigation a second supplementary charge sheet was submitted by the NIA in which the appellant was arrayed as an accused for committing offences punishable under Section 120B of the IPC read with Section 17 of the UAP Act, 1967 and substantive

offences under Sections 17 and 18 of the UAP Act, 1967, Section 17 of the CLA Act, 1908 and Section 201 of the IPC.

6. In the memo of appeal, the credentials of the appellant has been sought to be highlighted to the effect that he is accredited for setting up the first Sponge Iron Plant and Rolling Mill of the Adhunik Group of Companies at Durgapur in the year 2001. The appellant is the Managing Director of Adhunik Power and Natural Resources Limited which is a company incorporated under the Companies Act, 1956. The Adhunik Power and Natural Resources Limited had executed a memorandum of understanding dated 31.10.2005 for setting up of 1080 M.W. coal based Thermal Power Plant in two phases: the first phase was commissioned and is already in operation since 21.01.2013 while the second unit was commissioned on 19.05.2013. The regional office of the Company is in Jharkhand while its headquarter is situated at Kolkata, West Bengal.

7. Canvassing the arguments on behalf of the appellant Dr. Abhishek Manu Singhvi, learned Senior Counsel for the appellant has submitted that the appellant is the Managing Director of Adhunik Power and Natural Resources Limited who is based at Kolkata and is not operational in Jharkhand and he himself is a victim of extortion threats which has been misconstrued by the NIA by accusing the appellant of being involved in terror funding. Dr. Singhvi has drawn the attention of the Court to the sequential events of the case which commenced with the institution of the First Information Report on 11.01.2016 and culminated with the arrest of the appellant on 18.01.2022. He has submitted that the appellant was not named in the First Information Report lodged by the Police nor in the charge sheet submitted on 10.03.2016. On 12.04.2017 the provisions of the UAP Act was inserted and the name of the appellant still did not figure and even in the first supplementary charge sheet submitted by NIA the name of the appellant was conspicuous by its absence. In January, 2019 the 161 Cr.P.C. statement of the appellant was recorded by the Agency and subsequently in April, 2019 his

statement u/s 164 Cr.P.C. was also recorded. The sanction for prosecution was accorded by the appropriate government on 27.12.2019. On 07.01.2020 the appellant was issued notice u/s 41-A of the Cr.P.C. According to Dr. Singhvi, the aforesaid facts would emphasize the initial status of the appellant as a witness though subsequently the Agency did a volte face and named him as an accused in the second supplementary charge sheet.

Learned Senior Counsel has referred to Section 17 of the UAP Act and has made particular stress on the words “raises”, “provides” and “collects” as appearing in the said provision while juxtaposing the same with the word “knowing” by submitting that the evidence collected by the Investigating Agency does not indicate that the appellant had knowledge or awareness that the money was being used by a terrorist organization or a terrorist gang to fuel terrorism. The only knowledge the appellant had was that money was being paid to the transporters. The appellant therefore cannot be fastened with the allegations of being involved in terror funding.

Dr. Singhvi, learned Senior Counsel has punctuated his submissions by referring to the allegations against co-accused Sudesh Kedia and the order granting him bail by the Hon'ble Supreme Court in the case reported in (2021) 4 SCC 704. The role of Sudesh Kedia (A-19) has been depicted in para 17.11 of the second supplementary charge sheet and while taking us through the allegations levelled against Sudesh Kedia, Dr. Singhvi has submitted that he was accused of attending meetings with TPC leaders and paying levy to TPC leader Akramanji, CCL employees and village committee members through his current account. An amount of Rs. 9,95,000/- was also seized from the residential premises of Sudesh Kedia. It has been contended that money was admittedly paid from the company account and so far as Sudesh Kedia is concerned, he was the transporter who had received the money and had transferred it to the organization. Dr. Singhvi while referring to “Sudesh Kedia versus Union Of India” (supra) has emphasized that neither the appellant had participated in meetings nor had he

hobnobbed with the members of the terrorist organization or for that matter attended any programmes. The role of the appellant who has been arrayed as A-18 in the second supplementary charge sheet has been restricted to the purported knowledge the appellant had that the levy is being paid by the company. The findings recorded in the case of Sudesh Kedia (supra) clearly reveals that money was being paid to the members of TPC for smooth running of the business and therefore prima facie it cannot be said that Sudesh Kedia had conspired with the other members of TPC and raised funds to promote the organization. In support of his contentions, learned Senior Counsel has referred to paragraphs 13, 13.1, 13.2, 13.3 and 14 of the said case.

Dr. Singhvi has referred to the case of "*People's Union for Civil Liberties & Anr. versus Union of India & Ors.*" reported in (2004) 9 SCC 580, while submitting that *mens rea* is an essential component for an offence and an act can be said to be an offence if it is committed with an intent. The said case along with batch cases was for consideration of the constitutional validity of various provisions of Prevention of Terrorists Act, 2002. If there is no intention or design to further the activities of any terrorist organization no offence is committed. Drawing inspiration from the said finding Dr. Singhvi has submitted that no adverse inference can be drawn against the appellant if the entire gamut of allegations are taken into consideration. The frequently used phrase "smooth running of the business" as appearing in the charge sheets submitted by the NIA according to Dr. Singhvi will enable the Court to draw an inference favorable to the case of the appellant.

The next submission advanced by Dr. Singhvi is that for almost six years neither the Police nor the NIA had even whispered about the involvement of the appellant. He has submitted that the presumption of innocence shall always prevail so far as the appellant is concerned. He has pointedly referred to para 23 in the case of "*P. Chidambaram versus Directorate of Enforcement*" reported in (2020) 13 SCC 791, which reads as follows:

> ***"23.*** *Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.***"***

Reference has also been made to the counter affidavit filed on behalf of NIA and it has been argued that since Sudesh Kedia has been granted bail the counter affidavit is a feeble attempt in adversely developing the case of the appellant in order to make a distinction though it is a irrefutable fact that the case of the appellant stands on a much better footing than that of Sudesh Kedia.

The investigation into the case has been completed and after cognizance has been taken charge has also been framed on 23.08.2019 and 03.12.2021. Once charge has been framed the same symbolizes commencement of trial and therefore there cannot be any

further investigation. To buttress the aforesaid submission reliance has been placed in the case of "*Vinubhai Haribhai Malaviya & Ors. versus The State of Gujarat & Anr.*", reported in (2019) 17 SCC 1 and the paragraph relevant in support of such submission is quoted herein under:

> ***"20.*** *With the introduction of Section 173(8) in CrPC, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case. The vexed question before us is as to whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173?***"**

Dr. Singhvi has pointed out that though the money has been funded through the company's account but the company has not been made an accused and in absence of the company having been made an accused no vicarious liability can be fastened upon the appellant.

The charge sheet contains 185 witnesses, 131 documents and 66 material exhibits and therefore it can be presumed that it will take ages to conclude the trial while the appellant continues to languish in custody since 18.01.2022 and considering the entire scenario, according to Dr. Singhvi, the appellant deserves the privilege of bail.

8. Mr. Vikash Pahwa, learned Senior Counsel also appearing on behalf of the appellant has augmented the submissions canvassed by Dr. Singhvi by referring to the allegations in para 17.20 in the second supplementary charge sheet against Sanjay Jain (A-9) who was working as a General Manager in M/s Adhunik Power and Natural Resources Limited, Kandra, Saraikela-Kharsawan, Jharkhand. Mr. Pahwa has submitted that Sanjay Jain was working at the ground level and was collecting Rs. 200 Per Metric Ton from the transporters for the purpose of paying to TPC operatives while the appellant was sitting at Kolkata and except some e-mails which were marked 'CC' to him there is nothing to indicate that the appellant was aware about the *modus operandi* adopted for collection of levy. Such

e-mails also cannot lead to drawing an adverse inference against the appellant. In fact when Sanjay Jain was arrayed as an accused the status of the appellant was that of a witness though subsequently a u-turn was made by the Agency and the appellant was arrayed as an accused in the second supplementary charge sheet. Mr. Pahwa has further submitted that Sanjay Jain has been granted bail by a co-ordinate Bench of this Court in Cr. Appeal (D.B.) No. 222 of 2019. The principles of parity demand that the appellant in such background facts be also granted bail and in support of which the order passed in "*Kamaljit Singh versus State of Punjab & Anr.*" reported in (2005) 7 SCC 226 has been relied upon by Mr. Pahwa.

9. Mr. Vikramjit Banerjee, learned ASGI appearing on behalf of NIA has read from para 17.10 of the second supplementary charge sheet which specifies the role enacted by the appellant. On his direction the payment was made through RTGS to coal transporters against work orders. This was the official part. The other part is the deliberate act of the appellant in deleting the e-mails marked 'CC' to him. Mr. Banerjee has referred to the list of documents including the e-mail marked as D-168 which refers to an e-mail sent by Sanjay Jain to the appellant for release of Rs. 25,00,000/- on account of pending freight of M/s National Parivahan as per the discussions with the appellant and "Neta Jee" which clearly depicts the nexus existing between the appellant and the operatives of TPC. According to Mr. Banerjee all the e-mails were on official e-mail account of the company which demolishes the contention of the appellant that the deal was clandestine and the entire transaction was not to the knowledge of the appellant. These e-mails were sought to be deleted which also enhances the awareness of the appellant as to the goings on at the ground level.

Learned ASGI has drawn the attention of the Court to the judgment delivered in the case of "Sudesh Kedia" on 09.04.2021 which was much prior to the statement of Sudhanshu Ranjan @ Chhotu which was recorded on 28.09.2021 and which reveals the nexus between the appellant and the terrorist organization TPC. The

finding recorded in the case of Sudesh Kedia (supra) at para 13.1 cannot accentuate the case of the appellant in view of the statement of the approver Sudhanshu Ranjan @ Chhotu.

10. Dr. Abhishek Manu Singhvi, learned Senior Counsel for the appellant in reply has reiterated his initial stance. He has submitted that the charge is substantially of terror funding and being the Managing Director it is absolutely improbable for the appellant to be involved in terror funding and such charge should be looked at with scepticism. Once again attention of the Court has been drawn to the case of "Sudesh Kedia" wherein according to the learned Senior Counsel the same transaction was involved. Sudesh Kedia operated at the ground level while the appellant remained stationed at Kolkata in the headquarter of the company. The bail was granted to Sudesh Kedia despite the bar created in Section 43-D(5) of the UAP Act. Dr. Singhvi has countered the submissions advanced by the learned ASGI while submitting that none of the contentions raised by the appellant have been suitably replied to. Mere reading of the pre judicial statement of Sudhanshu Ranjan @ Chhotu would not change the basic structure of allegations against the appellant which appears to be outlandish and bizarre. He has submitted that converting the status of the appellant from a victim to being a prima donna and alleging him of planning and executing terror funding is unsustainable in criminal law. Learned Senior Counsel has added that there has been no forensic evidence that the e-mails which were marked 'CC' to him were willfully deleted. Reference has been made to the statement of the protected witnesses "D", "E" and "G" wherein none of the said witnesses had taken the name of the appellants. So far as protected witness "B" is concerned, his disclosure statement merely suggests that he had approached the appellant for clearing his dues who in turn had asked him to contact Sanjay Jain. The contact was made in Kolkata and according to the learned Senior Counsel the same does not indicate about the appellant having knowledge about the transaction taking place at the ground level.

Dr. Singhvi, has brought to the notice of the Court the

statements given by Sudhanshu Ranjan @ Chhotu Singh. The first is the disclosure statement given on 19.11.2018, the second is on 10.01.2020 on turning approver and lastly his deposition dated 27.09.2021. He has submitted in the context of such statements that the same are uncorroborated and have been given in a haphazard manner. The statement of the approver has to have a seal of objectivity. In his disclosure statement Sudhanshu Ranjan @ Chhotu Singh has not taken the name of the appellant. At one point he had rather said that he had come to know through Bindu Ganjhu that by the end of the year 2016 Sanjay Jain and Ajay Singh had started paying levy to TPC regional commander Akraman Ji directly. In the statement recorded u/s 306 Cr.P.C. he has given a new thrust to his earlier disclosure statement and apart from various imputations made against the appellant and others he has also disclosed about coming to know on various occasions the meetings the appellant had held with Akraman Ji which appears to be a worse form of hearsay evidence. It has been submitted that at the initial stage the allegations were portrayed to be of coercion and extortion but the prosecuting agency in order to nail the appellant has tried to improve its case by taking recourse to the approver statement of Sudhanshu Ranjan @ Chhotu Singh. Whether, according to Dr. Singhvi, the insinuation cast by Sudhanshu Ranjan @ Chhotu Singh in his statement recorded u/s 306 Cr.P.C. regarding the appellant having knowledge that the levy collected by TPC was being used for anti national activities could be construed to mean terror funding, more so when there is nothing to indicate about sharing of same ideology and belief. It has been submitted that the statements of Sudhanshu Ranjan @ Chhotu Singh had been considered in the case of “Sanjay Jain” by a co-ordinate Bench of this Court while granting him bail.

11. Mr. Vikash Pahwa, learned Senior Counsel has taken us through the counter affidavit filed by NIA and has submitted that though it seeks to distinguish the case of the appellant from that of Sudesh Kedia but there is no evidence on record that the role of the appellant is more serious than that of Sudesh Kedia. Indicting the

appellant of being the mastermind of the entire scheme is nothing but a figment of imagination of the prosecuting agency. It has been submitted that the averments made in the counter affidavit filed before this Court was never brought to the notice of the learned Special Judge, NIA, Ranchi.

12. Mr. Vikramjit Banerjee, learned ASGI for the National Investigation Agency on being asked as to how the coal block has been allotted has submitted that the same was through an open auction. When the appellant had bid he was aware about the ground realities as when a participant is bidding he does not bid blind. He has submitted that the statement of Sudhanshu Ranjan @ Chhotu Singh has to be read in its entirety and cannot be read in isolation and only then the wider conspectus of the involvement of the appellant can be understood. The official e-mail account of the appellant was extensively used. It has been pointed out that the appellant knew the consequences and therefore his role should be considered in a larger spectrum involving the other stake holders. Learned ASGI has also submitted that the appellant for the purpose of facilitating his business had embroiled himself in terror funding. While referring to the case of "Sanjay Jain" learned ASGI has submitted that the observations made at para 50 of the said judgment should not be considered on a wider canvass and should be construed to be restricted only to "Sanjay Jain". Mr. Banerjee has extensively referred to the case of "*NIA versus Zahoor Ahmad Shah Watali",* reported in (2019) 5 SCC 1, while Mr. Pahwa has contended such submission by referring to the case of *"Union of India versus K.A. Najeeb",* reported in (2021) 3 SCC 713.

13. We have considered the rival submissions and have also perused the various affidavits as well as the voluminous compilations submitted by them. The focal point of argument of the learned Senior Counsels for the appellant seems to be the grant of bail to Sudesh Kedia by the Hon'ble Supreme Court while making dexterous submission that the allegations against the appellant are more conducive for considering the grant of bail to the appellant. We

would, therefore, initiate our findings by making reference to the allegations made against Sudesh Kedia in the second supplementary charge sheet submitted by the NIA at para 17.11, which is quoted hereunder:

> **"*17.11 Role and activities of / offences established against Sudesh Kedia (A-19):*** *Sudesh Kedia (A-19) is the proprietor of M/s Essakay Concast & Minerals Pvt. Ltd. and his transporting company was engaged for transporting of coal on behalf of GVK Power and Godavari Commodities. He used to attend meetings with TPC leaders and had paid levy to TPC, CCL and village committee for smooth running of business in Amrapali and Magadh collieries. He used to pay Rs. 200/- @ tonne levy to TPC leader Kkraman (A-14), CCL employees and Village Committee members namely Amlesh Das, Arvind Singh and Triveni Yadav. Sudesh Kedia used to send money through his current account for making payment to village Committee and CCL and cash to Akraman (A-14), TPC. Therefore, it is established that A-19, colluded with members of terrorist gang, TPC, and others and abetted / promoted / thereby strengthened TPC in criminal conspiracy with members of the terrorist gang with an intent to raise funds for the above said terrorist gang through co-accused Bindu Ganjhu (A-5), Subhan Mian (A-7), Ajit Kumar (A-10), Prem Vikas @ Mantu Singh (A-11) and Akraman (A-14) for smooth running of his business. He possessed Proceeds of Terrorism in the form of cash amounting to Rs. 9,95,000/- Indian currency, was seized from his residential premises and demonetized Indian currency to face value of Rs. 86,000/- were seized form his office cum residential premises. Thereby, it is established that A-19 criminally conspired with A-5, A-7, A-10, A-11 and A-14 and committed offences under section 12B of IPC r/w sections 17 of the UA(P) Act 1967 and substantive offences under Sections 17, 18 and 21 of the UA(P) Act 1967 & Section 17 of the CLA Act, 1908.*"**

14. The role enacted by the appellant is depicted at para 17.10 of the second supplementary charge sheet and which reads as under:

> ***"17.10 Role and activities of / offences established against Mahesh Agarwal (A-18):*** *Mahesh Agarwal (A-18) is the Managing Director of M/S Adhunik Power and Natural Resources, Jharkhand. Evidence establish that on his direction, payment was made through RTGS mode to coal transporters against work orders, Amount @ Rs. 200/- per MT was given to transporters for the purpose*

of paying to TPC operatives and village committee for smooth functioning of the business concerns. For promoting his coal trade business, he connived with the co-accused persons namely Ajay Singh, Akraman and Bindheswar Ganjhu, and thereby abetted in raising of funds for the terrorist gang. The documentary and oral evidences establish that the said accused was paying levy to members of various groups like Village committee members, CCL, weigh bridge operators. TPC members such as Akraman (A-14), Bindu Ganjhu (A-5) and Premvikas @ Mantu Singh (A-11) and was involved with co-accused persons namely Sanjay Jain (A-9) and Ajay Kumar @ Ajay Singh in the commission of instant crime and conspiracy. The E-mail dated 03 April 2017 & 30th April 2017 recovered at the instance of charge sheeted arrested accused Sanjay Jain (A-9) and the documents produced by witness Rakesh Jain reveal that Mahesh Agrawal (A-18) was in the knowledge of levy being paid to CCL and village Committee. The four e-mails dated 01/05/2017, 2/05/2017, 16/05/2017, 21/05/2017, which were produced by witness Rakesh Jain, which were sent by employees of Adhunik Power & Natural Resources Ltd. to Raja Patni, M/s National Parivahana transporter for Adhunik Power stating that there is pending payments which was supposed to be paid to the Committee, regular phone calls being made by Akraman @ Netaji (Regional commander, TPC) (A-14) to Ajay Kumar (Branch office Ranchi) to pay pending freight charges to transports, threatening calls by Akraman @ Netaji to stop lifting of coal, plans of Ajay Kumar (Branch office Ranchi) to meet Akraman @ Neta Ji, demand draft of Rs. 40 lakh raised in the favour of Amrapali loading account committee, intimating that Sanjay Jain is meeting AkramanJi @ Neta Ji (A-14). Therefore, Mahesh Agarwal was in the knowledge that levy is being paid by their company to TPC leaders and operatives, thus colluded in terror financing of TPC. Further, Mahesh Agarwal deliberately deleted the e-mails marked as CC to him. It is established that Mahesh Agarwal (A-18), colluded with members of Terrorist gang TPC, and others and abetted / promoted / thereby strengthened TPC by engaging in criminal conspiracy with members of the terrorist gang with an intent to raise funds for the above said terrorist gang through co-accused Akraman (A-14), Sanjay Jain (A-9) and Ajay Kumar @ Ajay Singh (A-22) for smooth running of his business. Thereby, accused Mahesh Agarwal (A-18) committed offences under section 120B of IPC r/w sections 17 of the UA(P) Act 1967 and substantive offences u/s Sections 17 and 18 of the UA(P) Act 1967, section 17 of the CLA Act, 1908 and Section 201 of IPC.”

15. The role of the present appellant based on the second supplementary charge sheet can be summed up in the following manner:

(i) On his direction payment was made through RTGS to the coal transporters against work orders.

(ii) For promoting his business he connived with the TPC operatives and thereby abetted in raising funds for the terrorists gang.

(iii) The appellant was involved in paying levy to members of various groups like village committee members, CCL, weighbridge operators and TPC members.

(iv) The appellant had conspired with co-accused Sanjay Jain (A-9) and Ajay Kumar @ Ajay Singh in the commission of the offence.

(v) Some e-mails reveal that the appellant was in the knowledge of levy being paid to CCL and Village Committee Members.

(vi) The appellant had deliberately deleted the e-mails marked as 'CC' to him.

16. The role played by Sudesh Kedia as delineated by the Investigating Agency is summed up in the following manner:

(i) He used to attend meetings with TPC leaders and had paid levy to TPC, CCL and Village Committee Members.

(ii) Sudesh Kedia used to send money through his current account for making payment to the Village Committees and CCL and cash to Akramanji (A-14).

(iii) The proceeds of terrorism in the form of cash of Rs. 9,95,000/- was seized from his residential premises and demonetized currency of Rs. 86,000/- was seized from his office cum residential premises.

17. A comparison of the allegations made in the second supplementary charge sheet against the appellant and Sudesh Kedia

would reveal a startling feature as to the manner in which the TPC operatives were dealt with. The appellant, it is said, was in the knowledge, though, without any direct involvement of the levy being paid to the TPC operatives while Sudesh Kedia seems to have been burdened with the allegations of having a direct nexus with the TPC operatives, Village Committee members and CCL at the ground level by holding meetings and making payment of levy through his current account.

The allegations against Sudesh Kedia, therefore, is much graver than that of the appellant as would appear from the second supplementary charge sheet.

18. The case of another of the co-accused namely Sanjay Jain has also much been relied upon by the learned Senior Counsels for the appellant who has been granted bail by a co-ordinate Bench of this Court in Cr. Appeal (D.B.) No. 222 of 2019. The co-accused Sudesh Kedia has also been granted bail by the Hon'ble Supreme Court in a case reported in (2021) 4 SCC 704.

19. Before adverting to the orders referred to above, the allegations against Sanjay Jain (A-9) which finds place in the first supplementary charge sheet is being considered and which reads as follows:

> ***"17.20 Role and activities of / offences established against Sanjay Jain (A-9):*** *Therefore, as per the averments made hereinabove / in the pre-paragraphs, it is established that he was working as General Manager in M/s Adhunik Power and Natural Resources, Kandra, Saraikela Kharsawan, Jharkhand and after making payment through RTGS mode to coal transporters against work orders, he used to collect / receive back cash @ Rs. 200/- per MT from the transporters for the purpose of paying to TPC operatives including A-5, A-11 and A-14 for smooth functioning of the business concern and he used to raise levy for TPC on the direction of A-14. He was closely associated with the operatives of TPC and thereby became member of the terrorist gang as he was acting as conduit in between TPC and coal transporters and Coal purchasers for facilitating TPC in extortion of levy and abetted in raising of funds for the terrorist gang. E-Mails were recovered at his instance which establish that the said accused was paying levies to various ends including Village committee members,*

> *CCL, weigh bridge, TPC and as such was deeply involved / associated with co-accused persons in the commission of instant crime and conspiracy. Therefore, it is established that Sanjay Jain (A-9), colluded with members of terrorist gang / unlawful association TPC, proscribed by Government of Jharkhand and others and abetted / solicited / assisted in the operations / management of TPC in criminal conspiracy with members of the terrorist gang including A-5, A-11 and A-14 and with other accused transporters A-7 with intent to aid the above said terrorist gang collected funds from illegitimate sources through extortion from the contractors / coal trader / transporters and thereby conspired with co-accused for terrorist act. Thereby accused Sanjay Jain (A-9) committed offences under Sections 120B r/w 384, 414, 109 of the IPC, sections 17, 18 and 20 of the UA(P) Act, section 17 of the CLA Act, 1908.***"***

20. The accused Sanjay Jain was the General Manager in M/s Adhunik Power and Natural Resources Limited, Kandra, Saraikela-Kharsawan, Jharkhand who seems to have assumed the role of a conduit between TPC, Coal Transporters and Coal purchasers. He was directly involved in making payment of levy to the terrorist organization and the others connected with such organization. It would thus appear that Sanjay Jain was also operating at the ground level and was facilitating the payment of levy to the various stake holders.

21. In Cr. Appeal (D.B.) No. 222 of 2019 (*Sanjay Jain versus Union of India*) it was held as follows:

> ***"40.*** *From the materials on record, it is difficult to hold that the appellant conspired or advocated or abeted any offence under UA(P) Act. Section 18 is attracted when the act abeted, advocated, incited etc. is a terrorist act or any act preparatory to the commission of a terrorist act. May be TPC is engaged in terrorist activities, the acts of the appellant in making payment of levy amount to TPC and meeting with TPC supremo are not covered under sections 17 and 18 of UA(P) Act.*

22. Though Sudesh Kedia and Sanjay Jain have been granted bail and the orders granting bail have been heavily relied upon by the learned Senior Counsels for the appellant seeking parity but such submission has been sought to be negated by the learned ASGI while referring to the various statements made by Sudhanshu

Ranjan @ Chhotu Singh who had subsequently turned approver. However, prior to consideration of the evidence of Sudhanshu Ranjan @ Chhotu Singh the statement of some of the protected witnesses are being referred to more particularly to the nature of involvement of the appellant and that of Sudesh Kedia and Sanjay Jain.

Protected Witness No. "D" has stated that on behalf of Adhunik Power Limited at Gamharia near Tata Jamshedpur, Sanjay Jain used to attend meetings conducted by Akramanji who worked on behalf of Brajesh Ganjhu. The Hindalco Coal Trading Company work is looked after by Sonu Agarwal but his staff Rajendra Saw used to attend the meetings. Indraj Bhadauria of Godavari Commodities Company of Kolkata gave his trading work to Vijay Dhanuka, Gopal Complex, Ranchi and Sudesh Kedia near Mount Motors Ranchi. He has also stated that in the month of February, 2016 the Truck Association had called for an indefinite strike for increasing the fare of trucks. A meeting was called by Akraman and it was attended by Sanjay Jain amongst others. In February, 2017 another indefinite strike was called due to increase in fuel prices. Due to interference of Akraman the strike was called off. Another meeting was held in the presence of DO holders Sanjay Jain, Sudesh Kedia and others and at the intervention of the members of TPC all had agreed to a 10% hike in fares. This witness however has not whispered about the involvement of the appellant at any point of time.

Protected Witness No. "E" has also not taken the name of the appellant though he has stated about a meeting held on 14.02.2017 which was attended by the representatives of the transporters namely Sudesh Kedia, Sanjay Jain, Ajay Singh, and Vijay Dhanuka.

The protected Witness No. "G" has stated about a meeting attended by Sanjay Jain, Rajendra Saw and Govind Khandelwal. He however has not taken the name of the appellant.

On perusal of the statement of protected Witness No. "B", it appears that he was involved in purchasing coal and selling it in the open market as well as to Adhunik Alloy and Power Limited. In

the year 2015-2016 he had approached the appellant for return of his money and he was directed to contact Sanjay Jain. He has stated that Sanjay Jain got him work for transporting of approximately one lac ton of coal for about seven months. As per the verbal agreement with Sanjay Jain Rs. 200/- used to be collected from him either by Sanjay Jain or Ajay Singh, both representatives of M/s Adhunik Power and Natural Resources Limited.

23. The first disclosure statement before turning approver was given by Sudhanshu Ranjan @ Chhotu Singh on 19.11.2018. He used to deal in transportation of coal. In this statement he has not assigned any role to the appellant though he has stated that he came to know by the end of 2016 through Binod Ganjhu that Sanjay Jain and Ajay Singh of Adhunik Private Limited started paying levy to TPC regional commander Akramanji directly. So far as Sudesh Kedia is concerned, he has stated that the persons working for Sudesh Kedia had directly approached TPC regional commander Akramanji to apprise him so that he does not obstruct the mining in the area and pay levy to him directly which was opposed by the Village Committee members.

24. Sudhanshu Ranjan @ Chhotu Singh subsequently turned approver and his statement was recorded u/s 306 Cr.P.C. on 10.01.2020. He has stated that he was lifting and transporting coal in Amrapali Project and Rs. 254 Per Ton was being given to the committee through the staffs of Vishnu Agarwal. In the meantime, due to a drop in demand of coal his transportation work got stalled and he initiated a dialogue with Adhunik Company where he came to know that the entire work in the project is looked after by Sanjay Jain and Ajay Singh. He had called up the appellant once or twice who had advised him to take permission from “Neta Ji” and only after permission is granted he will be given work. He had thereafter approached the Manager of BKB Transport Company who had advised him to intimate “Neta Ji” through the owner of BKB Transport Company Vineet Ji and then only he can get some work. He also came to know that the members of the committee used to do

the work for Sudesh Kedia whose company "S Kedia" and "Sky Minerals" were engaged in the project.

Sudhanshu Ranjan @ Chhotu Singh has further disclosed that he had come to know that the appellant along with Mahesh Verma had come to Lawalong and held a meeting with Akramanji. When he started work after six months the price of coal had increased and there was a demand by the companies that the rate charged by the committee at Amrapali and Magadh should be Rs. 200/- per ton at par with what is charged by the committee at Piprawar consequent to which a meeting was held in which the appellant had also participated and after talking with "Neta Ji" the rate was whittled down to Rs. 200/- per metric ton. He has stated about the appellant, Sudesh Kedia, Sanjay Jain, Vineet Agarwal, Govind Khandelwal and Ajay Singh keeping the accounts of Magadh Amrapali Committee and if necessary they used to remove the obstacles by meeting with TPC operatives Mukesh Ji, Bhikan Ji, Brajesh Ji, Akraman Ji, Kohram Jee, Anishchay Ji and Karampal Ji. Sudhanshu Ranjan @ Chhotu Singh has also disclosed that the owner of the various companies, Sonu Agarwal, Vishnu Agarwal, Mahesh Agarwal (appellant), Sudesh Kedia, Vineet Agarwal along with Govind Khandelwal, Sanjay Jain and Ajay Singh had full knowledge that the levy which was extracted by the TPC was used to purchase arms and those persons are involved in anti national activities.

The evidence of Sudhanshu Ranjan @ Chhotu Singh as Witness No. 2 has been recorded on 28.09.2021 and he has basically reiterated his 306 Cr.P.C. statement recorded on 10.01.2020.

25. The subsequent statement of Sudhanshu Ranjan @ Chhotu Singh has been highlighted by the learned ASGI to create a differentia between the case of "Sudesh Kedia" and the present appellant.

26. So far as "Sanjay Jain" is concerned, the order in Cr. Appeal (D.B.) No. 222 of 2019 was delivered on 01.12.2021 and a fleeting reference was made to the statement of the approver Sudhanshu Ranjan @ Chhotu Singh in the following manner:

> ***"50.*** *The prosecution intends to examine 185 witnesses and it relies upon 131 documents as well as 66 material exhibits to prove the charge against the accused persons. We are informed that Sudhanshu Ranjan who was a member of Village Committee, Tandwa turned approver for the prosecution and his testimony has been recorded in the Court, but, at the same time, it is stated that this witness did not say anything incriminating against the appellant. Presently, the evidence of the informant is being recorded in the trial.****"***

27. The co-ordinate Bench has noted that the approver did not say anything incriminating against the appellant Sanjay Jain.

28. The evidence of Sudhanshu Ranjan @ Chhotu Singh in whatever capacity it may be does not criminate the appellant of terror funding, though, without leaving any room for doubt, an attempt has surely been made of the appellant being directly involved in collection of levy and being aware about such funds being used by the TPC operatives to carry out subversive activities. We have noted in short the statements of Sudhanshu Ranjan @ Chhotu Singh and we find that the name of Sudesh Kedia and Sanjay Jain prominently figures in such statements though the name of the appellant appears to have surfaced in the 306 Cr.P.C. statement and his subsequent evidence as Witness No. 2.

29. Before proceeding further we may now embark to consider the various provisions of the UAP Act in order to evaluate the allegations levelled against the appellant.

Section 17 of the UA(P) Act reads as follows:

> *[****17. Punishment for raising funds for terrorist act****. —Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.*
>
> *Explanation.—For the purpose of this section,—*

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

(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and

*(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under Section 15 shall also be construed as an offence.]***"**

Section 17 mentions about "terrorists organization" "terrorist gang" and "terrorist act". A "terrorists organization" has been defined in Section 2 (n) and it reads as "*terrorist organization means an organization listed in the schedule or an organization operating under the same name as an organization so listed."* Terrorists gang as per Section 2 (l) means *"any association, other than terrorist organization, whether systematic or otherwise, which is concerned with, or, involved in, terrorists act."*

The definition of the term "terrorist act" finds place at Section 15 of the Act and it reads 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

[(iii-a) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

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

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

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

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

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

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates 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.]

30. Section 17 is a penal provision aimed at a person who raises or provides fund or collects fund or an attempt made in such context with a knowledge that such funds are likely to be used in full or in part by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act. The tenor of the said provision indicates a voluntary act by an individual in raising, providing or collecting funds for facilitating an act of terrorism. Section 15 (1)(a)(iii) envisages a terrorist act which can cause or likely to cause disruption of any supplies or services essential to the life of the community in India or in any foreign country and this provision has also been relied upon by the NIA, the reason being the disruption of supply of coal on account of the nefarious activities of the TPC. In fact, on the contrary, if the allegations made by the

Investigating Agency are considered, some of the individuals at work at the ground level seems to have smoothened out the transportation of coal though at the price of being a victim of extortion and with an object for smooth running of the business.

Section 15 of the UAP Act also contemplates threat to security which also includes economic security which has been defined in Section 2(ea) and which also includes livelihood security and a glance at the said provision would not define the role of the appellant as an aggressor as the appellant was merely running his business and was at the receiving end of the extortion threats of TPC.

31. Section 18 of the UAP Act reads as follows:

> ***"18. Punishment for conspiracy, etc.-*** *Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directs or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."*

Section 18 of the Act, therefore, contemplates an act of conspiracy or an attempt at or an abetment, advise or incitement, direction or knowingly facilitating the commission of a terrorist act. Section 107 of the IPC defines "Abetment of a thing" which envisages that a person abets the doing of a thing if he instigates any person for doing that thing or conspires with one or more persons for doing that thing or intentionally aids by any act or illegal omission the doing of that thing.

The appellant has been alleged to have conspired, aided and abetted the payment of levy to the TPC operatives. However, from the entire gamut of the allegation, there does not seem to be any instigation at the behest of the appellant or any web of conspiracy weaved by the appellant with the TPC operatives. Section 18 of the UAP Act also speaks of "knowingly facilitating" while Section 107 of the IPC includes "intentionally aids" but from the outcome of the investigation it cannot be deciphered as to how and in what manner extorting of levy would amount to aiding or abetting a terrorist act.

The aforesaid findings is further buttressed by the

modus operandi adopted by the TPC which finds place in the first supplementary charge-sheet and which reads as under:

> "*Therefore, from above it surfaces that the modus operandi of the TPC is that they initially blocked the mining process in the Amrapali and Magadh area and threatened the locals and CCL officials and contractors. Then as part of a well planned conspiracy, they formed the Village Committees with their own men in the forefront in Amrapali and Magadh Coal projects of Jharkhand to start the mining process. Subsequently, they imposed a levy amount on coal transportation in the name of loading charges. Some amount does go towards loading charges but a major share of it goes to the TPC and their stooges in the village committee.*
>
> *The coal purchasing companies and others purchase coal through auction from the CCL and then engage transport companies for transportation of coal. It is at this level that the levy is imposed of which the major share goes to the TPC. The levy amount is drawn in cash by these transport company owners and supplied to the TPC which carries its activities in that area. Occasionally, the TPC leaders like A-14 and A-15 used to call for secret meetings of the transporters and coal purchasing companies and instruct them to provide funds timely and in an organized manner."*

In the second supplementary charge-sheet, in the concluding part of para 17.4 the same thing is reflected which reads as under:

> *"Thus, collection of extortion amount was systemically organized from the power company directly or through DO holders, transporters, village committee to TPC operatives and leaders.***"**

32. In the backdrop of the aforesaid provisions and the revelations made by the protected witnesses, we may now refer to the case of "*Sudesh Kedia versus Union of India*" (supra) wherein it was held as follows:

> **"*13.1.*** *A close scrutiny of the material placed before the Court would clearly show that the main accusation against the appellant is that he paid levy/extortion amount to the terrorist organisation. Payment of extortion money does not amount to terror funding. It is clear from the supplementary charge-sheet and the other material on record that other accused who are members of the terrorist organisation have been systematically collecting extortion amounts from businessmen in Amrapali and Magadh areas. The appellant is carrying on transport*

business in the area of operation of the organisation. It is alleged in the second supplementary charge-sheet that the appellant paid money to the members of the TPC for smooth running of his business. Prima facie, it cannot be said that the appellant conspired with the other members of the TPC and raised funds to promote the organisation.

13.2. *Another factor taken into account by the Special Court and the High Court relates to the allegation of the appellant meeting the members of the terror organisation. It has been held by the High Court that the appellant has been in constant touch with the other accused. The appellant has revealed in his statement recorded under Section 164 CrPC that he was summoned to meet A-14 and the other members of the organisation in connection with the payments made by him. Prima facie, we are not satisfied that a case of conspiracy has been made out at this stage only on the ground that the appellant met the members of the organisation.*

13.3. *An amount of Rs 9,95,000 (Rupees nine lakh and ninety-five thousand only) was seized from the house of the appellant which was accounted for by the appellant who stated that the amount was withdrawn from the bank to pay salaries to his employees and other expenses. We do not agree with the prosecution that the amount is terror fund. At this stage, it cannot be said that the amount seized from the appellant is proceeds from terrorist activity. There is no allegation that the appellant was receiving any money. On the other hand, the appellant is accused of providing money to the members of TPC.*

14. *After a detailed examination of the contentions of the parties and scrutiny of the material on record, we are not satisfied that a prima facie case has been made out against the appellant relating to the offences alleged against him. We make it clear that these findings are restricted only for the purpose of grant of bail to the appellant and the trial court shall not be influenced by these observations during trial.***"**

33. In "*Sanjay Jain versus Union of India*" (supra) it was held as follows:

"44. *We are of the opinion that it is not possible to hold that the appellant by his acts, such as, meeting Akraman Jee and making payment to Akraman Jee became a member of TPC.***"**

34. The subsequent development much harped upon by the learned ASGI is the statement of the approver Sudhanshu Ranjan @ Chhotu Singh u/s 306 Cr.P.C. and his evidence as Witness No. 2 but

on perusal of the said statement much of which is hearsay and which also encompasses the roles enacted by Sudesh Kedia and Sanjay Jain, the plea of the appellant that he was in fact a victim of extortion by TPC and the money was being paid to the members of TPC for smooth running of the business gets strengthened. So far as some of the e-mails are concerned, the contents of the e-mails are indicative of the efforts taken for the smooth running of the business and can in no way assumed to be pointing towards "terror funding". The payment of levy to TPC, Village Committee and others even if it is taken to be true would lack *mens rea* since it was not a voluntary act on the part of the appellant rather an act of compulsion for the smooth running of the business.

35. We now venture to consider the provisions of Section 43-D(5) which creates a bar in grant of bail to an accused. Section 43-D(5) reads as under:

> ***"(5)*** *Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:*
>
> *Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.****"***

36. In "*NIA versus Zahoor Ahmad Shah Watali*" reported in (2019) 5 SCC 1, it was held as follows:

> ***"23.*** *By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable*

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

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

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

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

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

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into

the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In Kalyan Chandra Sarkar v. Rajesh Ranjan this Court observed: (SCC pp. 537-38, para 18)

> *'18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in Puran v. Rambilas: (SCC p. 344, para 8)*
>
> > *"8. … Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. … That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."*
> >
> > *We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as*

to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.'

48. In Jayendra Saraswathi Swamigal v. State of T.N. this Court observed: (SCC pp. 21-22, para 16)

'16. … The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh and Gurcharan Singh v. State (UT of Delhi) and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.'"

24. *A priori, the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.*

26. *Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until*

> *framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.***"***

37. We are conscious of the fact that charge has been framed in the present case and in fact the order taking cognizance was challenged by the appellant in Cr. Appeal (D.B.) No. 119 of 2020 which was rejected and affirmed up to the Hon'ble Supreme Court. The same though would indicate a strong suspicion as observed in "*NIA versus Zahoor Ahmad Shah Watali*" but it would not oust the jurisdiction of the court in considering a bail application. The task to convince the court that there are no reasonable grounds for believing that the accusations are prima facie true becomes more onerous in a case of bail without ousting such prayer, irrespective of the stage of the case after charge sheet is submitted as both operate in different spheres and the considerations adopted, too, are different.

38. In fact 'Watali' was considered by the Hon'ble Supreme Court in the case of 'Sudesh Kedia' and it was observed therein that while considering the grant of bail under Section 43-D (5), it is the bounden duty of the court to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not.

39. The judgment rendered in "*NIA versus Zahoor Ahmad Shah Watali*" (supra) has been considered in the case of *"Union of India versus K.A. Najeeb",* reported in (2021) 3 SCC 713, wherein it has been held as follows:

> ***"16.*** *As regards the judgment in NIA v. Zahoor Ahmad Shah Watali, cited by the learned ASG, we find that it dealt with an entirely different factual matrix. In that case, the High Court had reappreciated the entire evidence on record to overturn the Special Court's conclusion of their being a prima facie case of conviction and concomitant rejection of bail. The High Court had practically conducted a mini-trial and determined admissibility of certain evidence, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under Section 43-D(5), but it was premature and possibly would have prejudiced the trial itself. It was in these circumstances that this Court intervened and cancelled the bail.*
>
> ***17.*** *It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.***"***

The other factors for grant of bail/denial of bail has been enumerated in the following manner:

> **"18.** *Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well*

protected.

19. *Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc.***"**

40. The appellant is in custody since 18.01.2022. The charge sheet contains 185 witnesses, 131 documents and 66 material exhibits and there is no likelihood of the trial being concluded in the near future. The conduct of the appellant indicates that he has fully cooperated with the Investigating Agency and his statements u/s 161 Cr.P.C. as well as u/s 164 Cr.P.C. were recorded though subsequently his status changed from being a witness to an accused.

41. At this juncture, it would be profitable to refer to the case of "*State of Kerala versus Raneef*", reported in (2011) 1 SCC 784 and the relevant paragraph is quoted thus:

"15. *In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille.***"**

42. The learned court below in its impugned order dated 26.02.2022 has not properly appreciated the materials available on record as well as the various provisions of the UAP Act while rejecting

the prayer for bail of the appellant.

43. We therefore, on consideration of the entire facets of the case and the submissions advanced by the learned counsels for the respective sides come to a conclusion that we are not satisfied that there are reasonable grounds for believing that the accusation against the appellant is prima facie true and as a consequence to the findings noted above, we hereby set aside the order dated 26.02.2022 passed by the learned AJC-XVI-cum-Spl. Judge, NIA, Ranchi in Misc. Criminal Application No. 109/2022, corresponding to Special (NIA) Case No. 03 of 2018 (R.C. Case No. 06/2018/NIA/DLI), arising out of Tandwa P.S. Case No. 02 of 2016.

44. The appellant shall be released on bail on usual conditions to be decided by the learned AJC-XVI-cum-Spl. Judge, NIA, Ranchi.

45. We make it clear that the learned trial court shall not be influenced while conducting the trial of any of the observation made by us in this order as such observations/findings are restricted only for the purpose of grant of bail to the appellant.

46. This appeal is allowed.

47. Pending I.A., if any, stands disposed off.

48. Let a copy of this order be sent through "FAX" immediately to the concerned court.

(Rongon Mukhopadhyay, J.)

I Agree

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

High Court of Jharkhand at Ranchi
Dated, the 11th day of April, 2022.
Alok/AFR